

References

RESOLUTION AGREEMENT

Between the Arcadia Unified School District,
the U.S. Department of Education, Office for Civil Rights, and
the U.S. Department of Justice, Civil Rights Division

OCR Case Number 09-12-1020

DOJ Case Number 169-12C-70

BACKGROUND AND JURISDICTION

The U.S. Department of Education, Office for Civil Rights (“OCR”) and the U.S. Department of Justice, Civil Rights Division (“DOJ”) (jointly referred to as the “United States”) investigated a complaint (“Complaint”) filed against the Arcadia Unified School District (“District”), pursuant to Title IX of the Education Amendments of 1972 (“Title IX”) and Title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000c *et seq.* (“Title IV”). The Complaint alleged discrimination on the basis of sex against a student in the District (“Student”). The Student is a transgender boy who has consistently and uniformly presented as a boy at school and in all other aspects of his life for several years, as supported by documentation provided to the District by his family. The Student has been known, treated, and accepted as a male by his family, teachers, and classmates. Specifically, the Complaint alleged that the District denied the Student educational opportunities on the basis of sex when, because the Student is transgender, it prohibited him from accessing (1) sex-specific facilities designated for male students at school for use during school and extracurricular activities, and (2) sex-specific student cabins for male students during a school-sponsored overnight academic camp. Without admitting any unlawful conduct, in order to resolve the Complaint, the District agrees to implement this Resolution Agreement (“Agreement”), which includes individual and District-wide measures.

DEFINITIONS

For the specific purposes of this Agreement, the following definitions apply:

- A. “Gender-based discrimination” is a form of sex discrimination, and refers to differential treatment or harassment of a student based on the student’s sex, including gender identity, gender expression, and nonconformity with gender stereotypes, that results in the denial or limitation of education services, benefits, or opportunities. Conduct may constitute gender-based discrimination regardless of the actual or perceived sex, gender identity, or sexual orientation of the persons experiencing or engaging in the conduct.
- B. “Sex assigned at birth” and “assigned sex” refer to the gender designation listed on one’s original birth certificate.
- C. “Gender expression” refers to external cues that one uses to represent or communicate one’s gender to others, such as behavior, clothing, hairstyles, activities, voice, mannerisms, or body characteristics.

- D. "Gender identity" refers to one's internal sense of gender, which may be different from one's assigned sex, and which is consistently and uniformly asserted, or for which there is other evidence that the gender identity is sincerely held as part of the student's core identity.
- E. "Transgender" describes an individual whose gender identity is different from the individual's assigned sex. "Transgender boy" and "transgender male" refer to an individual assigned the female sex at birth who has a male gender identity. An individual can express or assert a transgender gender identity in a variety of ways, which may but do not always include specific medical treatments or procedures. Medical treatments or procedures are not considered a prerequisite for one's recognition as transgender. For purposes of this Agreement, a "transgender student" is a student who consistently and uniformly asserts a gender identity different from the student's assigned sex, or for which there is documented legal or medical evidence that the gender identity is sincerely held as part of the student's core identity.
- F. "Gender transition" refers to the experience by which a transgender person goes from living and identifying as one's assigned sex to living and identifying as the sex consistent with one's gender identity. A gender transition often includes a "social transition," during which an individual begins to live and identify as the sex consistent with the individual's gender identity, with or without certain medical treatments or procedures.
- G. "Gender stereotypes" refers to stereotypical notions of masculinity and femininity, including expectations of how boys or girls represent or communicate one's gender to others, such as behavior, clothing, hairstyles, activities, voice, mannerisms, or body characteristics.
- H. "Gender nonconformity" refers to one's gender expression, gender characteristics, or gender identity that does not conform to gender stereotypes.
- I. "Sex-specific facilities" refers to facilities and accommodations used by students at school or during school-sponsored activities and trips, and include, but are not limited to, restrooms, locker rooms, and overnight facilities.
- J. "Parent" means a student's parent(s) or legal guardian(s).

TERMS OF THE AGREEMENT

I. EXPERT CONSULTANT

- A. No later than ninety (90) calendar days after execution of this Agreement, the District will engage one or more third-party consultants with expertise in child and adolescent gender identity, including discrimination against transgender and gender nonconforming youth, to support and assist the District in implementing this Agreement.

- B. The consultant(s) will be agreed upon by both the District and the United States.
- C. The District will promptly notify the United States if it intends to retain additional or alternative consultants during the term of this Agreement for purposes of implementing this Agreement.
- D. The District will be responsible for all costs, if any, associated with the retention of expert consultants.

II. INDIVIDUAL MEASURES

- A. For the duration of the Student's enrollment in the District, the District will continue to:
 - 1. provide the Student access to sex-specific facilities designated for male students at school consistent with his gender identity; however, the Student may request access to private facilities based on privacy, safety, or other concerns;
 - 2. provide the Student access to sex-specific facilities designated for male students at all District-sponsored activities, including overnight events and extracurricular activities on and off campus, consistent with his gender identity; however, the Student may request access to private facilities based on privacy, safety, or other concerns;
 - 3. treat the Student the same as other male students in all respects in the education programs and activities offered by the District; and
 - 4. ensure that any school records containing the Student's birth name or reflecting the Student's assigned sex, if any, are treated as confidential, personally identifiable information; are maintained separately from the Student's records; and are not disclosed to any District employees, students, or others without the express written consent of the Student's parents or, after the Student turns 18 or is emancipated, the Student.
- B. The District will notify the Student and his parents that they may, at any point during the Student's enrollment in the District, request that the District establish a support team to ensure the Student has access and opportunity to participate in all programs and activities, and is otherwise protected from gender-based discrimination at school. If the District receives such a request, it will form a support team that will:
 - 1. include, at a minimum, the Student, his parents, an advocate or representative of the parents' choice (if any), a medical professional of the

parents' choice (if any), and relevant District personnel familiar with the Student;¹

2. develop a Student-specific support plan to provide the Student with safe and equitable access to all school and District facilities and activities, addressing any particular issues raised by the Student or his parents;
3. document its meetings, recommendations, and decisions, including, but not limited to, the date and location of each meeting, the names and positions of all participants, the basis for its recommendations and decisions, and supporting third-party opinions and information considered and/or relied upon in the meeting; and
4. at least once each school year and at any time upon the request of the Student or his parents, review the Student's particularized circumstances to determine whether existing arrangements related to the Student's gender identity, gender transition, or transgender status are meeting his educational needs and ensuring that the Student has equal access to and equal opportunity to participate in the District's education programs and activities. Once constituted, the support team will be in place for the remainder of the Student's enrollment in the District or until his parents request in writing that it be terminated.

III. DISTRICT-WIDE MEASURES

A. Policies, Procedures, and Regulations

1. No later than November 30, 2013, the District, in consultation with its consultant(s) and following approval by the United States, will revise all of its policies, procedures, regulations, and related documents and materials (e.g., complaint forms, handbooks, notices to students and parents, website information) related to discrimination (including harassment) to:
 - a. specifically include gender-based discrimination as a form of discrimination based on sex, and
 - b. state that gender-based discrimination includes discrimination based on a student's gender identity, gender expression, gender transition, transgender status, or gender nonconformity.
2. No later than January 31, 2014, the District, with the assistance of the consultant(s) and following approval by the United States, will ensure that its policies, procedures, and regulations applicable to or governing student

¹ The District will not bear the costs of the student's medical professional or advocate, if any.

participation in all programs and activities offered by the District provide all students, including transgender students and other students who do not conform to sex stereotypes, equal access to and equal opportunity to participate in all such programs and activities in a manner that does not discriminate based on sex. The District will:

- a. identify all existing policies and regulations applicable to or governing students' access to and participation in programs and activities offered by the District, and revise those policies and regulations as necessary to ensure that all students, including gender nonconforming and transgender students, are provided with equal access to all such programs and activities;
 - b. modify current policies or develop a comprehensive gender-based non-discrimination policy to ensure that all students, including transgender students, are protected from gender-based discrimination and have equal access to and equal opportunity to participate in all education programs and activities offered by the District; and
 - c. develop an implementation guide for site administrators, faculty, and staff addressing the application of the District's gender-based discrimination policies, as adopted or modified under ¶ III.A.2.b. above, to transgender and gender nonconforming students.
3. If the District is notified by a student, parent, or representative that the student is undertaking, planning to undergo, or has completed a gender transition, the District will promptly inform the notifying individual and the student of their right to request a support team of appropriate individuals to ensure that the student has equal access to and equal opportunity to participate in the District's programs and activities.

B. Instruction and Professional Development

1. Starting with the 2013-2014 school year, and then annually thereafter for the term of this Agreement, the District, in consultation with its consultant(s) and the United States, will provide training to all certificated District-level and school-based administrators regarding the District's obligations to prevent and address gender-based discrimination; implementation of the policies, procedures, and regulations adopted under this Agreement; and best practices for creating a nondiscriminatory school environment for transgender students. The initial training will be conducted no later than March 31, 2014. Site administrators will, throughout each school year, provide this information to all faculty and staff during existing trainings, meetings, and other appropriate opportunities. No later than March 31, 2014, and by November 1 of each school year thereafter, the District will submit a plan, for the United

States' review and approval, indicating how it intends to provide this information to faculty and staff.

2. Consistent with the policies and procedures adopted in this Agreement and with applicable law, the District, in consultation with its consultant(s), will, in its bullying prevention and sexual harassment programs, provide age-appropriate instruction to all students on gender-based discrimination and will provide examples of prohibited conduct, including harassment, in various school-related contexts, including the types of conduct prohibited with respect to sex-specific facilities and elsewhere at school.

IV. MONITORING AND REPORTING

- A. For all policies, procedures, regulations, and other materials revised under this Agreement, the District will provide draft documents to the United States for its review no later than thirty (30) calendar days before the applicable deadline for implementation. The United States will provide comments no later than thirty (30) calendar days after its receipt of the draft documents. The parties will work in good faith to resolve any disagreements by the applicable deadline for implementation.
- B. The District will provide documentation of its compliance with this Agreement through written compliance reports, which will be produced to the United States on February 15 and August 15 of the first year this Agreement is in force, and annually thereafter on August 15 for each year this Agreement is in place. The first report will be due on February 15, 2014 and will contain information for the period running from the date of the execution of this Agreement through January 31, 2014. Each subsequent report will contain information for the period ending July 31 of the respective year. Each report will contain the following information and documents:
 1. the name(s), position(s), employer(s) or professional affiliation(s), and contact information of each consultant retained by the District in connection with this Agreement, as well as the start and end dates of each individual's services;
 2. a copy of all relevant policies, procedures, regulations, and related materials (e.g., handbooks) that were implemented, revised, or rescinded during the reporting period;
 3. a copy or detailed description of all gender-based discrimination or harassment complaints or incidents that occurred during the reporting period, including documentation or a detailed written description of the District's response to each incident;
 4. whether the District was notified during the reporting period that any student was undertaking, planning to undergo, or had completed a gender

transition; and, if so, whether the District notified each such student and his/her parent of their right to request a support team; and whether any requests for a support team were made;

5. for all support teams formed or that were in place during the reporting period (including for the Student), the names and positions of the team members, documentation of the request for the formation of the team, date(s) the team met, and any documentation of its meetings, recommendations, and decisions;
 6. a detailed description or documentation related to all trainings provided to District employees pursuant to this Agreement, including the date(s) of each training; and the name, position, and school/work site of each employee who was required, but did not attend the training;
 7. a detailed written description of any changes to the District's bullying prevention and sexual harassment programs made pursuant to this Agreement, including a copy of all relevant instructional materials; and
 8. a detailed written description of the District's compliance with the individual measures required by Section II of this Agreement, as well as all documentation related to the Student's support team and support plan.
- C. The District will provide all reports, documents, and information required to be produced to the United States pursuant to this Agreement in electronic form, usable by the United States, or in written form if the data in electronic form would not be usable, in accordance with the timelines set herein.
- D. The District will produce to the United States all reports, documents, and information required by this Agreement, including those containing students' personally identifiable information ("PII") from education records. Pursuant to the law enforcement exception to the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g(b)(1)(C) and (3), which applies to the United States in this matter, the United States may receive documents containing PII from education records in connection with the enforcement of the federal legal requirements which relate to federally supported education programs. *See* 20 U.S.C § 1232g(b)(1)(C)(ii). The United States will maintain the confidentiality of all such information produced by the District, consistent with the Privacy Act of 1974, 5 U.S.C. § 552a, the Freedom of Information Act, 5 U.S.C. § 552, and FERPA.

V. ENFORCEMENT

- A. The United States may enforce the terms of this Agreement, Title IX, Title IV, and all other applicable federal laws.
- B. OCR will not initiate enforcement action and DOJ will not initiate litigation regarding the Complaint provided that the District implements the provisions of this Agreement in good faith.²
- C. If OCR or DOJ determines that the District has failed to comply with the terms of this Agreement or has failed to comply in a timely manner, one or both agencies will so notify the District in writing and will attempt to resolve the issue(s) in good faith with the District. If the United States is unable to reach a satisfactory resolution of the issue(s) within sixty (60) calendar days of providing notice to the District, OCR may initiate administrative compliance proceedings³ and DOJ may initiate civil enforcement proceedings in federal court.
- D. The District understands that the United States will monitor this Agreement until it determines that the District has fulfilled the terms of this Agreement. Sections I and III of this Agreement may not be terminated prior to June 30, 2016. Section II of this Agreement may not be terminated prior to the Student's withdrawal or graduation from the District, whichever is sooner.
- E. The District further understands that the United States retains the right to evaluate the District's compliance with this Agreement, including the right to conduct site visits, observe trainings, interview District staff and students (including *ex parte* communications with students and employees other than school and District administrators), and, if necessary, request additional reports or data.

² As of the date of this Agreement, litigation is not "reasonably foreseeable" concerning the matters described herein. To the extent that any party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described herein, the party is no longer required to maintain such a litigation hold. Nothing in this paragraph relieves any party of any other obligations imposed by this Agreement.

³ OCR may initiate compliance proceedings under 34 C.F.R. §§ 100.8-100.12 and 34 C.F.R. Part 101.

FOR THE UNITED STATES OF AMERICA:

For the U.S. Department of Education:

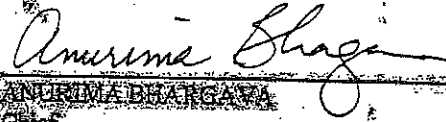


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Date: July 24, 2013

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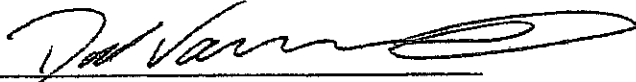


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**FOR THE ARCADIA UNIFIED SCHOOL
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Students' Rights

Gender Expression and Gender Identity

Civil rights laws prohibit discrimination and discriminatory harassment on the basis of gender expression and gender identity in K-12 public schools.

Discrimination is the unfair or unequal treatment or harassment of a person or group because they are part of a defined group, known as a protected class. **Gender expression and gender identity** are protected classes under Washington State law.¹

Discriminatory harassment is harassment based on a **protected class**. It can take many forms, such as threats, name-calling, derogatory jokes, physical assault, or other conduct that is physically threatening, harmful, or humiliating.

Common Terms and Definitions

People use many different words to describe their gendered experiences. Terminology can differ based on region, language, age, culture, and other factors.

Here are some commonly used terms:

Gender Expression describes the ways in which a person expresses their gender. Behavior, emotions, mannerisms, dress, grooming habits, interests, and activities are some of the ways people express gender.

Gender Identity refers to a deeply felt internal sense of being female, or male, or both, or neither—regardless of their gender assigned at birth.

Gender Non-conforming describes a person whose gender expression differs from stereotypical expectations about how they should look or act based on the gender they were assigned at birth. People who identify outside traditional gender categories or identify as both genders or as gender neutral are examples of gender non-conforming.

Biological Sex/Sex refers to a person's internal and external anatomy, chromosomes, and hormones.

Transgender is a general term often used to describe a person whose gender identity or expression, or both, are different from those traditionally associated with their gender assigned at birth.

Transitioning refers to the process in which a person goes from living and identifying as one gender to living and identifying as another.

¹ Chapter 28A.642 RCW, <http://app.leg.wa.gov/rcw/default.aspx?cite=28A.642>. Chapter 49.60 RCW, <http://app.leg.wa.gov/rcw/default.aspx?cite=49.60>. Chapter 392-190 WAC, <http://app.leg.wa.gov/WAC/default.aspx?cite=392-190>.



Students' Rights

Gender Expression and Gender Identity

Preferred Names, Personal Pronouns, and School Records

Preferred Name, Personal Pronoun. Students who attend Washington public schools have the right to be addressed by their preferred name and personal pronouns—*he* and *him*, or *she* and *her*. Schools should not require a legal name change for staff to use the student's preferred name. During class, on seating charts, during roll call, on tests and assignments, and on other school records, staff should use a student's preferred name and gender pronoun.

School Records. The record of a student's K–12 educational experience comprises two types of documents; each requires a different response from schools relative to gender expression and gender identity.

Non-official records that document a student's education should refer to a student by their preferred name and gender. For example, school identification cards, which are not legal documents, should display the student's preferred name.

Official education records that are mandated by law could require a school to use a student's legal name and gender. For example, the documents related to state tests must report the student's legal name. Schools should change the student's name on official school records if the student provides documentation of a legal name change. Schools should change a student's gender designation if a parent or student requests the change.

Public school records should use the student's preferred name and gender designation unless there is a legal reason not to do so.

Dress Codes and Gender Expression

Clothing and hairstyle are two ways in which students often express gender. Students have the right to express their gender at school—within the constraints of the school's dress code—without discrimination or harassment. School dress codes should be gender-neutral and should not restrict a student's clothing choices on the basis of gender.

Restrooms and Locker Rooms

Restrooms. Public schools must allow students to use the restroom that corresponds to their gender identity. Any student—transgender or not—who requests greater privacy for any reason should be given access to an alternative restroom, such as a staff restroom or health office restroom. However, school staff cannot require a student to use an alternative restroom because of their transgender or gender non-conforming status.

Locker Rooms. Public schools should provide access to the locker room that corresponds to a student's gender identity unless the situation demands that a student's privacy be protected. A separate changing schedule or use of a private area, such as a nearby restroom stall with a door or an area separated by a curtain, are some ways public schools protect physical privacy.

Schools should determine a student's use of locker rooms on a case-by-case basis. The goals are to maximize social integration and provide equal opportunity to participate in physical education classes and athletic opportunities.



Students' Rights

Gender Expression and Gender Identity

Sports and Physical Education Classes

Schools must allow all students to participate in physical education and athletics that correspond to their gender identity.

Eligibility for interscholastic athletics is determined by the Washington Interscholastic Activities Association (WIAA), www.wiaa.com. Students should contact the WIAA or review the **Gender Identity Participation Policy** in the eligibility section of the WIAA Handbook, www.wiaa.com/subcontent.aspx?SecID=350.

Confidential Educational and Health Information

Privacy laws protect the safety and well-being of the student. This right to privacy is protected by state and federal laws, such as the federal Family Education Rights and Privacy Act (FERPA).²

School staff can only share confidential educational and health information if they are permitted by law. In general, school staff should not share a student's transgender or gender nonconforming status, legal name, or gender assigned at birth with others, who could include other students, school staff, and non-school staff.

Discriminatory Harassment

Harassment based on gender expression or gender identity is a form of discrimination prohibited in Washington public schools. Schools must take steps to protect students from discriminatory harassment.

School staff must investigate possible discriminatory harassment—as soon as they know or reasonably should know—even if a parent or student does not file a formal complaint.

If an investigation reveals that harassing conduct created a hostile environment, staff must act quickly to stop the behavior and put an end to the hostile environment.

The school must:

1. Address any effects discriminatory harassment had on the student at school, **AND**
2. Make sure that harassing conduct does not happen again.

Find more information about discriminatory harassment, guidelines for district policy and practice, and related resources, www.k12.wa.us/equity.

² Family Educational Rights and Privacy (FERPA), 20 U.S.C. §1232; 34 C.F.R. Part 99, http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title34/34cfr99_main_02.tpl.



Students' Rights

Gender Expression and Gender Identity

Resolve Concerns or Disagreements

A discussion with your school principal, or civil rights compliance coordinator at the school district, is often the best first step to address your concerns or disagreements about discrimination and work toward a solution.

- **Focus on the facts** related to discrimination and harassment, as you understand them, AND
- Let the principal or coordinator know **what you want them to do to resolve the problem.**

Find contact information for your district's civil rights compliance coordinator here, www.k12.wa.us/Equity/ContactList.aspx. You also have the option to file a formal complaint.

Formal Complaints — Discrimination and Discriminatory Harassment

If you believe your child is experiencing discrimination or discriminatory harassment based on gender expression or gender identity, you can file a formal complaint.

- On the Equity and Civil Rights website, www.k12.wa.us/Equity/Families, find information about how to file a formal complaint and follow the steps.
- Contact the U.S. Department of Education, Office for Civil Rights at 206-607-1600 (TDD: 1-800-877-8339), or visit the website, www.ed.gov/ocr.
- Contact the Washington State Human Rights Commission at 1-800-233-3247 (TTY: 1-800-300-7525), or visit the website, www.hum.wa.gov.

Learn More. Ask Questions. Get Help.

Equity and Civil Rights Office at the Office of Superintendent of Public Instruction

360-725-6162 | TTY: 360-664-3631 | equity@k12.wa.us | www.k12.wa.us/equity

For the Civil Rights Compliance Coordinator in your district, visit:

www.k12.wa.us/Equity/ContactList.aspx

Find more information about discrimination and harassment, guidelines for district policy and practice, and related resources, www.k12.wa.us/equity.

This document outlines rights and responsibilities under state and federal civil rights laws. You may have additional rights under other laws. This information is for informational purposes only—not to provide legal advice. For legal advice specific to the facts and circumstances of your individual situation, please contact an attorney.

OSPI provides equal access to all programs and services without discrimination based on sex, race, creed, religion, color, national origin, age, honorably discharged veteran or military status, sexual orientation, gender expression, gender identity, disability, or the use of a trained dog guide or service animal by a person with a disability. Questions and complaints of alleged discrimination should be directed to the Equity and Civil Rights Director at 360-725-6162/TTY: 360-664-3631; or P.O. Box 47200, Olympia, WA 98504-7200; or equity@k12.wa.us.



Transgender Students

Definitions/Terms

- **Gender Expression** is how a person expresses their gender, often through behavior, emotional expression, mannerisms, dress, grooming, interests, and activities.
- **Gender Identity** refers to one's deeply felt internal sense of being female, or male, or both, or neither, regardless of their gender assigned at birth.
- **Gender Nonconforming** describes a person whose gender expression differs from stereotypical expectations about how they should look or act based on the gender they were assigned at birth. This includes people who identify outside traditional gender categories or identify as both genders, or as gender neutral.
- **Biological Sex/Sex** refers to a person's internal and external anatomy, chromosomes, and hormones.
- **Transgender** is a general term often used to describe a person whose gender identity and/or expression is different from that traditionally associated with the person's gender assigned at birth.
- **Transitioning** refers to the process in which a person goes from living and identifying as one gender to living and identifying as another.

Official Records

The District is required to maintain a permanent student record which includes the student's legal name and the student's gender. The District will change a student's official records to reflect a change in legal name upon receipt of:

1. Documentation that the student's legal name or gender has been changed pursuant to a court order or through amendment of state or federally-issued identification; or
2. A written, signed statement explaining that the student has exercised a common-law name change and has changed their name for all intents and purposes and that the change has not been made for fraudulent reasons.

Schools may change a student's official gender designation upon parent or student request pursuant to the Office of the Superintendent of Public Instruction's (OSPI's) process found at <http://www.k12.wa.us/cedars/CEDARSDDataFormQA.aspx>.

To the extent that the District is not legally required to use a student's legal name and biological sex on school records or documents, the District should use the name and gender by which the student identifies. In situations where school employees are required by law to use or report a student's legal name or gender, such as for standardized testing, school staff should adopt practices to avoid the inadvertent disclosure of the student's transgender or gender nonconforming status.

Confidential Health or Educational Information

Information about a student's gender status, legal name, or gender assigned at birth may constitute confidential medical or educational information. Disclosing this information to other students, their parents, or other third parties may violate privacy laws, such as the federal Family Education Rights and Privacy Act (FERPA) (20 U.S.C. §1232; 34 C.F.R. Part 99). Therefore, to ensure the safety and well-being of the student, school employees should not disclose a student's transgender or gender nonconforming status to others, including the student's parents and/or other school personnel, unless the school is (1) legally required to do so or (2) the student has authorized such disclosure.

Communication and Use of Names and Pronouns

An appropriate school employee will privately ask known transgender or gender nonconforming students how they would like to be addressed in class, in correspondence to the home, and at conferences with the student's parent/guardian. That information will be included in the electronic student record system along with the student's legal name in order to inform teachers and staff of the name and pronoun by which to address the student. When appropriate or necessary, this information will be communicated directly with staff to facilitate the use of proper names and pronouns. A student is not required to change their official records or obtain a court-ordered name and/or gender change as a prerequisite to being addressed by the name and pronoun that corresponds to their gender identity.

When communicating with transgender or gender nonconforming students regarding particular issues such as conduct, discipline, grades, attendance or health, school employees will focus on the conduct or particular issues rather than making assumptions regarding the student's actual or perceived gender identity. When communicating with parents of transgender or gender nonconforming students, school employees will refrain from the use of gender pronouns and refer to the student by name whenever practicable. The district will not condone the intentional and persistent refusal to respect a student's gender identity, or inappropriate release of information regarding a student's transgender status.

Restroom Accessibility

Students will be allowed to use the restroom that corresponds to the gender identity they assert at school. No student will be required to use a restroom that conflicts with his or her gender identity.

Locker Room Accessibility

Use of locker rooms by transgender or gender nonconforming students will be assessed on a case-by-case basis, with the goal of maximizing transgender or gender nonconforming student social integration, providing an equal opportunity to participate in physical education classes and athletic opportunities and ensuring the student's safety. In most cases, the district should provide the student access to the locker room that corresponds to the gender identity they assert at school. Reasonable alternatives to locker room conditions include, but are not limited to:

- use of a private area (e.g., nearby restroom stall with a door, an area separated by a curtain, an office in the locker room, or a nearby health office restroom);
- a separate changing schedule (i.e., utilizing the locker room before or after the other students).

Any alternative to locker room conditions will be provided in a manner that allows the student to keep his or her transgender or gender nonconforming status private. No student, however, will be required to use a locker room that conflicts with his or her gender identity.

Sports and Physical Education Classes

The District will provide all students, including students, the opportunity to participate in physical education and athletic programs/opportunities in a manner that is consistent with their gender identity.

A student may seek review of his or her eligibility for participation in interscholastic athletics by working through the Gender Identity Participation procedure set forth by the Washington Interscholastic Activities Association (WIAA).

Dress Codes

The District will allow students to dress in a manner that is consistent with their gender identity and/or gender expression within the constraints of the dress codes adopted at their school site and within the constraints of the District guidelines for dress as they relate to health and safety issues (e.g., prohibitions on wearing gang-related apparel). School dress codes will be gender-neutral and will not restrict a student's clothing choices on the basis of gender.

Other School Activities

In any school activity or other circumstance involving separation by gender (i.e., class discussions, field trips), students will be permitted to participate in accordance with the gender identity they assert at school. Teachers and other school employees will make every effort to separate students based on factors other than gender where practicable.

Training and Professional Development

When possible, the District will conduct staff training and ongoing professional development in an effort to build the skills of all staff members to prevent, identify and respond to harassment and discrimination. The content of such professional development should include, but not be limited to:

- Terms and concepts related to gender identity, gender expression, and gender diversity in children and adolescents;
- Appropriate strategies for communicating with students and parents about issues related to gender identity and gender expression, while protecting student privacy;
- Strategies for preventing and intervening in incidents of harassment and discrimination, including cyber-bullying;
- District and staff responsibilities under applicable laws and district policies regarding harassment, discrimination, and gender identity and expression issues.

Discrimination and Harassment Complaints

Discrimination and harassment on the basis of sex, sexual orientation, or gender identity or expression are prohibited within the district. It is the responsibility of each school, the District and all staff to ensure that all students, including transgender and gender non-conforming students, have a safe school environment. The scope of this responsibility includes ensuring that

any incident of discrimination or harassment is given immediate attention and/or reported to the district's Civil Rights Compliance Coordinator.

Complaints alleging discrimination or harassment based on a person's actual or perceived gender identity or expression are to be taken seriously and handled in the same manner as other discrimination and/or harassment complaints. This includes investigating the incident and taking age and developmentally-appropriate corrective action. Anyone may file a complaint alleging a violation of this policy using the complaint process outlined in the district's Nondiscrimination Procedure 3210P.

Transgender Students

The board believes in fostering an educational environment that is safe and free of discrimination for all students, regardless of sex, sexual orientation, gender identity or gender expression. To that end, the board recognizes the importance of an inclusive approach toward transgender students with regard to official records, confidential health and education information, communication, restroom and locker room accessibility, sports and physical education, dress codes and other school activities, in order to provide these students with an equal opportunity for learning and achievement. This policy and its procedure will support that effort by facilitating district compliance with local, state and federal laws concerning harassment, intimidation, bullying and discrimination.

Cross References:	Policy 3210	Nondiscrimination
	Policy 3207	Prohibition of Harassment, Intimidation and Bullying
	Policy 3231	Student Records
Legal References:	Chapter 28A.642, RCW	Discrimination prohibition
	Chapter 49.60, RCW	Washington Law Against Discrimination
	20 U.S.C. §1232g, 34 C.F.R., Part 99	Family Education Rights and Privacy Act

Prohibiting Discrimination in Washington Public Schools – OSPI
Guidelines for school districts to implement Chapters 28A.640 and
28A.642 RCW and 392-190 WAC (February 2012)

Management Resources:

Policy and Legal News, November 2013

WSSDA issues new policy regarding
transgender students

Adoption Date:
School District Name:
Revised:
Classification: Essential



U.S. Department of Justice
Civil Rights Division



U.S. Department of Education
Office for Civil Rights

July 24, 2013

Dr. Joel Shawn
Superintendent
Arcadia Unified School District
234 Campus Drive
Arcadia, CA 91007

(In reply, please refer to DOJ Case No. DJ 169-12C-70, OCR Case No. 09-12-1020)

Dear Dr. Shawn:

In October 2011, after receiving separate complaints, the U.S. Department of Justice, Civil Rights Division (DOJ) and the U.S. Department of Education, Office for Civil Rights (OCR) initiated a joint investigation of the Arcadia Unified School District (the "District") into allegations of sex-based discrimination against a middle school student in the district (the "Student"). The complaints, filed pursuant to Title IX of the Education Amendments of 1972, 42 U.S.C. 1681 (Title IX) and its implementing regulations and Title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000c *et seq.* (Title IV), alleged that the District was discriminating against the Student based on sex by denying him equal access to the District's education program and activities because he is transgender.¹ Specifically, the complaints alleged that the District prohibited the Student from accessing facilities consistent with his male gender identity, including restrooms and locker rooms at school, as well as sex-specific overnight accommodations at a school-sponsored trip to an off-site academic camp in October 2011. DOJ and OCR (collectively, the "United States") jointly investigated the allegations.

Prior to the conclusion of the investigation, the District expressed an interest in voluntarily resolving this case and entered into a resolution agreement that commits the District to take specific actions. This letter summarizes the information gathered during the investigation and how the complaints were resolved.²

Title IX and its implementing regulations, 34 C.F.R. § 106.31, prohibit discrimination on the basis of sex in education programs and activities operated by recipients of federal financial assistance. Title IV prohibits discrimination by public schools against students based on race, color, national origin, sex, and religion. OCR investigated its complaint under its Title IX

¹ A transgender person has a gender identity (one's internal sense of gender) that is different from the individual's assigned sex (i.e., the gender designation listed on one's original birth certificate).

² Certain personally identifiable information gathered during this investigation has been omitted from this letter to protect the Student's privacy.

authority. DOJ investigated its complaint under its Title IV authority. The District is a public school district that receives federal funds, and therefore is subject to the requirements of both Title IX and Title IV. In the context of this investigation, the United States applied the same legal standards under Title IX and Title IV.

School districts are responsible for providing students with a nondiscriminatory educational environment. Under Title IX, “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681(a). Under the Title IX regulations, a school district may not treat individuals differently on the basis of sex with regard to any aspect of services, benefits, or opportunities it provides. 34 C.F.R. §§ 106.31(a)-(b). All students, including transgender students and students who do not conform to sex stereotypes, are protected from sex-based discrimination under Title IX and Title IV.³

Summary of Investigation

The Student, a rising ninth grader in the District, has attended school in the District since Kindergarten. The Student was a seventh grader at a middle school in the District at the time of the complaints. The Student, who was assigned the female sex at birth, identified as a boy from a very young age. With his family’s support, he began consistently to assert his male gender identity and commenced a gender transition from female to male during his fifth grade year, the 2009-2010 school year, while attending an elementary school in the District.⁴

During that school year, the Student participated in a District-sponsored overnight academic camp trip for fifth graders, where he was assigned to a girls’ cabin. At the camp, the Student was teased and socially ostracized by his female cabin-mates, who did not perceive him to be a girl. At school, he faced some harassment from classmates because of his masculine clothing and hairstyle, which did not conform to female stereotypes. For example, on one occasion, a classmate referred to him as “it.” Based on these incidents, the Student and his family decided to commence his gender transition over spring break of that year. To effectuate

³ See, e.g., *Pratt v. Indian River Cent. Sch. Dist.*, No. 7:09-CV-0411, 2011 WL 1204804, at *11 (N.D.N.Y. Mar. 29, 2011); *Doe v. Brimfield Grade Sch.*, 552 F. Supp. 2d 816, 823 (C.D. Ill. 2008); *Montgomery v. Independent Sch. Dist. No. 709*, 109 F. Supp. 2d 1081, 1090 (D. Minn. 2000); Letter of Findings, Tehachapi Unified School District, OCR Case No. 09-11-1031, DOJ Case No. DJ 169-11E-38, at 2 (June 30, 2011), available at <http://www.justice.gov/crt/about/edu/documents/tehachapiagreement.pdf>. In the employment context, federal courts and administrative agencies have applied Title VII of the Civil Rights Act of 1964, the federal law prohibiting sex discrimination, to discrimination against transgender individuals based on sex, including nonconformity with sex stereotypes and gender identity. See, e.g., *Glenn v. Brumby*, 663 F.3d 1312, 1315-20 (11th Cir. 2011); *Barnes v. City of Cincinnati*, 401 F.3d 729, 737 (6th Cir. 2005); *Smith v. City of Salem*, 378 F.3d 566, 572-75 (6th Cir. 2004); *Schroer v. Billington*, 577 F. Supp. 2d 293, 303-08 (D.D.C. 2008); *Macy v. Holder*, Appeal No. 0120120821, 2012 WL 1435995, at *4-11 (U.S. Equal Emp’t Opportunity Comm’n Apr. 20, 2012). Courts rely on Title VII precedent to analyze discrimination “on the basis of sex” under Title IX. See, e.g., *Franklin v. Gwinnett Cnty. Pub. Sch.*, 503 U.S. 60, 74 (1992); *Murray v. N.Y. Univ. Coll. of Dentistry*, 57 F.3d 243, 249 (2nd Cir. 1995).

⁴ A gender transition is the experience by which a transgender person goes from living and identifying as one’s assigned sex to living and identifying as the sex consistent with one’s gender identity. A gender transition often includes a “social transition,” during which an individual begins to live and identify as the sex consistent with the individual’s gender identity, with or without certain medical treatments or procedures.

his transition, the Student, among other things, adopted a new, traditionally male first name; expressed a desire to be referred to with masculine pronouns; and continued outwardly to present as a male, including in his clothing and hairstyle. The Student's parents worked with his teacher and school administrators to ensure a smooth transition. According to the District and the Student's family, the Student's classmates, notified of the transition by their teacher, accepted him as male immediately, and the harassment of the Student ceased. With the consent of the Student's parents and the school, the Student used a gender-neutral restroom for the remainder of his fifth grade year.

The Student completed elementary school without further incident and has not experienced any peer harassment while in middle school. He has consistently and uniformly identified and presented as male in school and all other aspects of his life, including through his traditionally masculine clothing and hairstyle, adoption of a male name, and preference to be called by masculine pronouns. All of the witnesses interviewed by OCR consistently indicated that the Student is accepted and treated as a boy by his classmates and teachers. Although some students know his transgender status (including students with whom he went to elementary school), a number of his current middle school classmates do not. As part of his transition, the Student is under the care of healthcare professionals.

In October 2011, DOJ and OCR received complaints alleging that: (1) the District prohibited the Student from using sex-specific restroom and locker room facilities designated for boys during his sixth and seventh grade years, and (2) the District refused to permit the Student to stay in a cabin with other male students at an overnight camp sponsored by the District in October 2011 during his seventh grade year, requiring instead that he stay in a cabin separate from all of his classmates with his parent or another adult chaperone. After receiving the complaints, DOJ and OCR jointly pursued an investigation of these allegations. The investigation included site visits by OCR staff to the District schools attended by the Student and the overnight camp site; interviews with District administrators and faculty, camp administrators, the Student and his family, parents of some of the Student's classmates, California Department of Education ("CDE") officials, administrators in other California school districts with policies addressing transgender and gender nonconforming students, and other gender identity experts; and a review of documentation provided by the Student's family and the District.

1. Access to Restrooms and Locker Rooms

The student entered the sixth grade at his middle school in the 2010-2011 school year. Prior to the start of that school year, the Student's parents met with middle school and District administrators to discuss the Student's transgender status. During this meeting, the Student and his parents requested that the District permit the Student to use male-designated restrooms and locker rooms at the middle school, in accordance with the Student's and family's wishes, as informed by medically appropriate standards of care recommended by the Student's healthcare providers.⁵ Citing generalized concerns about safety and privacy, the District refused this

⁵ At various points, including prior to the seventh grade camp trip, the Student's parents provided the District information, including from his healthcare providers, that the medically-appropriate standard of care for a transgender adolescent is for the young person to be supported in their social transition to his or her self-identified gender, and that schools should therefore treat a transgender student as the gender consistent with his or her gender identity in all settings, including routine activities and access to sex-specific facilities.

request, requiring instead that the Student use the private restroom in the school health office as both a restroom and changing area for physical education (P.E.) class. The health office is located on the first floor of the school, some distance away from the school gym and the location of the Student's sixth grade classes. The Student's parents agreed to this arrangement because, at the time, they remained unsure of the best arrangements for their son. Nevertheless, over the course of his sixth grade year, the Student became increasingly unhappy with the arrangement because it made him feel "different" and called unwanted attention to his situation with other classmates. Based on these problems, in summer 2011 following completion of the Student's sixth grade year, the parents renewed their request that the Student be permitted to use the male-designated facilities in the seventh grade. The District refused to reconsider the earlier arrangement.

In both sixth grade and seventh grade, the Student regularly missed class time in both P.E. and other subjects because of the distance of the health office from the gym and his classrooms. For P.E., all students are required to change clothes before and after P.E. In sixth grade, the Student was dismissed early from the class preceding P.E. to ensure that he had adequate time to change his clothes. His sixth grade P.E. teacher sometimes dismissed him early in order to give him time to change out of his gym clothes. On several occasions, the Student's P.E. teacher instructed the students who were in the locker room not to change into their gym clothes; because the Student was not in the locker room, the Student did not receive this instruction and was the only student to come to class in his gym clothes, calling further unwanted attention to him. Because he was required to store his gym clothes in a bin under the cot used by students who were not feeling well, when retrieving his gym clothes the Student sometimes faced questions from other students in the health office. The restroom arrangement created similar difficulties. To use the restroom during class time, the Student was required to walk across campus, missing class time and facing questions from classmates about the length of time he was away. The Student occasionally found the health office locked, requiring him to find an employee to unlock it for him. Similar difficulties occurred on other occasions, such as during an evening dance, when the Student was unwilling to ask for special permission to leave the dance area and look for an employee to unlock the health office for him. Eventually, the Student avoided using the restroom altogether.

There is no dispute the District treated the student differently than other students because of his gender identity. During the investigation, the District advised the United States, as it had the Student and his parents, that its decision to restrict the Student's access to all student restrooms and locker rooms was motivated by concerns related to the safety and privacy of the Student and other students. In November 2011, OCR toured school facilities, including the male-designated restrooms and locker rooms, as well as the health office facility that the Student was required to use for a restroom and changing area. OCR observed that the boys' locker room had non-functional showers and private changing areas. Witnesses, including the Student's P.E. teacher, the school's former principal, the vice-principal, the complainants, and other parents consistently stated that students did not fully disrobe when changing for P.E. Additionally, the District's superintendent and deputy superintendent, the school principal, former principal and vice-principal, the Student's guidance counselor, and seven teachers, including the Student's P.E. teacher, consistently reported that the middle school has an excellent safety record, and that there were no known instances of peer-on-peer harassment in the restrooms, locker rooms, or elsewhere in the school, including any involving the Student. During the investigation, OCR

also interviewed the director of a summer camp that the Student attended the summer before sixth grade, which was housed in his middle school building, during which he used male-designated facilities at the school with the camp's knowledge and without incident.

Despite these facts, District officials acknowledged that, at the time of the complaints, they had not considered any reasonable alternative arrangements for the Student's use of restroom and changing facilities that would have been less burdensome on the Student.

2. Access to Field Trip Accommodations

In October 2011, the District sponsored an overnight trip for all seventh graders to an academic camp at a private outdoor educational camp facility in California. The facility has cabins as sleeping accommodations. The academic camp trip is considered by students to be a highlight of the seventh grade year, in part because it is the first overnight school-sponsored trip without parent chaperones. In August 2011, the Student's parents contacted the District to request that the Student be allowed to stay in a cabin with male peers at the camp. The District refused the parent's request, requiring as a condition of the Student's participation in the trip that he stay in a private cabin on his own, separate from all of his classmates and chaperoned by his parent or a District administrator.

Before the trip, all students, including the Student, were permitted to submit a list of classmates with whom they wished to share a cabin. Several of the Student's male friends, including boys who were aware of his transgender status, requested the Student as a cabin-mate. The Student submitted a request listing these classmates as well. The District did not permit him to stay in a cabin with these students. The Student became very upset by the District's decision to require him to stay in his own cabin and became very distracted from his school work. Until several days before the camp, the Student considered not participating in the trip at all. At this time, the family filed the complaints with OCR and DOJ.

After receiving the complaints and reviewing supporting documentation provided by the Student's attorney, OCR and DOJ separately contacted the District by telephone regarding its plans for the Student for the rapidly approaching camp trip. During those calls, the District confirmed its plan for the Student to stay in his own cabin with his parent and indicated that it would not change the plan prior to the camp. As with the facilities at school, the District referenced generalized safety and privacy concerns in prohibiting the Student from staying in a cabin with other students. The District also referenced advice provided by CDE and camp staff in support of their decisions.

The Student stayed in a separate cabin with his parent. At the camp, the Student was permitted to participate in camp activities with a group of boys from another cabin, but did not enter any student cabin during break periods or free time because he did not want to violate the District's rules and no one had told him that it was acceptable to do so.⁶ As a result, he was sad and upset throughout the trip. The Student faced questions from other students about his cabin arrangement. Because the Student was not comfortable being truthful about his circumstances, the Student felt that this dishonesty created a distance between him and his peers.

⁶ The Student's parent stated that a counselor of the boys' cabin had invited the Student to enter the cabin during break periods or free time, but that the Student did not feel comfortable absent explicit permission from the District.

In November 2011, OCR also visited the private camp facility and interviewed camp administrators. The toilet, sink, and shower areas were all separate, single-stall, individually-locking rooms, such that no student would shower, use the restroom, or be required to change in front of other students. The camp administrators stated that they had presented several options to the District that would have allowed the Student to stay in a cabin with his classmates, such as assigning a second adult chaperone to the Student's cabin or permitting him to lodge with a smaller number of boys who were aware of his status. However, the District acknowledged that it did not present these options to the Student or his family. The camp administrators and District confirmed that the District independently made the final decision to require the Student to stay in a separate cabin with his parent. The District also stated that it sought advice on the camp accommodations from CDE, and that CDE agreed that the separate cabin was an acceptable arrangement for the Student. However, CDE staff told OCR and DOJ that the District provided limited information regarding the camp and the Student's circumstances, and that they were not informed that the Student was well-accepted by his peers, some of whom had requested him as a cabin-mate, or that the camp administrators offered alternative sleeping accommodations.

In February 2012, during the pendency of the United States' investigation and as a result of a change in state law, the Student's parents obtained an identification document for the Student reflecting the Student's male gender; they provided this document to the District. Subsequently, the District began permitting the Student to use the boys' restrooms and locker rooms at the middle school in April 2012. Since that time, the Student has used the male-designated facilities without experiencing any harassment and the District has indicated that there have been no incidents related to the Student's use of those facilities. Although since April 2012 the District has permitted the Student to use the male-designated facilities, it has not developed any policies or procedures addressing the treatment of transgender students.

In January 2013, the Student's family notified the United States of its continuing questions and concerns about the permanence of the existing arrangements, particularly in light of the Student's impending matriculation at the District's high school.

On April 23, 2013, the United States shared with the District concerns about the District's response to the family's request that the Student be permitted access to sex-specific facilities prior to 2012, including that the District had not considered reasonable alternatives that would have been less burdensome on the Student during his sixth and seventh grade years. Additionally, the United States shared concerns about the District's unwillingness to recognize the Student's consistent and uniform gender presentation in the absence of an identification document. The United States also conveyed the family's concern about future arrangements to the District. Lastly, the United States shared with the District, and the District affirmed, that its investigation had not revealed safety or privacy issues for the Student or other students at the time of the complaints.

Voluntary Resolution Agreement

The District, without admitting any violation of federal law, voluntarily agreed to enter into the attached Resolution Agreement with the United States to resolve the complaints. The Resolution Agreement memorializes the District's previous decisions to permit the Student to use male-designated facilities at school and on school-sponsored trips and to otherwise treat the Student as a boy in all respects. The District has also agreed to take other actions to ensure that the District continues to treat all students, including the Student and other transgender students, in a nondiscriminatory manner, including by amending its policies and procedures, training staff, and ensuring appropriate supports for the Student and other transgender students who request it.

Conclusion

The United States has determined that, once implemented, the Resolution Agreement will resolve the issues in this complaint. Therefore, the United States is closing this complaint as of the date of this letter. The United States will monitor the implementation of the enclosed Resolution Agreement and may reopen the investigation if the District does not comply with the Agreement. The United States is notifying the Complainant of the closure of this complaint concurrently. This concludes the United States' investigation of this complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

It is unlawful to harass, coerce, intimidate or discriminate against any individual who has filed a complaint, assisted in a compliance review, or participated in actions to secure protected rights.

Under the Freedom of Information Act, this document and related records may be released upon request or made public by the United States. In the event that the United States receives such a request or intends to make these documents public, the respective agency will seek to protect, to the extent provided by law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

The United States thanks you and your staff for your cooperation during this investigation. If you have any questions regarding this letter, please contact DOJ attorneys Whitney M. Pellegrino or Joseph J. Wardenski at (202) 514-4092, or OCR attorneys Zachary Pelchat, Suzanne Taylor, or Kendra Fox-Davis at (415) 486-5555.

Sincerely,

Aurora Chavez, Chief
U.S. Department of Justice
Civil Rights Division
Educational Opportunities Section

Arthur Zaidman, Director
U.S. Department of Education
Office for Equal Rights
San Francisco Regional Office

Encl.

GENDER IDENTITY AND GENDER EXPRESSION

59. What terms are commonly used to describe gender identity or gender expression?

Individuals use a number of words to describe their gendered experiences. Some people may refer to themselves as trans, transsexual, transgender, male-to-female (MTF), female-to-male (FTM), two-spirit, and a variety of other terms. Terminology can differ based on region, language, race, ethnicity, age, culture, and many other factors. Some common terms are defined below.

Gender identity is a person's deeply felt internal sense of being male or female, regardless of their sex assigned at birth.

Gender expression is the manner in which a person represents or expresses gender to others, often through behavior, clothing, hairstyles, activities, voice, or mannerisms.

Transgender is a general term used to describe a person whose gender identity or expression is different from that traditionally associated with the person's sex assigned at birth.

Transitioning is the process in which a person changes their gender expression to better reflect their gender identity.

Gender nonconforming is a term for people whose gender expression differs from stereotypical expectations about how they should look or act based on the sex they were assigned at birth. This includes people who identify outside traditional gender categories or identify as both genders.

60. Should transgender and gender nonconforming students have the right to express their gender identity in school?

Yes. Washington state law prohibits discrimination in public schools based on gender expression and identity (RCW 28A.642.010). Students must be permitted to dress according to the gender in which they consistently identify and should be addressed and treated using the name and pronouns of their choice (i.e., "he" and "him" or "she" and "her"). School districts are encouraged to adopt gender-neutral dress codes that do not restrict a student's clothing choices on the basis of gender. Dress codes should be based on educationally relevant considerations, apply consistently to all students, include consistent discipline for violations, and make reasonable accommodations when the situation requires an exception.

61. How should school districts address a student's name and sex on official records?

School districts maintain permanent student records that include a student's legal name and legal gender. To the extent that the school district is not legally required to use a student's legal name and gender on school records or documents, the district should use the name and gender by which the student identifies. School IDs, for example, are not legal documents and should use the student's preferred name. The school district should change a student's official record to reflect a change in the student's legal name or gender upon receipt of documentation that such change has been made pursuant to a court order or through amendment of state- or federally-issued identification. In situations where school staff or administrators are required by law to use or report a student's legal name or gender, such as for standardized testing, school staff should adopt practices to avoid the inadvertent disclosure of such confidential information.

62. Should schools inform staff, students, or parents about a student's transgender status?

Information about a student's transgender status, legal name, or gender assigned at birth may constitute confidential medical or education information. Disclosing this information to other students, their parents, or other third parties may violate privacy laws, such as the federal Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 C.F.R. Part 99). School staff should not disclose information that may reveal a student's transgender status to others, including parents and other school staff, unless legally required to do so or unless the student has authorized such disclosure.



STATE OF WASHINGTON
HUMAN RIGHTS COMMISSION

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63. Should a school district require proof of medical treatments as a prerequisite for respecting a student's gender identity or expression?

No. School districts should not require proof of medical treatments in order to respect a student's gender identity or expression. If a school district has an *bona fide* basis that would justify questioning whether a student's asserted gender identity is genuine, it may ask for information to show that the student's gender identity or expression is sincerely held. No particular type of information (such as medical history information) should be specifically required.



64. Should school districts allow transgender students to use the restroom of their choice?

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Yes. School districts should allow students to use the restroom that is consistent with their gender identity consistently asserted at school. Any student – transgender or not - who has a need or desire for increased privacy, regardless of the underlying reason, should be provided access to an alternative restroom (e.g., staff restroom, health office restroom). This allows students who may feel uncomfortable sharing the facility with the transgender student(s) the option to make use of a separate restroom and have their concerns addressed without stigmatizing any individual student. No student, however, should be required to use an alternative restroom because they are transgender or gender nonconforming.

If school administrators have legitimate concerns about the safety or privacy of students as related to a transgender student's use of the restroom, school administrators should bring these concerns to the school district compliance coordinator. Such privacy or safety issues should be immediate and reasonably foreseeable, not speculative. School administrators and/or compliance coordinator should meet with the student and/or parents to determine if there is a need for an alternative facility. Determination to provide an alternative facility for any student should be on a case-by-case basis.

65. How should school districts address physical education and athletic participation by transgender students?

School districts should allow students the opportunity to participate in physical education and athletic activities in a manner that is consistent with their gender identity. For interscholastic athletics, should any questions arise as to whether a student's request to participate in a sex-segregated activity consistent with his or her gender identity is *bona fide*, a student may seek review of his or her eligibility for participation by working through the Gender Identity Participation procedure set forth by the Washington Interscholastic Athletic Association (WIAA), available at <http://www.wiaa.com/subcontent.aspx?SecID=350>.

66. Should school districts allow a transgender student to use the locker room of their choice?

The use of locker rooms by transgender students should be assessed on a case-by-case basis, with the goals of maximizing the student's social integration and equal opportunity to participate in physical education classes and sports, ensuring the student's safety and comfort, and minimizing the stigmatization of the student. In most cases, transgender students should have access to the locker room that corresponds to their gender identity consistently asserted at school. Any student who has a need or desire for increased privacy, regardless of the underlying reason, should be provided with a reasonable alternative changing area, such as the use of a private area (e.g., a nearby restroom stall with a door), or a separate changing schedule. Any alternative arrangement should be provided in a way that protects the student's ability to keep his or her transgender status private. No student, however, should be required to use a locker room that conflicts with his or her gender identity.

State of Colorado Regulations

SEXUAL ORIENTATION DISCRIMINATION RULES

Rule 81.1 — Statement of Purpose

The rules in this section have been adopted to contribute to the elimination of discrimination on the basis of sexual orientation, inclusive of transgender status, in employment, housing, public accommodations, and advertising, as required by Parts 3 to 7 of Article 34, Title 24, Colorado Revised Statutes, as amended, hereinafter referred to as the "Law." C.R.S. §24-34-305(1)(a), entitled "Powers and Duties of Commission," authorizes the Commission to "adopt, publish, amend and rescind" regulations consistent with and for the enforcement of the Law.

Rule 81.2 — Sexual Orientation Definitions

- (A) The term "sexual orientation," as defined in the Law, means a person's orientation toward heterosexuality, homosexuality, bisexuality, transgender status or another person's perception thereof.
- (B) The term "transgender" means having a gender identity or gender expression that differs from societal expectations based on gender assigned at birth.
- (C) The term "gender identity" means an innate sense of one's own gender.
- (D) The term "gender expression" means external appearance, characteristics or behaviors typically associated with a specific gender.
- (E) The term "covered entity" means any person, business, or institution required to comply with the antidiscrimination provisions of the Law.

Rule 81.3 — Separate Lines of Progression and Seniority Systems

It is an unlawful employment practice to classify any job according to sexual orientation or to maintain separate lines of progression or separate seniority lists based on sexual orientation where this would adversely affect any person.

Rule 81.4 — Medical Leave

If an employer grants leave or time off from work to employees for medical reasons, the employer shall treat requests for leave to address health care needs related to an individual's sexual orientation in the same manner as requests for other medical conditions.

Rule 81.5 — Pre-Employment & Other Inquiries

Any inquiry in connection with prospective employment, housing, public accommodations, or advertising, that expresses directly or indirectly any limitation, specification or discrimination as to sexual orientation shall be unlawful.

Rule 81.6 — Background Checks

If a covered entity learns through a background check or other means of a person's sexual orientation, the entity shall not take an adverse action against the individual on the basis of the information.

Rule 81.7 — Discriminatory Wages

Wages and wage schedules shall not be related to or based on the sexual orientation of the employees.

Rule 81.8 — Sexual Orientation Harassment

- (A) Unlawful harassment is severe or pervasive conduct that creates an environment that is subjectively and objectively hostile, intimidating, or offensive on the basis of sexual orientation. Prohibited conduct includes, but is not limited to, the following:
- (1) Asking unwelcome personal questions about an individual's sexual orientation;
 - (2) Intentionally causing distress to an individual by disclosing to others the individual's sexual orientation;
 - (3) Using offensive names or terminology regarding an individual's sexual orientation; or
 - (4) Deliberately misusing an individual's preferred name, form of address, or gender-related pronoun;
- (B) An individual alleging harassment based upon sexual orientation must take advantage of any corrective or remedial measures made available by a covered entity, unless pursuing such a complaint would be futile or impractical. A covered entity shall initiate a reasonable investigation and take prompt and effective remedial action, if appropriate.

Rule 81.9 — Advertising

It is a violation of the Law for an advertisement to indicate a preference, limitation, specification, or discrimination based upon sexual orientation in employment, housing or public accommodations.

Rule 81.10 — Dress & Grooming Standards

Covered entities may prescribe standards of dress or grooming that serve a reasonable business or institutional purpose, provided that they shall not require an individual to dress or groom in a manner inconsistent with the individual's gender identity.

Rule 81.11 — Gender-Segregated Facilities

- (A) Nothing in the Act prohibits segregation of facilities on the basis of gender.

- (B) All covered entities shall allow individuals the use of gender-segregated facilities that are consistent with their gender identity. Gender-segregated facilities include, but are not limited to, restrooms, locker rooms, dressing rooms, and dormitories.
- (C) In gender-segregated facilities where undressing in the presence of others occurs, covered entities shall make reasonable accommodations to allow access consistent with an individual's gender identity.

WORK PLACE HARASSMENT

Rule 85.0

- (A) It shall be a discriminatory or unfair employment practice for an employer, employment agency, labor organization, or its agents or supervisory employees, to harass, with or without loss of income or other tangible employment action, a person during the course of employment because of disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry. Harassment occurs if an intimidating, hostile or offensive working environment is created based upon an individual's disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry. An objectionable environment exists if a reasonable person would find the workplace hostile or abusive and the victim in fact perceived the workplace to be offensive. Harassment is not an illegal act unless a complaint is filed with the appropriate authority at the complainant's workplace and such authority fails to initiate a reasonable investigation of a complaint and take prompt remedial action if appropriate. For the purpose of this rule, "filed" means that a complaint is reported either verbally or in writing to the appropriate authority.
- (B) In determining whether alleged conduct constitutes illegal harassment, the commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the offensive conduct and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.
- (C) With respect to conduct between coworkers, an employer is responsible for acts of harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate remedial action.
- (D) An employer may also be responsible for the acts of non-employees with respect to workplace harassment of employees where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate remedial action. In reviewing these cases the commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.
- (E) In the event of alleged workplace harassment a defending employer may raise an affirmative defense to liability to a victimized employee. Such defense is that: (1) the employer exercised reasonable care to prevent and correct promptly any harassing behavior, and (2) the victimized employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise. This affirmative defense may be established by: a demonstration that the employer had promulgated an anti-harassment policy providing for a complaint procedure which was disseminated in the workplace prior to the occurrence of the offensive conduct and that the employee failed to report the offensive conduct

Oregon Regulations

Exceptions to Discrimination Based on Sexual Orientation

(1) The following actions are not unlawful practices under ORS chapter 659A, including housing discrimination under ORS 659A.145 or 659A.421 or federal housing law:

(a) Housing and the use of facilities. It is not an unlawful practice for a bona fide church or other religious institution to take any action with respect to housing or the use of facilities when:

(A) The action taken is based on a bona fide religious belief about sexual orientation; and

(B) The housing or the use of facilities involved is closely connected with or related to the primary purpose of the church or institution; and

(C) The housing or the use of facilities involved is not connected with a commercial or business activity that has no necessary relationship to the church or institution.

(b) Employment Preference. It is not an unlawful employment practice for a bona fide church or other religious institution, including but not limited to a school, hospital or church camp, to prefer an employee, or an applicant for employment, of one religious sect or persuasion over another if:

(A) The employee or applicant belongs to the same religious sect or persuasion as the church or institution; and

(B) In the opinion of the church or institution, the preference will best serve the purposes of the church or institution; and

(C) The employment involved is closely connected with or related to the primary purposes of the church or institution; and

(D) The employment involved is not connected with a commercial or business activity that has no necessary relationship to the church or institution.

(c) Employment Actions. It is not an unlawful employment practice for a bona fide church or other religious institution to take any employment action based on a bona fide religious belief about sexual orientation when:

(A) The employment position involved is directly related to the operation of the church or other place of worship, such as clergy, religious instructors and support staff;

(B) The employment position involved is in a nonprofit religious school, nonprofit religious camp, nonprofit religious day care center, nonprofit religious thrift store, nonprofit religious bookstore, nonprofit religious radio station or nonprofit religious shelter; or

(C) The employment position involves religious activities, as long as the employment position:

(i) Is closely connected with or related to the primary purpose of the church or institution; and

(ii) Is not connected with a commercial or business activity that has no necessary relationship to the church or institution.

(d) Dress Code. An employer is not prohibited from enforcing an otherwise valid dress code or policy, as long as the employer provides, on a case-by-case basis, for reasonable accommodation of an individual based on the health and safety needs of the individual.

(2) The above exceptions do not excuse a failure to provide reasonable and appropriate accommodations permitting all persons access to restrooms consistent with their expressed gender.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS Ch 659A

Hist.: BLI 35-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08; Administrative correction 10-21-08; BLI 40-2008(Temp), f. 11-10-08, cert. ef. 11-12-08 thru 5-1-09; BLI 43-2008, f. 12-3-08, cert. ef. 12-5-08; Renumbered from 839-005-0016, BLI 7-2010, f. & cert. ef. 2-24-10; BLI 8-2011, f. 10-13-11, cert. ef. 10-14-11

800 Purpose

800.1 In order to meet the obligations to prohibit discrimination based on gender identity or expression as set forth in the Act, the Office and the Commission adopt this chapter for the following purposes:

- (a) To implement the provisions of the Act regarding discrimination based on gender identity or expression in employment, housing, public accommodations, or educational institutions, including all agencies of the District of Columbia government and its contractors;
- (b) To provide guidance with regard to the requirements of the law to all employers, housing providers, businesses, organizations, educational institutions, and District government agencies and contractors in seeking compliance with the law;
- (c) To educate the public on the behaviors, conduct, and actions that constitute unlawful discrimination based on gender identity or expression;
- (d) To ensure that transgender people are treated in a manner that is consistent with their identity or expression, rather than according to their presumed or assigned sex or gender; and
- (e) To guide the internal processing of complaints filed with the Office or cases heard by the Commission.

AUTHORITY: Unless otherwise noted, the authority for this chapter is section 301(c) of the Human Rights Act of 1977 (Act), effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1403.01(c)).

SOURCE: Final Rulemaking published at 53 DCR 8751, 8751-52 (October 27, 2006).

801 GENERAL PROHIBITIONS OF GENDER IDENTITY OR EXPRESSION DISCRIMINATION

801.1 It shall be unlawful for any person or entity, including agencies of the District of Columbia government and its contractors, to discriminate against a person in employment, housing, public accommodations, or educational institutions on the basis of that person's actual or perceived gender identity or expression. Such unlawful discriminatory practices shall include but not be limited to the following in:

- (a) **EMPLOYMENT:** failing to hire or promote; engaging in disparate treatment; engaging in unlawful termination and transfers; engaging in verbal or physical harassment; creation of a hostile environment; failing to make a reasonable accommodation when requested by the employee in accordance with 4 DCMR § 804 (1995); and denying access to restrooms and other gender specific facilities that are consistent with the employee's gender identity or expression.
- (b) **HOUSING AND COMMERCIAL SPACE:** refusing to show, rent, or sell real property that is available for lease or sale; discriminating in financial transactions related to real property; engaging in disparate treatment by adding or using different terms or conditions in a lease; refusing to make or provide services, repairs, or improvements for any tenant or lessee; denying access to restrooms or gender specific facilities in common areas that are consistent with an individual's gender identity or expression; creating a hostile environment; and failing to stop or prevent harassment by co-tenants, landlords, or property managers.
- (c) **PUBLIC ACCOMMODATIONS:** refusing to provide goods or services of any kind; engaging in disparate treatment in the provision of goods and services; engaging in verbal or physical harassment; creating a hostile environment; and denying access to restrooms and other gender specific facilities that are consistent with a customer's or client's gender identity or expression.
- (d) **EDUCATIONAL INSTITUTIONS:** refusing or limiting educational opportunities in admission, matriculation, or access to extracurricular activities; engaging in disparate treatment of a student; engaging in or failing to prevent verbal or physical harassment; creating a hostile environment; and denying access to restrooms and other gender specific facilities that are consistent with a student's gender identity or expression.
- (e) **DISTRICT OF COLUMBIA GOVERNMENT:** refusing to provide any facility, service, program, or benefit of the District of Columbia government; engaging in verbal or physical harassment; creating a hostile environment; and denying access to restroom facilities and other gender specific facilities that are consistent with a person's gender identity or expression.

801.2 All entities covered under the Act shall clearly and explicitly communicate the District of Columbia's laws regarding gender identity or expression and other protected categories to all management, employees, and volunteers as required by D.C. Official Code § 2-1402.51.

SOURCE: Final Rulemaking published at 53 DCR 8751, 8752-53 (October 27, 2006).

802**RESTROOMS AND OTHER GENDER SPECIFIC
FACILITIES**

- 802.1 All entities covered under the Act, as amended, shall allow individuals the right to use gender-specific restrooms and other gender-specific facilities such as dressing rooms, homeless shelters, and group homes that are consistent with their gender identity or expression.
- 802.2 All entities covered under the Act with single-occupancy restroom facilities shall use gender-neutral signage for those facilities (for example, by replacing signs that indicate "Men" and "Women" with signs that say "Restroom").

SOURCE: Final Rulemaking published at 53 DCR 8751, 8753 (October 27, 2006).

803

ACCOMMODATIONS FOR HEALTH CARE NEEDS

803.1 When requested by the employee, an employer shall make reasonable accommodations (including medical leave) for transgender-related health care needs that are consistent with such accommodations that are provided for other medical needs. Such needs include but are not limited to medical or counseling appointments, surgery, recovery from surgery, and any other transgender-related procedures.

SOURCE: Final Rulemaking published at 53 DCR 8751, 8753 (October 27, 2006).

804**DRESS AND GROOMING STANDARDS**

- 804.1 No employer, housing provider, public accommodation, educational institution, or any agency of the District of Columbia government or its contractors shall require individuals to dress or groom themselves in a manner inconsistent with their sex or their gender identity or expression.
- 804.2 Employers, housing providers, public accommodations, educational institutions, and agencies of the District of Columbia government and its contractors may prescribe standards of dress which shall serve a reasonable business purpose, as long as such standards do not discriminate or have a discriminatory impact on the basis of an individual's sex or the individual's gender identity or expression.
- 804.3 Except as otherwise provided in this chapter, the Office and Commission adopt and incorporate by reference the provisions of 4 DCMR § 512(1995).

SOURCE: Final Rulemaking published at 53 DCR 8751, 8753-54 (October 27, 2006).

805

**GENDER-SPECIFIC FACILITIES WHERE NUDITY
IN THE PRESENCE OF OTHERS IS CUSTOMARY**

805.1 All entities covered under the Act shall provide access to and the safe use of facilities that are segregated by gender.

805.2 In gender-specific facilities where nudity in the presence of other people is customary, entities covered by the Act shall make reasonable accommodations to allow an individual access to and the use of the facility that is consistent with that individual's gender identity or expression, regardless of whether the individual has provided identification or other documentation of their gender identity or expression.

805.3 Requiring documentation or other proof of an individual's gender is prohibited, except in situations where all persons are asked to provide documentation or other proof of their gender for a reasonable business or medical purpose.

SOURCE: Final Rulemaking published at 53 DCR 8751, 8754 (October 27, 2006).

806**RECORDING OF GENDER AND NAME**

- 806.1 An entity covered under the Act shall not require an applicant to state whether the individual is transgender.
- 806.2 If an application form asks for the applicant to identify as male or female, designation by the applicant of a sex that is inconsistent with the applicant's assigned or presumed gender shall not be considered, without more, to be fraudulent or to be a misrepresentation for the purpose of adverse action on the application.
- 806.3 An applicant's giving of a name publicly and consistently used by the applicant, even when the name given is not the applicant's legal name, shall not be grounds for adverse action, if the name given is consistent with the applicant's gender identity or expression. However, where use of a person's legal name is required by law or for a reasonable business purpose, the applicant may be required to disclose it.
- 806.4 An applicant's failure to disclose a change of gender or name (unless specifically required as part of an application process for a reasonable business purpose) shall not be considered grounds for an adverse action.

SOURCE: Final Rulemaking published at 53 DCR 8751, 8754-55 (October 27, 2006).

807

BACKGROUND CHECKS

807.1

If an entity covered under the Act learns through a background check or other means that a person is transgender, the entity shall not, without more, take an adverse action against the individual on the basis of the learned information and shall take reasonable measures to preserve the confidentiality of that information.

SOURCE: Final Rulemaking published at 53 DCR 8751, 8755 (October 27, 2006).

HARASSMENT AND HOSTILE ENVIRONMENT

808.1 All harassment and actions that create a hostile environment based on gender identity or expression shall be prohibited.

808.2 The following behaviors may constitute evidence of unlawful harassment and hostile environment:

- (a) Deliberately misusing an individual's preferred name form of address or gender-related pronoun;
- (b) Asking personal questions about an individual's body, gender identity or expression, or gender transition;
- (c) Causing distress to an individual by disclosing to others that the individual is transgender; and
- (d) Posting offensive pictures, or sending offensive electronic or other communications.

In determining whether there is unlawful harassment or a hostile environment, the totality of the circumstances surrounding the alleged violation of the Act must be considered, including the nature, frequency, and severity of the behavior, whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with the alleged victim. Ultimately the standard is an objective one, focusing on whether the behavior was sufficiently severe or pervasive to alter the conditions of the victim's employment, housing, education, or access to or use of public accommodations, or relations with a District of Columbia agency or contractor, and to create an abusive environment.

SOURCE: Final Rulemaking published at 53 DCR 8751, 8755 (October 27, 2006).

899.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

"Act" - the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official code § 2-1401.01 et seq.).

"Commission" - the Commission on Human Rights, established by section 401 of the Act (D.C. Official Code § 2-1404.01).

"Entities" - include all employers, housing providers, public accommodations, educational institutions, and government agencies and their contractors that come within the jurisdictional reach of the Act.

"Gender identity or expression" - a gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual's assigned sex at birth.

"Office" - the Office of Human Rights, established by section 202 of the Fiscal Year 2000 Service Improvement and Budget Support Act of 1999, effective October 20, 1999 (D.C. Law 13-38; D.C. Official Code § 2-1411.01).

"Transgender" - an adjective that refers to any individual whose identity or behavior differs from stereotypical or traditional gender expectations, including transsexual individuals, cross-dressers, androgynous individuals, and others whose appearance or characteristic are perceived to be gender-atypical.

SOURCE: Final Rulemaking published at 53 DCR 8751, 8756 (October 27, 2006).

C. **Sexual Orientation**

- (1) The term “sexual orientation” means a person’s actual or perceived heterosexuality, bisexuality, homosexuality, gender identity, or gender expression.
- (2) The term “gender identity” means an individual’s gender-related identity, whether or not that identity is different from that traditionally associated with that individual’s assigned sex at birth, including, but not limited to, a gender identity that is transgender or androgynous.
- (3) The term “gender expression” means the manner in which an individual’s gender identity is expressed, including, but not limited to, through dress, appearance, manner, speech, or lifestyle, whether or not that expression is different from that traditionally associated with that individual’s assigned sex at birth.

3.12 SEXUAL ORIENTATION DISCRIMINATION

A. Bona Fide Occupational Qualification

- (1) Section 4572(1) of the Act provides an exception to the prohibition of discrimination in employment on account of sexual orientation when such discrimination is based on a bona fide occupational qualification (BFOQ). The BFOQ exception is construed very narrowly, and the employer, employment agency, or labor organization must prove by a preponderance of the evidence that
 - (1) the essence of the business operation requires the discriminatory practice and
 - (2) it had a factual basis to believe that all or substantially all persons in the excluded category would be unable to safely or efficiently perform the duties of the job involved.
- (2) The following are examples of cases that do not warrant application of the BFOQ qualification exception and are considered unlawful employment practices:
 - a) Refusal to select an individual for a position based on assumptions about comparative employment characteristics based on sexual orientation rather than actual capabilities.
 - b) Refusal to select an individual because of the preferences or prejudices of others, including, but not limited to, coworkers, clients, business associates, or customers.

H. Sexual Orientation Harassment

- (1) Harassment on the basis of sexual orientation is a violation of Section 4572 of the Act. Unwelcome comments, jokes, acts, and other verbal or physical conduct on the basis of sexual orientation constitute sexual orientation harassment when:
 - a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or union membership;
 - b) submission to or rejection of such conduct by an individual is used as the basis for employment or union decisions affecting such individual; or
 - c) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working or union environment.
- (2) An employer, employment agency, or labor organization (hereinafter collectively referred to as "employer") is responsible for its acts and those of its agents and supervisory employees with respect to sexual orientation harassment. When the supervisor's harassment culminates in a tangible employment action, such as, but not limited to, discharge, demotion, or undesirable reassignment, liability attaches to the employer regardless of whether the employer knew or should have known of the harassment, and regardless of whether the specific acts complained of were authorized or even forbidden by the employer. When the supervisor's harassment does not culminate in a tangible employment action, the employer may raise an affirmative defense to liability or damages by proving by a preponderance of the evidence:

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-
- (a) that the employer exercised reasonable care to prevent and correct promptly any harassing behavior based on sexual orientation, and
 - (b) that the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.
- (3) With respect to persons other than those mentioned in paragraph 2 above, an employer is responsible for acts of sexual orientation harassment in the workplace where the employer, or its agents or supervisory employees, knew or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

BANGOR DAILY NEWS

Suit over transgender students' bathroom rights to go forward, judge says

By Judy Harrison, BDN Staff
Posted April 20, 2011, at 11:02 a.m.

BANGOR, Maine — A lawsuit over a transgender student's use of the girls' bathroom at an Orono elementary school may go forward, but only after a Superior Court justice dismissed the most controversial count.

Justice William Anderson earlier this month dismissed the part of the lawsuit that claimed administrators at the Asa Adams School were obligated under the Maine Human Rights Act to allow the child to use the girls bathroom rather than a restroom for staff.

".. [T]his 'accommodation' claim would impose upon Superintendent [Kelly] Clenchy and the various school entities defending this suit an obligation to accommodate [the child's] transgender status by allowing her to continue using the girls' bathrooms consistent with her gender identity," the judge wrote. "Neither the language of the [Maine Human Rights Act], the language of the [Maine Human Rights Commission's] own internal regulations, nor prevailing case law interpreting the Civil Rights Act requires this type of accommodation."

However, the judge ruled that two other aspects of the lawsuit could proceed.

In his 10-page decision dated April 1, Anderson ruled that a claim that the school discriminated against the transgender student when the child was a fifth-grader there during the 2007-2008 school year and another seeking damages may go forward.

A transgender person generally is considered someone of one biological sex who identifies himself or herself as belonging to the opposite gender.

Anderson's ruling involved a child born a male who identifies as a female, according to court documents. The child no longer attends the school.

The lawsuit was filed in Penobscot County Superior Court by the Maine Human Rights Commission and the student's parents in June 2009 after the MHRC ruled in the child's favor.

Defendants in the lawsuit include Clenchy, the former superintendent of the Orono School District, now Riverside RSU 26, and officials at Asa Adams School.

Efforts to reach John Gause, the attorney representing the MHRC, and Jodi Nofsinger, the Lewiston attorney representing the parents of the transgender child, were unsuccessful Wednesday.

"The school is pleased with the decision and considers it, essentially, to be a complete victory," Melissa Hewey, the Portland attorney representing school officials, said in an email Wednesday. "Justice Anderson held that there is no duty under the Maine Human Rights Act to permit students to use the

restroom of the gender with which they identify, which was the precise issue we raised and wanted a ruling on in our motion to dismiss.

"All that is left of the case, in our view, is whether individuals at the school intentionally discriminated against the student in this case," Hewey said. "This is a factual issue that cannot be decided at this stage of the proceedings but we know that no school administrator or staff member ever intentionally discriminated against this student and are thus confident that that portion of the claim will also ultimately be dismissed as well."

A bill that would allow the operator of a restroom or shower facility to decide who may use which gender's restroom is pending before the Legislature. A hearing held earlier this month in Augusta generated heated debate.

The bill's sponsor, Rep. Kenneth Fredette, R-Newport, served on the Maine Human Rights Commission when it decided that Orono schools and an Auburn Denny's Restaurant discriminated against transgendered females by not allowing them to use women's restrooms. Fredette disagreed with those decisions.

"If passed, this law would, in a sense, validate the Orono School Department's position in this matter throughout this case by recognizing that this is not an issue that is best addressed by a bright line requirement but rather must be addressed on a case by case basis considering the people involved and the circumstances presented," Hewey said Wednesday.

<http://bangordailynews.com/2011/04/20/news/bangor/lawsuit-over-use-of-girls%e2%80%99-bathroom-at-orono-school-may-go-forward-judge-says/> printed on October 27, 2011



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TRANSGENDER STUDENTS' USE OF BATHROOMS AND LOCKER ROOMS

Protections for Transgender Students Generally

Safe use of bathrooms and locker rooms in schools and colleges is essential for any student—particularly transgender students, who can face unique challenges. Transgender people are individuals who have a persistent and deeply held identification with a gender that is different from that which they were assigned at birth. Like everyone else, transgender students deserve to use bathrooms and locker room facilities with assurances for their safety and dignity.

In addition, Massachusetts law prohibits public schools and colleges from discriminating against transgender students, including on the bases of sex and disability.¹ For example, in Pat Doe v. Yunits², a Superior Court found that a transgender student who was forbidden by her school from wearing clothing that comported with her female gender identity could bring a discrimination action against the school district.

Recent interpretations of state and federal law by courts and government agencies in related contexts make clear that transgender students are protected by existing law. For example, sex discrimination laws have been determined to protect transgender people in employment and credit.³ The same is true for disability protections in both school and employment settings.⁴

¹ See Mass. Gen. L. c. 76, sec. 5 (prohibiting discrimination “in obtaining the advantages, privileges and courses of study” on account of sex); Mass. Const. Pt. 1, Art. I, X and CXIV (state constitutional prohibition of unequal treatment based upon sex and disability).

² 2001 WL 664947 (Mass. Super. Ct. Feb. 26, 2001).

³ See Millett v. Lutco, 2001 WL 1602800 (Mass. Comm’n Against Discrimination) (Massachusetts law prohibiting discrimination on the basis of sex encompasses discrimination against transgender individuals); Rosa v. Parks West Bank & Trust Co., 214 F.3d 213 (1st Cir. 2000) (a transgender person denied a bank application for a loan could sue under the Equal Credit Opportunity Act’s sex discrimination protections).

⁴ See Pat Doe, 2001 WL 664947 at *5 (finding that state constitutional disability protections covered a transgender student seeking to wear clothing that comported with her female gender identity); Jette v. Honey Farms, 2001 WL 1602799 (Mass. Comm’n Against Discrimination) (holding that Massachusetts disability protections in employment covers transgender employees).

As such, transgender students are guaranteed non-discriminatory treatment at public schools and colleges throughout Massachusetts. This guarantee includes ensuring that transgender students have safe and dignified access to the bathroom and locker room facilities that are consistent with each student's gender identity and expression.

Transgender Students' Right to Use Gender-Appropriate Bathrooms

Transgender students should be allowed to use the bathroom that would be appropriate for a non-transgender student with the same gender identity and expression as the transgender student, regardless of the transgender student's birth sex. Most transgender students already do so without anyone needing to be informed of or to scrutinize the student's gender or medical history. The touchstone for equality in this context is equal treatment. Non-transgender students appropriately are not asked for proof of their gender or information relating to their medical history; neither should transgender students be asked for such information. An alternative that would require either anatomical checks or proof of medical history would be insulting, invasive, and would violate the student's right to privacy, particularly with regard to personal medical information.

In addition, forcing transgender students who have transitioned to use the bathroom that matches their assigned birth sex would actually cause more distraction and problems. For example, a female-to-male transgender individual (who has transitioned from female to male by taking hormones with or without any surgical intervention) has a gender presentation that is similar to non-transgender men. Requiring a transgender male student to use the women's room would likely make everyone uncomfortable—the transgender male student as well as the non-transgender female students with whom he would have to share the facility. The same would be true for transgender women. Also, such a policy would be not only degrading and potentially unsafe for the transgender student but seriously damaging to the student's mental health.

Transgender Students' Right to Use Gender-Appropriate Locker Rooms

While some locker rooms can pose a slightly different situation, transgender students should be allowed to use the locker room that would be appropriate for a non-transgender student with the same gender identity and expression.

Like most people, transgender people seek privacy and personal space when changing and showering in locker rooms, in order to protect their own safety and privacy. Just as is true for many non-transgender individuals, many transgender individuals have a strong sense of modesty and choose to use private shower stalls when available and enclosed bathroom stalls to change their clothes. As is also true for non-transgender individuals, not everyone is as modest.

In situations where nudity may be unavoidable, and a transgender student has expressed discomfort with this situation, schools and colleges can make a reasonable

accommodation by creating a separate changing/showering space within the locker room—as many do already for people with physical disabilities. This solution may be as easy as putting up a shower curtain, or it may involve creating a separate shower stall or changing space that is private. Either way, schools and colleges should work with the transgender student/s to find an accommodation that is both reasonable and appropriate for the student, and that does not require the student to use an inappropriate facility.

An inappropriate facility would be one that is not consistent with the student's gender identity and expression. For example, it would not be appropriate for a school to require a student who has a male gender identity and expression (even if that student was born female) to use the locker room facility provided for female students. Neither would it be appropriate for a school to require a student who has a female gender identity and expression (even if that student was born male) to use the locker room facility provided for male students.

As a last resort, if no reasonable accommodation that satisfies the student's concern can be made within the locker room that is consistent with the student's gender identity and expression, then a school or college can make available a separate, single-user locker room and showering facility.

Summary

In general, we have found at GLAD that most people do not encounter problems with transgender people using bathrooms and locker room facilities. To the extent we have learned of problems, we have found that appropriate education and/or training can resolve them. Often, resolving a concern that gets raised either by a transgender or non-transgender person in this context is as easy as educating staff or students about the basic realities and existence of transgender people's lives. Having appropriate policies in place to begin with can help prevent any problems from arising. Below is sample policy from Washington State University that has addressed this issue apparently with great success:

"Locker Room and Restroom Accessibility:

Transgender individuals shall not be forced to use the locker room corresponding to their gender assigned at birth. In locker rooms that involve undressing in front of others, transgender individuals who want to use the locker room in accordance with the individual's consistently asserted gender identity will be provided with the available accommodation that best meets the needs and privacy concerns of all involved. Based on availability and appropriateness to address privacy concerns, such accommodations could include, but are not limited to use of a private area in the locker room (i.e., a bathroom stall with a door, an area separated by a curtain) or use of a family change room."

Created February 2008

Schools, Restrooms and Gender Nonconforming Students*

For gender normative students, the question of when and where to go to the bathroom is of little consequence. These children are privileged to not have to take this fundamental need into consideration in the course of their school day. For the transgender or gender nonconforming child, on the other hand, the issue is one of enormous consequence. From humiliating taunting to acts of extreme violence, the school restroom has a significant impact on the student's sense of safety on campus. Accounting for this aspect of transgender and gender nonconforming students' experiences is incumbent on all schools and districts. Doing so requires addressing two related problems faced by these students.

Problem: Lack of appropriate restroom accessibility

Many transgender and gender non-conforming students have no access to bathrooms. Some are told to use the bathroom that does not correspond to their gender identity. Many are expelled from school because the school does not know where the person should use the bathrooms. Others are given the "option" of using an restroom designated for staff or one that might be found in the nurse's, counseling or administration office. Unfortunately, for many children this is no option at all as they are forced to navigate their peer's judgments about using such alternate facilities. The message this sends, to the child and peers alike, is that there must something so wrong with the child that they need a separate space. It was not that long ago that we designated "separate but equal" restrooms, only to determine as a society such requirements were both unlawful and inappropriate in a nation dedicated to freedom and diversity.

Recommendation: Gender appropriate restroom accessibility

All students have a right to safe and appropriate restroom facilities. This includes the right to use a restroom that corresponds to the student's gender identity, regardless of the student's sex assigned at birth. Requiring the student to 'prove' their gender (by requiring a doctor's letter, identity documents, etc.) is not acceptable. The student's self-identification is the sole measure of the student's gender.

Problem: Lack of gender-neutral bathrooms

Often transgender and gender non-conforming students do not feel safe in either the men's or women's restrooms. Many students are harassed in both women's and men's restrooms – because they are perceived to not be sufficiently stereotypically feminine or masculine.

In a transgender focus group, the Gay Straight Alliance Network found that the lack of safe bathrooms is the biggest problem that gender non-conforming students face. For instance, "One youth wouldn't use the restroom at school. Instead, he would cross the street to a restaurant and use the men's room there where people didn't know he was biologically female." Many parents of gender nonconforming or transgender students literally map out the location of the closest gender-neutral restrooms to their child's school, while other speak about frequent and traumatic accidents for younger students.

For transgender and gender non-conforming people, the lack of safe bathroom access is one of the most frequent form of discrimination faced but the least acknowledged by policy makers.

Even in areas seen as progressive, many transgender and non-transgender people have no safe places to go to the bathroom. Problems include getting harassed, beaten, and arrested in *both* women's and men's rooms. Many avoid public bathrooms altogether and develop health problems. This can be a major factor in a student's decision to remain in school or not.

Respondents to the San Francisco Human Rights Commission's "Bathroom Survey," a survey of almost 500 people documenting the problem caused by the lack of gender-neutral bathrooms, describes the problems faced on a daily basis most starkly:

- "Women jump out of their shoes; I get harassed by the guys"
- "Security chased me"
- "I have been slapped, pushed, and dragged out by security guards"
- "Got beaten up for using the 'wrong bathroom'"
- "Having the door almost knocked down by teenagers"
- "I run into problems 80% of the time"
- "This is a problem every day"
- "I have spent so many hours avoiding public multi-stall bathrooms that I have damaged my bladder and put pressure on my kidneys."

Recommendation: More Gender Neutral Bathrooms

In addition, where possible, school districts will also provide an easily accessible unisex single stall bathroom for use by **any** student who desires increased privacy, regardless of the underlying reason.

However, use of a unisex single stall restroom should always be a matter of choice for a student. No student should be compelled to use one either as a matter of policy or due to continuing harassment in a gender appropriate facility. If possible, we encourage more than one gender-neutral bathroom.

*Adapted from

Transgender and Gender Non-Conforming Youth: Recommendations For Schools

Transgender Law Center

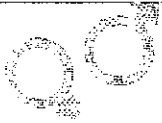
www.transgenderlawcenter.org

info@transgenderlawcenter.org

(415) 865-5619 or 865-0176

1800 Market Street #408

San Francisco, CA 94102



WORKING WITH TRANSGENDER STUDENTS: Information for School Psychologists

Definitions

- Transgender
 - An umbrella term that can be used to describe people whose gender expression is nonconforming and/or whose gender identity is different from their birth assigned gender. Transgender people might identify as male-to-female or female-to-male. The term transgender also includes individuals who do not conform to the binary gender system. In other words, they may consider themselves both male and female or neither male nor female.
- Transsexual
 - Someone who transitions from one gender to another.
- Gender nonconforming
 - A person who is or perceived to have gender characteristics and/or behaviors that do not conform to traditional or societal expectations. Gender nonconforming people *may or may not* identify as lesbian, gay, bisexual, or transgender.
- Although often linked with the gay, lesbian, and bisexual (LGB) community, many transgender individuals consider themselves heterosexual.

(Definitions from Cho, Laub, & Wall, 2004)

Prevalence

The prevalence is difficult to estimate because there has been very little research conducted, especially with youth.

- Current estimates are about 1 in 10,000 for biological males and 1 in 30,000 for biological females.
- The actual prevalence is likely higher than those estimates.
 - 2-3% of biological males engage in cross-dressing.
 - Approximately 1 in 2,500 adult males in the U.S. has had sex reassignment surgery.
 - There are likely more unreported cases.
 - Some estimates say the prevalence might be as high as 1 in 100 worldwide.

(APA, 2006; Conway, 2002; Olyslager & Conway, 2007)

Psychological and Academic Impacts

Transgender youth are the **most vulnerable** youth population, due to both violence and harassment by peers and adults.

- Victimization in Schools
 - Harassment
 - Almost all (87% - 96%) transgender students have reported being verbally harassed because of their sexual orientation or gender identity.
 - 53% - 83% reported physical harassment because of their gender expression.
 - 26% reported being physically assaulted (e.g., injured with a weapon).
 - 76% reported being sexually harassed.
 - Transgender students reported higher levels of harassment and assault in schools than all non-transgender students (including LGB students).
 - Other Types of Victimization
 - 90% reported hearing derogatory comments such as “faggot.”
 - 90% reported experiencing relational aggression.
 - 67% reported having their property stolen or damaged.
 - 62% reported experiencing cyberbullying.
 - 39% reported hearing school staff making negative comments about gender expression.
 - Only 11% reported staff intervention when hearing negative remarks about gender expression; 10% reported other students would intervene when hearing negative remarks about gender expression.
- Academic Impacts
 - 65% - 75% reported feeling unsafe at school.
 - Most reported feeling unsafe because of their sexual orientation or gender expression.
 - 47% reported missing class at least once per month because they felt unsafe.
 - Transgender students who experienced high levels of harassment had significantly lower GPAs and had lower educational aspirations than transgender students who experienced low levels of harassment.
- Psychological Impacts
 - Transgender youth experience higher rates of substance abuse and suicide ideation than their gender-conforming peers.
 - Transgender youth rejected by their families are four times as likely to attempt suicide and use illegal drugs and two times as likely to become HIV infected than transgender students with family support.

(Greytak, Kosciw, & Diaz, 2009; Grossman, & D'Augelli, 2007; Human Rights Watch, 2001, as cited in Sausa, 2005; Sausa, 2005)

What Can Be Done in Classrooms

- Challenge gender norms (e.g., only boys have short hair, only girls wear nail polish).
- Avoid activities that force students to choose a gender.
- Always immediately address name-calling and harassment.
 - Ignoring harassment might send the message that you support it.
- Be a supportive adult for LGBT students.
 - Although 83% of transgender students reported having at least one supportive adult at their school, only 36% could report six or more supportive adults.
- Include gender-variant resources in the classroom (e.g., books) and invite guest speakers to your classroom.
 - Only 46% of transgender students reported they could find information about LGBT people or history in their school library, 16% reported information about LGBT issues in textbooks, and 11% reported curriculum that included positive representation of LGBT people.

(Cho, Laub, & Wall, 2004; Greytak, Kosciw, & Diaz, 2009)

What Can Be Done in the School and District

- District Procedures
 - Have periodic training for school staff on transgender issues and how to keep transgender students safe.
 - Publish a step-by-step procedure students can follow to report an incident of discrimination or harassment.
- Names and Pronouns
 - Consistently address students by the name and pronoun corresponding to their gender identity.
- Restrooms: It is important to have restrooms that transgender students feel comfortable using. Otherwise they might avoid using restrooms at school, which could lead to health problems.
 - Options for Restrooms and Locker Rooms
 - Allow students to use the restroom that corresponds to their gender identity or have unisex bathrooms in the school. The district should consider having a meeting with parents and students to discuss the reasons for transgender-friendly bathrooms. Students can also advocate and educate others about these changes. For example, students could write an article in the school newspaper. See the Sylvia Rivera Law Project's website (www.srlp.org) for more resources about transgender-friendly restrooms.
 - Provide students access to a single stall bathroom.
 - Allow students to use the locker room consistent with their gender identity, with accommodations such as the use of a private area in

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- the public area (e.g., a bathroom stall in the locker room), a separate changing schedule, or the use of a nearby private area.
- Gym Activities and Sports
 - Allow students to participate in gender-segregated gym activities and recreational sports in accordance with the student's gender identity.
 - Participation in competitive sports and contact sports can be determined in a case-by-case manner.
 - Dress Codes
 - If the school has a dress code that differs for males and females, allow students to dress in accordance with their gender identity, or implement a dress code that is same for males and females.

(Cho, Laub, & Wall, 2004; LL & NYAC)

What You Can Do When Working with Transgender Students

- Realize that transgender students reported they were most comfortable talking about LGBT issues with school psychologists, school counselors, and social workers among the adults in their schools.
- Encourage transgender students to talk about LGBT issues. Transgender students who talked about these issues (both in the classroom and with school staff) were more likely to feel connected to their school.
- Act as a "transition assistant" and assist students with finding possible ways of expressing their gender physically and socially.
- Provide psycho-education about approaches to changing their bodies and help them learn that they will be able to facilitate changes over time.
- Have resources for transgender students such as community groups, websites, reading material, and etc. (see resources below).
- Transgender students are more likely to talk with supportive adults about transgender and LGB issues than about victimization issues. However, be available to help transgender students cope with any stress or victimization they are experiencing.

(APA, 2006; Cho, Laub, & Wall, 2004; Greytak, Kosciw, & Diaz, 2009; Schwarz, 2007)

What You Can Do When Working with Families

- Have educational programs available for parents and families (see resources below).
- Encourage parents and families to seek support in processing their own reactions and feelings.

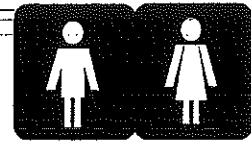
(APA, 2006; Cho, Laub, & Wall, 2004; Schwarz, 2007)

What You Can Do for Yourself

- Realize that transgender youths exist.
- Identify your own gender biases and expectations.
- If you have beliefs or biases that might affect how you work with transgender students, do not place yourself between transgender students and the services they need. Know where to refer the student, if necessary.
- Attend training programs (if available) and read research to educate yourself about ways to reduce psychological and academic risks for transgender youth (see resources below).

(APA, 2006; Cho, Laub, & Wall, 2004; Schwarz, 2007)

Transgender Resources



Beyond the Binary: A Toolkit for Gender Identity Activism in Schools

<http://www.gsanetwork.org/BeyondtheBinary/btbonline.pdf>

In-depth information aimed at school personnel and students about creating a safe space at school for transgender and gender nonconforming students.

Bending the mold: An Action Kit for Transgender Youth

<http://data.lambdalegal.org/pdf/305.pdf>

Offers suggestions to keep schools safe for transgender children

Resources for Gender Variant Children and Trans-Identified and Questioning Youth and Their Allies

http://www.safeschoolscoalition.org/RG-gender_nonconforming_trans_youth.html

Lists and describes many excellent websites, books, and videos.

Answers to Your Questions About Transgender Individuals and Gender Identity

<http://www.apa.org/topics/transgender.html>

A brochure put together by the Office of Public Communication, American Psychological Association, and the Task Force on Gender Identity, Gender Variance, and Intersex Conditions. Contains answers to basic questions and additional resources.

Harsh Realities: The Experience of Transgender Youth in Our Nation's Schools

http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/001/1375-1.pdf

An in-depth study of the experiences of transgender youth in school.

Trans-academics.org

<http://www.trans-academics.org/>

Flagship project of the Association for Gender Research, Education, Academia & Action. Provides education and community resources on gender identity issues. Includes a reference library with over 1600 listings of academically-oriented publications, research and educational tools, and community announcements.

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Compiled by Nicole Krause, M.S.E.

Compliance Guidelines to Prohibit Gender Identity Discrimination

Compliance Rules and Regulations Regarding Gender Identity Discrimination

San Francisco Administrative Code Chapter 12A, 12B, 12C

San Francisco Police Code Article 33

City and County of San Francisco

Human Rights Commission

25 Van Ness Ave., Suite 800

San Francisco, CA 94102-6033

December 10, 2003

Introduction and History of Gender Identity Protection in San Francisco

In 1995 San Francisco included "gender identity" as a protected class to its nondiscrimination ordinances in response to a 1994 public hearing held by the Human Rights Commission. At that hearing, Supervisors and other City officials learned that there are transgender people in every race, class and culture, and of every age, ability, gender, and sexual orientation. The Supervisors and other City officials also learned that transgender people are subjected to severe discrimination in employment, housing and public accommodations and that no local, state or federal law provided protection and no recourse existed when discriminatory actions occurred.

Therefore, the San Francisco Administrative Codes and Police Codes were amended to prohibit discrimination based on gender identity. Since the law was changed, the Human Rights Commission has continued to receive complaints from people who are not hired, not promoted, are fired, denied housing, denied services, and denied access to facilities, and are discriminated against because of their gender identity. These guidelines are intended to assist City Departments, agencies, businesses, and organizations in complying with the law.

In this introduction, we would like to emphasize that a person's gender identity is that person's sense of self regarding characteristics labeled as masculine, feminine, both or neither. An individual determines their own gender identity and the sole proof of a person's gender identity is that person's statement or expression of their self identification.

While any given individual's gender identity or expression may make other people uncomfortable, refusing to treat transgender or gender-variant people in the same manner as other people is a violation of San Francisco laws. The Human Rights Commission is charged with investigating complaints of discrimination based on gender identity. It has been the experience of the Human Rights Commission that most situations in which people experience discomfort or have a fear of confrontation can be addressed so that all individuals are treated with dignity and the law is not violated.

In addition to these Regulations, the staff of the Human Rights Commission is available to provide training and education, and to help create flexible implementation plans for agencies, business establishments and organizations seeking to comply with the law. For more information, visit the Human Rights Commission website at www.sfgov.org or call (415)252-2500.

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- 1. Purpose**
- 2. Definition of Gender Identity**
- 3. Regulations**
- 4. Examples of Unlawful Gender Identity Discrimination**
- 5. Guidelines**
- 6. Appendices**

1. PURPOSE:

It is the law and policy of the City and County of San Francisco to eliminate discrimination based on gender identity in San Francisco and in City & County of San Francisco contracting. These guidelines supercede prior gender identity guidelines approved December 10, 1998 and are effective as of December 10, 2003.

The Human Rights Commission developed these guidelines for several purposes:

- » To implement the provisions of San Francisco Administrative Code Chapters 12A, 12B, 12C and San Francisco Police Code Article 33 regarding discrimination based on gender identity;
- » To provide guidance to employers, businesses, organizations, City departments, and entities contracting with the City and County of San Francisco seeking to comply with the law.
- » To educate the public about gender identity law and policy so as to prevent and address discrimination.

2. DEFINITION OF GENDER IDENTITY

Chapters 12A, 12B, and 12C of the San Francisco Administrative Code and Article 33 of the San Francisco Police Code define "Gender Identity" as "a person's various individual attributes as they are understood to be masculine and/or feminine." * Gender Identity therefore includes discrimination based upon an individual's self-asserted gender identity and/or gender expression whether or not different from that traditionally associated with the person's actual or perceived sex as assigned at birth.

[*12A.3(a); 12B.1(c); 12C.2; 33]

3. REGULATIONS

It is unlawful to discriminate against a person in employment, housing, or public accommodations, on the basis of that person's actual or perceived gender identity, or to discriminate against a person who associates with persons in this protected category, or to retaliate against any person objecting to, or supporting enforcement of legal protections against gender identity discrimination in

employment, housing, and public accommodations

4. EXAMPLES OF UNLAWFUL GENDER IDENTITY DISCRIMINATION

A. EMPLOYMENT: Includes but is not limited to failure to hire, failure to promote, disparate treatment, unlawful termination, verbal and/or physical harassment, deliberate misuse of appropriate forms of address and pronouns, failure to make a reasonable accommodation when requested by the employee, and/or denial of access to bathroom that is appropriate to the employee's gender identity.

B. HOUSING: Includes but is not limited refusal to show, rent, or sell real property that is available for lease or sale, addition of different or additional terms or conditions in a lease, and refusal to provide services or make repairs or improvements for any tenant or lessee, deliberate misuse of appropriate forms of address and pronouns by the landlord or property manager, tolerating harassment by co-tenants, landlords, or property managers.

C. PUBLIC ACCOMMODATIONS: Includes but is not limited to refusal to provide goods or services, disparate treatment, verbal and/or physical harassment, intentional and deliberate misuse of appropriate forms of address and/or pronouns, and/or denial of access to bathroom/restroom that is consistent with and appropriate to the customer's or client's gender identity.

5. GUIDELINES

A. BATHROOMS/RESTROOMS: Individuals have the right to use the bathroom/restroom that is consistent with and appropriate to their gender identity. The Commission wants to ensure that people of all genders have safe bathroom access. Therefore, the Commission strongly urges that all single-use bathrooms be designated gender neutral (unisex) and that all places of public accommodation and employment provide a gender neutral bathroom option.

B. VERIFICATION OF GENDER: Requiring proof of an individual's gender is prohibited, except in situations where all persons are asked to verify their gender.

C. EMPLOYMENT: When requested by the employee, an employer must make reasonable accommodations for an employee's health care needs, including but not limited to health care provider or counseling appointments, time off to recover from surgery or from a transition-related complication.

D. DRESS CODES: Employees have the right to comply with the gender-specific dress code that is appropriate to their gender identity when employers implement employee dress codes that are gender-specific.

E. ONGOING TRAINING AND POLICY COMMUNICATION: To ensure that employers understand their obligations to maintain a discrimination-free workplace, the Commission recommends that employers require all management, employees, and volunteers to receive training regarding gender identity issues. All agencies, businesses, organizations, City contractors, and City departments are required to clearly and explicitly communicate San Francisco's laws regarding gender identity and other protected categories to all management, employees, and volunteers. In

addition, all businesses within the City and County of San Francisco are required to conspicuously post the San Francisco Human Rights Commission employment non-discrimination poster in a place accessible to all employees.

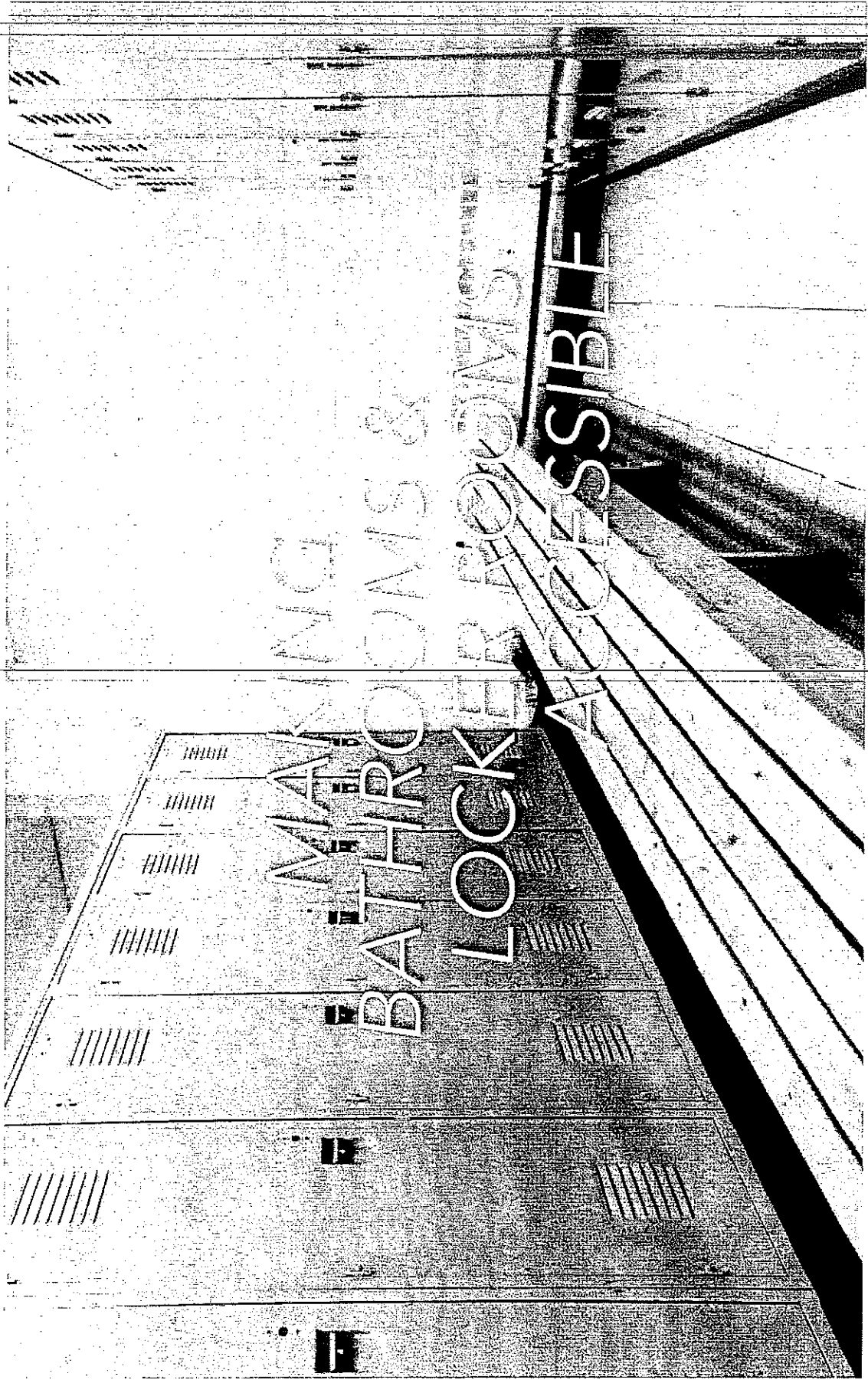
F. SEX-SPECIFIC FACILITIES WITH UNAVOIDABLE NUDDITY:

- A. All people have an equal and binding right to the access and safe use of those facilities that are segregated by sex. In sex-specific facilities, where nudity in the presence of other people is unavoidable, agencies, businesses, organizations, City contractors, and City departments shall make reasonable accommodations to allow an individual access and use of the facility that is consistent with that individual's gender identity which is publicly and exclusively asserted.
- B. Access and use of a sex-specific facility may not be denied to any individual with an identification that designates the gender they are asserting. If an individual does not voluntarily show identification designating their gender identity, reasonable accommodations shall be made to integrate the individual into the facility that corresponds with the gender identity that the individual publicly and exclusively asserts or intends to assert over a period of time.
- C. The Human Rights Commission recommends that alternative forms of gender identification be accepted, such as a letter from a City department, community-based organization, healthcare provider, or counselor.

APPENDICIES

SCOPE OF EXPLICITLY TRANSGENDER-INCLUSIVE ANTI-DISCRIMINATION LAWS

Jurisdiction	Year	Category (in which protections are found)	Public Accommodations	Housing	Employment	Education	Right of Private Action
Arizona							
Tucson	1999	Gender identity	?	?	?	?	
California							
CALIFORNIA*	2003	Sex		?	?		?
Los Angeles	1979	Sexual orientation	?	?	?	?	?
San Francisco	1994	Gender identity	?	?	?		?
Santa Cruz County	1998	Gender	?	?	?	?	?



TAKE ACTION

MAKING BATHROOMS & LOCKER ROOMS ACCESSIBLE

1. DEMAND A SAFE SPACE

Talk to your teachers and school counselor about your safety and privacy concerns and why it's important to have a safe space to change clothes or use the restroom. The school should make every effort to accommodate you, instead of simply instructing you to use the facility that corresponds with the sex you were assigned at birth.

2. GATHER SUPPORT

Organize a petition to have gender-neutral bathrooms created in your school. You may want to begin your petition drive by promoting it with an article in your student paper. For more information, read about the film Toilet Training on the Sylvia Rivera Law Project's website (www.srlp.org).

3. BE VOCAL

Speak up when you see teasing or harassment in bathrooms, locker rooms or anywhere on school grounds.

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Transgender and Gender Non-Conforming Youth Recommendations For Schools

Transgender Law Center

www.transgenderlawcenter.org

info@transgenderlawcenter.org

(415) 865-5619 or 865-0176

Overall Problem:

Transgender students face severe discrimination and harassment in schools. 89.5% of transgender students report feeling unsafe in schools.[1] Transgender students are at higher risk of dropping out of school and of suicide.

Example of harassment:

School was Hell. No one wanted to sit near me in the cafeteria. No one wanted to talk to me. I was treated like I had leprosy of AIDS. I was the freak kid. Kids would say, "Oh, hi, Lawrence." And I would speak back. And, "oh my God, you sound just like a girl." Guys wanted to pick fights. People would say just a whole bunch of vulgar things to me. Every day I'd come home from school cryin'. Kids would yell from the school bus, "Faggot!" Throw stuff out of the windows. Make me hate kids, hate school, hate life." [2]

-- Lawrence, 19 year old transgender youth

Overall Recommendations:

A) To protect transgender and gender non-conforming students by creating an explicit anti-discrimination and anti-harassment policy – and to enforce these policies meaningfully.

B) To train all teachers, administrators, counselors, and students in transgender sensitivity, in what it means to treat all people respectfully and equally.

California protects transgender and gender non-conforming students in public schools from discrimination and harassment. (AB 537 – Student Violence and Prevention Act). So, in California, the above recommendations are the law. Minnesota and New Jersey have similar protections.

Specific Problems and Recommendations:

Problem 1 : Incorrect and Disrespectful Names and Pronouns

Frequently, transgender and gender non-conforming students are not addressed by the appropriate pronouns or names. Having our gender recognized and validated is important for our emotional health. As anyone can imagine, it is extremely disrespectful to be called by a pronoun or name one does not chose for oneself. It invalidates ones identity and self-concept. This lack of validation and recognition can and often does lead to depression and suicide.

Recommendation 1: Correct Names/Pronouns – according to student self-identification

Transgender and gender non-conforming students have the right to be addressed by a name and pronoun corresponding to their gender identity. This is true regardless of whether the student has obtained a court ordered name or gender change. Intentionally addressing a student by the incorrect name or pronoun is a form of discrimination. The directive does not prohibit inadvertent slips or honest mistakes, but it does apply to an intentional and persistent refusal to respect a student's gender identity.[3]

Students who wish to use pronouns other than the masculine or the feminine (such as zhe and hir) need to be respected equally.

Problem 2: Lack of appropriate restroom accessibility

Many transgender and gender non-conforming students have no access to bathrooms. Some are told to use the bathroom that does not correspond to their gender identity. Many are expelled from school because the school does not know where the person should use the bathrooms.

Recommendation 2: Gender appropriate restroom accessibility

All students have a right to safe and appropriate restroom facilities. This includes the right to use a restroom that corresponds to the student's gender identity, regardless of the student's sex assigned at birth.[4] Requiring the student to 'prove' their gender (by requiring a doctor's letter, identity documents, etc.) is not acceptable. The student's self-identification is the sole measure of the student's gender.

Problem 3: Lack of gender neutral bathrooms

Often transgender and gender non-conforming students do not feel safe in either the men's or women's restrooms. Many students are harassed in both women's and men's restrooms – because they are perceived to be sufficiently stereotypically feminine or masculine.

In a transgender focus group, the Gay Straight Alliance Network found that the

lack of safe bathrooms is the biggest problem that gender non-conforming students face. For instance, "One youth wouldn't use the restroom at school. Instead, he would cross the street to a restaurant and use the men's room there where people didn't know he was biologically female."^[5]

"For transgender and gender non-conforming people, the lack of safe bathroom access is "the most frequent form of discrimination faced but the least acknowledged by policy makers"^[6] Even in San Francisco, many transgender and non-transgender people have no safe places to go to the bathroom - get harassed, beaten, and arrested in both women's and men's rooms. Many avoid public bathrooms altogether and develop health problems.

Respondents to the San Francisco Human Rights Commission's "Bathroom Survey,"^[7] a survey of almost 500 people documenting the problem caused by the lack of gender-neutral bathrooms, describes the problems we face on a daily basis most starkly:

- "Women jump out of their shoes; I get harassed by the guys"
 - "Security chased me"
 - "I have been slapped, pushed, and dragged out by security guards"
 - "Got beaten up for using the 'wrong bathroom'"
-
- "Having the door almost knocked down by teenagers"
 - "I run into problems 80% of the time"
 - "This is a problem every day"
 - "I have spent so many hours avoiding public multi-stall bathrooms that I have damaged my bladder and put pressure on my kidneys."

Recommendation 3: More Gender Neutral Bathrooms

In addition, where possible, School District will also provide an easily accessible unisex single stall bathroom for use by any student who desires increased privacy, regardless of the underlying reason. However, use of a unisex single stall restroom should always be a matter of choice for a student. No student should be compelled to use one either as a matter of policy or due to continuing harassment in a gender appropriate facility.^[8] If possible, we encourage more than one gender neutral bathroom.

Problem 4: Lack of Locker Room Accessibility

Transgender and gender non-conforming students also face difficulties in locker room facilities. Gender non-conforming students are harassed, no matter what locker room. Often, transgender students are kept from going into any locker room.

Recommendation 4: Locker room accessibility

In locker rooms that involve undressing in front of others, transgender students who want to use the locker room corresponding to their gender identity must be provided an accommodation that best meets the student's needs. Such accommodations can include: (A) use of a private area within the public area (a bathroom stall with a door, an area separated by a curtain, a PE instructor's office in the locker room), (B) a separate changing schedule in the private area (either utilizing the locker room before or after the other students), (C) use of a nearby private area (a nearby restroom, a nurse's office), (D) access to the locker room corresponding to the student's sex assigned at birth, or (E) satisfaction of PE requirement by independent study outside of gym class (either before or after school or at a local recreational facility).

It is not an acceptable accommodation to deny a student's opportunity for physical education either through not allowing the student to have PE or by forcing the student to have PE outside of the assigned class time. Requiring a transgender student to use the locker room corresponding to the student's sex assigned at birth is likewise prohibited.

[9]

Problem 5: Lack of access to sports and gym class

Often, transgender and gender non-conforming students are forced to be on a sports team that does not fit their gender identity. This is yet one more way in which transgender and gender non-conforming students are not taken seriously and are told that their identities are not valid. Being repeatedly told that one's self perception is invalid is extremely psychologically harmful.

Recommendation 5: Sports and gym class

Generally, students should be permitted to participate in gender-segregated sports and gym class activities in accordance with the student's gender identity. In some situations, legitimate questions about fairness in athletic competitions will need to be resolved on a case-by-case basis. This exception will not, however, apply to participation in gym class where the activity is recreational instead of competitive.

Gender segregation in other areas

This directive outlines the main areas where students may find themselves segregated by gender. It does not, however, purport to identify and address all such circumstances. As a general rule, any other time students are segregated by gender (i.e. classroom discussion, field trips, or support/counseling groups) students must be permitted to participate in accordance with their gender identity. [10]

Problem 6: Inappropriate Dress codes

Often students are required to wear clothing that is inconsistent with their gender identity. For instance, Pat Doe, a male to female transgender student was told that she could not wear girl's clothes. Every single day, first thing in the

morning, she had to go to the principal's office, where the principal would look at her and decide if she was dressed enough like a boy. This student brought a suit against the school, a suit which she won. [11]

Recommendation 6: Students can dress according to their gender identity

School District can enforce reasonable student dress codes for the purposes of maintaining a safe and orderly school environment, and ensuring that the school can fulfill its educational mission. However, All School District employees must respect the right of a student to dress in accordance with the student's gender identity. [12] Further, students should not have to chose between male and female clothing. Some students are most comfortable in and most themselves in clothing that is not clearly male or female or a combination of the two.

Problem 7: Unsupportive Families:

Some transgender and gender non-conforming students are not openly so at home because of safety reasons. "Transsexual youth who are open about their identity face extreme abuse and rejection from families and peers. Many are forced to leave their home communities and survive on the streets." [13]

Recommendation 7: Confidentiality

A school should never disclose the student's gender non-conformity or being transgender to the student's parents unless the student consents.

Problem 8: Lack of role models and access to accurate information

Often, transgender students feel like they are all alone in the world. There are very few transgender role models in schools. There are no books in schools that teach about transgender and gender non-conforming people. Often schools reinforce stereotypical gender norms. And, further, schools do not teach students that there are gender options beyond female and male. In fact, most school structures reinforce the myth of two genders: male and female segregated bathrooms, male and female segregated locker rooms, female and male segregated sports teams and activities, etc.

Recommendation 8: More role models and access to accurate information

Schools should make an effort to employ transgender and gender non-conforming teachers. Schools should have books about transgender and gender non-conforming people. Schools should make sure that everyone is aware that there is a great human gender diversity that certainly includes female and male, but goes far beyond.

Prepared by Jody Marksamer and Dylan Vade

The Transgender Law Center is sponsored by the National Center for Lesbian Rights, Female-to-Male International, the Echoing Green Foundation, the Yale University Initiative for Public Interest Law, the Horizons Foundation, the

Sisters of Perpetual Indulgence, and the Common Counsel Foundation.

[1] Gay Lesbian Straight Education Network (GLSEN) National School Climate Survey, 2001.

[2] From Shannon Minter "The Human Rights of Lesbian, Gay, Bisexual, Transgendered, and Questioning Youth: Key Issues Under the United Nations Convention on the Rights of the Child."

[3] The above paragraph is the draft recommendation from the California Safe Schools Coalition, a coalition of civil rights activists working to enforce AB 537.

[4] The above paragraph is the draft recommendation from the California Safe Schools Coalition, a coalition of civil rights activists working to enforce AB 537.

[5] Transgender Focus Group, Santa Barbara, April 21, 2002.

[6] Shawna Virago from Community United Against Violence (CUAV) at San Francisco Human Rights Commission LGBT Advisory Committee Meeting Sept. 24, 2002.

[7] San Francisco Human Rights Commission, Summer 2001.

~~[8] The above paragraph is the draft recommendation from the California Safe Schools Coalition, a coalition of civil rights activists working to enforce AB 537.~~

[9] The above two paragraphs are the draft recommendation from the California Safe Schools Coalition, a coalition of civil rights activists working to enforce AB 537.

[10] The above two paragraphs are the draft recommendation from the California Safe Schools Coalition, a coalition of civil rights activists working to enforce AB 537.

[11] *Pat Doe vs. John Yunits*, Superior Court of Massachusetts, 2000..

[12] The above paragraph is the draft recommendation from the California Safe Schools Coalition, a coalition of civil rights activists working to enforce AB 537.

[13] Paul Gibson, L.C.S.W., "Gay Male and Lesbian Suicide," from the REPORT OF THE SECRETARY'S TASK FORCE ON YOUTH SUICIDE, Vol. 3 (U.S. Department of Health and Human Services, 1989.) From Shannon Minter "The Human Rights of Lesbian, Gay, Bisexual, Transgendered, and Questioning Youth: Key Issues Under the United Nations Convention on the Rights of the Child."

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Latino AIDS Agency Evicted Because Transgender Clients Used 'Wrong' Bathroom, ACLU Charges in NY Lawsuit

June 26, 2001
FOR IMMEDIATE RELEASE

NEW YORK -- The leading Latino HIV/AIDS agency in New York was effectively forced out of Jackson Heights, Queens - an epicenter of the AIDS epidemic in U.S. Latino communities - because of prejudice against the agency's transgendered clients, the American Civil Liberties Union said in a lawsuit filed today.

The Hispanic AIDS Forum was forced to leave Jackson Heights after the landlord at the office building that housed the agency for 10 years acquiesced to complaints from another tenant that the agency's transgendered clients were using the "wrong" restrooms. (For example, people who identified and expressed themselves as women -- but who were not born anatomically female -- used the women's restroom.) The landlord was unwilling to discuss ways to accommodate the transgendered clients, refused to renew the agency's lease, and began eviction proceedings.

"This is unlawful discrimination - and prejudice with the highest of prices," said Tamara Lange, staff attorney at the ACLU AIDS Project. "This landlord has made it much harder for the Hispanic AIDS Forum to reach the people who need HIV/AIDS services most, and this organization has been forced to pay higher rent and moving costs. That money could have been used to help more Latinos affected by HIV/AIDS."

Latinos account for 20 percent of all new HIV cases nationwide, even though 12 percent of the population is Latino. New York, with 9 percent of the country's Latino population, is home to fully 30 percent of the entire nation's Latino population with HIV. Jackson Heights -- which is one of New York's largest gay communities, is 45 percent Latino and has one of the largest concentration of Latina transgendered people in the nation -- is home to many Latinos affected by HIV/AIDS.

"This epidemic is ravaging Latinos, and efforts to prevent its spread have to come from within our own communities and reach people where they are," said Heriberto Sanchez Soto, Executive Director of the Hispanic AIDS Forum, at a press conference this morning at the agency's cramped city-wide headquarters in Manhattan. "We can't afford to let prejudice get in the way."

Today's lawsuit, filed in New York State Supreme Court in Manhattan, says the Estate of Joseph Bruno (which owns the building in Jackson Heights), an associated Trust and its Trustees violated state and local laws that prohibit discrimination based on sex, gender and disability. The lawsuit asks for unspecified damages, citing the financial and practical impact the move had on the Hispanic AIDS Forum's ability to reach people badly in need of services.

According to the lawsuit, the landlord told Sanchez Soto that the Hispanic AIDS Forum's lease would not be renewed because of complaints from other tenants over "men who think they're women using the women's bathrooms." When asked whether he was referring to the agency's transgendered clients, the lawsuit charges that the landlord replied, "I don't care what they are. They can't use the wrong restrooms."

The landlord insisted that the Hispanic AIDS Forum sign a written agreement that none of its clients would use restrooms in the building. When the agency refused, the landlord began eviction proceedings and the agency eventually moved to Woodside, Queens, which is less central to Latino, gay and transgender communities.

While the agency didn't have an automatic right to renew its lease, landlords are barred from denying space or services based on several protected criteria, including sex, gender and disability, Lange said. "We're aware that this question about bathrooms is socially complicated, but there are many ways to accommodate transgendered people without infringing on others," she explained. "What you can't do is just get rid of a tenant without ever trying to make an accommodation, which is what this landlord did. The first step should have been education and dialogue – not eviction."

Also at this morning's press conference, activists who for years have tried to amend New York City's anti-discrimination ordinance to explicitly include transgendered people said today's lawsuit illustrates the need for clearer laws. Much of the debate over the expanded legislation has centered on whether it's necessary, with opponents of the new legislation arguing that sex discrimination laws already protect people based on gender identity.

Whether or not transgendered people are already covered under sex discrimination laws, activists said today, a more explicit local ordinance might have prevented the eviction from happening since a law which explicitly included protections for transgendered people might have told the landlord and its lawyers that the eviction would be illegal.

Today's case is Hispanic AIDS Forum v. Estate of Joseph Bruno.

About the Hispanic AIDS Forum

The Hispanic AIDS Forum provides treatment, education and innovative prevention services to New York City's Latino population. The agency's mission is to reduce HIV transmission and to secure timely and quality support services for Latina/os affected by HIV/AIDS. The Hispanic AIDS Forum operates three community-based offices in some of New York's largest Latino neighborhoods: Western Queens, Lower Manhattan and the South Bronx.

About the ACLU AIDS Project

Since the first days of the AIDS epidemic, the ACLU has fought for the civil liberties of people affected by the disease. This includes discrimination, as well as confidentiality in testing, reporting and treatment. Last month, the ACLU AIDS Project secured a new legal precedent protecting emergency health care workers from forced testing and from discrimination stemming from undue fear of transmission on the job.

Statement of Heriberto Sanchez Soto

Executive Director, Hispanic AIDS Forum

June 26, 2001

Good morning, ladies and gentlemen. Thank you for joining us today as we take this extraordinary step to seek justice.

HIV/AIDS represents a great challenge to the Latino community. Nationally we represent 11 percent of the U.S. population, but account for 18 percent of the AIDS cases reported to date. According to the Centers for Disease Control and Prevention, the cumulative total of Latinos diagnosed with AIDS is over 131, 698. The cumulative total of deaths of all Latinas/os with AIDS (through December 1999) is 74,396, or 56 percent of the total Latino AIDS cases.

In New York City these statistics become grimmer. While accounting for 24 percent of New York's population, Latinos represent a disproportionate 31 percent of the total cumulative adult and adolescent AIDS cases (35, 557 of 115, 269). In the Borough of Queens, the majority of Latinos living with AIDS are concentrated in West Queens, with Jackson Heights as the epicenter of the disease among this population. West Queens has become an area that has attracted many new immigrants from throughout Latin America.

Some of us will argue that the problem is made worse when bias and prejudice distract us from providing services to the populations most in need. For Latinos in New York and nationally, class issues, race and lifestyles are certainly at the core of the problem.

Case in point, the Hispanic AIDS Forum is seeking legal remedy to blatant discrimination based on gender.

Having evicted HAF from its offices at the Brunson Building in Queens, the Estate of Joseph Bruno makes it clear that existing laws in New York City make it all too easy for landlords to discriminate against those whose physical and emotional make-up does not fit their criteria of what is traditionally acceptable.

In doing so, the Estate of Joseph Bruno has diminished HAF's ability to provide uninterrupted services to many Latinos who turn to HAF for advocacy, daily support and assistance in coping with the emotional, physical and social ravages of HIV/AIDS.

They have also had a significantly negative effect upon the transgender community, reinforcing the basest of social stigma, denying them of their most basic human needs and requirements, and shaming them for being who they are.

The Hispanic AIDS Forum recognizes that it cannot meet its mission without vigilance to protecting human and civil rights. HIV and AIDS has been more than a medical problem. Bigotry, discrimination, prejudice has made our struggle against the spread HIV a daunting challenge. With this action today HAF reinforces its commitment to fight prejudice and bigotry at all levels. We will not relent until we overcome. Thank you.

Published on *American Civil Liberties Union* (<http://www.aclu.org>)

Source URL: http://www.aclu.org/lgbt-rights_hiv-aids/latino-aids-agency-evicted-because-transgender-clients-used-wrong-bathroom-aclu



MODEL SCHOOL DISTRICT POLICY REGARDING TRANSGENDER AND GENDER NONCONFORMING STUDENTS

PURPOSE

California law and District policy require that all programs, activities, and employment practices be free from discrimination based on sex, sexual orientation, or gender identity. This policy is designed in keeping with these mandates to create a safe learning environment for all students and to ensure that every student has equal access to all school programs and activities.

This policy sets out guidelines for schools and district staff to address the needs of transgender and gender nonconforming students and clarifies how state law should be implemented in situations where questions may arise about how to protect the legal rights or safety of such students. This policy does not anticipate every situation that might occur with respect to transgender or gender nonconforming students, and the needs of each transgender or gender nonconforming student must be assessed on a case-by-case basis. In all cases, the goal is to ensure the safety, comfort, and healthy development of the transgender or gender nonconforming student while maximizing the student's social integration and minimizing stigmatization of the student.

DEFINITIONS

The definitions provided here are not intended to label students but rather to assist in understanding this policy and the legal obligations of District staff. Students might or might not use these terms to describe themselves.

- "Gender identity" is a person's deeply held sense or psychological knowledge of their own gender, regardless of the gender they were assigned at birth. Everyone has a gender identity.
- "Transgender" describes people whose gender identity is different from their gender assigned at birth.
- "Gender expression" refers to the way a person expresses gender, such as clothing, hairstyles, activities, or mannerisms.
- "Gender nonconforming" describes people whose gender expression differs from stereotypical expectations, such as "feminine" boys, "masculine" girls, and those who are perceived as androgynous.

GUIDANCE

Privacy

All persons, including students, have a right to privacy. This includes the right to keep private one's transgender status or gender nonconforming presentation at school. Information about a student's transgender status, legal name, or gender assigned at birth also may constitute confidential medical information. School personnel should not disclose information that may reveal a student's transgender status or gender nonconforming presentation to others, including parents and other school personnel, unless legally required to do so or unless the student has authorized such disclosure. Transgender and gender nonconforming students have the right to discuss and express their gender identity and expression openly and to decide when, with whom, and how much to share private information.

When contacting the parent or guardian of a transgender or gender nonconforming student, school personnel should use the student's legal name and the pronoun corresponding to the student's gender assigned at birth unless the student, parent, or guardian has specified otherwise.

Official Records

The District is required to maintain a mandatory permanent pupil record ("official record") that includes a student's legal name and legal gender. However, the District is not required to use a student's legal name and gender on other school records or documents. The District will change a student's official record to reflect a change in legal name or legal gender upon receipt of documentation that such change has been made pursuant to a court order. In situations where school staff or administrators are required by law to use or to report a transgender student's legal name or gender, such as for purposes of standardized testing, school staff and administrators shall adopt practices to avoid the inadvertent disclosure of such confidential information.

Names/Pronouns

A student has the right to be addressed by a name and pronoun that corresponds to the student's gender identity. A court-ordered name or gender change is not required, and the student need not change his or her official records.

The intentional or persistent refusal to respect a student's gender identity (for example, intentionally referring to the student by a name or pronoun that does not correspond to the student's gender identity) is a violation of this policy.

Gender-Segregated Activities

To the extent possible, schools should reduce or eliminate the practice of segregating students by gender. In situations where students are segregated by gender, such as for health education classes, students should be included in the group that corresponds to their gender identity.

Student Information Systems

The District has modified its student information system to prevent disclosure of confidential information and ensure that school personnel use a student's preferred name and pronouns consistent with the student's gender identity. Instructions for using that system are attached to this policy.

Restroom Accessibility

Students shall have access to the restroom that corresponds to their gender identity consistently asserted at school. Any student who has a need or desire for increased privacy, regardless of the underlying reason, should be provided access to a single stall restroom, but no student shall be required to use such a restroom.

Locker Room Accessibility

The use of locker rooms by transgender students shall be assessed on a case-by-case basis with the goals of maximizing the student's social integration and equal opportunity to participate in physical education classes and sports, ensuring the student's safety and comfort, and minimizing stigmatization of the student. In most cases, transgender students should have access to the locker room that corresponds to their gender identity consistently asserted at school. Any student who has a need or desire for increased privacy, regardless of the underlying reason, should be provided with a reasonable alternative changing area such as the use of a private area (e.g., a nearby restroom stall with a door, an area separated by a curtain, a P.E. instructor's office in the locker room, or a nearby health office restroom), or with a separate changing schedule (e.g., using the locker room that corresponds to their gender identity before or after other students). Any alternative arrangement should be provided in a way that protects the student's ability to keep his or her transgender status confidential. In no case shall a transgender student be required to use a locker room that conflicts with the student's gender identity.

Physical Education Classes & Intramural Sports

Transgender and gender nonconforming students shall be permitted to participate in physical education classes and intramural sports in a manner consistent with their gender identity.

Interscholastic Competitive Sports Teams

Transgender and gender nonconforming students shall be permitted to participate in interscholastic athletics in a manner consistent with their gender identity.

Dress Codes

Transgender and gender nonconforming students have the right to dress in a manner consistent with their gender identity or gender expression. In general, schools may not adopt dress codes that restrict students' clothing or appearance on the basis of gender.

Discrimination/Harassment

It is the responsibility of each school and the District to ensure that transgender and gender nonconforming students have a safe school environment. This includes ensuring that any incident of discrimination, harassment, or violence is given immediate attention, including investigating the incident, taking appropriate corrective action, and providing students and staff with appropriate resources. Complaints alleging discrimination or harassment based on a person's actual or perceived transgender status or gender nonconformity are to be handled in the same manner as other discrimination or harassment complaints. (See the "Related Resources" and the "Assistance" sections of this policy for further information regarding the filing of discrimination or harassment complaints.)

Transferring a Student to Another School (Opportunity Transfers)

In general, schools should aim to keep transgender and gender nonconforming students at the original school site. Opportunity transfers should not be a school's first response to harassment and should be considered only when necessary for the protection or personal welfare of the transferred student, or when requested by the student or the student's parent. The student or the student's parent or guardian must consent to any such transfer.

RELATED RESOURCES

[Include here related policies from the District concerning the topics covered in the policy, such as discrimination, harassment, bullying, reporting incidents of discrimination, dress codes, and opportunity transfers.]

Complaints about violations of this policy should be handled through the Uniform Complaint Procedures. Cal. Code Regs. tit. 5, §§ 4600-4687.

ASSISTANCE

[Include here contact information for relevant District offices that can provide assistance regarding educational equity compliance, SIS, athletics, or other issues.]

ATTACHMENTS

[Include here instructions for entering data in and getting data from the District's student information system to prevent disclosure of confidential information and ensure that school personnel use a student's preferred name and pronouns consistent with the student's gender identity.]



Federal Appeals Court Rejects School Teacher's Lawsuit Seeking To Keep Transgender Employee from Bathrooms

June 20, 2002

FOR IMMEDIATE RELEASE

MINNEAPOLIS — A federal appeals court today said a Minneapolis public school met its legal obligation by giving alternate restroom options to a teacher who did not want to use the same facilities as a male-to-female transgendered employee, in what the American Civil Liberties Union called a "watershed victory" for the rights of transgendered people.

Southwest High School teacher Carla Cruzan complained that allowing transgendered library employee Debra Davis to use the women's bathroom violated Cruzan's religious freedom and created a hostile workplace based on sex. As a result, the school provided Cruzan with ready access to several other bathrooms, including single-person facilities and other women's restrooms. Unsatisfied with the school's accommodation for her, Cruzan asked a federal court to block Davis from using the women's restrooms at school. She lost and appealed to the U.S. Court of Appeals for the 8th Circuit, in St. Louis.

"This case had two common threads that we see all across the country -- someone didn't want a transgendered person to have basic access to restrooms and then used religion as a smokescreen for blatant discrimination," said Tamara Lange, an ACLU Lesbian & Gay Rights Project staff attorney who wrote a friend-of-the-court brief supporting the school.

"Carla Cruzan was the person who thought there was a problem here, so the school was right to find some other alternative for her -- not for the transgendered employee," Lange said. "This is a watershed victory that tells employers and businesses nationwide that they can't deny a transgendered person basic rights based on someone's dislike for the person."

In today's unanimous ruling, a three-judge panel of the federal appeals court upheld the school district's restroom policy, saying, "The school district's policy was not directed at Cruzan and Cruzan had convenient access to a number of restrooms other than the one Davis used. Cruzan does not assert Davis engaged in any inappropriate conduct other than merely being present in the women's faculty restroom. Given the totality of the circumstances, we conclude a reasonable person would not have found the work environment hostile or abusive."

The ACLU's friend-of-the-court brief, filed earlier this year, said that Cruzan, not the school, was unreasonable when she demanded that the school allow her own personal beliefs to dictate Davis' use of school restrooms. The ACLU, filing on behalf of groups including the Minnesota chapter of the Gay, Lesbian and Straight Education Network, also noted that students, teachers, staff and parents at Southwest High School roundly supported Davis and the school's handling of the situation.

"The Minneapolis Public Schools have shown a willingness to learn about and support the needs and concerns of LGBT students, parents and staff. From students who plastered the walls with signs supporting Debra to the Out4Good office in the Minneapolis district itself - this community is a model for every school in the country," said J.J. Kahle, Co-Chair of GLSEN-Minnesota. "Debra was supported so she could continue doing her good work in the library. While it's too bad that Carla Cruzan is intolerant, her concerns were addressed by finding other restrooms she can use."

Minnesota is one of just two states that explicitly prohibits discrimination based on gender identity - but that civil rights law is not at issue because this case is about whether Cruzan was discriminated against by the school's accommodation of a transgendered employee. The ACLU Lesbian & Gay Rights Project is currently litigating a New York City case claiming that a landlord violated existing sex discrimination laws by evicting a social services agency because its transgendered clients used restrooms consistent with their gender identities. More on that case is online at: [/cpredirect/12340](#).

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TRANSGENDER LAW & POLICY INSTITUTE

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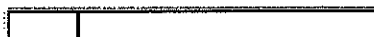
[Scope of Explicitly Transgender-Inclusive Non-Discrimination Laws: A joint publication from the Transgender Law and Policy Institute and National Gay and Lesbian Task Force](#)

[Transgender Issues: A Fact Sheet. \(updated 9/2007\)](#)

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U.S. jurisdictions with laws prohibiting discrimination on the basis of gender identity or expression

Type of jurisdiction	Number
States:	13 + DC
Cities and counties:	109
Total	122



	Carbondale, IL
	Covington, KY
	El Paso, TX
	Ithaca, NY
	Key West, FL
	Lake Oswego, OR
	Monroe Co., FL
	Oakland, CA
	Peoria, IL
	San Diego, CA
	Scranton, PA
	Springfield, IL
	University City, MO
2002	Allentown, PA
	Baltimore, MD
	Boston, MA
	Buffalo, NY
	Chicago, IL
	Cook County, IL
	Dallas, TX
	Decatur, IL
	East Lansing, MI
	Erie County, PA
	New Hope, PA
	New York City, NY
	Philadelphia, PA
	Salem, OR
	Tacoma, WA
2001	Denver, CO
	Huntington Woods, MI
	Multnomah Co., OR
	State of Rhode Island
	Rochester, NY
	Suffolk County, NY
2000	Atlanta, GA
	Boulder, CO
	DeKalb, IL
	Madison, WI
	Portland, OR
1999	Ann Arbor, MI
	Jefferson County, KY
	Lexington-Fayette Co., KY
	Louisville, KY
	Tucson, AZ
1998	Benton County, OR
	Santa Cruz County, CA
	New Orleans, LA

- no regs on SO/GT

→ 50 - none

- no regs

	Toledo, OH
	West Hollywood, CA
	York, PA
1997	Cambridge, MA
	Evanston, IL
	Olympia, WA
	Pittsburgh, PA
	Ypsilanti, MI
1996	Iowa City, IA
1994	Grand Rapids, MI
	San Francisco, CA
1993	State of Minnesota
1992	Santa Cruz, CA
1990	St. Paul, MN
1986	Seattle, WA
1983	Harrisburg, PA
1979	Los Angeles, CA.
	Urbana, IL
1977	Champaign, IL
1975	Minneapolis, MN

none

750 -

none

*Hawaii's non-discrimination law covers only discrimination in housing, not in employment or public accommodations. For more information on what each law covers in Hawaii and other states, see the joint TLPI-NGLTF comprehensive chart, "Scope of Explicitly Transgender-Inclusive Non-Discrimination Laws".

The Transgender Law and Policy Institute has verified that each jurisdiction listed above has a transgender inclusive non-discrimination law and has on file either the passed ordinance or bill, or the relevant sections of the municipal or state code.

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U.S. jurisdictions prohibiting discrimination in public employment on the basis of gender identity and expression

Through legislative actions:

Alameda County, CA (includes provision of services)

Athens-Clarke County, Georgia

Bellingham, WA

Boise, Idaho

Chapel Hill, North Carolina

Dane County, Wisconsin (also applies to county contractors)

Decatur, Georgia

Houston, Texas

Lansdowne Borough, Pennsylvania

Largo, Florida

Luzerne County, Pennsylvania

Nashville, Tennessee

Pine Lake, Georgia

Rhinebeck, NY

San José, California (also applies to city contractors)

Tequesta, Florida

Wilton Manors, Florida (also applies to city contractors)

Through executive orders:

State of Indiana

State of Ohio

New York State Office of the Comptroller

Pennsylvania State Government

Pennsylvania Department of the Auditor General

Legislation

Arizona HB 2455

Introduced on February 11, 2009 and assigned to the House Rules Committee, this bill would prohibit discrimination in employment, public accommodations and other areas based on sexual orientation and gender identity.

Arizona SB 1368

Introduced on February 2, 2009 this bill would prohibit discrimination in employment based on sexual orientation and gender identity.

Connecticut HB 6452

This bill was introduced February 11, 2009 and referred to the Joint Judiciary Committee. Hearings were held March 19, 2009. HB 6452 would update Connecticut's anti-discrimination laws to add gender identity or expression as protected categories in employment and public accommodations.

Florida HB 397/SB 2012

HB 397 was introduced March 3, 2009. SB 2012 was introduced March 5, 2009 and referred to

five separate committees. Both bills would amend the Florida Civil Rights Act to add sexual orientation, and gender identity or expression, as well as pregnancy and familial status, as protected categories. Read the full text of house bill [here](#) and the senate bill [here](#).

Georgia HB 111

Introduced on January 16, 2009 this bill would provide penalty enhancement for crimes motivated by the victim's sexual orientation, gender identity, or other traits.

Indiana HB 1250

Introduced on January 12, 2009 and assigned to the House Committee on Public Policy, this bill would extend existing anti-discrimination laws to apply to discrimination in employment and public accommodations motivated by sexual orientation, gender identity, age, disability, and other traits.

Kansas SB 169

This bill passed the Senate Federal and State Affairs Committee on March 19, 2009. On March 23, 2009, it was withdrawn from the Senate calendar and re-referred to the Federal and State Affairs Committee. SB 169 bill would extend existing anti-discrimination laws to apply to discrimination motivated by sexual orientation and gender identity.

Kentucky HB 72

HB 72 was introduced January 6, 2009 and assigned to the House Judiciary Committee. SB 95 was introduced February 9, 2009 and assigned to the Senate Judiciary Committee. The bills died when the legislature adjourned March 30, 2009. HB 72 would have extended existing anti-discrimination laws to apply to discrimination motivated by sexual orientation and gender identity.

Maryland HB 474/SB 566

HB 474 was introduced February 4, 2009 and assigned to the House Health and Government Operations Committee. Hearings were held February 25, 2009. SB 566 was introduced February 6, 2009 and assigned to the Senate Judicial Proceedings Committee. Hearings were held March 4, 2009. The bills died when the session ended April 13, 2009. These bills would have updated existing anti-discrimination laws to add gender identity or expression as protected categories. Read the full text of house bill [here](#) and the senate bill [here](#).

Massachusetts HB 1728

An Act Relative to Gender-Based Discrimination and Hate Crimes has been re-introduced for the 2009 legislative session in the House by Representative Carl Sciortino and Representative Byron Rushing (HB 1728) and in the Senate by Senator Benjamin Downing. This bill will make the protection of transgender people explicit, uniform, and visible to the general public. It will include gender identity and expression in the state's non-discrimination statute and will amend existing hate crime laws to explicitly protect people targeted for violence and harassment.

Michigan HB 4192

This bill was introduced February 5, 2009 and assigned to the House Judiciary Committee. HB 4192 would update existing anti-discrimination laws to add sexual orientation, gender identity, and gender expression as protected categories.

Missouri HB 701

Introduced on February 12, 2009 this bill would amend existing laws to prohibit discrimination in employment, public accommodations, and housing based on sexual orientation and gender identity.

Missouri SB 109

This bill was introduced January 7, 2009. Hearings were held before the Senate Progress and Development Committee on February 25, 2009. SB 109 would prohibit discrimination in employment, public accommodations, and housing based on sexual orientation, gender identity, or other traits.

Montana HB 252

This bill was introduced January 14, 2009 and assigned to the House Judiciary Committee. On February 17, 2009, it received a negative vote in committee, and the bill died February 26, 2009 when a deadline for transmitting general bills to the Senate expired. SB 252 would have amended existing anti-discrimination law to prohibit discrimination based on sexual orientation and gender identity. SB 223 would have amended existing hate crimes law to add sexual orientation and gender expression as covered categories.

Montana SB 223

This bill was introduced January 14, 2009 and assigned to the Senate Judiciary Committee. The bill died February 26, 2009 when a deadline for transmitting general bills to the House expired.

New York AB 1006

This bill was introduced January 7, 2009 and assigned to the Assembly Judiciary Committee. AB 1006 would provide that, in any case involving custody of a child, a judge may not prohibit a parent from undergoing gender reassignment surgery as a condition of receiving custody.

New York AB 5710/SB 2406

These bills would update existing anti-discrimination laws to apply to discrimination based on gender identity or expression. AB 5710 received a favorable vote from the House Governmental Operations Committee on April 6, 2009. Read the full text of house bill [here](#) and the senate bill [here](#).

North Carolina HB 1049/SB 843

HB 1049 was introduced April 2, 2009 and assigned to the House Education Committee. SB 843 was introduced March 24, 2009 and assigned to the Senate Judiciary Committee. These bills would amend the state personnel act to prohibit employment discrimination based on sexual orientation or gender identity. Read the full text of house bill [here](#) and the senate bill [here](#).

North Dakota SB 2278

This bill was introduced January 19, 2009 and assigned to the Senate Judiciary Committee. On February 18, 2009, the Senate voted 27-19 to pass the bill. On April 3, 2009, the House voted 34-54 against the bill. SB 2278 would add sexual orientation, gender identity, and gender expression to existing anti-discrimination laws.

Pennsylvania HB 300

On March 11, 2009, the House State Government Committee voted 12-11 in favor of the bill. The bill is pending before the House. HB 300 would prohibit discrimination in employment, housing, public accommodations and other areas based on sexual orientation and gender identity.

Montana SB 223

This bill was introduced January 14, 2009 and assigned to the Senate Judiciary Committee. The bill died February 26, 2009 when a deadline for transmitting general bills to the House expired.

South Carolina SB 73

This bill was introduced January 13, 2009 and assigned to the Senate Judiciary Committee. SB 73 would amend existing employment anti-discrimination law to add sexual orientation and gender identity as protected categories.

South Carolina SB 75

This bill was introduced January 13, 2009 and assigned to the Senate Committee on Labor, Commerce, and Industry. SB 75 would amend existing housing anti-discrimination law to add sexual orientation and gender identity as protected categories.

Texas HB 538

HB 538 was introduced January 12, 2009 and would prohibit employment discrimination based on sexual orientation, gender identity, or gender expression.

Virginia HB 1624

This bill was introduced January 20, 2009 and assigned to the House Education Committee. HB 1624 would provide information for the Board of Education to use in its model policy on bullying and harassment or intimidation, including a definition of bullying, harassment or intimidation that includes behavior motivated by actual or perceived sexual orientation or gender identity.

Virginia HB 2385

This bill was introduced January 14, 2009 and assigned to the House Committee on General Laws. The bill died when the legislature adjourned February 28, 2009. HB 2385 would have prohibited discrimination in public employment based on sexual orientation, gender identity, gender expression, and other traits.

Virginia SB 1247

This bill was introduced January 14, 2009 and assigned to the Senate Committee on General

Laws and Technology. The bill was withdrawn January 28, 2009. SB 1247 add sexual orientation, gender identity, and gender expression to the categories protected under the Virginia Human Rights Act.

U.S. Jurisdictions with Policies Regarding Restroom and Gender Specific Facilities

The jurisdictions listed below have explicit language and policies regarding restroom use and other gender specific facilities:

Colorado Effective May 29, 2008, the Colorado Anti-Discrimination Act was expanded to include sexual orientation, inclusive of transgender status, to the list of protected classes for public accommodations. Consequently, transgender people are not required to "prove" they are transgender to use gender-segregated facilities, just as non-transgender individuals should be able to use a restroom or locker room appropriate to their gender identity without having to provide documentation or respond to invasive requests. Click [here](#) to learn more about Colorado's protections of transgender people and language on restroom policy.

Iowa Iowa has put out a series of brochures, the following document is for the Employment section of the law. They too have come to the conclusion that trans people must be allowed to use the restrooms that match their gender identity. Click [here](#) to see Iowa's language on restroom use.

San Francisco San Francisco has guidelines in their administrative code. Not only do they require access according to a person's gender identity, they also prevent entities from picking out transgender people for having to show documentation of their gender when others are not also asked for documentation. Click [here](#) to view San Francisco Human Rights Commission's Guidelines to Prohibit Gender Identity Discrimination.

Washington State Washington State has a compliance checklist for entities, and a frequently asked questions document, that explains that restroom access is to be afforded to individuals based on the gender a person asserts, or their gender identity, depending on the document. Click [here](#) to see the Sexual Orientation/Gender Identity Questions page.

Washington D.C. Washington, DC has also developed regulations covering restrooms, stating that access should be based on a person's gender identity or expression. Click [here](#) to read D.C.'s regulations covering restroom use.

Additionally, here are letters from state level agencies addressing public safety concerns around bathroom use:

[Letter from Washington State Human Rights Commission.](#)

[Letter from Iowa Civil Rights Commission.](#)

[Letter from Colorado Division of Civil Rights.](#)

[Letter from California Department of Fair Employment & Housing.](#)

U.S. Jurisdictions with Anti-Bullying and/or Anti-Discrimination Laws That Specifically Enumerate Gender Identity

California Students are protected from discrimination and hate violence on the basis of gender identity and disability as defined under [Cal Ed Code § 220 \(2002\)](#).

Colorado The Colorado Civil Rights Commission expressly defines gender identity and sexual orientation as protected from discrimination and harassment. Click [here](#) to read the Commission's regulations.

Illinois Illinois law explicitly prohibits discrimination or harassment of any kind based on gender identity. Click [here](#) to view the law.

Iowa has put out a series of brochures about protecting transgender people against discrimination

and harassment in schools. Click [here](#) to view the Iowa Civil Rights Commission's language on Iowa's Safe Schools Law.

Maine Human Rights Act protection transgender people from discrimination and bullying in schools. Click [here](#) to read the law.

Maryland Maryland's Public Schools Model Policy expressly protects transgender people from bullying, harassment, or intimidation. Click [here](#) to read the policy.

Minnesota The anti-discrimination law prohibits discrimination, which includes harassment, based on sexual orientation, defined to include transgender, in education. MINN. STAT. §363A.03 (44) Definition of Sexual Orientation. MINN STAT. §§363A.13 and 363A.23

New Jersey expressly prohibits discrimination and harassment based on sexual orientation and gender identity or expression in public schools. School districts are required to adopt harassment and bullying prevention policies. Notice of the school district's policy shall appear in any publication of the school district that contains the comprehensive rules, procedures and standards of conduct for schools in the district, and in any student handbook. N.J. Stat. 18A:37-13 through 17.

North Carolina law prohibits bullying or harassing behavior by school employees or other students that is reasonably perceived as being motivated by a student's actual or perceived gender identity. Session Law 2009-12; N.C.Gen. Stat. § 115C-407.5

Oregon The School Governance and Student Conduct law defines gender identity within sexual orientation to protect transgender people from discrimination. Click [here](#) to read the law.

Vermont The model policy on prevention of harassment of students includes gender identity. Click [here](#) to read the law.

Washington State The Human Rights Commission includes gender identity among groups protected from discrimination and harassment. Click [here](#) to read the law.

Washington D.C. District of Columbia law expressly prohibits discrimination based on "personal appearance" and "disability" in relation to the use of or access to facilities and services. D.C. Code § 2-1402.41 (2001). Gender identity is read into the provision under personal appearance, which covers discrimination based on "outward appearance, irrespective of sex, with regard to bodily condition or characteristics, manner or style of dress." D.C. Code § 2-1401.02 (2001).

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See also:

The jurisdictions listed above have nondiscrimination laws with statutory language that explicitly includes people of transgender experience. For a list of jurisdictions that have human rights laws that have been interpreted by the courts to cover people of transgender experience, go to [jurisdictions with positive case law](#).

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