

Creating Gender-Inclusive Schools

Key Terms

Although gender terminology continues to shift and evolve, the below terms can still be used as a starting point when talking about gender.¹

1. **Assigned Sex.** The sex a person was given at birth, usually based on their external and internal anatomy. Historically viewed as a binary (*i.e.*, either male or female).²
2. **Gender.** The complex interrelationship between a person's body, internal identity, and external expression.
3. **Gender expression.** The external ways a person communicates their gender to others—through their behavior, mannerisms, emotions, style of dress, hairstyle, interests, choice of colors, toys, or activities, etc.
4. **Gender identity.** A person's innate sense of being female, male, nonbinary, genderfluid, or something else. The following terms are often used as gender identity descriptors:
 - a. **Cisgender.** An adjective describing a person whose gender identity matches their assigned sex (*e.g.*, someone assigned female at birth and whose gender identity is also female).
 - b. **Transgender.** An adjective describing a person whose gender identity does not match their assigned sex (*e.g.*, someone assigned female at birth but whose gender identity is not female).
 - c. **Nonbinary.** An adjective describing a person whose gender identity does not fall into one of the two binary categories (male or female). For example, maybe they identify as something other than male or female or blend elements of both.
5. **LGBTQ.** An acronym used to reflect the lesbian, gay, bisexual, transgender, and queer community. Includes both sexual orientation and gender identity descriptors.
6. **Sexual orientation.** Who a person is emotionally, physically, and/or romantically attracted to (*e.g.*, gay, straight, lesbian, queer, bisexual, asexual, etc.).

¹ Definitions adapted from Gender Spectrum's "Understanding Gender", available at: <https://genderspectrum.org/articles/understanding-gender>.

² It should also be noted that about 1% of people are born intersex, with anatomical variations that do not align with what is typically classified as male or female. [Principles of Gender-Inclusive Puberty and Health Education](#), Gender Spectrum (2016), 34.



Discrimination and Discriminatory Harassment

Discrimination is defined as the unfair or unequal treatment of a person or group because they are part of (or perceived to be part of) a legally protected class. Gender identity and gender expression are both protected classes under Washington state law.³ As a result, Washington public schools are prohibited from discriminating against students based on their gender identity or gender expression.

Discriminatory harassment occurs when conduct is based on a student's protected class and creates a hostile environment. A hostile environment is created when the conduct is so severe, pervasive, or persistent that it limits a student's ability to participate in or benefit from the educational program.⁴ Signs that a student may be experiencing a hostile environment can include depression or anxiety, school refusal or absenteeism, behavior referrals, a lack of interest in class or extracurricular activities, slipping grades, and others.

Schools must investigate possible discrimination or discriminatory harassment as soon as they know or reasonably should know about it, even if a parent or student does not file a formal (written) complaint. If the investigation reveals that harassing conduct was discriminatory and created a hostile environment, schools must act quickly to stop the behavior, put an end to the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.

Examples of discrimination based on gender identity or expression could include:

- Repeatedly misgendering a nonbinary student after being notified of their requested pronouns and gender designation.
- Requiring a transgender boy to use the single-stall restroom in the nurse's office instead of the multi-stall boys' restroom.
- Refusing to allow a girl to compete on a girls' athletic team because she is transgender.
- Failing to properly investigate and address verbal reports that one student is bullying another for "dressing like a boy."

³ Other protected classes under Washington law include race, color, national origin, religion, creed, sex, sexual orientation, honorably discharged military status, disability, use of a trained guide dog or service animal, and age. [RCW 28A.642](#), [RCW 28A.640](#); [RCW 49.60](#).

⁴ [WAC 392-190-0555](#).


Key Legal Protections

Legal protections (e.g., laws, regulations, guidance, policies, procedures, etc.) that explicitly prohibit discrimination and discriminatory harassment based on gender identity and expression are necessary, but not alone sufficient, for creating a gender-inclusive school environment.

Federal Law

Discrimination based on gender identity and gender expression is not explicitly prohibited under federal law. However, some courts have held that the Equal Protection Clause⁵ and Title IX of the Education Amendments of 1972⁶ implicitly provide these protections.

In 2020, additional federal legal protections were also provided through [case law](#) from the United States Supreme Court and related [guidance](#) issued by the United States Department of Education's Office for Civil Rights (OCR).⁷



KEY TAKEAWAY: IN WASHINGTON PUBLIC SCHOOLS, ALL STUDENTS HAVE THE RIGHT TO BE TREATED IN ACCORDANCE WITH THEIR GENDER IDENTITY AND EXPRESSION

State Law

Discrimination based on gender identity and gender expression is explicitly prohibited under two Washington laws and their accompanying regulations, the **Washington Law Against Discrimination**, which applies to K-12 public schools as places of public accommodation, and the **Equal Educational Opportunity Law**, which applies specifically to K-12 public schools.⁸

At the direction of the legislature, OSPI developed enforceable **guidelines** to help school districts and public charter schools implement these state laws and regulations.⁹ Additionally, the most updated **guidance** specific to creating gender-inclusive schools is available on the Equity and Civil Rights Office's [website](#).¹⁰

⁵ U.S. Const., Amend. XIV.

⁶ 20 U.S.C. §§ 1961 et seq.

⁷ *Bostock v. Clayton County, Georgia*, 140 S.Ct. 1731 (2020); U.S. Department of Education, Notice of Interpretation, "Enforcement of Title IX with Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of *Bostock v. Clayton County*" (June 16, 2021), available at: <https://www.govinfo.gov/content/pkg/FR-2021-06-22/pdf/2021-13058.pdf>

⁸ The Washington Law Against Discrimination, [RCW 49.60](#) and the Equal Education Opportunity Law; [RCW 28A.642](#).

⁹ These guidelines are currently under revision and may not reflect recent changes made to Chapter 392-190 WAC, which supersedes the guidelines where different. For more information, please visit our website at <https://www.k12.wa.us/policy-funding/equity-and-civil-rights>.

¹⁰ <https://www.k12.wa.us/policy-funding/equity-and-civil-rights/resources-school-districts-civil-rights-washington-schools/gender-inclusive-schools>.

Creating Gender-Inclusive Schools

Gender-inclusive schools are schools that prohibit discrimination based on gender identity and gender expression; respect, affirm, and support all students' gender identities; challenge gender stereotypes so that all students feel free to express their interests and be confident in their strengths; and discuss natural human differences and variation without judgment.¹¹

Gender-inclusive schools benefit all students, help to equalize student experiences and outcomes; and prioritize student health, safety, and wellbeing. Research¹² has shown that when schools do not intentionally create gender-inclusive learning environments, transgender students are more likely than their cisgender peers to:

- Experience harassment and bullying at school because of their gender identity or gender expression.
- Miss or refuse to attend school.
- Underperform educationally and fail to graduate.
- Be disciplined and funneled into the juvenile justice system.
- Face serious psychological and physical distress, such as suicidal thoughts and attempts.¹³
- Experience homelessness.

Although not specifically required by law, it can be helpful for school personnel and transgender or nonbinary students to work together to develop a **gender support plan** (*i.e.*, an individually tailored written document that describes the specific gender-based supports at school needed by the student and agreed upon by the LEA).¹⁴

Required Policy, Procedure, and Gender-Inclusive Schools Coordinator

Effective January 31, 2020, all LEAs in Washington must have a policy and procedure that includes all elements of WSSDA's model **gender-inclusive schools policy and procedure** (numbered 3211 and 3211P, respectively).¹⁵ Alternatively, LEAs may amend or update an existing policy and procedure (such as their nondiscrimination policy and procedure) to incorporate all elements of WSSDA's model gender-inclusive schools policy and procedure. LEAs are also

¹¹ *Principles of Gender-Inclusive Puberty and Health Education*, Gender Spectrum (2016), 10.

¹² See, e.g., *Separation and Stigma: Transgender Youth & School Facilities*, GLSEN (2017) at 4. Accessible here: [https://www.glsen.org/sites/default/files/2019-11/Separation and Stigma 2017.pdf](https://www.glsen.org/sites/default/files/2019-11/Separation%20and%20Stigma%202017.pdf).

¹³ As many as 41% of transgender people have attempted suicide, as compared to 4.6% of cisgender people. *Id.*

¹⁴ Sample gender support and transition plans are available in Appendix D of the *Schools in Transition: A Guide for Supporting Transgender Students in K-12 Public Schools*, jointly published by the National Education Association, American Civil Liberties Union, National Center for Lesbian Rights, Gender Spectrum, and Human Rights Campaign (2012). Available here:

<https://assets2.hrc.org/files/assets/resources/Schools-In-Transition.pdf>

¹⁵ [RCW 28A.642.080](https://leg.wa.gov/RCW/default.aspx?cite=28A.642.080).

required to annually notify parents/guardians, students, volunteers, and employees about their gender-inclusive schools policy and procedure and designate a gender-inclusive schools coordinator.

Under Washington law, the gender-inclusive schools coordinator's duties include:

- Ensuring the LEA has adopted and is properly implementing a policy and procedure that incorporates all elements of WSSDA's model gender-inclusive schools policy and procedure.
- Serving as the primary contact for that policy and procedure.
- Receiving copies of all related formal and informal discrimination complaints.
- Partnering with LEA employees responsible for monitoring compliance with state civil rights law, as well as the primary Harassment, Intimidation, and Bullying (HIB) contact.
- Timely obtaining related training.

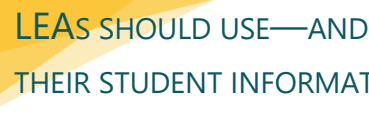
Students' Requested Names, Pronouns, and Gender Designations

All students in Washington public schools have the legal right to be addressed at school by the name, pronouns, and gender designation that aligns with their gender identity, regardless of whether they have legally changed their name or gender designation. Repeatedly refusing to use a transgender student's requested name, pronouns, or gender designation (*i.e.*, misgendering) can constitute unlawful discrimination under Washington law.

A student's educational record typically includes two types of documents: unofficial and official. Each type requires a different response from schools relative to that student's gender identity.

Unofficial education documents

should be updated to identify a transgender student by their requested name, pronouns, and gender designation. These include, but are not limited to, student ID cards or email addresses, seating charts, attendance lists, athletic rosters, yearbooks, playbills, and directory information.



LEAs SHOULD USE—AND UPDATE
THEIR STUDENT INFORMATION
SYSTEMS TO REFLECT—A STUDENT'S
REQUESTED NAME, PRONOUNS, AND
GENDER DESIGNATION IN MOST
CIRCUMSTANCES.

Official education documents may still require an LEA to use a transgender student's legal name, pronoun, and gender designation. Under Washington law, the transcript is the only official education document that requires a student's legal name.¹⁶ However, LEAs may also provide a space on the transcript for a student's requested name.

¹⁶ [WAC 392-415-070\(2\)\(a\)\(i\)](#).

LEAs should update student information systems with a transgender student's requested name, pronouns, and gender designation upon student or parent request, regardless of whether the student has undergone a legal name or gender designation change. School registrars and front desk staff should all be aware of this requirement and trained on how to make these changes in the student information system. LEAs should also be prepared to offer and use the nonbinary gender designation (X), in addition to the existing binary male/female gender designations.

Changes to Students' Legal Names or Gender Designations

If a transgender student provides documentation of a legal name or gender designation change, then slightly different requirements apply. In this situation, the LEA is required to:

- Update the student's legal name or gender designation in its student information system; and
- Use the student's legal name or gender designation on all subsequently-kept student records—both unofficial and official—beginning on the date the request was made and the documentation provided (*i.e.*, such changes do not apply retroactively).

Upon alumni request, LEAs may also reissue records, such as transcripts, to reflect the above changes. To do so, they should follow their existing process for updating student records.

Student Privacy

Privacy laws, such as the Family Education Rights and Privacy Act (FERPA), prohibit LEAs from disclosing confidential or personally identifiable information about a student to anyone, including other students, other parents, volunteers, and even other LEA employees, unless legally required to do so or the student authorizes the disclosure.¹⁷ Confidential or personally identifiable information includes a student's transgender status and legal name and gender designation. LEAs must also ensure that employees only obtain access to those student records in which they have a legitimate educational interest.

In Washington, the right to be treated consistent with one's gender identity at school belongs to the student, not to the parent or guardian. Some transgender students may not want their families (including their siblings) to know that they are transgender or that they use a different name, pronouns, or gender designation at school. Students may be concerned about a lack of familial acceptance and the resulting impact on their safety and wellbeing at home. To avoid unintentionally outing students at home, LEAs are strongly encouraged to ask them which name, pronouns, and gender designation should be used when communicating with their parents or guardians and to incorporate these requests in a gender support plan.

¹⁷ 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.

If a LEA has an objective basis to question whether a student’s gender identity is sincerely held, additional supporting information may be requested from the student. However, no one type of information (*e.g.*, medical record, treatment plan, etc.) is specifically required. LEAs should also be mindful that asking students about confidential medical information could violate their right to privacy.

Dress Codes

Students have the right to express their gender identity at school without facing discrimination or harassment. Clothing and hairstyles are two ways that students often choose to express their gender identity. Dress codes should therefore be gender-neutral, based on educationally relevant considerations, and consistently applied to all students.

Restroom and Locker Room Access and Appropriate Use

In Washington, all students have the legal right to access and use sex-separated school facilities, like restrooms and locker rooms, that align with their gender identity. LEAs must provide *any* student (whether transgender, cisgender, or nonbinary) who requests greater privacy with access to an alternative facility, such as a staff restroom or health office restroom, if available. However, transgender students should never be required to use an alternative facility, as this can be discriminatory.

Restrooms and locker rooms are designed to be used for specific purposes, such as going to the bathroom and changing clothes. LEAs should use their existing discipline policies, procedures, and rules to promptly address inappropriate behavior by *any* student that occurs in a restroom or locker room (*e.g.*, peeping, harassment, bullying, etc.). Note that the mere presence of a transgender student in the restroom or locker room corresponding with their gender identity does not, on its own, constitute inappropriate behavior. LEAs should clearly communicate their expectations for appropriate conduct in restrooms and locker rooms to all students, along with any applicable policies, procedures, rules, and consequences for violation.

Options for increasing privacy in restrooms and locker rooms could include:

- Replacing shorter restroom stall dividers with longer, floor-length ones.
- Hanging plastic or fabric curtains in locker rooms to create private shower stalls and changing areas.
- Offering different changing schedules for students.
- Remodeling existing facilities to create single-user restrooms or permanent changing stalls and shower dividers.

P.E. and Athletics Participation

LEAs must allow all students to participate in the physical education and athletics opportunities that correspond to their gender identity. Eligibility for interscholastic athletics is determined by the Washington Interscholastic Activities Association (WIAA), so students or LEAs with eligibility questions should review the Gender Identity Participation Policy in the WIAA [handbook](#) or contact the WIAA.¹⁸

Rooming Assignments on Overnight Trips

LEAs must treat all students consistent with their gender identity when making rooming assignments for school-related overnight trips. LEAs are not permitted to discriminate against transgender students by denying them the right to participate in overnight trips because they are transgender or by disclosing their gender identity to others, including fellow students or parents/guardians.

Before making rooming assignments, OSPI strongly encourages LEAs to talk with transgender students about their rooming preferences and then honor those preferences to the maximum extent possible. For example, some transgender students might feel most comfortable being paired with a close friend or sibling, while others might prefer a single room, if available. Additionally, having these conversations with all students going on an overnight trip—not just transgender students—can help to minimize stigmatization and maximize integration for everyone.

Dispute Resolution

The LEA's civil rights or gender-inclusive schools compliance coordinator¹⁹ is often the best person to handle **informal (verbal) concerns** about discrimination and help the complainant work toward a solution. When trying to informally resolve concerns, it is important to listen to all parties, focus on the facts related to the alleged discrimination, and clarify the relief or resolution sought by the complainant. LEAs should also notify complainants of their right to file a formal written complaint and provide them with a copy of the discrimination complaint procedure.

Complainants may also choose to file **formal (written) complaints** of discrimination or discriminatory harassment based on gender expression or gender identity. There is no need for a complainant to try to resolve their concern informally before filing a formal complaint. Because certain timelines and response requirements are triggered by law when a formal discrimination complaint is filed, LEAs should ensure all such complaints are swiftly routed to the appropriate

¹⁸ The WIAA Handbook is available online at: <http://wiaa.com/results/handbook/2021-22/Eligibility.pdf>.

¹⁹ Contact information for the different compliance coordinators in each LEA can be found on OSPI's website, here: <https://www.k12.wa.us/policy-funding/equity-and-civil-rights/school-district-charter-school-compliance-coordinators>. LEAs should check this information annually for accuracy.

compliance coordinator. To learn more about the different civil rights complaint-filing processes that may be available, please contact:

- **OSPI's Equity and Civil Rights Office**
360-725-6162 | equity@k12.wa.us
- **U.S. Department of Education's Office for Civil Rights (OCR)**
206-607-1600 | OCR.Seattle@ed.gov
- **Washington State Human Rights Commission**
1-800-233-3247 | www.hum.wa.gov

Additional Resources

OSPI's webpage on Gender Identity and Gender Expression in Schools, available at:
<https://www.k12.wa.us/policy-funding/equity-and-civil-rights/gender-identity-and-expression-schools>

Schools in Transition: A Guide to Supporting Transgender Students in K-12 Schools, published by the ACLU, Gender Spectrum, the Human Rights Campaign, the National Center for Lesbian Rights, and the National Education Association, available at:
<http://hrc-assets.s3-website-us-east-1.amazonaws.com//files/assets/resources/Schools-In-Transition.pdf>

Washington Interscholastic Athletic Association's Handbook, available at:
<http://wiaa.com/results/handbook/2021-22/Eligibility.pdf>.

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