



## **Guidance to School Districts: Creating a Safe and Supportive School Environment for Transgender Students Issued May 5, 2016**

ODE fosters excellence for every learner, and recognizes that academic success depends on a safe school environment. As an organization, we value equity for every student; this includes an educational environment safe and free from discrimination and harassment, ensuring that every student has equal access to educational programs and activities.

Under Oregon law, “[a] person may not be subjected to discrimination in any public elementary, secondary or community college education program or service, school or interschool activity or in any higher education program or service, school or interschool activity where the program, service, school or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly.”<sup>1</sup> Discrimination includes “any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on race, color, religion, sex, sexual orientation, national origin, marital status, age or disability.”<sup>2</sup> Oregon law broadly defines, “sexual orientation” as an individual’s actual or perceived heterosexuality, homosexuality, bisexuality or gender identity, regardless of whether the individual’s gender identity, appearance, expression or behavior differs from that traditionally associated with the individual’s sex at birth.<sup>3</sup>

Additionally, federal law under Title IX of the Education Amendments of 1972 (Title IX) generally prohibits discrimination on the basis of sex in federally funded programs and activities.<sup>4</sup> The United States Department of Education’s Office for Civil Rights (OCR) has issued guidance recognizing that Title IX protects transgender and gender nonconforming students.<sup>5</sup> Additionally, the U.S. Departments of Education and Justice have stated that under Title IX, “discrimination based on a person’s gender identity, a person’s transgender status, or a person’s nonconformity to sex stereotypes constitutes discrimination based on sex” and has asserted a significant interest in ensuring that all students, including transgender students, have the opportunity to learn in an environment free of sex discrimination in public schools.<sup>6</sup> Recently, a federal court upheld this interpretation of federal law by the U.S. Department of Education.<sup>7</sup>

<sup>1</sup> ORS 659.850(2).

<sup>2</sup> ORS 659.850 (1).

<sup>3</sup> ORS 174.100.

<sup>4</sup> 20 U.S.C. §1681(a) (2006).

<sup>5</sup> See 20 U.S.C. §§ 1681-1688 (2006); 34 C.F.R. Part 106 (2010); 54 C.F.R. Part 54 (2000); United States Department of Education, Office for Civil Rights, Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities (December 1, 2014).

<sup>6</sup> See Statement of Interest of the United States, *Grimm v. Gloucester County School Board*, Case No. 4:15cv54 (E.D. Virg. filed June 29, 2015).

<sup>7</sup> *Grimm v. Gloucester County School Board*, Case No. 15-2056 (Issued April 20, 2016).

As a response to student, parent, and school district requests, the Oregon Department of Education, working with stakeholders, developed these guidelines to provide assistance for districts to foster an educational environment that is safe, free from discrimination, and aligned with state and federal laws. These guidelines are designed to be used by school boards, administrators and other members of the educational community to guide development of school procedures and district policies related to transgender and gender nonconforming students.

The guidelines are intended to suggest best practices and to provide a foundation for the educational community to build safe and supportive school cultures. **These guidelines are not legal advice, nor should they be relied on as legal advice. If you require legal advice regarding the issues discussed in these guidelines, please consult an attorney.**

In order to make this document as helpful as possible, illustrative examples that highlight frequently-asked questions and best practices for addressing these questions appear throughout in italics. While these scenarios and remedies are based on real-life examples personally identifiable student information and specific school information has been changed to protect the privacy of the students involved. These scenarios are also not meant to be exhaustive of all potential scenarios or remedies appropriate for each school community.

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## Terminology

Understanding the common terminology associated with gender identity is important to providing a safe and supportive school environment for students. The following definitions used by research, advocacy and governmental organizations are provided to assist in understanding the guidance presented. Although these are the most commonly used terms, students may use other terms to describe their gender identity, appearance, or expression. Terminology and language describing transgender and gender nonconforming individuals can differ based on region, language, race or ethnicity, age, culture, and many other factors. It is recommended that school staff and educators inquire about which terms a student uses to describe themselves and their experience. A good general guideline is to employ those terms which the student uses to describe themselves.

### **Definitions:**

1. **Assigned sex** – Sex recorded at birth, usually on the basis of external genitalia.
2. **Cisgender**- A term used to describe people who, for the most part, identify with the sex they were assigned at birth.
3. **Gender binary** – The assumption that there are only two genders (male and female), rather than more than two genders or gender fluidity.
4. **Gender expression** - How people express their gender externally based on mannerisms, dress, etc. A person's gender expression/presentation may not always match their gender identity.
5. **Gender identity** - A person's internal sense of being male, female or some other gender, regardless of whether the individual's appearance, expression or behavior differs from

that traditionally associated with the individual's sex assigned at birth. Gender identity is distinct from and often unrelated to an individual's sexual orientation.

6. **Gender role** - The socially determined sets of behaviors assigned to people based on their biological sex.
7. **Gender sensitive** - Materials and instruction strategies that is sensitive to individual's similarities and differences regarding gender role, gender identity and/or sexual orientation.
8. **Genderqueer** – A person whose gender identity cannot be categorized as solely male or female. The term is not a synonym for transgender and should only be used if someone self-identifies as genderqueer.
9. **Intersex** – An umbrella term used for people born with reproductive or sexual anatomy and/or chromosome pattern that does not seem to fit the typical definition of male or female. Intersex may also be known as Difference of Sex Development and may not always be known at birth, but may be revealed at any stage of a person's life
10. **Sexual orientation** – Means a person's physical, romantic, emotional, aesthetic, or other form of attraction to others. Sexual orientation and gender identity are not the same. Although, the Oregon Legislature adopted a broader definition of "sexual orientation" for purposes of all Oregon statutes to "mean an individual's actual or perceived heterosexuality, homosexuality, bisexuality or gender identity, regardless of whether the individual's gender identity, appearance, expression or behavior differs from that traditionally associated with the individual's sex at birth."<sup>8</sup>
11. **Transgender** – An umbrella term for persons whose gender identity, gender expression, or behavior does not conform to that typically associated with the sex to which they were assigned at birth. Persons who identify as transgender may or may not pursue medical transition.
12. **Transgender female** -This is a person whose assigned sex at birth is male but identifies and lives as a female.
13. **Transgender male** - This is a person whose assigned sex at birth is female but identifies and lives as a male.
14. **Transition** - The time when a person begins living as the gender with which they identify rather than the gender they were assigned at birth, which often includes changing one's first name and dressing and grooming differently. Transition may or may not also include medical and legal aspects, including taking hormones, having surgery, or changing identity documents (e.g. driver's license, Social Security record) to reflect one's gender identity.
15. **Transsexual** – An outmoded term that refers to a person who has permanently changed - or seeks to change - their bodies through medical interventions (including but not limited to hormones and/or surgeries). Unlike transgender, transsexual is not an umbrella or popular term. Many transgender people do not identify as transsexual and prefer the word *transgender*. It is best to use transgender instead unless the individual uses this term to describe themselves.

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<sup>8</sup> ORS 174.100

## Student Identity

One's gender identity is an innate characteristic of each individual's personality that is generally declared by a child at an early age.<sup>9</sup> The person best situated to determine a student's gender identity is the individual student. In a case where a student is not yet able to self-advocate, the request to respect and affirm a student's identity will likely come from the student's parent.<sup>10</sup>

However, in other cases, transgender students may not want their parents to know about their transgender identity. These situations should be addressed on a case-by-case basis and school districts should balance the goal of supporting the student with the requirement that parents be kept informed about their children. The paramount consideration in such situations should be the health and safety of the student, while also making sure that the student's gender identity is affirmed in a manner that maintains privacy and confidentiality.

Students may openly discuss and express their gender identity and expression, and decide when, with whom, and how much information to share. District and school personnel may also encounter situations in which transgender students have not disclosed being a transgender student. School personnel should be mindful of the confidentiality and privacy rights of students when communicating with others and mindful not to reveal, imply, or refer to a student's gender identity or expression. To ensure confidentiality when discussing a particular concern such as academic progress, access to learning, conduct, discipline, grades, attendance, or health, the focus of school personnel should be specifically on the concern at issue and not on the student's gender identity or expression.

***EXAMPLE:** The parents of a pre-school-age child who was assigned "female" at birth noted throughout the child's early years that their child identified as a boy. For as long as the parents could remember, the child preferred to play with boys rather than girls, wanted a short haircut, rejected wearing any clothing that the child identified as "something a girl would wear," and ignored anyone who called him by his stereotypically feminine name. When it was time for the child to enter kindergarten, the child said to his parents, "You have to tell them when I go to kindergarten that I'm a boy." The school district enrolled the child as a boy.*

It is recommended that school districts accept a student's assertion of his/her/their own gender identity. A student who says she is a girl and wishes to be regarded that way throughout the school day should be respected and treated like any other girl. So too with a student who says he is a boy and wishes to be affirmed that way throughout the school day. Such a student should be respected and treated like any other boy.

Many transgender people experience discrimination and some experience violence due to their identity. Some environments may feel safe and inclusive, and others less so, challenging a person's ability to live consistently with one gender identity in all aspects of life. For example, it is possible that a student assigned "male" at birth, with a female gender identity, who lives as a girl, is not able to express her female gender identity at all times.

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<sup>9</sup> *Gender Identity Development in Children*, American Academy of Pediatrics (updated 11/21/15).

<sup>10</sup> When used in this document, the term "parent" refers to a parent as well as legal guardian or person in parental relationship as defined in ORS 339.133.

The age at which individuals come to understand and express their gender identity may vary based on each person’s social and familial supports.<sup>11</sup>

School districts should work closely with the student and the student’s parents in devising an appropriate plan regarding the confidentiality of the student’s transgender identity. In some cases, transgender students may feel more supported and safe if other students are aware that they are transgender. In these cases, school district staff should work closely with the student, parents, and other staff members on a plan to inform and educate the student’s peers. It may also be appropriate for school districts to engage with community resources to assist with educational efforts.

Transgender and gender nonconforming students form a diverse community, and they may differ in how they present, including differences in comfort level with being out as transgender or gender nonconforming, their transition status, their age, and their gender expression. School districts should adopt a flexible approach given that transgender students may not feel comfortable or safe being their authentic selves in all contexts.

***EXAMPLE:** In one school, a student explained to her guidance counselor that she was a transgender girl who had heretofore only been able to express her female gender identity while at home. The stress associated with having to hide her female gender identity by presenting as male at school was having a negative impact on her mental health, as well as on her academic performance. The student and her parents asked if it would be okay if she expressed her female gender identity at school. The guidance counselor acted on her request. The fact that the student presented no documentation to support her gender identity was not a concern. The school had no reason to believe the request was based on anything other than the student identified as female.*

### **Recommended Nondiscriminatory Practices**

#### **Provision of Free Appropriate Public Education**

Under Oregon law, school districts are required to provide a free appropriate public education to all students who are resident within the district.<sup>12</sup> Students “may not be subjected to discrimination in any public elementary, secondary or community college education program or service, school or interschool activity or in any higher education program or service, school or interschool activity where the program, service, school or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly.”<sup>13</sup> Discrimination includes “any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on race, color, religion, sex, sexual orientation, national origin, marital status, age or disability.”<sup>14</sup> “Sexual orientation means an individual’s actual or perceived heterosexuality, homosexuality, bisexuality or gender identity,

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<sup>11</sup> See Gerald P. Mallon, “Practice with Transgendered Children,” in Social Services with Transgendered Youth, 49, 55-58 (Gerald P. Mallon ed., 1999). See also Stephanie Brill & Rachel Pepper, “Developmental Stages and the Transgender Child,” in The Transgender Child, 61-64.

<sup>12</sup> ORS 339.115.

<sup>13</sup> ORS 659.850(2).

<sup>14</sup> ORS 659.850.

regardless of whether the individual’s gender identity, appearance, expression or behavior differs from that traditionally associated with the individual’s sex at birth.”<sup>15</sup>

### **Names and Pronouns**

Transgender students often choose to change the name assigned to them at birth to a name that affirms their gender identity. As with most other issues involved with creating a safe and supportive environment for transgender students, the best course is to engage the student, and possibly the parents, with respect to name and pronoun use. The school district should decide with the student and parents the best plan to reflect the individual student’s needs when initiating name and pronoun use.

There are no state laws which either require or prescribe requirements for school district issued student IDs. However, if your school district has chosen to issue student IDs, it is recommended that student IDs be issued in the name reflecting the student’s gender identity consistently asserted at school. This may require issuing the student a new ID card.

For those students who have been attending a school and undergo gender transition while attending the same school, school districts in consultation with the student and parents should develop a plan for initiating use of the chosen name and pronouns consistent with the student’s gender identity.

*Example: A transgender girl was transferring to a new high school. She asked the principal to inform her teachers that even though her school records indicate that her name is John, she goes by the name Jane and uses female pronouns. With permission from Jane, the school principal sent the following memorandum to the student’s classroom teachers: “The student John Smith wishes to be referred to by the name Jane Smith, a name that is consistent with the student’s female gender identity. Please be certain to use the student’s preferred name and female pronouns in all contexts. It is my expectation that students will similarly refer to the student by her appropriate name and pronouns. Your role modeling will help make a smooth transition for all concerned. Continued, repeated, and intentional misuse of names and pronouns may erode the educational environment for Jane. If you need any assistance to make sure that Jane Smith experiences a safe, nondiscriminatory classroom atmosphere, please contact me.” In addition to the memorandum, school staff was provided with training about supports for transgender students as well as procedures for sexual harassment and bullying.*

### **Management of Student Identity in School Documents and Records**

School personnel should not disclose information that may reveal a student’s transgender identity except as allowed under the Family Education Rights Privacy Act (FERPA). Under FERPA, generally only those school employees “determined to have legitimate educational interests” may have access to a student’s records or the information contained within those records.<sup>16</sup> However, FERPA also contains other general exceptions for release of student records.<sup>17</sup> For example,

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<sup>15</sup> ORS 174.100.

<sup>16</sup> 34 C.F.R. § 99.31(a)(1).

<sup>17</sup> See the following web site for a discussion of the requirements of FERPA:  
<http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

student records may be released with the written permission of a student’s parent. These rights transfer to the student when the student reaches the age of 18 or attends a school beyond the high school level.

Disclosing confidential student information to other employees, students, parents, or other third parties may violate privacy laws, including but not limited to FERPA. Disclosing confidential student medical information, for example transition status or hormone therapy, to other employees, students, parents or other third parties may constitute a violation of the Health Insurance Portability and Accountability Act (HIPAA) or Oregon law.<sup>18</sup>

Transgender students have the ability, as do all students, to discuss and express their gender identity and expression openly and decide when, with whom, and how much of their private information to share with others.

Schools should work closely with the student and parents in customizing an appropriate plan regarding the confidentiality of the student’s transgender identity that supports the student. That plan may include the option to inform and educate the student’s peers or to not share the information with the student’s peers.

When a transgender student new to a school is using a preferred name, the birth name should be kept confidential by school district staff. School districts should review their Student Information Systems and ensure that all printed and digital materials generated for classroom and instructor use show the student’s chosen name, not their legal name. Examples include attendance sheets, grade books, etc. School districts are reminded to use reasonable methods for ensuring that only those with a legitimate educational interest have access to student records.

ODE will change a student’s gender within the Secure Student Identification System (SSID) upon request from a district. ODE will allow the request from the district to serve as the “documentation to support the change” that is generally required by ODE for changes to the SSID. There is no need for the student to prove their new gender. The student’s declaration of their gender is acceptable.

Steps to change gender on the student record:

- Update the student’s gender in your student information system
- Update the student’s gender in SSID
- Check your errors for any collections that do not catch the change

### **First Name Change Options and Process:**

The administrative rules of the Secretary of State and State Board of Education require that student records contain at a minimum the full legal name of the student and other information.<sup>19</sup> Although ODE maintains a general expectation that the legal name in the school electronic record be consistent with the legal name of the student, in the case of transgender students it may be necessary to deviate from this policy to support and protect the student.

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<sup>18</sup> ORS 179.505.

<sup>19</sup> OAR 166-400-0060(32) and 581-022-1670(7).

Additionally, transgender students often make the transition in stages and may not, yet, be ready to complete the legal name change process. In order to support students, ODE recommends that school districts enter the name the student is currently using (the name that corresponds to the student's self-identified gender) into the "Preferred name" field and retain the legal name in the school electronic record and generally in the student records. However, in some student information systems, the "preferred name" does not appear throughout the system and the legal name may appear in daily use documents like the gradebook, attendance records, etc. This can result in "outing" of the student as a student who is transgender.

In cases such as these, ODE will support the following options:

1. Replace the legal first name of the student in the electronic system with the student's preferred name and move the legal name to the middle name field. Monitor for SSID errors and resolve. Student should retain the same SSID and last name in the system.
2. Replace the legal first name of the student in the electronic system and make sure you monitor for SSID errors.
3. Have a cross-reference system in place to locate the student's electronic records by use of the student's legal name.
4. Retain the same SSID for the student in the electronic system.
5. Maintain the student's legal name generally within the student's record as required by Secretary of State administrative rules relating to the archiving of student records.

### **Graduation: Transcripts and Diplomas**

Students are often still in transition at the time of graduation and have not necessarily completed legal name changes and other documentation. Recommended best practice for graduating transgender students is to provide two diplomas and two sets of transcripts, one with the legal first name and one with the preferred first name.

Once a student has completed a legal name change, they can request all records be updated in their student education record to reflect their legally changed name. This may happen before or after graduation.

Although there are no state requirements relating to whether transcripts contain information about a student's gender, it is recommended that student transcripts be gender neutral and contain no indicator of gender for any student.

### **Student Health Records**

School nurses and other licensed health professionals need accurate and reliable information to ensure that the student receives appropriate care to enable them to coordinate care with other health care providers. A school nurse should use the transgender student's preferred name and identified gender except when necessary to ensure the health and safety of the student.



## **Instruction and Student Support (Comprehensive Sexuality Education)**

Under Oregon administrative rule, each school district shall provide an age-appropriate, comprehensive plan of instruction focusing on human sexuality education. Course material and instruction for all human sexuality education courses that discuss human sexuality in public elementary and secondary schools shall enhance students' understanding of sexuality as a normal and healthy aspect of human development. Local school boards shall approve the plan of instruction and require that it be reviewed and updated biennially in accordance with new scientific information and effective education strategies. The plan requires inclusive materials, language, and strategies that recognizes different sexual orientations, gender identities and gender expression. Further, sexuality education materials, instructional strategies, and activities must not, in any way, use shame or fear based tactics.<sup>20</sup>

The human sexuality education rule (OAR 581-022-1440) allows school districts to use instructional strategies, provide material, and engage in activities that promote a safe environment for all students to learn as well as healthy and positive peer relationships. Importantly, comprehensive sexuality education (CSE) includes healthy sexuality and violence prevention instruction; it emphasizes dignity and respect for all; and validation for all individual and peer differences. Medically accurate, age appropriate, inclusive CSE is a tool to support student understanding of gender identity and sexual orientation diversity.

## **Gender-Based Activities, Rules, Policies, and Practices**

Title IX prohibits discrimination on the basis of sex in federally funded education programs and activities. Regulations issued by the OCR authorize schools to offer single-sex classes or extracurricular activities only under certain circumstances. For these reasons, school districts should consult with their Title IX Coordinator or legal counsel to review such policies, rules and practices, and should eliminate any that do not serve a clear pedagogical purpose.

In 2014, OCR issued guidance relating to Title IX which stated that: "All students, including transgender students and students who do not conform to sex stereotypes, are protected from sex-based discrimination under Title IX. Under Title IX, a recipient generally must treat transgender students consistent with their gender identity in all aspects of the planning, implementation, enrollment, operation, and evaluation of single-sex classes."<sup>21</sup>

Based on this guidance transgender students should be treated consistent with their gender identity and should not be excluded from participation in, be denied the benefits of, or be subjected to harassment or other forms of discrimination on the basis of gender identity in any program or activity. These activities and programs may include but are not limited to cheer class,

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<sup>20</sup> OAR 581-022-1440.

<sup>21</sup> *Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities*, United State Department of Education, Office of Civil Rights, December 1, 2014 found at: <http://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf>.

homecoming, prom, spirit day, celebrations, assemblies, acknowledgments, after school activities/ programs and all extra-curricular activities.

*EXAMPLE: One school district required female students to wear dresses to prom, and male students to wear suits or tuxedos. The school district changed its policy to remove gender specific requirements, and instead required students to wear formal attire.*

## **Restroom and Locker Room Usage**

School districts, as well as students and their families, may find the use of restrooms, locker rooms, changing facilities, and participation in extracurricular activities to be among the more important issues to consider. OCR has recognized that school districts “in preventing and redressing discrimination, ... must formulate, interpret and apply their rules in a manner that respects the legal rights of students, including constitutional rights relating to privacy.”<sup>22</sup> In 2015, the United States Departments of Education and Justice stated that:

Under Title IX, discrimination based on a person’s gender identity, a person’s transgender status, or a person’s nonconformity to sex stereotypes constitutes discrimination based on sex. As such, prohibiting a student from accessing the restrooms that matches his (her) gender identity is prohibited sex discrimination under Title IX. There is a public interest in ensuring that all students, including transgender students, have the opportunity to learn in an environment free of sex discrimination.<sup>23</sup>

Based on a recent OCR finding against an Illinois school district, it is recommended that alternative accommodations, such as a single “unisex” bathroom or private changing space, should be made available to students who request them, but should not be forced upon students, or presented as the only option.

OCR in a recent report issued to an Illinois school district found the district in violation of Title IX for excluding a high school student who is transgender “from participation in and denying her the benefits of its education program, providing services to her in a different manner, subjecting her to different rules of behavior, and subjecting her to different treatment on the basis of sex.”<sup>24</sup> The school district had honored the student’s request to be treated as female in all respects except for her request to be provided access to the girl’s locker rooms. The student used a restroom to change for PE class but did not take the most direct route from the restroom to the gymnasium “because it’s embarrassing. Everyone would see me.” She also took a circuitous route to PE class to avoid standing out. Her PE teacher reported that the student was frequently late to class. In another instance, the student did not receive information given to other students in the locker room by the PE teacher. The district installed ten private changing areas in the girl’s locker room

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<sup>22</sup> Investigation Report, United States Department of Education, Office of Civil Rights issued to Township High School District 211, Palantine Illinois, OCR Case No. 05-014-1055, page 12 (November 2, 2015).

<sup>23</sup> *Grimm v. Gloucester County School Board*, Case No. 4:15cv54 (E.D. Virg. filed June 29, 2015) statement of interest.

<sup>24</sup> Investigation Report, United States Department of Education, Office of Civil Rights issued to Township High School District 211, Palantine Illinois, OCR Case No. 05-014-1055 (November 2, 2015).

including five shower areas and five restroom stalls. The student also stated her intention was to change privately in one of the changing areas.

OCR stated “the District could satisfy its Title IX obligations as well as protect potential or actual student privacy interests.” OCR concluded “that the District, on the basis of sex, excluded [the student] from participation in and denied her the benefits of its education program, providing her different benefits or benefits in a different manner, subjected her to different rules of behavior, and subjected her to her to different treatment in violation of the Title IX regulation, at 34 C.F.R. section 106.31.”<sup>25</sup>

As cited previously in this document Oregon state law prohibits discrimination by public education providers based on an “individual’s actual or perceived heterosexuality, homosexuality, bisexuality or gender identity, regardless of whether the individual’s gender identity, appearance, expression or behavior differs from that traditionally associated with the individual’s sex at birth.”<sup>26</sup> While we are unaware of any Oregon court cases which have interpreted this language, courts from other states have ruled on similar language from their own state laws and have found that this language provides protections for transgender students including the use of a bathroom consistent with the student’s gender identity.<sup>27</sup>

The following are examples of ways in which school officials have responded to situations involving gender-segregated activities or spaces:

***EXAMPLE:** In one elementary school, a transgender student socially transitioned from female to male. After consultation with the student’s family and in accordance with the student’s wishes, the principal informed the staff that in order to foster an inclusive and supportive learning environment, the student will begin using male restrooms, in accordance with the student’s male gender identity and expression.*

***EXAMPLE:** In one high school, a transgender student who had transitioned from male to female was given access to the female changing facility. However, the student was uncomfortable using the female changing facility with other female students, since there were no private changing areas within the facility. The principal examined the changing facility and determined that curtains could easily be put up along one side of a row of benches near the group lockers, providing private changing areas for any students who wished to use them. After the school put up the curtains, the student was comfortable using the changing facility.*

## **Sports and Physical Education**

Physical education is a required part of the curriculum and an important part of many students’ lives. Transgender students are to be provided the same opportunities to participate in physical education as are all other students. Generally, students should be permitted to participate in physical education and intramural sports in accordance with the student’s gender identity that is consistently asserted at school.

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<sup>25</sup> *Id.* at page 13.

<sup>26</sup> ORS 174.100.

<sup>27</sup> See *Doe v Regional School Unit*, 86A.3d 600 (2014).

Generally, transgender students should be permitted to also participate in interschool activities. Oregon law that prohibits discrimination in education also applies to interschool activities where the activity is financed in whole or in part by moneys appropriated by the Legislative Assembly.<sup>28</sup> School districts should also review guidance provided by the Oregon School Activities Association (OSAA) relating to participation in competitive high school inter-school athletic activities.

## **Student Safety**

Research has identified that transgender and gender nonconforming students are often targeted with physical violence and experience a hostile school environment at a higher rate than their peers. As a result, transgender and gender nonconforming students are also more likely to demonstrate frequent absenteeism, higher dropout rates, and higher rates of depression and suicide.<sup>29</sup>

Oregon law requires all school districts to “adopt a policy prohibiting harassment, intimidation or bullying and prohibiting cyberbullying.”<sup>30</sup> This policy must require school district employees to report acts of harassment, intimidation or bullying or an act of cyberbullying to a person identified by the district.<sup>31</sup> This includes harassment, intimidation or bullying against transgender students.

Under Oregon law, “harassment, intimidation or bullying” means any act that:

- (a) ) Substantially interferes with a student’s educational benefits, opportunities or performance;
- (b) Takes place on or immediately adjacent to school grounds, at any school-sponsored activity, on school-provided transportation or at any official school bus stop;
- (c) Has the effect of:
  - (A) Physically harming a student or damaging a student’s property;
  - (B) Knowingly placing a student in reasonable fear of physical harm to the student or damage to the student’s property; or
  - (C) Creating a hostile educational environment, including interfering with the psychological well-being of a student; and
- (d) May be based on, but not be limited to, the protected class status of a person.<sup>32</sup>

Oregon law goes on to define “protected class” as a group of persons distinguished, or perceived to be distinguished, by race, color, religion, sex, sexual orientation, national origin, marital status, familial status, source of income or disability.<sup>33</sup>

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<sup>28</sup> ORS 659.850(2).

<sup>29</sup> 18 Jaime M. Grant, et al., National Center for Transgender Equality and National Gay and Lesbian Task Force, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, 3, 45 (2011). [http://www.thetaskforce.org/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf)

<sup>30</sup> ORS 339.356

<sup>31</sup> ORS 339.356

<sup>32</sup> ORS 339.351

<sup>33</sup> ORS 339.351

Required school district policies must include how the district will publicize the policy within the district including making it readily available to parents, school employees, students and others.<sup>34</sup> School district employees and parents should work together to resolve complaints alleging harassment, bullying or intimidation based on a student's actual or perceived gender identity or expression.

Based on school district policies, school administration should promptly respond to incidents of harassment, bullying or intimidation by taking actions that include, but are not limited to the following: a) intervening to stop the behavior; b) investigating and documenting the incident; c) determining and enforcing appropriate corrective actions within the school's area of responsibility; d) remedying the effects of such behavior on the targeted student and other students; and e) monitoring to ensure that the behavior does not recur.

In some instances, harassment, intimidation or bullying may constitute child abuse and require mandatory reporting by school district employees to law enforcement or the Department of Human Services and to a person designated by the school district.<sup>35</sup>

***EXAMPLE:** During public testimony at a school board meeting a member of the public used the name of a student who is a transgender student and indicated they knew the grade level and school of the student. The person threatened bodily harm against the student if the student continued to attend school. The school district superintendent who was in attendance at the public meeting reported the information to local law enforcement and worked with local law enforcement and the student's parents to ensure the student's safety including not allowing the person access to school grounds.*

### **Resources**

American Academy of Pediatrics, *Gender Identity Development in Children*, (updated 11/21/15). <https://www.healthychildren.org/English/ages-stages/gradeschool/Pages/Gender-Identity-and-Gender-Confusion-In-Children.aspx>

Connecticut Safe Schools Coalition, *Guidelines for Connecticut Schools to Comply with Gender Identity and Expression Non-Discrimination Laws, Frequently Asked Questions* (2012).

[http://www.sde.ct.gov/sde/lib/sde/pdf/equity/title\\_ix/guidelines\\_for\\_schools\\_on\\_gender\\_identity\\_and\\_expression2012oct4.pdf](http://www.sde.ct.gov/sde/lib/sde/pdf/equity/title_ix/guidelines_for_schools_on_gender_identity_and_expression2012oct4.pdf)

*Doe v Regional School Unit*, 86A.3d 600 (2014).

[http://www.courts.maine.gov/opinions\\_orders/supreme/lawcourt/2014/14me11do.pdf](http://www.courts.maine.gov/opinions_orders/supreme/lawcourt/2014/14me11do.pdf)

DOED reply to E. Prince, dated January, 2015.

[http://www.bricker.com/documents/misc/transgender\\_student\\_restroom\\_access\\_1-2015.pdf](http://www.bricker.com/documents/misc/transgender_student_restroom_access_1-2015.pdf)

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<sup>34</sup> ORS 339.356

<sup>35</sup> See ORS 339.370, 339.372 and 419B.005 to 419B.050.

Eugene School District (OR): *Best Practices for Serving Gender Nonconforming Students* (April 2015).

[http://www.4j.lane.edu/staff/4j\\_gendernonconformingstudents\\_bestpractices\\_january2016/](http://www.4j.lane.edu/staff/4j_gendernonconformingstudents_bestpractices_january2016/)

Family Educational Rights and Privacy Act (FERPA)

<http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

New York State Education Department, *Guidance to School Districts for Creating a Safe and Supportive School Environment For Transgender and Gender Nonconforming Students* (2015).

<http://www.nysed.gov/Press/Transgender-and-Gender-Nonconforming-Students-Guidance-Document>

OCR December 1, 2014 Q and A on Title IX and Single Sex Elementary and Secondary Classes.

<http://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf>

OCR Dear Colleague Letter on Title IX Coordinators.

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>

OCR Case No 09-12-1020 (July 24, 2013) Arcadia S.D. Resolution Letter and Agreement.

<https://www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf>

OCR Case No 09-12-1095 (October, 2014) Downey School District Resolution Letter and Agreement.

<http://www2.ed.gov/documents/press-releases/downey-school-district-letter.pdf>

Oregon Revised Statutes (ORS).

[https://www.oregonlegislature.gov/bills\\_laws/Pages/ORS.aspx](https://www.oregonlegislature.gov/bills_laws/Pages/ORS.aspx)

Portland Public Schools (OR): *Supporting our transgender students* (August 2014).

[http://www.pps.k12.or.us/schools/gray/files/bmadison/PPS\\_LGBTQ\\_FAQ\\_PPS\\_Employees.pdf](http://www.pps.k12.or.us/schools/gray/files/bmadison/PPS_LGBTQ_FAQ_PPS_Employees.pdf)

*Price Waterhouse v Hopkins*, 490 US228, 251 (1989).

<https://supreme.justia.com/cases/federal/us/490/228/case.html>

*Smith v City of Salem*, 378F.3d566, 574-75 (2004).

<http://caselaw.findlaw.com/us-6th-circuit/1380020.html>

Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688.

[http://www2.ed.gov/about/offices/list/ocr/docs/tix\\_dis.html](http://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html)

Title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000c et set.

<https://www2.ed.gov/.../civilrights>

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