



ORCHARD PARK CENTRAL SCHOOL DISTRICT

TRANSGENDER AND GENDER NON CONFORMING STUDENTS

A REVIEW OF RESOURCES AND COMMON QUESTIONS

What rights do transgender and gender non conforming students have and where can I find this information?

- Orchard Park and other school districts are governed by federal, state, and local laws including the New York State Human Rights Law. In addition, the State Education Department has published resources for school districts regarding protections for transgender and gender nonconforming students. Individuals can access many of these resources online:
 - [Division of Human Rights](#)
 - [Human Rights Law Protections for Gender Identity & Expression.](#)
 - [Guidance to School Districts for Creating a Safe and Supportive School Environment For Transgender and Gender Nonconforming Students JULY 2015](#)
 - [Guidance on Protections From Gender Identity Discrimination Under New York State Human Rights Law District Policy 7552](#)
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What laws govern school districts and protections against discrimination on the basis of gender identity or expression?

- The New York State Human Rights Law prohibits discrimination in employment, housing, credit, places of public accommodation, internships, domestic services, volunteer firefighting, and non-sectarian educational institutions, including public school districts. In 2019, the Human Rights Law was amended to add gender identity and expression as a protected category. The law now explicitly prohibits discrimination on the basis of gender identity or expression.
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If a student shares that they identify as a different identity than that assigned at birth, what is the responsibility of a school district?

- By law, a school must 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 will be respected and treated like any other girl. So too with a student who says he is a boy and wishes to be regarded that way throughout the school day. Such a student will be respected and treated like any other boy.
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What if a student is not comfortable sharing this information with their parents? What is the responsibility of the school district? Does a student need parent approval?

- If a student does not wish to engage their parent or guardian, the counselor or social worker will continue to work with the student to build that capacity, but may not share that information with the parent. In cases where transgender students do not want their parents to know about their transgender status, the situation is addressed on a case-by-case basis. The District will balance the goal of supporting the student with the requirement that parents be kept informed about their children. The paramount consideration in those situations is the health and safety of the student and making sure that the student's gender identity is affirmed in a manner in which the level of privacy and

confidentiality is maintained necessary to protect the student's safety. A school district, as a covered entity, may not deliberately disclose a person's transgender, gender non-conforming or intersex status, or their gender dysphoria without their consent.

What are the legal requirements for a school district to determine a student's gender identity?

- Confirmation of a student's asserted gender identity is usually as simple as a statement from the student; it may also include a letter from an adult familiar with the student's situation, such as a parent, health care provider, school staff member familiar with the student (a teacher, guidance counselor, or school psychologist, among others), or other family members or friends. A letter from a social worker, doctor, nurse practitioner, or other health care provider stating that a student is being provided medical care or treatment relating to her/his/their gender identity is another form of confirmation of an asserted gender identity. Similarly, a letter from a clergy member, coach, family friend, or relative stating that the student has asked to be treated consistent with her/his/their asserted gender identity, or photographs at public events or family gatherings are other potential forms of confirmation. These examples are intended to be illustrative rather than comprehensive, and in most cases nothing beyond a statement from the student should be required. Transgender and GNC students form a diverse community, and they may differ in how they present, including differences in factors like their comfort level with being known as transgender or GNC, their transition status, their age, and their gender expression. Schools and districts should adopt a flexible approach in this area given that transgender students may not feel comfortable or safe being their authentic selves in all contexts.

What are the legal requirements for a school district as it relates to a student's gender identity and athletics?

- District policies, along with the New York State Public High School Athletic Association (NYSPHSAA) guidelines, must be consistent with the current state of the law and Title IX regulations. The laws and regulations for transgender athletes are clear and the District/BOE should not develop or set policies that are contrary to what is outlined in federal and state law, as well as within New York State Athletic or Education Department Regulation.

Title IX of the Education Amendments of 1972 ("Title IX") specifically prohibits discrimination on the basis of sex in federally-funded education programs and activities. The United States Department of Education's Office for Civil Rights has issued guidance recognizing that Title IX protects transgender students against discrimination based on their gender identity.

Please refer to the document below, which comes directly from NYSPHSAA, that outlines how transgender students are to be classified for athletic purposes.

**The appeal process, which is referenced in NYSPHSAA, is not a process for districts, rather it is for a transgender student who may feel that their right to compete is not being followed by their home district.*

https://cdnsm5-ss10.sharpschool.com/UserFiles/Servers/Server_18436708/File/District/Athletics/transgender.pdf

Can a student just walk into a bathroom and after state that they identified as a different gender?

- As shared above, under the law all individuals, including students, have the right to use the facilities consistent with their self-identified gender. The district works diligently and closely with any student who identifies as a gender different than his/her/their gender assigned at birth. The process and conversations between students and counselors/social workers works to ensure that the student and district have developed a plan that provides a safe environment while complying with all applicable legal requirements, which includes using facilities consistent with one's own gender identity regardless of the individual's sex assigned at birth, anatomy, gender, medical history, appearance, or the sex indicated on the individual's identification. A student is able to access the bathroom of the gender that they consistently identify with.
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What are the key considerations school districts must consider when working with transgender and GNC students?

- The person best situated to determine a student's gender identity is the individual student.
- Plans to protect the confidentiality of the student's transgender status must be developed on a case-by-case basis.
- The paramount consideration should be the student's health and safety.
- School personnel should speak with the student first before discussing a student's gender nonconforming or transgender status with the parent/guardian.