

Title IX and Transgender Students

Addressing Anti-discrimination and Harassment

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The Social Climate

Understanding the Concerns Behind the
Guidance and Regulations

BULLYING AND HARASSMENT

- 68% of LGBTQ students ages 13-21 surveyed indicated they felt unsafe at school due to their sexual orientation, gender expression or gender identity (2021 National School Climate Survey conducted by GLSEN). Examples of why they felt unsafe included:
 - Anti-LGBTQ remarks made at school
 - Harassment and assaults occurring at school
 - Discriminatory policies and practices used at school that restricted students' gender affirming decisions
- These feelings resulted in school avoidance, increased drop-out rates, diminished academic performance, depression, and reduced likelihood of post-secondary education
- Nearly 1 out of 5 transgender and non-binary youth attempted suicide (2022 National Survey on LGBTQ Youth Mental Health)

State and Federal Laws and Regulations

Understanding the Agencies that Enforce the Laws and Regulations and
What Authority They Have Over Public Schools

NYS Human Rights Law

New York State HRL expressly prohibits discrimination by educational institutions based upon students, employees or applicants' actual or perceived sex and gender identity, which includes gender-related identity, appearance, behavior, expression, or other gender-related characteristics, regardless of the sex assigned to that person at birth, including, but not limited to, the status of being transgender.

NYS Human Rights Law

Examples of discriminatory conduct under the HRL can include:

- Denying equal access to school;
- Denying the use of restroom or other facilities consistent with a person's gender identity;
- Requiring a transgender person to use a single-occupancy facilities;
- Requiring individuals to show medical documents to use facilities consistent with gender identity;

NYS Human Rights Law

Examples of discriminatory conduct under the HRL can include:

- Refusing to use an individual's requested name or pronoun;
- Denying access to an educational program or school-sponsored club based upon gender identity;
- Subjecting the individual to harassment at school or work.

NYS Education Law § 3201-a

Prohibits discrimination based on sex with respect to admission into or inclusion in courses of instruction and athletic teams in public schools. “Discrimination based on sex” includes discrimination based on gender identity and expression.

Dignity for All Students Act (DASA)

Provides that “no students shall be subjected to harassment or bullying by employees or students on school property or at a school function; nor shall any student be subjected to discrimination based on a person’s actual or perceived...sexual orientation, gender, or sex...by school employees or students on school property or at a school function.”

Title IX

Provides that “No person in the United States on the basis of sex shall be excluded from participation in, be denied benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

“Sex” has been interpreted as encompassing gender identity and expression.

US Dept. of Education Office of Civil Rights

Has jurisdiction over school districts receiving Federal funds and enforces Title IX.

OCR can investigate complaints relating to discrimination on the basis of gender and/or sex, including gender expression and identity

US Dept. of Education Office of Civil Rights

Enforcement powers include authority over federal funding for school districts

Title IX Regulations released April 19, 2024.

2024 Title IX Regulations

The new regulations go into effect August 1, 2024:

- Clearly prohibit discrimination and harassment based on sexual orientation, gender identity, and sex characteristics;
- Clarify that schools cannot prevent students from participating in school consistent with their gender identity, except in limited circumstances (sex-separate living facilities and sex separate athletic teams)

School District Liability Under Title IX

- A school district is deliberately indifferent if its response to gender/sexual harassment is clearly unreasonable in light of the known circumstances.
- Complaints of discrimination must be resolved promptly and equitably.

School District Liability Under Title IX

- 2024 Regulations require school districts to address conduct that is subject to its disciplinary authority (previous regulations limited obligation to respond under Title IX to conduct that occurred within school or school-sponsored events).
- Codes of Conduct and DASA authorize school districts to address off campus conduct and cyberbullying which rise to a certain threshold.

Best Practices

Suggested Guidance from NYSED

Students Transitioning

- School personnel's acceptance of a student's asserted gender identity should require no more than a statement from the student expressing their preference. Schools do not need to require permission, letters from professionals, or proof of gender identity.
- Discuss and clarify expectations and challenges to transitioning, especially if student is not ready for a full social transition.

Students Transitioning

- Discuss and clarify issues such as:
 - Which names and pronouns to use and in what setting?
 - Rest room and locker room choices
 - Confidentiality concerns
 - How to handle overnight field trips, gender segregated health assemblies, etc.

Student Records

- If a transgender student requests a change to educational records to reflect the stated gender identity and affirmed name and pronouns, the school should honor that request, regardless of whether the student has completed a legal name change.
- Previous records that reflect the birth name or gender should be kept confidential.

Student Records

- Unless a student has a legal name change order, health records maintained by the nurse must remain in the birth name.
- If a school is presented with a legal name change order, then all student records must be updated.

Student Names

- Students are not required to obtain parental/guardian consent or a court-ordered name and/or gender change before being addressed by their affirmed name and pronouns.
- School staff are responsible for ensuring students are referred to correctly. Intentionally referring to a student, verbally or in writing, by a pronoun inconsistent with the student's gender identity or by a name other than the student's affirmed name. Students should be given the opportunity to share the name and pronouns that they identify with and want to be used.

Student Names

- In classrooms, teachers should update items that have each student's affirmed name, such as attendance lists, name plates, seating charts, or participation popsicle sticks throughout the year. If participating in virtual classrooms, schools should adjust their settings so that TGE students can edit their display names for virtual classrooms and virtual calls.

Privacy and Confidentiality

- The federal Family Educational Rights and Privacy Act (FERPA) prohibits the improper disclosure of personally identifiable information (PII) derived from students' educational records. PII includes, but is not limited to, the student's name, date of birth, sex, gender, indirect identifiers, and other information that alone or in combination is linked or linkable to a specific student that would allow a reasonable person in the school community to identify the student.
- Schools should clearly and unambiguously advise the student that their parents/guardians may become aware of the use of an affirmed name in school and on school records, through school communication or if their parent/guardian seeks to review the student's education records.

Privacy and Confidentiality

- With the student's consent, a trusted trained school professional may facilitate a conversation between the student and their parent/guardian regarding the student's affirmed name and gender identity.
- When TGE students use an affirmed name in school, the legal name must be kept confidential by school staff. FERPA only authorizes the release of PII from education records to school officials (including teachers, among others) who have a *legitimate educational interest* in the information. Therefore, once a legal name is made confidential, the student's legal name should only be shared with school officials who have a legitimate educational interest in knowing this information.

Restrooms and Locker Rooms

- “[U]nder 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 match [their] 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.”

U.S. Dept. of Educ. Letter from Suzanne Goldberg April 6, 2021

- Denying the use of restrooms or other facilities because of a person’s gender identity is a violation of NYS Human Rights Law and is unlawful discrimination. Arrangements should be provided in a non-stigmatizing manner that protect student privacy and are not marginalizing or disruptive for the student.
- Schools may not ask a TGE person to use a single-stall restroom because of someone’s concerns or condition the use of facilities such as restrooms, locker rooms, or residential facilities upon students’ provision of medical or other specific documentation.

Relevant Guidance Documents

- **Creating a Safe, Supportive and Affirming School Environment for Transgender and Gender Expansive Students: NYSED July 2023**
http://www.p12.nysed.gov/dignityact/documents/Transg_GNCGuidanceFINAL.pdf
- **Guidance on Protections from Gender Identity Discrimination Under New York State Human Rights Law (2020, January 29) *New York State Division of Human Rights.***
<https://dhr.ny.gov/system/files/documents/2022/04/nysdhr-genda-guidance-2020.pdf>
- **The Dignity Act, A Resource and Promising Practices Guide for School Administrators & Faculty**
<https://www.p12.nysed.gov/dignityact/documents/FINALDignityForAllStudentsActGuidanceDec2017.pdf>
- **New York State Gender Recognition Act FAQs (2022).**
<https://ahihealth.org/wp-content/uploads/2022/03/NYS-Gender-Recognition-Act-FAQS.pdf>