

# **A Toolkit for Ensuring Safe and Supportive Schools for Transgender and Gender Nonconforming Students**

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## Introduction

Safe, supportive and welcoming schools play a pivotal role in ensuring students are engaged in learning and that nothing hinders their ability to achieve their best in the classroom. The School Safety Technical Assistance Council seeks to help all schools in Minnesota ensure that all students in Minnesota regardless of their color, race, religion, gender or sexual orientation are afforded a safe, supportive and welcoming school environment where they can achieve success.

Ensuring that transgender and gender nonconforming students are safe and supported in school has been an emerging issue throughout the nation and in school districts and charter schools throughout Minnesota. During the last three years, an increasing number of school and school district administrators and staff members as well as students and families have contacted the Minnesota Department of Education and the [School Safety Technical Assistance Center](#) seeking technical assistance on how to ensure safe, supportive and inclusive environments for all students, including transgender and gender nonconforming students.

In response, the council, which oversees the center, formed a workgroup to develop this toolkit to help school districts and charter schools create school environments where transgender and gender nonconforming students are safe, supported and fully included, and have equal access to the educational opportunities provided to all students as required by federal or state law.

## Defining Transgender and Gender Nonconforming Students

Gender identity, assigned sex and sexual orientation are separate identity characteristics according to the American Psychological Association and National Association of School Psychologists.<sup>1</sup> Any student, including transgender and gender nonconforming students, may be heterosexual, gay, lesbian or bisexual. Gender identity does not correlate with sexual orientation.

Understanding the terminology associated with gender identity is important to providing a safe and supportive school environment for students. The following terms and definitions are included in this toolkit to assist school leaders and staff in understanding the information presented in this resource:

- Gender identity – an individual’s innate sense of one’s own gender; a deeply held sense of psychological knowledge of one’s own gender, regardless of the gender assigned at birth.
- Gender expression – the external appearance, characteristics or behaviors typically associated with a specific gender.
- Gender nonconforming – people whose gender expression differs from stereotypical binary expectations, such as “feminine” boys, “masculine” girls, and those who are perceived as androgynous or gender nonbinary.
- Sexual orientation – categories of sexual orientation typically have included attraction to members of one’s own gender (gay or lesbian), attraction to members of another sex (heterosexual) and attraction to two or more genders (bisexual).

<sup>1</sup> American Psychological Association & National Association of School Psychologists. (2015). [Resolution On Gender And](#)

[Sexual Orientation Diversity In Children And Adolescents In Schools](#). Retrieved from Retrieved from

<http://www.apa.org/about/policy/orientation-diversity.aspx>

- Transgender – an umbrella term for people whose gender identity does not conform to that typically associated with the sex to which they were assigned at birth.

## Transgender and Gender Nonconforming Students at Risk

School officials play powerful proactive roles in creating safe environments for transgender and gender nonconforming students. In 2015, the National Center for Transgender Equality found that 77 percent of students who identify as transgender or gender nonconforming reported being harassed at some point between kindergarten and grade 12.<sup>2</sup> Specifically, 54 percent of the above individuals were verbally harassed, 24 percent were physically attacked and 13 percent were sexually assaulted during this time because of being transgender. These students faced such severe mistreatment that 17 percent dropped out of school. Additionally, a recent national study of more than 10,000 youth found that 50 percent of gender nonconforming students reported that they did not participate in school activities because they feared being discriminated against, 42 percent were called derogatory names on a consistent basis and 40 percent reported that they were frequently and often excluded from school activities.<sup>3</sup>

In Minnesota, the Minnesota Student Survey data for transgender and gender nonconforming students are consistent with national data. Transgender and gender nonconforming students in the 9th and 11th grades reported elevated levels of bullying and harassment.<sup>4</sup> Additionally, 31 percent of transgender and gender nonconforming students have attempted suicide and 61 percent had seriously considered attempting suicide.

## Drafting School Policies

This toolkit has been compiled to provide information to assist schools in establishing or amending school policies to ensure that all students are provided with a safe and supportive school environment. The information provided within this document to assist schools does not create new legal obligations or requirements under federal or state law.

Several Minnesota schools have already drafted school policies on creating a safe, supportive and welcoming environment for transgender and gender nonconforming students.<sup>5</sup> The council has also located several similar policies across the United States that have been used to support transgender and gender nonconforming

<sup>2</sup> James, S.E., Herman, J.L., Rankin, S. Keisling, M., Mottet, L., & Anafi, M. (2016). The Report of the 2015 U.S. Transgender Survey. Washington, D.C., National Center for Transgender Equality.

<sup>3</sup> See, Human Rights Campaign Foundation survey [“Growing Up LGBT in America.”](#)

<sup>4</sup> See, [2016 Minnesota Student Survey \(MSS\)](#).

<sup>5</sup> See, Minneapolis Public Schools [Policies Supporting All Genders](#); Mounds Park Academy [Guidelines on Transgender and Gender Diverse Students](#); Saint Paul Public Schools [Gender Inclusion Policy](#).

students.<sup>6</sup> The majority of the policies identify how staff can support transgender and gender nonconforming students, discuss the obligations of staff to prevent discrimination, bullying and harassment and outline how school officials will coordinate and collaborate with each other and with parents.

## Overview of Federal and State Law

In 2011, the U.S. Department of Education Office for Civil Rights (OCR) stated that school officials, under Title IX, have a duty to investigate gender discrimination and harassment claims concerning actual or perceived sexual orientation as well as failure to conform to traditional societal notions of male and female.<sup>7</sup> In 2014, OCR provided additional guidance to schools investigating claims based on gender identity and failure to conform to societal stereotypes and actual or perceived sexual orientation.<sup>8</sup>

The [Minnesota Human Rights Act](#) prohibits discrimination and harassment in education based on gender expression, actual or perceived gender identity and actual or perceived sexual orientation.<sup>9</sup> Minnesota law provides that all students have the right to attend school in a safe and supportive environment where they can learn and have equal access to all educational opportunities.<sup>10</sup> Illegal discrimination can occur if a student is expressly denied full utilization of a benefit at school, is indirectly denied full utilization of a benefit at school due to a policy, practice or procedure of the school or if a student is exposed to a hostile environment that interferes with the student's ability to learn or participate in activities at school.

<sup>6</sup> El Rancho Unified School District, [Transgender and Gender-nonconforming students](#), New York State Education Department, [Guidance to Schools on Creating Safe and Supportive School Environments for Transgender and Gender-Nonconforming Students](#), Washington Office of State Superintendent of Public Instruction, [Prohibiting Discrimination in Washington Public Schools \(2012\)](#), [Prohibiting Discrimination in Public Schools](#), Kansas City 33 School District (MO), [Prohibition Against Discrimination, Harassment and Retaliation Transgender and Gender Nonconforming Employees and Students](#), Atherton High School, Jefferson County School District (KY), [Policy on School Space](#), Los Angeles Unified School District (CA), [Transgender Students- Ensuring Equity and Nondiscrimination](#), Maryland State Department of Education, [Providing Safe Spaces for Transgender and Gender Nonconforming Youth: Guidelines for Gender Identity Nondiscrimination](#), Massachusetts Department of Elementary and Secondary Education, [Guidance for Massachusetts Public Schools Creating a Safe and Supportive School Environment - Nondiscrimination on the Basis of Gender Identity \(2014\)](#), Alaska Matanuska-Susitna Borough School District (AK), [Transgender Student Guidelines](#) (2015), Oregon Department of Education, [Guidance to School Districts: Creating Safe and Supportive School Environments for Transgender and Gender-Nonconforming Students](#), Wisconsin Shorewood School District (WI), [Nondiscrimination Guidelines Related to Students Who Are Transgender and Students Nonconforming to Gender Role Stereotypes](#) (2014), Nevada Washoe County School District (NV), [Gender Identity and Gender Non-Conformity - Students](#)

<sup>7</sup> U.S. Department of Education Office for Civil Rights (OCR) [Dear Colleague Letter \(April 4, 2011\)](#).

<sup>8</sup> U.S. Department of Education Office for Civil Rights (OCR) [Questions and Answers on Title IX and Sexual Violence \(2014\)](#).

<sup>9</sup> See, Minn. Stat. §363A.03, Subd. 44, Sexual Orientation is defined as "having or being perceived as having an emotional, physical, or sexual attachment to another person without regard to the sex of that person or having or being perceived as having an orientation for such attachment, or having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness. Sexual orientation does not include a physical or sexual attraction to children by an adult."

<sup>10</sup> See, Minn. Stat. §363A.13.

The [Safe and Supportive Minnesota Schools Act](#)<sup>11</sup> prohibits bullying and harassment of all students, including bullying and harassment of students based on gender expression, actual or perceived gender identity and actual or perceived sexual orientation. Under the Safe and Supportive Minnesota Schools Act, public school districts and charter schools are required to adopt a policy that prohibits bullying and harassment of all students, including bullying and harassment based on sex, gender identity, gender expression and sexual orientation.<sup>12</sup> Bullying may also rise to the level of a discriminatory hostile educational environment under Title IX or the Minnesota Human Rights Act.

Students who believe their rights under one of the above laws may have been violated may contact:

Title IX – the [U.S. Department of Education regional office in Chicago](#), (312) 730-1560 or by fax at (312) 730-1576.

MDHR – the [Minnesota Department of Human Rights](#), (651) 539-1121, 1-800-657-3704 Toll Free, 1-800-627-3529 MN Relay, or by email at [www.mn.gov/mdhr](http://www.mn.gov/mdhr).

To seek assistance related to school bullying, contact the [School Safety Technical Assistance Center](#), 651-582-8364. [Find immediate resources to address bullying.](#)

## Working with Parents, Community, School Officials and Board Members

Research shows that communicating and engaging with parents, members of the school community and throughout the school is important to ensure that transgender and gender nonconforming students are safe and supported in school.

### Parents

Families of transgender and gender nonconforming students play a critical role in their child's well-being and success at school. A family's acceptance and support of their child's gender identity is strongly associated with positive mental health and academic achievement.

Schools should collaborate closely with parents to address the individualized needs of transgender or gender nonconforming students. Schools can offer parents educational information and professional resources to help families meet the needs of their transgender or gender nonconforming child. School-based mental health professionals can direct families to additional resources for family support and medical and mental health resources for the child or adolescent.

When students transition, they may need more support. *Students and their families make their own decisions about what the student needs during transition as every student's transition is unique.*

Some students will embark upon a social transition but may or may not undergo medical transition. During a social transition, a student may change their name and/or their pronouns, clothing, hair, use of make-up and overall personal style. Medical transition may include surgical procedures but may be limited to hormone

medication. Schools generally play a very limited role in the medical aspects of a student's transition as the medical choice is a private decision that does not need to be shared with the school.

To ensure a safe and supportive transition at school, school leaders and staff should meet with the student and parents to actively discuss transition. The [Gender Spectrum's Student Gender Transition Plan](#) may be a helpful resource for school staff when planning with the student and family. Schools should appreciate that it is helpful to the student to have support before, during and after transition. As there is no standard timeframe or sequence of steps in which a student transitions, schools should remain flexible and responsive to the student and their family during a student's gender transition and be open to the possibility that the needs of the student may evolve during the transition process.

While students often feel excited, happy and relieved to have their gender affirmed at school, transition may also be a time of great stress for them, their family and guardians. Family may fear that the student will be excluded, isolated, harassed or physically harmed at school. Stress may also be compounded for individuals who are members of racially or other historically disenfranchised communities. For instance, a transgender student who is black may experience compounding stress from discrimination based on racial identity and gender identity.

Language around gender is evolving. In some native communities, the term "Two-Spirit" is used for an American Indian person possessing a blend of male and female spirits. The term honors people of native heritage. Two-spirit students traditionally do not seek out medical transition nor use the language of transgender nor gender nonconforming to describe their gender.

The transition experience of one student and family may be very different than that of another student and family. For instance, a student and family may want a very private and slow transition. They may request to move schools or wait until the student enters the next grade level in a new building. In other cases, a student and family may want a very public and immediate transition at their present school, including formal class announcements and/or an optional after school meeting to discuss the transition with families and peers.

Racial, cultural, economic, religious or other factors influence the transition experience the student and family choices and decisions. Transgender and gender nonconforming students and their families are racially and culturally diverse. During transition, diverse and unique needs may arise. For example, a transgender or gender nonconforming student's family who does not speak English may need a translator or interpreter who understands and knows key terminology to properly support the student and the student's family.

School can be the safest environment for transgender and gender nonconforming students. Some transgender and gender nonconforming students are abused by family members at home because of their gender identity. When concerned about a student's well-being and safety at home, it is best practice for school staff such as social workers or counselors to work directly with the student to develop a plan to ensure their safety. If school staff determines the student is not safe, the student support team should follow their protocol for reporting child neglect or harm. Research shows that transgender and gender-nonconforming students are at high risk for self-harm.

## **Community, School Officials and Board Members**

School leaders can create a safe and supportive environment by engaging a broad and diverse group of stakeholders within the school community. Stakeholders to be considered include school staff members,

students, parents, student groups, family groups, racial and cultural groups as well as representatives from churches, businesses and community organizations.

School officials should offer the opportunity for holding small, on-going meetings to specifically listen to the needs of transgender and gender nonconforming students and their families and to gain an understanding of the current environment and needs in the school or district. In addition, holding larger, informational listening sessions with stakeholders early in the process will help build trust and provide schools and school districts with a broader understanding of the concerns and needs of the school community.

Feedback provided during listening sessions will help school leaders better understand the concerns, questions and needs of students and this will inform their work. What school leaders learn during these sessions will not only help them develop the best policies and practices for their school but it will often help them communicate more effectively with all stakeholders and prepare stakeholders for implementation of new policies and practices.

Best practice tips for community engagement:

1. Make the focus of the meetings clear to all who attend. For example, if the meeting focus is on the development of policies and practices to meet the needs of transgender and gender nonconforming students and all students, the focus would not be about the value of or the existence of transgender and gender nonconforming people.
2. Set clear expectations for a respectful, non-discriminatory dialogue. For example, one expectation can be that participants speak and act in a kind and respectful way. When needed, school leaders should offer clarifying statements about non-discrimination. If appropriate, school leaders may also wish to remind people of the school's mission statement or the school's climate improvement work.
3. Allow all stakeholders the opportunity to ask questions or raise concerns, set time limits for speaking and remind participants about individual privacy.
4. Include students and families from across racial, cultural and religious groups in appropriate meetings.
5. School leaders should be prepared to quickly respond to questions raised and concerns expressed. School officials may wish to develop some simple talking points to address questions and concerns raised. For example, "I know this is new territory for many of us. Sometimes change can be challenging. Perhaps I can share some information with you about gender identity and transgender people?" Example talking points including the sample below can be found in "[Schools in Transition – A Guide for Supporting Transgender Students in K-12 Schools.](#)"

## Names, Pronouns and Student Records

Schools should not assume a student's name, gender identity or pronoun. School officials should ask the student and use the requested name and pronouns. Students need not provide schools with legal documents to correct their first name or gender within their student records. When students are referred to by the wrong pronoun by peers or school staff, students may feel intimidated, threatened, harassed or bullied. School staff can ensure a more respectful environment for all students when efforts are made to correct the misuse of pronouns, as well as names, in student records.

Teachers can support inclusion of all students, including transgender and gender-nonconforming students, by embracing simple classroom practices that allow for all students to participate in accordance with their gender identity. Classroom practices that recognize and affirm all students, including transgender and gender-nonconforming students, are varied and can include how the teacher addresses the classroom and how the teacher separates students into groups.

[Family Educational Rights and Privacy Act](#) (FERPA) protects the privacy of students. Schools should note that neither a student's gender nor pronouns are considered public or directory information. Casual use of a student's incorrect pronoun or incorrect name may violate FERPA. FERPA also permits families to elect not to disclose directory information about their student.

1. Because schools have multiple student record systems, schools should inventory all of their student record systems to ensure that they have implemented a systemic process that ensures that the names of students are consistently used as they wish to be identified. Schools should consider adding a customized data field for pronouns in their student record system. Schools should ensure that information for the student is properly recorded within the Minnesota Automated Reporting Student System (MARSS). If you have questions or need assistance with this, [contact Minnesota Department of Education staff, \(marss@state.mn.us\)](mailto:marss@state.mn.us).
2. A school administrator or designee should meet with the student and family to discuss how the student's name and gender will be communicated to peers and the school community. School principals should consider periodically reminding all staff personnel to consistently use the requested name and pronouns of students.
3. Teachers could address students as "students" and "scholars" to be inclusive as opposed to "boys and girls." You can learn more about what schools are doing to make transgender students comfortable in the classroom on page 10 of [Example Policies and Emerging Practices for Supporting Transgender Students](#).

## Activities

Schools should not exclude any student from participation in a school-affiliated activity based on a student's gender identity or transgender status. Schools should not treat students differently on the basis of sex, including gender identity, in any school activities or the application of any school rule. Schools must provide the same opportunities to transgender and gender nonconforming students that they provide to all students. Transgender or gender nonconforming students should be able to participate in activities in a manner that is consistent with their gender identity.

## Athletics

Sports provide youth with unique opportunities to improve their physical fitness and develop valuable life skills such as goal setting, perseverance, teamwork and a commitment to fair play. Transgender students should be afforded equal opportunities to play sports. A student should not be required to provide medical or other documentation that is not required of all students in order to participate, according to 2016 Title IX guidance.<sup>13</sup> Title IX requires that schools provide transgender students with the right to participate in such activities, including athletics, in a manner consistent with their gender identity.

If a school does not allow a student to participate on the team consistent with their gender identity or gender expression, a student or the student's family can make an appeal to the [Minnesota State High School League \(MSHSL\)](#). The Eligibility Appeal Procedures for a transgender student is outlined in the [300.00 Bylaws: Administration of Student Eligibility](#) section of MSHSL's Official Handbook For questions and assistance regarding eligibility appeal procedures, contact the MSHSL at (763) 560-2262.

## Homecoming, Prom and School Events

School traditions are important to all students, and transgender and gender nonconforming students are no exception. Students should not be prohibited from attending homecoming, prom or other social events because they are transgender or gender nonconforming. Students who are transgender or gender nonconforming should be allowed to socialize, dance, request songs and take photos similar to any other students in the school.

Under the Minnesota Human Rights Law, schools must allow transgender and gender-nonconforming students to participate fully in all school activities, including traditions that incorporate gender roles categorized as "male" and "female." For example, one tradition of many schools is to have a male homecoming king and a female homecoming queen. In these situations, the school should allow a student to participate according to their gender identity.

In an effort for inclusivity, schools may wish to consider revisiting existing traditions or establishing new traditions. For example, instead of electing a homecoming king and homecoming queen, some schools have chosen to nominate "prom ambassadors," "homecoming court" or "homecoming royalty." At the University of Minnesota, for example, the titles of homecoming king and queen have been replaced with the title "Homecoming Royalty" and students selected as royalty will now be called "royals."

## Dress Code

Gender nonconforming students and transgender students experience elevated rates of bullying and harassment based on gender identity or how they express their gender, which can include how they dress. In a

recent study, 52 percent of transgender and gender nonconforming students report that they were not allowed to dress in a way that fit their gender identity or expression.<sup>14</sup>

While school dress codes need to be inclusive, it is equally important that school staff support transgender and gender nonconforming students and take steps to prevent bullying and harassment of these students during the school day and at school events as well.

All students often use clothing to express many facets of their identity. Clothing choices are informed by ethnicity, culture, religious beliefs and other aspects of identity, including gender identity. Schools routinely take into consideration the religious and cultural expressions of students when establishing dress codes. Schools should similarly take into consideration the expression of gender identity of students.

1. No student should be disciplined for wearing clothing that fails to conform to perceptions of gender based stereotypes.
2. School staff should not pressure or coerce any student into wearing certain attire choices over others that are provided. Here is one example of gender inclusive dress guidelines for a school event: *“All students are expected to wear: a) black pants, a white collared shirt and a solid color tie; OR b) a knee-length black dress OR c) a black skirt that is knee length or longer and a white blouse OR c) black dress pants and a white collared shirt or white blouse.”*
3. Where students are expected to dress formally, it is best practice to allow students to dress in formal wear that aligns with their gender identity while adhering to a gender inclusive dress code.

## Restrooms, Locker Rooms and Hotel Accommodations

Title IX and the Minnesota Human Rights Act declare that it is an unfair discriminatory to deny any student the full and equal enjoyment of any educational institution such as a public school. Schools ensure full and equal enjoyment of public accommodations for students where they are not stigmatized or segregated from the rest of the general student population while exercising their rights to the public accommodation.

“A policy that requires an individual to use a bathroom that does not conform to his or her gender identity punishes that individual for his or her gender nonconformance, which in turn violates Title IX.” *Whitaker v. Kenosha Unified School District*, (7<sup>th</sup> Cir. May 30, 2017)

Within the school setting, school officials and leaders need to ensure that all students have access to restrooms; have access to locker rooms to fully participate in classes, sports, and other activities; and have access to hotel accommodations when travelling with school groups for athletic, educational and/or cultural purposes.

Schools should work with transgender and gender nonconforming students to ensure that they are able to access needed facilities in a manner that is safe, consistent with their gender identity and does not

<sup>14</sup> James, S.E., Herman, J.L., Rankin, S. Keisling, M., Mottet, L., & Anafi, M. (2016). The Report of the 2015 U.S. Transgender Survey. Washington, D.C., National Center for Transgender Equality.

stigmatize them. Privacy objections raised by a student in interacting with a transgender or gender nonconforming student may be addressed by segregating the student raising the objection provided that the action of the school officials does not result in stigmatizing the transgender and gender nonconforming student.

## **Restrooms**

Transgender and gender nonconforming students should be afforded the opportunity to use the restroom of their choice. Some students may feel uncomfortable with using a restroom with a transgender or gender nonconforming student. Any student who wishes not to share a restroom with a transgender or gender nonconforming student can be provided a private space such as a single-user restroom. Many schools have chosen to make single-stall restrooms available to all students. For example, some schools have re-purposed a staff restroom into a single user restroom for all students to use.

## **Locker Rooms**

Students use locker rooms during their school day for physical education classes, sports and other activities. Some transgender and gender nonconforming students may prefer a private space while others may wish to use the locker room consistent with their gender identity. Coaches should consider how they can utilize privacy curtains, restrooms and separate changing schedules to provide for privacy for all students.

## **Hotel Accommodations**

If students are to be separated based on gender when travelling for athletic, educational or cultural activities, school officials should allow a transgender or gender nonconforming student the opportunity to room with peers who match the student's gender identity unless the transgender or gender nonconforming student requests otherwise. At times, any student may have specific needs for privacy and the school should make arrangements based upon that student's needs.