



# Providing Safe Spaces for Transgender and Gender Non-Conforming Youth: Guidelines for Gender Identity Non-Discrimination

Maryland schools have a history of commitment to educating all students to reach their highest potential. School safety is a vital component of that commitment. Safety and prevention efforts, long the hallmark of Maryland's success, have provided students with safe, respectful, engaging, and welcoming environments in which to grow and learn. In growing numbers transgender and gender non-conforming students are becoming more comfortable with who they are and are more visible in schools. Providing schools with information, support, and best practices is an important step in assuring welcoming, caring, respectful, and affirming environments for all students.

It is the hope of the Maryland State Department of Education (MSDE) that this document may provide technical guidance and assistance as each Maryland school system works to support the rights of all students, including those who are transgender and gender non-conforming.

These guidelines are designed to serve as suggestions for consideration for school systems and administrators who may want to develop their own transgender policy, procedures, and/or guidelines.

## The Need

In "Growing Up LGBT (Lesbian, Gay, Bisexual, Transgender) in America," the Human Rights Campaign Foundation's groundbreaking survey of more than 10,000 LGBT youth, 42 percent of gender non-conforming youth report "frequently" or "often" being called names and 40 percent report being excluded by peers "frequently" or "often". More than half of gender non-conforming youth reported "never participating" in the majority of activities listed in the survey (e.g., sports, church/religious youth groups and service organizations) out of fear of discrimination.

Additional research indicates that 80 percent of transgender students feel unsafe at school because of who they are. According to data from Center for Disease Control's Youth Risk Behavior Survey (2011), the percentage of gay, lesbian, and bisexual students (across sites) who did not go to school at least one day during the 30 days before the survey because of safety concerns ranged from 11 percent to 30 percent of gay and lesbian students and 12 percent to 25 percent of bisexual students.



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The Journal of Adolescent Health (2015) reported that compared with non-transgender youth, transgender youth had an elevated probability of being diagnosed with depression (50.6 percent vs. 20.6 percent); suffering from anxiety (26.7 percent vs. 10 percent); attempting suicide (17.2 percent vs. 6.1 percent); and engaging in self-harming activities without lethal intent (16.7 percent vs. 4.4 percent).

The need for protections for transgender and gender non-conforming students is clear. According to a 2011 report from the National Center for Transgender Equality and the National Gay and Lesbian Task Force, 132 Maryland respondents who expressed transgender identity or gender nonconformity while in grades K-12 reported alarming rates of harassment (81percent), physical assault (38 percent) and sexual violence (16 percent). A staggering 43 percent reported that they had attempted suicide at some point in their life, 27 times the rate of the general population of 1.6 percent. Harassment was so severe that it led 6 percent to leave a school in K-12 settings or leave higher education. In addition, the Gay, Lesbian, and Straight Education Network (OLSEN, 2014) reports that students who experienced high levels of victimization based on gender expression were twice as likely as students who did not experience high levels of victimization to report that they did not plan to pursue post-secondary education.

Rather than focusing on their education, many transgendered and gender non-conforming students struggle for the ability to come to school and be themselves. The National Center for Transgender Equality reports that 59 percent of transgender students have been denied access to restrooms consistent with their gender identity. Some are denied opportunities to go on field trips or participate in sports. Together with bullying and victim-blaming, these conflicts can lead to disproportionate discipline and involvement in the juvenile justice system.

## Vocabulary

Discussion regarding the needs of transgender and gender non-conforming students is best held when there is mutual understanding of key concepts and a shared vocabulary. The key concepts and vocabulary used in this document include:

- Sex – the genetic and anatomical characteristics with which people are born, typically labeled “male” or “female”.
- Gender – the attitudes, feelings, and behaviors that a given culture associates with a person's biological sex.



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- Gender Identity – A person's deeply held internalized sense or psychological knowledge of their gender regardless of the biological sex they were assigned at birth.
- Cisgender – Students whose sex assigned at birth correspond to their gender identity.
- Transgender – Students whose internalized knowledge and sense of who they are as either male or female does not match their sex assigned at birth.
- Gender Expression – The manner in which a student represents or expresses gender to others, often through manner of speech and word choices, manner of dress and hairstyle, the wearing (or not wearing) of cosmetics, and other distinctive cultural markers of gender.
- Gender Non-Conforming – An umbrella term for students whose gender expression differs from stereotypical expectations of the sex they were assigned at birth. Students who do not identify with either traditional gender categories or identify as both genders are often called gender non-conforming, gender diverse, or gender expansive.
- Transition – The process through which transgender people begin to live as the gender with which they identify, rather than the one typically associated with their sex assigned at birth. Transitions may include any combination of physical, social, and medical processes.
  - Social transition may include changing names, pronouns, hairstyle, and clothing.
  - Medical transition may include medical components like hormone therapy and gender affirming surgeries. Not all transgender individuals seek medical care as part of their transition, especially minors.

## Non-Discrimination Guidelines for All

A safe and supportive school environment minimizes stigmatization, protects all students from harassment and bullying, and does not single out students by gender. It may help to create a gender-neutral environment. These non-discrimination guidelines are not intended to address every situation that might occur with respect to transgender or gender non-conforming students. In all cases, the goal is to provide equal educational opportunity



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and healthy development of students. When developing transgender policy or procedure, school systems and administrators may want to consider the following:

- Review dress codes to describe what the school considers appropriate clothing without referencing gender.
- Consider gender neutral dress codes for class or yearbook photos, honor society ceremonies, graduation ceremonies, or dances.
- Review dress codes to describe what the school considers appropriate clothing:
  - Permit all students to wear any clothing that is appropriate for students under the school dress code, regardless of the student's gender or gender identity. This includes school extracurricular activities, as well as events, such as school dances, choral concerts, the wearing of uniforms, or graduation.
  - If a school has two separate gender-specific dress codes, any student should be permitted to dress consistently with the dress code for either gender. So long as the student is compliant with one of the dress codes, the student should not be subject to discipline or a requirement to change clothing on the grounds that the student is wearing the "wrong" dress code for the student's gender or gender identity.
- Eliminate gender-based sorting of students.
- Include the categories of sexual orientation, gender identity, and gender expression in all non-discrimination materials.
- Provide staff training that addresses student diversity and builds the capacity of all staff to understand and appreciate student sexual orientation, gender identity, and gender non-conforming as part of regular training and/or continuing education.
- Modify forms that allow families and students the ability to self-identify their gender and preferred names and pronouns. Multiple federal and state agencies have adopted a two- part question that asks separately about current gender identity and sex assigned at birth.
- Design classroom lessons that expand understandings of gender diversity and look for entry points in the curriculum to address gender diversity.
- Include questions specific to LGBT students in school climate surveys.



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- Post anti-bullying and anti-discrimination policies around the school and share them with the school community.
- Select a restroom in your school that is designated for only one user at a time as a gender neutral/unisex restroom.
- Provide access to a single use/gender neutral restroom for any student who has a need or desire for increased privacy, regardless of the underlying reason.

## Non-Discrimination Guidelines for Name and Gender

Equal education in a non-discriminatory environment may be supported by the following guidelines:

- Address every student by a name and pronoun that corresponds to the student's gender identity.
- Privately ask students how they want to be addressed in class and whether this will be different when in correspondence to the home or at conferences with the student's parents or guardians.
- Train all teachers, staff, and school administrators to use the student's preferred name, pronouns and gender.
- Use the student's preferred name for classroom rosters, identification badges, announcements, certificates, newspapers, newsletters, yearbooks, and any other record where the use of the legal name is not specifically required by law.
- Create a process so a student or parent/legal guardian may request a change of name and/or gender so that a student may be registered in school under a name and gender that corresponds with the student's gender identity.
  - Provide a means to protect the student's previous identity once a legal name change has occurred and current records are amended to show the change.
  - Store historical records where they are safe from inadvertent disclosure.
  - Implement practices that safeguard confidential information from inadvertent disclosure when school staff or administrators are required by law to use or to report a student's legal name or gender as it appears in the official record.
- Upon request, amend and re-issue a diploma in a former student's name once



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the former student secures a legal name change, being sure that the fact that the student's name was changed is not indicated in any way on the diploma.

## Non-Discrimination Guidelines for Disclosing Information

All persons, including students, have a right to privacy. This includes the right to keep private one's transgender status or gender non-conforming presentation at school. In considering the creation or development of a local transgender policy, school system administrators may want to review and consider these guidelines:

- Note that while a balance between students' rights to privacy and parents' rights to information in the educational environment is vital, no provision of state or federal law requires schools to affirmatively disclose this sensitive information to parents. Courts have recognized a constitutional right to medical confidentiality concerning one's status as a transsexual person, (See *Powell v. Schriver*, 175 F.3d 107, 111 (2nd Cir. 1999)). Federal courts have concluded that schools should not disclose sensitive student information such as sexual orientation to parents without a legitimate stated interest to do so.
- Treat all student information, medical, or other sensitive personal information, including information relating to transgender students, as confidential in accordance with applicable state, local and federal privacy laws.
- Permit transgender and gender non-conforming students to discuss and express their gender identity openly and to decide when, with whom, and how much private information may be shared.
- Implement training and practices that assist school staff and prevent accidental disclosure of information that may reveal a student's transgender status to others, including parents and other school staff unless the student and/or the student's parent has authorized school staff to make such disclosure or staff is legally required to do so.
  - Consider that while information in official student records must be disclosed upon the request of parents, sensitive information related to gender identity generally need not be disclosed without the student's consent.



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## Non-Discrimination Guidelines for Access

Perhaps the most difficult and sensitive issue school administrations will face is the use of bathrooms and locker rooms. Respect for the privacy and comfort-level of each student can guide the decision-making process. For example, a transgender student may not feel comfortable in a sex-specific bathroom or locker room. Likewise, a cisgender student may not feel comfortable using a bathroom or locker room with a transgender student. Having a gender neutral, single stall bathroom available to those students respects the privacy and comfort-level of each of them. Not every school building has such a bathroom generally available, but it may be that the nurse's office can be open for this purpose.

There are several cases that have found it discriminatory to mandate that a transgender student use a particular bathroom or locker room. See, e.g., *Doe v. Clenchy*, No. 09-201 (Me. Super. Ct. April 11, 2011); *Mathis v. Fountail-Fort Carson School District #8*, No. P20130034X (Colorado Division of Civil Rights. June 17, 2013). But, there are cases that find to the contrary. *Johnston v. University of Pittsburgh*, 2015 WL 1497753 (W.D.Pa., March 31, 2015); *GG v. Glouster County School Board*, Civil No. 4:15cv54L (E.D.Va., Sept. 17, 2015). The law has not yet settled on this issue.

## Non-Discrimination Guidelines for Restrooms

The following suggestions may assist school systems in creating a non-discriminatory and equitable school environment.

- Provide access to the restroom that corresponds to the student's gender identity.
- Designate any available single stall restroom with a locking door as a unisex/gender neutral restroom and as available to all students. If a single stall student restroom is not generally available, designate a private restroom such as one in the health suites for any student who requests increased privacy and safety, for any reason. This accommodation may be offered to all students.
- Permit transgender and gender non-conforming students whose gender identity is not exclusively male or female to use facilities they believe are the most consistent with their safety and gender identity.



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## Discrimination Guidelines for Locker Rooms

Respectful and careful review of all relevant factors and concerns is essential when considering the locker room issue.

- Designate any available single stall restroom with a locking door as a unisex/gender neutral restroom and as available to all students. If a single stall student restroom is not generally available, designate a private restroom such as one in the health suites for any student who requests increased privacy and safety, for any reason. This accommodation may be offered to all students.
- Provide access to the locker room that corresponds to the student's gender identity.
- Provide the option to use a safe and non-stigmatizing private alternative space for any student who is uncomfortable using shared facilities.
- Provide reasonable alternative arrangements for any student who expresses a need or desire for increased privacy. Alternative arrangements should be provided in a way that protects the transgender student's ability to keep his or her transgender status confidential.
- Based on availability and appropriateness to address privacy concerns, such arrangements could include, but are not limited to:
  - Assignment of a student locker in near proximity to the coaches' office or a supportive peer group.
  - Use of a private area within the public area of the locker room facility (e.g. nearby restroom stall with a door or an area separated by a curtain).
  - Use of a nearby private area (e.g. nearby restroom or a health office restroom).
  - A separate changing schedule (either utilizing the locker room before or after the other students).

## Non-Discrimination Guidelines for Physical Education and Athletics

Suggested guidelines for consideration are:

- Include transgender students in sex-segregated athletic activities based on their gender identity.
- Allow athletic participation without medical or legal documentation regarding



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gender.

- Protect the student athlete's privacy rights. Personal information regarding transgender status, medical history, or sex assigned at birth should not be disclosed to teammates, or to staff or students of other schools without the student's consent.
- Follow Maryland Public Secondary Schools Athletic Association Guidelines/COMAR for participation in Interscholastic Athletics. Regulations:
  - Each school system should develop and apply criteria for students to participate on interscholastic athletic teams consistent with their bona fide gender identity. All students who participate in interscholastic athletics must meet eligibility standards in COMAR 13A.06.03.

## Non-Discrimination Guidelines for Single-Sex Classes and Extracurricular Activities

Non-discrimination and equity consideration in this area may address the following issues:

- Any single-sex classes or extracurricular activities must be consistent with Title IX and applicable regulations, including that the decision to offer a single-sex class or activity generally must be substantially related to an important educational objective.
- The USDE interprets Title IX to mean that schools generally must treat students consistent with their gender identity in all aspects of the single-sex classes and extracurricular activities.

## Non-Discrimination Guidelines for Overnight Field Trips

Student comfort is paramount in the decisions around overnight field trips. Maximizing the student's social integration may be achieved by the integration of these guidelines:

- Make arrangements in consultation with the student. If the transgender student's parents or guardians are involved and supportive, they may also be consulted.
- Be sensitive to the need to maintain the student's privacy and not disclose or require disclosure of the student's transgender status to the other students or their parents without the consent of the transgender student and/or the student's parent.



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- Allow students the opportunity to room with others according to their gender identity.
- Make efforts to accommodate any student who desires greater privacy; however, transgender or gender non-conforming students should not be isolated.