

## **TRANSGENDER STUDENT ADVOCACY AND SUPPORT: EVOLVING ETHICS IN A TIME OF DEVOLVING POLICY**

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Like any other students, transgender and gender diverse students need to have equitable educational and education-related facilities. While some issues related to trans and gender diverse students may seem new and challenging, this basic ethical commitment to equity needs to remain foremost in the practices of educators as legal issues continue to develop. Until recently, legal decisions and inclusive policy protections for transgender students appeared to be gaining momentum. At times like the present, when educators are faced with seemingly new needs to be attentive to student diversity, policies and laws providing firm guidance can help keep the goal of educational equity clear. Now that we have seen the executive branch withdraw its protections for trans youth, we are seeing districts renewing their commitment to the principles behind federal protections even in the absence of executive branch guidance. That commitment to equitable education is laudable and shows that the necessity to care for students and teach equitably should not rely on policy alone.

Court decisions, laws, and policies have encouraged educators to understand a transgender identity as, first and foremost, directly correlated to “gender.”

Multiple courts have ruled that transgender people, that is, people whose sex assigned at birth is not the same as their gender identity, are best understood as having gender-based rights to equitable treatment in schools. These rulings indicate that Title IX requires that students in school receiving federal assistance may not “be excluded from participation in, be denied the benefits of, or be subjected to discrimination” on the basis of sex, a category, the rulings indicate, that includes gender identity. Because bias and even school architecture can complicate equitable access to education, court rulings further indicate that Title IX requires equitable treatment for trans students in public school. This equitable treatment includes prevention of bullying and provision of equitable access to restrooms.<sup>1</sup>

These rulings, and the Obama administration’s Office of Civil Rights’ “Dear Colleague” letter,<sup>2</sup> sought to provide more definitive federal protections for trans students, but legal protections still remain a patchwork across states, regions, cities, and districts. When the Fourth Circuit court ruled that Gavin Grimm could use school restrooms that matched his gender identity, a case that was initially supported by the

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<sup>1</sup> See, among others, *Doe v. Brimfield Grade Sch.*, 552 F. Supp. 2d 816, 823 (C.D. Ill. 2008).

<sup>2</sup> U. S. Department of Justice, Civil Rights Division, U. S. Department of Education, Office for Civil Rights, “Dear Colleague Letter on Transgender Students,” May 13, 2016, accessed at <https://www2.ed.gov/about/offices/list/ocr/lgbt.html>

Department of Justice, many thought there would be a definitive national ruling in favor of the extension of Title IX to gender identity. The school district appealed and the Supreme Court has referred the case back to the lower court. It is difficult at this point in time to predict what the outcome will be. The new administration has signaled that Title IX issues are unlikely to be a priority and while there appears to be some disagreement in the current administration, the guidance in the "Dear Colleague" letter, already under an injunction staying their implementation since Aug. 2016, has now been rescinded.

While definitive federal policy seems to be devolving, state, local, and school-based approaches to transgender students' rights, and increasing public and educational support for trans youth may provide a new way to extend protections. The advice teachers need now is how to do right by trans and gender non-conforming students. This requires that schools ensure students safety, privacy, and inclusion. The challenge for teachers and administrators is to build school policy that respects and serves people *without* consistently recognized rights and persistently advocate for them to have those rights.

#### Ethical Schools and Transgender Diversities

We argue that attention to trans-related rights, recognition, and accommodations provide a good opportunity to connect various justifications for equitable education, reminding educators that they need to care and advocate for students. Trans-related issues also provide an occasion to encourage educators to understand

students as complex and embodied learners. Trans and gender diverse students' interactions with curricula, policy, and even school buildings and data systems require a robustly equitable approach to learning. Trans students also share interests with students who face other gender-based inequities, students of color seeking greater representation in curricula and broader respect in schools, and students who need various accommodations in order access their education (including disability-related accessibility and accommodations for expression of religion). The rights of transgender and gender diverse students connect to schools' larger project of working towards an already agreed-upon goal – equity and inclusion for all students. The rest of this paper explains how schools might be restructured in order to be more gender equitable while continuing to honor differences among students.

Education is an endeavor that respects the diversity of students (and teachers, staff, and community as well). It encourages critical analysis of knowledge and social categories, and it respects the creativity and self-determination of all involved. Educational institutions ought to create communities for learning that embrace students' (and staff and community members') distinctiveness and difference. Institutions can start by recognizing that categories like gender are not as simple as once believed. All students, not only those who identify as transgender, work with and against gender norms. Support for creativity *and exploration* is key.

Educators know that different learners need different kinds of support

in order to have an equal chance at learning. Schools, therefore, need to understand and address particular challenges that trans students face in navigating the school day. They face misgendering and misnaming from teachers and students. They are unable to access restrooms without controversy. Most trans students report hearing disparaging comments or experiencing harassment from other students, and even from teachers, often to the point where they no longer want to go to school. Trans students are shouldering the distress of a society still largely unfamiliar with, and intimidated by, the newer visible presence of gender diverse children and the subsequent implications – real or, more often imagined. That this is unacknowledged and unrecognized by most makes their school experiences all the more difficult for trans and gender diverse children. Trans students may face distinctive challenges to their education, but they share a need with all students to be recognized for who they are, to have access to necessary services, and to learn without fear of bias, violence and privacy violations.

While trans-related issues may seem relatively new, the history of trans people advocating for equity, in fact, is long. Their struggle emerged publicly as civil rights movements encouraged a demand for equity and recognized the need for self-determination and the creation of alternative social institutions. From the uprising of trans people against police repression at the Compton's

Cafeteria in 1966 which led to trans-communities creating support services necessary for trans people to flourish, to the uprising of LGBT people at Stonewall in 1969 that began the movements for LGBT rights and led to the organization of services for homeless trans youth, trans people have been at the forefront of understanding a need to change laws and the more immediate need to organize their own social and political institutions. Such activism continues today and transgender advocacy groups like the National Center for Transgender Equality<sup>3</sup> and the Gay, Lesbian, and Straight Education Network can help provide schools with guidance on best practices.

Families of transgender youth, too, are increasingly becoming advocates. Support programs like the Gender Odyssey conference<sup>4</sup> provide spaces for youth and families to learn more about one another and gender diversity. Organizations like Gender Diversity throughout the U. S. also provide help with counseling, medical advice, and family support and are more than willing to help schools strategize for how to best support trans students. Much in the same way that families have helped push for gender equity, racial justice, and accessibility for young people with disabilities, families with trans children can be an additional beneficial resource for schools seeking to become more equitable. Families have also been a driving force behind legal actions when

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<sup>3</sup> National Center for Transgender Equality [www.transequality.org](http://www.transequality.org), Gay, Lesbian, and Straight Education Network [www.glsen.org](http://www.glsen.org)

<sup>4</sup> Gender Odyssey [www.genderodyssey.org](http://www.genderodyssey.org)

their children's schools were uncooperative.

It is crucial to recognize, however, that schools should not rely on parents of trans children to be the sole source of learning for teachers, administrators, and other staff. Just as a school would not task the parent of a child with a difference in ability, culture or faith with providing the comprehensive education needed for the school to meet its obligations for equity and safety, parents of trans children should not be expected to shoulder this entire responsibility. Similar to the work schools have done in response to families with children with autism or ADHD, the steps schools have taken towards equity have been helped by developing constructive relationships with medical and mental health professionals.

Ensuring equitable education for transgender youth who transition into their gender identity also expands educational possibilities for the different ways students live their gender. There are many different ways in which youth do not conform to gender norms. Gender nonconforming and nonbinary youth work against the easy division of male and female. Other young people emphasize their desire to be innovative by identifying as gender creative, gender diverse, or gender nonbinary. Some young people who are agender refuse gender altogether. Gender diverse youth can be helped by schools that teach about gender and gender equity in flexible and expansive ways, providing recognition to their critical work against the restrictions of gender binaries or creative reworkings of those binaries. Age-appropriate conversations with children about equity

in relationship to gender identity and gender expression can be had at every grade level and in a manner that is respectful of the diversity within any student population. Expansive understanding of gender norms helps all students, encouraging cisgender boys and girls, that is, students whose assigned gender at birth matches their gender identity, to pursue their own academic and creative interests without pressure to conform to gender norms and is consistent with decades-long discussions of gender equity in the U.S.

For many trans young people, recognition of their particular need to transition to their gender identity may require collaboration among schools, families, and sometimes medical or mental health professionals, although medical validation is not necessary for every approach to transitioning gender. For those trans students who want to begin a medical transition, educators need to know that professional counselors and doctors will be providing support to that student and that such decisions are made with care and consideration by the student. Puberty delay medication, often referred to as hormone blockers, enable young trans people to stall the onset of secondary sexual characteristics of their birth gender. By delaying the pubertal changes associated with their birth sex, the student, their parents, and providers are often more able to confidently determine any course of action with respect to a medical transition including the more permanent changes that come with any future hormonal or surgical intervention to gain further congruence with their gender identity.

Trans people are a diverse group. Some seek surgical and/or hormonal gender reassignment in order to live fully recognized in their gender identity. Some combine medical interventions with social gender identity innovations to live outside of gender binaries. Because young people are rarely able to access, or may not want, irreversible surgeries that are required in order change federal documents, schools can provide crucial recognition by using students' chosen names and appropriate pronouns. A common error on the part of educators is to assume that medical and legal validation are necessary in order to provide gender identity recognition. This is not the case. Best practices recognized by health care professionals include honoring a student's gender identification and personal identifiers, including names and pronouns and accommodations consistent with that gender identification.

Ensuring equitable education for transgender youth who transition into their gender identity also expands educational possibilities for gender nonconforming, gender nonbinary, gender creative, and other gender diverse youth. Gender diverse youth can be helped by schools that teach about gender and gender equity in flexible and expansive ways, providing recognition to their critical work against gender binaries. Age-appropriate conversations with children about equity in relationship to gender identity and gender expression can be had at every grade level. These conversations can be held in a manner that is respectful of the diversity within any student population.

### **Challenging Prejudice, Emphasizing Care**

A teacher or administrator may feel better able to assess the needs of trans and gender diverse students than the students themselves or those caring for these students. Educators should comprehend that they likely have significantly less understanding of the situation than they need to make such judgments or determinations. As with any form of identity or culture new to a district, educators need to learn more about trans issues before repeating commonplace prejudices. Such prejudices include the presumed inability of students to understand their gender or the supposedly tactical reasons a non-trans boy may want to use girls' rooms. These ideas have been circulating broadly since the so-called bathroom bill in North Carolina. We recommend educators make use of national and local resources to make their own considered responses to creating a caring and supportive educational environment. In some cases, trans students will already be living in their gender identity and not pass notice as trans: few in school may even be aware of their identity. In other situations, students may transition while in school. In such cases, having a plan for maintaining age-appropriate lessons for peers and training for teachers and administrators will be necessary.

It is worth noting that using the term "transition" has the potential to set in motion a discourse that can be helpful, but also problematic. For many teachers seeking to support trans and gender nonconforming students, the idea of a transition is helpful because it opens possibilities for thinking about how a

gender identity that has been previously taken for granted is better understood as open to change and growth. However, the idea of a transition can also be problematic if it fosters expectations of linear progression through pre-determined developmental milestones along a predictable and stable timeline. On the contrary, what the trans and gender non-conforming community knows and is thoroughly prepared to teach others is how to see individuals in transition (and beyond) on their own terms, and as fully self-actualizing persons who are differentially negotiating opportunities and challenges both personally and in their relationships with others. What matters most is that the conditions and timeline for transition are managed by the person who is transitioning, with that person's sense of autonomy and decision-making prioritized over the predictable institutional tendency for schools to lean toward inertia.

In addition to caring and understanding student difference, legal guidance may also be helpful in some areas. We encourage schools, no matter the laws in their area, to enact nondiscrimination policies that include

gender identity but more importantly remain committed to treating all students with respect. School policies set an expectation for an inclusive community. They may help encourage a broader understanding of gender identity-related issues. Without a robust commitment to an inclusive and respectful school community, policies do not function. Nor are they sufficient. Still, they provide students with an indication that the school knows enough about trans issues to think it is worth making that commitment clear. Furthermore, policies and laws give trans students official recourse to complaint if something goes wrong. Currently, 17 states and Washington, D. C.<sup>5</sup> have laws protecting gender identity. Even where there are state level laws in place to protect gender identity in education, coverage varies. Five states<sup>6</sup> and Washington, D. C. extend trans rights in education to private secular schools. Some states have bolstered their general protections for gender identity-related rights to include specific guidance requiring schools to allow trans students to use restrooms and locker rooms appropriate to their gender.<sup>7</sup> Twenty states have laws protecting students against bullying that include

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<sup>5</sup> The states are Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Minnesota, New Jersey, New York, North Carolina, Oregon, Vermont, Washington, and the District of Columbia. <https://www.aclu.org/know-your-rights/transgender-people-and-law>

<sup>6</sup> Colorado, Illinois, Maine, Nevada, and New Jersey. <https://www.aclu.org/know-your-rights/transgender-people-and-law>

<sup>7</sup> California, Colorado, Connecticut, and Massachusetts. <https://www.aclu.org/know-your-rights/transgender-people-and-law>

bullying on the grounds of LGBT identity.<sup>8</sup>

As schools work to be inclusive of trans issues, they also should guard against exacerbating exclusions through tactics that appear to provide accommodation. Gender-inclusive and gender-neutral restrooms are one way that schools have attempted to create safe space for trans and gender creative youth. But if those restrooms are the only restrooms open to trans and gender diverse youth, schools create a new form of segregation, as trans students are still excluded from all other bathrooms. Further, youth who have transitioned need to be recognized as full members of that gender, not recognized as different from cisgender members of that same gender. This is both an ethical issue and a medical one—doctors have now testified in repeated cases that continuing to treat students who have confirmed their gender identity as if they are not “really” that gender puts them in situations where depression and anxiety are likely. In addition, such segregation can force unwanted disclosure for trans youth who might have otherwise been able to maintain their privacy—guaranteed under Family Educational Rights and Privacy Act. Understanding the differences among trans students, and the potentially problematic outcome of attempting one-size-fits-all protections that create more difficulties for some, are key to ensuring their equitable education.

Schools that have included a “support plan” for their trans students, in order to address their unique needs with respect to names, pronouns, privacy, parental support (or lack thereof), and available community resources have found that this is highly beneficial and appreciated by the student. It also has two added benefits. It allows the school time to prepare their staff for any transition-related steps, and it presents an added barrier for the often-feared specter of cisgender male students accessing the girls’ restroom or the locker room as a practical joke or for even more nefarious reasons.

For many schools, the area of greatest distress is not the trans or gender diverse student themselves, but educators, staff and other students feeling ill-equipped to address concerns, questions and resistance from others. This distress manifests primarily in three different ways. The first is the common misunderstanding that gender identity and sexual orientation are related: they are not. This confusion makes it difficult for educators adequately to address questions from other students, especially from younger students. When educators worry that these conversations would be deemed too mature, they neglect to have any conversation, although there are age-appropriate ways to talk about gender with children who may well be aware of differences and eager to understand. Secondly, for some, differences in faith, culture and politics are felt to be in direct

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<sup>8</sup> See “Maps of State Laws and Policies,” accessed at [www.hrc.org/state-maps](http://www.hrc.org/state-maps). The states are Maine, New Hampshire, Vermont, Rhode Island, Massachusetts, Connecticut, New York, Delaware, Maryland, North Carolina, Arkansas, Illinois, Iowa, Minnesota, Colorado, Nevada, California, Oregon, Washington.

conflict with offering support and validation to a trans student. Schools have responsibilities to all their students and cannot trade away care for one group of students because another group does not believe they should be respect. Lastly, as a result of a rapidly growing presence of trans students of all ages, there are few resources available to guide schools through the complex distress and confusion inspired by a barely-understood gender experience of a trans or gender diverse student. We have included a resource list at the end.

Schools that have successfully navigated this terrain have recognized the need to shift the emphasis from a particular student's needs to an understanding of their own need for further education and conversation. A dual approach of incorporating gender differences into the framework of human diversity and discovering age-appropriate language and tools to discuss gender differences, while simultaneously honoring those with cultural, political, and faith differences, has provided these schools with a positive pathway. In these schools, all increase their learning, feel validated, and are respected.

Terms related to gender and gender identity are themselves evolving and changing. We also encourage educators to listen to how students want to be addressed, to learn from students about gender complexity, and to encourage all in the school community to think about gender as a concept that requires more critical education. Teachers know that students come into their own in a wide variety of ways. They learn to enjoy or excel at particular subjects, they understand family and cultural traditions

in their own ways, and often, even cisgender students, rework gender meanings to help express themselves and find their place in the world. Transgender and gender diverse students may seem to be pushing gender beyond the comfort of some, but they are doing so to be able to live in congruence with their innate gender identification.

An optimal learning environment for all students is any school's legal mandate. The pathway to this environment requires a proactive approach, pursuing education whenever possible. When educators, staff, families and students understand each other better, the confidence and relief felt by all makes it evident that educators have the tools they need to honor diversity, provide respect for all, and create inclusive learning environments.

### **Resources**

For help with discrimination cases, contact your local state Human Rights Office or:

American Civil Liberties Association:  
[aclu.org](http://aclu.org)  
Lambda Legal Defense: [lambdalegal.org](http://lambdalegal.org)  
Human Rights Campaign: [hrc.org](http://hrc.org)

For school resources and/or climate studies contact:

Gay, Lesbian, and Straight Educators  
Network: [glsen.org](http://glsen.org)  
National Center for Transgender  
Equality: [transequality.org](http://transequality.org)  
Gender Diversity: [genderdiversity.org](http://genderdiversity.org)