



# MODEL LOCAL EDUCATION AGENCY POLICY ON TRANSGENDER AND NONBINARY STUDENTS

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Model Language and Commentary

**GLSEN**<sup>®</sup>



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## Introduction

Transgender and nonbinary students have been a part of our schools and education system for decades. However, for many educators and administrators, awareness of the unique needs of these students represents new and sometimes confusing issues to consider. Together through this document, GLSEN and NCTE, are here to assist, to ensure that all students have a safe and welcoming educational environment.

This model local education agency (LEA), often named school districts, policy is intended to serve as a resource to LEAs on how best to meet the needs of transgender and nonbinary students. This set of recommendations was developed by examining LEA policies from around the country. These recommendations were also informed by examining federal and state policy frameworks.

While this document provides a starting place to create policies on the treatment of transgender and nonbinary students, the strongest policies are developed in consultation with communities that can best inform local needs and priorities. Convening a task force of internal and external stakeholders is one strategy that can yield this type of important information that will ultimately make schools safer, affirming, and more inclusive for transgender and nonbinary students, particularly those who are also Black, brown, Latinx, Indigenous, and/or people with disabilities, who should have the same access to a quality education as their peers.

**GLSEN** is a national education non-profit organization, leading the movement to create safe and inclusive K-12 schools for all since 1990. We work tirelessly to ensure that all children can have a high quality education where they feel safe and affirmed. We envision a world in which every child learns to respect and accept all people, regardless of sexual orientation, gender identity, and/or gender expression, and in turn is respected and accepted themselves.

The **National Center for Transgender Equality (NCTE)** is a national social justice organization devoted to ending discrimination and violence against transgender people through education and advocacy on national issues of importance to transgender people. By empowering transgender people and our allies to educate and influence policymakers and others, NCTE facilitates a strong and clear voice for transgender equality in our nation's capital and around the country.

## Model LEA School Board Policies

### A. Nondiscrimination Policies

#### POLICY:

#### CONSIDERATIONS UNDER FEDERAL AND STATE LAWS

##### FEDERAL LAW

Title IX is the federal education law that protects students from discrimination based on sex. In June 2020, the Supreme Court ruled (in *Bostock v. Clayton County, Georgia*) that discrimination on the basis of sex “inherently” includes discrimination based on sexual orientation or transgender status. Numerous courts have also held that, under this ruling, transgender students are protected from discrimination under Title IX and the Equal Protection Clause of the U.S. Constitution.

Some, though not all, transgender students may have additional rights under Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act, based on a diagnosis of gender dysphoria or related conditions such as anxiety or depressive disorders. These students may be entitled to Individualized Education Plans (IEPs) that address their gender-related needs.

As explained in guidance from the U.S. Department of Education, the Equal Access Act “requires public secondary schools to treat all student-initiated groups equally, regardless of the religious, political, philosophical, or other subject matters discussed at their meetings. Its protections apply to groups that address issues relating to LGBT students and matters involving sexual orientation and gender identity, just as they apply to religious and other student groups.” Under the Act, schools must treat student groups equally, and may not single out a group such as GSAs (Gay Straight Alliances or Gender and Sexuality Alliances) for limitations not imposed on other student groups.

##### STATE LAW

Many states, territories, and the District of Columbia have laws that explicitly prohibit discrimination in education on the basis of gender identity and expression. In these states, many elements of this model policy may be explicitly incorporated in policies or regulations implementing these state laws. Consistent with these laws, a number of states have developed guidance documents for school districts pertaining to transgender and nonbinary students. Regardless of whether state laws explicitly address gender identity and expression, transgender and nonbinary students are protected under Title IX and state sex discrimination laws and may also be protected under state laws regarding disability discrimination. School districts should adopt explicit nondiscrimination and anti-bullying policies to help ensure acceptance, respect, and safety for all students and compliance with all federal and state laws. The policy language included here regarding bullying, harassment,

and discrimination is not comprehensive, and districts are encouraged to consult GLSEN’s Model District Anti-Bullying and Harassment Policy for more comprehensive recommended policy language.

**IMPLEMENTATION AND NOTES:**

This landmark *Bostock* decision is a powerful tool for changing education environments, both at K-12 schools and in higher education, for the better by removing those barriers that are impeding LGBTQ+ students and educators from being safe and affirmed in schools and college campuses across the country. Historically, federal, state, and local policies have allowed for or even required discrimination against LGBTQ+ students, educators, faculty, and staff, and created environments where they are not safe to learn or safe to work. When students are not safe at school, they are denied an education; and when educators do not feel safe at school, they cannot do their jobs. Learning environments should be places of liberation, where every educator can teach and every student can thrive and reach their full potential, regardless of their sexual orientation, gender identity, race, sex, religion, language, disability, immigration, or economic status.

## B. Privacy and Confidentiality

**POLICY:**

The Family Education Rights Privacy Act (FERPA) is a federal law which applies to all aspects of a student’s identity, including their gender identity and transgender status (20 U.S.C. § 1232g; 34 CFR Part 99). Under FERPA, only those school employees with a “legitimate educational interest,” the student, or their parent or guardian, may have access to a student’s records, including the records of transgender and nonbinary students.

[The local education agency] shall ensure that all personally identifiable and medical information relating to transgender and nonbinary students is kept confidential in accordance with applicable state, local, and federal privacy laws. Staff or educators shall not disclose any information that may reveal a student’s gender identity to others, including parents or guardians and other staff, unless the student has authorized such disclosure, the information is contained in school records requested by a parent or guardian, or there is another compelling need. This disclosure must be discussed with the student, prior to any action.

Prior to disclosing any such information about a transgender or nonbinary student, educators and staff should work with the student to discuss the manner, time, and message of this disclosure. This should include providing the student with any support services they may need to make the disclosure in a safe and supportive environment.

Transgender and nonbinary students have the right to discuss and express their gender identity openly and to decide when, with whom, and how much to share private information. The fact that a student chooses to use a different name, to transition at school, or to disclose their gender identity to staff, educators, or other students does not authorize school staff to disclose a student’s personally identifiable or medical information to anyone.

**IMPLEMENTATION AND NOTES:**

Whether or not information is in a student's official records, courts have held that students have a constitutional right to privacy concerning their sexual orientation, transgender status, or gender identity. The process of coming out and transitioning is highly personal, and thus, disclosure and privacy are important considerations. For example, a student may come out to only one educator, but ask that they not yet change how they are addressed in the classroom (e.g., name or pronouns). Others may come to an administrator and ask for this information to be shared with teachers and peers. In addition, for some students, this may represent a matter of safety and wellbeing at home. Students may not be ready for their parents or guardians to know about their gender identity or expression, or that they are expressing their affirmed gender in school. Before contacting the parent or guardian of a transgender or nonbinary student, school staff should clarify with the student whether to use their gender affirming name and the pronouns that correspond to their gender identity, or whether to use their legal name when corresponding with a parent/guardian. See *Nguon v. Wolf*, 517 F.Supp 2d 1177 (C.D. Cal. 2007) (finding that a student has a constitutional right to privacy with regards to a school disclosing information about that student's identity to their parent or guardian). Therefore, disclosure should be driven by the needs and safety of the transgender or nonbinary student, with an emphasis on privacy.

Administrators should consider creating a private and confidential support plan, in collaboration with the transgender or nonbinary student. This teamwork is essential to building trust and clear expectations of needs for the student. Questions to consider when developing this plan:

- Who is the student out to already? Family, guardians, friends, others?
- Does the student feel safe at school? At home?
- What needs does the student have for support?
- With whom does the student feel most comfortable discussing these matters?
- Does the student want to be out to others in the school?
- How and when would the student like to come out to their peers, teachers, and/or family?

The student support plan should address when and how to share information with family members and others, recognizing that students' situations differ and some students may fear negative consequences from being outed before they are ready.

## C. Media and Public Communications

### **POLICY:**

#### Inter-District Communications (staff, students, and families)

When communicating to the media or community about issues related to gender identity or expression, the school or LEA shall have a single spokesperson to address the issue. Rather than directly commenting on the issue, other LEA and school staff shall direct parents/guardians and the media to the designated spokesperson. Protecting the privacy of all students, including transgender and nonbinary students, must be a top priority for the spokesperson and all staff, and all personally identifiable and medical information shall be kept strictly confidential, in accordance with state and federal privacy laws that include public records laws.

#### Outside District Communications (media)

Schools and districts may receive requests for information about transgender students or policies. These types of inquiries can occur when local media learns about a student transitioning or adoption of a policy regarding transgender and nonbinary students. In such cases, it is important that school and district staff respond appropriately in order to avoid undue and potentially harmful attention to individual students.

### **IMPLEMENTATION AND NOTES:**

Organizations such as GLSEN and NCTE can provide assistance to advocates and school staff dealing with this type of media scrutiny. In general, if the school or LEA chooses to respond to press inquiries regarding how the LEA supports transgender and nonbinary students, a designated spokesperson should provide information and talking points regarding the issue for use with the media. Schools and LEAs should not disclose the identity or personal information of individual students publicly. To ensure the privacy of all students, the school or LEA should avoid raising issues relating to specific students through public hearings or communication to the media or community. Schools and LEAs should take care to never make a statement that causes harm, but allow for students and supportive families to drive what the communications plan, if any, should be.

## D. Names, Parent/Guardian Notification, School Records, and Pronouns

### **POLICY:**

All students have the right to be addressed by a name, pronouns, and other terms that correspond to their gender identity. This foundational respect should not rely on whether a student has access to a legal name change or gender marker change on official documents. Educators, staff, and peers, should always use the pronoun and name with which a student identifies or requests.

Educators, staff, and peers are expected to respect a student's name and pronouns, once they have been made aware of said student's correct information.

Medical information, recognition, or documentation are not required to change a student's gender marker or name in the student database/information system.

When requested by the student and their parent/guardian, a transgender or nonbinary student's name should be changed in the Student Database/Information System to reflect their affirmed gender.

If a student has not disclosed their gender identity to a parent/guardian, and as a result the database/information system information cannot be changed, their affirmed name shall be noted as a "preferred name" in the system. This affirmed name should be used by staff and peers, according to the transgender or nonbinary student's wishes. Attendance rosters and ID cards should reflect the student's wishes with regards to name and/or gender marker/pronouns, regardless of the database/information system. The legal name should be used only where specifically required. Districts and schools should determine which uses require the legal name, including whether it is required for specific testing or reporting purposes.

Students may, upon request, have a diploma and course records reissued with a name change after graduation.

A student's gender should not be listed on school ID cards, permission forms, program application forms, or other forms, publications, or documents except where necessary due to state or federal law, regulation, or other requirements.

## **IMPLEMENTATION AND NOTES:**

### CONSIDERATIONS FOR NAMES

Misgendering (referring to a transgender or nonbinary person using a word, especially a pronoun, that does not correctly reflect their gender identity) and "deadnaming" (using a student's prior name that does not reflect their identity) in school is a major fear and concern for transgender and nonbinary students. Having a policy that clearly affirms a student's right to use the name and pronouns that are consistent with their gender identity is essential for the health and safety of the student. While mistakes happen, it is important for staff, faculty, and peers to make every effort to correct mistakes, ensure they are not repeated, and address any intentional misuse of a student's name or pronouns.

The process and cost by which a student changes their legal name and the gender on official documents marker varies by state. Some states have fees and processes which make it difficult, if not impossible, to change these documents. Thus, requiring such documentation creates an unnecessary and prohibitive barrier for transgender and nonbinary students. Schools and LEAs should make affirming changes to names and gender markers when requested, regardless of documentation.

### CONSIDERATIONS FOR PARENT/GUARDIAN NOTIFICATION

Some transgender and nonbinary students may not yet be out to their parents or guardians. As previously stated, it is essential to have open communication and plans established with the student to go over potential circumstances. For instance, mail may be sent home with a student's prior and/or legal name, which may not be their affirmed name. If a student is not yet out to their parent(s)/guardian(s), using their prior name in



correspondence may be the desirable course of action, although they use a different name amongst peers and educators in school. Educators and staff should work closely with the student to determine what changes are necessary, and where, to ensure their safety and well being.

#### CONSIDERATIONS FOR SCHOOL RECORDS

In some circumstances, school administrators may be specifically required by law to record a student's name or gender as it appears on documents such as a birth certificate. In those instances, school staff and administrators should record this information in a separate, confidential file to avoid the inadvertent disclosure of the information.

All records that are not specifically required by law to match government-issued documents should be updated when requested by the student. Where there is no state law governing specific types of records, schools should work alongside the student and parent/guardian to ensure documentation is correct and affirming.

School administrators should also assess which records, forms, or documents are and are not required to list gender, and avoid listing gender in cases where it is not needed. For example, some state laws require gender be listed on student transcripts, while others do not. Commercial vendors of student information systems, career and college readiness tools, or other software systems may also require gender to be listed on a few key forms. Confidential and voluntary questions about gender and other demographics may be critical for student surveys, such as school climate surveys. Other forms and documents, such as student ID cards, permission or consent forms (such as for field trips, counseling, medication, or release of records), free or reduced lunch application forms, application or wait list forms for various school programs, medical or counseling consent forms, typically need not and should not list a student's gender.

#### CONSIDERATIONS FOR PRONOUNS

Pronouns should never be assumed for any student. Educators and staff should ask all students what pronouns they use, and have a place to document that information in class rosters, databases, etc.

Educators and administrators should be aware of gendered language utilized in schools. Phrases like "ladies and gentlemen," "boys and girls," or circumstances where classes are divided by binary genders are all places that can cause unnecessary stress and anxiety for transgender and nonbinary students. Consider other ways to address or group students including (but not limited to):

- Everyone, folks, friends, or colleagues to address groups of students.
- Grouping students based on their birthdate, their favorite colors, or random numbering, rather than by binary genders.

## E. School Facilities

### **POLICY:**

With respect to all restrooms, locker rooms, or changing facilities, students shall have access to facilities that correspond to their gender identity. Schools may maintain separate restrooms, locker rooms or changing facilities for male and female students, provided that they allow all students equal access to facilities that are consistent with their gender identity. Transgender and nonbinary students should determine which facilities they feel safest and most comfortable using.

Any student who is uncomfortable using a shared gender-segregated facility, regardless of the reason, shall, upon the student's request, be provided with a safe and non-stigmatizing alternative. This may include, for example, addition of a privacy partition or curtain, provision to use a nearby private restroom or office, or a separate changing schedule. However, such alternatives shall only be provided to a student upon that student's request. Requiring a transgender or nonbinary student to use a separate space against their wishes threatens to stigmatize the student and disclose their transgender status to others. Under no circumstances may students be required to use gender segregated facilities that are inconsistent with their gender identity.

Schools shall designate any existing facilities that are designed to be used by only one person at a time as accessible to all students regardless of gender. However, under no circumstances shall a student be required to use a single-user facility because they are transgender or nonbinary. Schools are encouraged to assess ways to increase privacy for all students in existing facilities, and to incorporate universal-design approaches for all-gender facilities with enhanced privacy in new construction or renovation.

### **IMPLEMENTATION AND NOTES:**

#### CONSIDERATIONS FOR RESTROOMS, LOCKER ROOMS, OR CHANGING FACILITIES

The model policy ensures equal access to all school facilities by making clear that all students have the right to be treated according to their gender identity. At the same time, the model policy also acknowledges that some students, for a variety of reasons, may feel uncomfortable using shared facilities. This may include transgender students, students with disabilities or physical differences, students who are reluctant to use facilities alongside a transgender student, or other students. The model policy provides for accommodating students upon request by providing a safe and non-stigmatizing alternative.

The model policy also encourages schools to consider universal-design approaches to provide all-gender facilities with increased privacy in new construction or renovations. These approaches, which may include an open restroom plan with fully enclosed stalls, have been recognized for their potential to improve flow, maximize privacy and use of space, and improve accessibility for people with disabilities, transgender and nonbinary individuals, and others.

## F. Physical Education, Sports, and Extracurricular Activities

### **POLICY:**

Students shall be permitted to participate in all physical education, athletics, and other extracurricular activities according to their gender identity. Participation shall not be conditioned by requiring legal or medical documentation.

Participation in interscholastic sports is governed by the [State Student Athletic Association]. If the Association has policies regarding transgender and nonbinary athletic participation, the school will implement and utilize those policies accordingly.

[If there is no state athletic association policy, see GLSEN’s recommendations for athletic policies.]

For overnight school trips: Students shall be allowed use of an overnight facility that corresponds with their gender identity. Transgender and nonbinary students will be consulted in the planning process, to address any potential concerns and needs for privacy. If applicable, a student’s parent/guardian should also be consulted, unless there are privacy concerns in doing so.

Under no circumstances should a transgender or nonbinary student be denied the opportunity to participate in any overnight trips or other opportunities based on overnight accommodations. No student should be required to be housed separately or in a manner that does not reflect their gender during any school sponsored trip or event. The school shall make all efforts to accommodate any student who desires greater privacy in overnight trips.

### **IMPLEMENTATION AND NOTES:**

Generally, athletics participation at the interscholastic level is governed by state athletic associations. In states where there is no state-wide policy, schools and LEAs should reference [GLSEN’s athletic-specific guidance document](#).

Overnight trips can be awkward and difficult for many youth, not just transgender and nonbinary youth. Schools and LEAs should be prepared to offer reasonable accommodations for all youth with privacy concerns. Educators and/or staff should have open conversations with youth about overnight accommodations well in advance of the trip, and provide all students with the opportunity to make reasonable requests. Preparation should include upfront communication about rooming, facilities, and expectations for the event.

## G. Dress Code

### **POLICY:**

Schools may enforce dress codes, but any dress code must be gender-neutral. Students must have the right to dress in accordance with their gender identity, within the constraints of the dress codes adopted by the school. School staff must not enforce a school's dress code more strictly against any group of students, including transgender and gender-nonconforming students.

### **IMPLEMENTATION AND NOTES:**

LEAs are more often adopting dress codes that do not have separate rules based on gender. Under these policies, all students have access to the same clothing options regardless of gender, and students cannot be disciplined for wearing clothes associated with a particular gender if those clothes otherwise comply with the dress codes. For example, a school's dress code might say, "Skirts or shorts may not end more than two inches above the knee" rather than "Girls may not wear skirts that end more than two inches above the knee." This approach minimizes the risk of liability under the First Amendment and laws prohibiting discrimination based on actual or perceived race, color, national origin, sex, disability, sexual orientation, gender identity, class, or religion.

## H. Training and Professional Development

### **POLICY:**

As an institution built on the foundation of knowledge and education, [school/LEA] is dedicated to ensuring all educators, staff, and administrators are prepared with the information necessary to create a safe, welcoming, and inclusive learning environment. To foster this environment of learning and inclusively, all staff and educators will participate in annual professional development and training specific to the needs of transgender and nonbinary students and colleagues. The material covered in this training shall include, but not be limited to:

- Terms, definitions, concepts, and understandings relevant to gender identity and gender expression in youth;
- Using appropriate names, pronouns, and other terms for students;
- Strategies for communication with students and parents/guardians about issues related to gender identity and gender expression;
- Classroom management practices, curriculum, and resources that educators can integrate into their classrooms to help build a more gender-inclusive environment for all students;
- Current policies related to gender identity, gender expression, privacy, and bullying prevention in the school/district;
- Provide a space to listen, provide feedback, and help address any questions or concerns staff and educators may have related to transgender and nonbinary student inclusion.

This professional development and training will be held annually, to ensure that newly hired staff and educators are equally informed and any changes are clearly communicated in a timely manner. If applicable, this training may coincide with other previously scheduled training, onboarding, or professional development days, so long as the relevant information is conveyed.

### **IMPLEMENTATION AND NOTES:**

In order to ensure this policy is implemented and utilized correctly, it is critical for schools and LEAs to provide annual mandatory training and professional development on the material. Schools and agencies may consider bringing in an outside facilitator to convey the information. Ideally, schools and/or agencies should hire a facilitator with lived experience, such as a transgender or nonbinary educator, young person, or health expert.

Training and professional development concerning transgender or nonbinary students should not wait until a student comes out in school. Schools and LEAs should be proactive in providing this information, rather than react when a student comes out. This proactive approach will help LEAs and schools avoid missteps, mistakes, and potentially emotionally, physically, or even legally damaging circumstances for everyone involved.

## I. Notify and Engage K-12 Learning Communities on Policies to Support Transgender and Nonbinary Students

### **POLICY:**

Students, parents/guardians, and families will be notified at least annually of nondiscrimination policies, including each student's right to be treated in accordance with their gender identity.

- Schools shall include this information in student handbooks, back-to-school messages, and other appropriate materials.
- Schools shall publish their policies on their websites.

### **IMPLEMENTATION AND NOTES:**

All students and their families should be aware of students' rights and LEA policies and commitment to create supportive learning communities for all students, including transgender and nonbinary students. Schools should not wait for questions or issues to arise, but should proactively inform students and families.

## Terms and Definitions

Transgender and nonbinary students may use different terms to describe their lives and experiences of gender. Terminology and language differ and evolve based on region, language, race or ethnicity, age, culture, and many other factors. Some examples of terms used by some youth include: trans, trans girl, trans boy, nonbinary, genderqueer, gender fluid, demi girl, demi boy, Two Spirit (amongst Native American, American Indian/Alaska Native, First Nation, or Indigenous communities only), and many more. Some trans youth prefer simply to be referred to as boys or girls except when their trans status is specifically relevant. These terms often mean different things or refer to different experiences of gender. Staff and educators should reflect and use the terms that students use to describe themselves, and avoid terms that make these students uncomfortable.

These definitions are provided not for the purpose of imposing labels, but rather to assist in understanding this policy and the obligations of school and agency personnel. Students may or may not use these terms to describe themselves or their experiences.

**GENDER IDENTITY:** A person’s deeply held knowledge of their own gender, which can include being a man, woman, another gender, or no gender. Gender identity is an innate part of a person’s identity. One’s gender identity may or may not align with society’s expectations with the sex they were assigned at birth (male, female, or intersex).

**GENDER EXPRESSION:** Expression of gender, whether through hair styles, makeup, or personal fashion, changes over the course of a person’s lifetime.

**TRANSGENDER/TRANS:** An adjective describing a person whose gender identity differs from the sex they were assigned at birth. A trans woman is a woman whose sex was assigned male when she was born. A trans man is a man whose sex was assigned female when he was born. Some transgender people are not male or female, and may use terms like nonbinary to describe their gender (see below).

**GENDER NONCONFORMING:** A term sometimes used to describe people whose gender expression differs from social expectations, such as “feminine boys,” “masculine girls,” and people who are perceived as androgynous in some way. Being gender nonconforming is distinct from being transgender, though some trans people may consider themselves to be gender nonconforming. For example, a cisgender woman who has short hair and likes sports might consider herself gender nonconforming, but may not identify as transgender.

**NONBINARY:** A term used to refer to people whose gender identity is not exclusively male or female, including those who identify with a different gender, a combination of genders, or no gender. Nonbinary may be considered a subset of transgender or a distinct identity. Other similar or more specific terms may include genderqueer, gender fluid, agender, or Two-Spirit (for Native American students).

**CISGENDER:** An adjective describing a person whose gender identity corresponds with the gender society typically associates with the sex they were assigned at birth. The majority of people are cisgender, while a minority are transgender. For example, a cisgender woman was assigned female at birth and identifies as female her gender as a woman.

**SEXUAL ORIENTATION:** A person’s romantic and/or sexual attraction to other people. This includes being straight, gay, bisexual, queer, asexual, or many other terms used to describe sexual orientation. This is different and distinct from gender identity. Transgender and nonbinary people may be straight, gay, lesbian, asexual, or any other sexual orientation.

**TRANSITION:** The process in which a person begins to live according to their gender identity. Transition is a process that is different for everyone, and it may or may not involve specific medical treatments or changes to official documents. There is no one step or set of steps that an individual must undergo in order to have their gender identity affirmed and respected.

**QTBPOC:** This is an acronym for Queer/Trans, Black, Indigenous, and People of Color.

For additional information and resources on this model policy contact GLSEN’s Public Policy Office at [policy@glSEN.org](mailto:policy@glSEN.org) and the National Center for Transgender Equality at [ncte@transequality.org](mailto:ncte@transequality.org).