



# Fact Sheet on U.S. Department of Education Policy Letter on Transgender Students

## **WHAT THE POLICY LETTER DOES**

The policy letter explains how schools are required to treat transgender students under Title IX, the federal law prohibiting sex discrimination in education. It lays out the principles that the Department of Education will follow when it enforces Title IX, which should be given great weight by courts in interpreting the law.

Under this policy, schools are required to treat transgender students according to their gender identity, including by making sure that transgender students have access to restrooms and locker rooms that match their gender identity, using the right names and pronouns for transgender students, and letting them dress in accordance with their gender.

## **SCHOOLS COVERED BY THE POLICY**

The guidance applies to all K-12 schools, preschools, colleges and universities that get federal funding. A school receives federal funding if it gets any federal grants, contracts or loans, or if any of its students get financial aid from the federal government. That includes every public school across the country—including public charter schools—and most private colleges.

## **RESTROOMS AND LOCKER ROOMS**

The guidance makes clear that students have a right to use the restrooms and locker rooms that match their gender identity. Schools can't force a transgender student to use facilities that don't match their gender identity or segregate them into separate facilities, like a single-user restroom or an isolated area of locker room. Transgender and non-transgender students who want additional privacy in a restroom or locker room for any reason can ask their school an alternative. For example, a school can let a student who requests it use a single-user restroom or add curtains or stalls in locker rooms to give everyone more private options.

## **NAMES, PRONOUNS, AND STUDENT RECORDS**

Students have the right to be addressed by the names and pronouns that they use. That's true even if they haven't legally changed their name or gender. If teachers and school officials refuse to use the right name and pronouns, they may be breaking the law. Schools also must take reasonable steps to protect transgender students' privacy, including regarding their birth name. For example, the Department of Education points to state and local policies that allow students to list a chosen name other than their legal name in school records and use this name for most school purposes, while keeping a legal name the student does not use in a segregated, confidential file.



## **DRESS CODES**

Schools can require students to follow a dress code. However, students have the right to dress in a way that matches their gender identity. So, for example, if a transgender girl wears a dress to school, and the school code permits other girls to wear dresses just like hers, the school can't claim that she's not following the dress code just because they believe she should be wearing boys' clothes. In addition, the Department of Education's letter is clear that a student's appearance should not have to "conform to stereotypical notions of masculinity or femininity."

It is also important to understand that a school also can't enforce the dress code more strictly against a transgender or gender-nonconforming student than they do against other students. For example, if the school dress code officially doesn't allow students to wear bracelets, but girls wear bracelets to school all the time without getting in trouble, a school can't single out a transgender girl who comes to school wearing a bracelet and discipline her but not other girls.

## **RESPECTING STUDENTS' GENDER IDENTITIES**

The Department of Education's policy recognizes that students should be treated according to their gender identity. Schools should not require transgender students to change the gender marker on IDs or show evidence of medical treatment in order to be treated respectfully.

## **NON-BINARY OR GENDERQUEER STUDENTS**

Title IX protects not only transgender boys and girls, but also students whose genders aren't entirely male or female, sometimes called non-binary or genderqueer students. While the Department of Education guidance does not specifically state how it applies to these students, other federal, state, and local policies recognize that these student should determine which locker rooms and restrooms, pronouns, and dress code standards are most appropriate for them in accordance with their gender identity.

## **CONFIDENTIALITY OF PERSONAL INFORMATION**

Students' right to privacy about their personal information is protected by federal law. Revealing a student's transgender status, birth name, sex assigned at birth, or medical history to classmates, parents, teachers and others may violate the federal educational privacy law, known as FERPA. While it's not always possible to prevent other people from finding out about a student's transgender status, schools must make every effort to keep that information private unless the student has given them permission to share it. Transgender students have a right to decide who finds out about their transgender status, unless there is a legitimate educational reason for sharing the information. This reason cannot simply be based on others' potential discomfort. Even if a student discloses information about their transgender status to some people or in some settings, this does not authorize the school to disclose it to others.



While many transgender students have the support of their families, some do not have supportive families, and inadvertent disclosures could even put the student in danger. Parents have a right to request information in a student's official school records. Absent such a request, the Department of Education provides examples of state and local policies that call for staff to work together with transgender students on a case-by-case basis to determine how the school should communicate with parents, teachers and peers, and how much information the student is comfortable sharing with those people.

### **STUDENT HEALTH PLANS**

The policy letter does not discuss insurance coverage offered by schools, colleges, or universities. However, Affordable Care Act prohibits discrimination based on transgender status in many student health plans. This section prohibits most insurance companies from discriminating against transgender students—including by having policies that exclude transition-related care from coverage.

### **ANTI-TRANS STATE LAWS**

Title IX overrides state laws that conflict with it. That means that laws like North Carolina's HB 2, which tries to force trans students into restrooms that don't match their gender, are not enforceable. Schools that refuse to follow Title IX can face serious consequences from the federal government, even if they are relying on a contrary state law. HB 2 is currently being challenged in court, including in a lawsuit by the Department of Justice.

### **ENFORCING TRANSGENDER STUDENTS' RIGHTS**

If schools don't follow the Title IX requirements in this policy, the Department of Education can enforce it in several ways. The Department's Office for Civil Rights, the office that is responsible for making sure that schools follow nondiscrimination requirements, investigates complaints made by students and parents. The Department of Education can also sue schools that discriminate against transgender students and seek to deny them federal funding.

If your school is not following the Department of Education's policy, make sure that your principal or school district staff are aware of it, and explain why it's important that they follow it. If your school still refuses to follow what the Department of Education says, or does something else that discriminates against a trans or gender non-conforming student, you can file a complaint with the Department of Education's Office of Civil Rights. To learn how you can file a complaint, check out NCTE's guide, [Transgender and Gender Non-Conforming Students: Your Rights at School](#). You don't need a lawyer to file a complaint, but you might find it useful to reach out to an LGBT-friendly lawyer for help.

### **Does the guidance make exceptions for any schools?**

Some religious schools can ask for an exemption under Title IX if there is something the law requires them to do something that conflicts with their religious beliefs. If they get an



exemption, it is only for the specific action that conflicts with their religious beliefs—not for other aspects of Title IX. Also, if a school gets an exemption under Title IX, that doesn't mean that they have an exemption under any other federal law that may protect transgender students, including laws protecting student privacy and prohibiting discrimination in health plans, employment, or housing.

Single-sex schools also get a limited exception. A small number of elementary and secondary schools and private undergraduate colleges may choose who to admit, and they are allowed but not required to admit students according to their gender identity. Once a person is admitted, though, single-sex schools are not allowed to discriminate against them, no matter what gender they identify with.