

**GUIDANCE
FOR EDUCATORS
WORKING WITH
TRANSGENDER AND
GENDER NONCONFORMING
STUDENTS**



BACKGROUND

In 2008, the Colorado General Assembly passed SB08-200 which barred discrimination based on sexual orientation, including transgender status. In November 2009, the Colorado Civil Rights Commission adopted rules to implement SB08-200. Though the statute and rules set out legal requirements applicable to schools, there is little practical guidance available to schools. Given the statistical likelihood that each school district will have transgender employees or students, it is essential that school boards, school administrators, and educators understand the requirements of the law. The Colorado Association of School Boards (CASB), the Colorado Association of School Executives (CASE), the Colorado Education Association (CEA), and One Colorado collaborated to create this document to provide practical guidance and resources to school districts, educators, and school communities working with and meeting the needs of transgender students.

LEGAL PROVISIONS

Through SB08-200, Colorado expanded the classes of individuals that public entities, including schools, must ensure are free from discrimination. Colorado law now requires that all programs and activities be free from discrimination based on sexual orientation. SB08-200 specifically defined sexual orientation as “[a] person’s orientation towards heterosexuality, homosexuality, bisexuality, transgender status or another person’s perception thereof.”¹ The Civil Rights Commission rules (also Division of Regulatory Agencies “DORA” Rules) further define the scope of the statute as affording protections to individuals based on the following:

- Transgender means those individuals “having a gender identity or gender expression that differs from societal expectations based on gender assigned at birth.”²
- Gender identity means an individual’s “innate sense of one’s own gender,”³ a deeply held sense or psychological knowledge of one’s own gender, regardless of the gender assigned at birth.
- Gender expression means “external appearance, characteristics, or behaviors typically associated with a specific gender.”⁴ Gender expression is the way we communicate our gender identity to others. Gender nonconforming describes people whose gender expression differs from stereotypical expectations, such as “feminine” boys, “masculine” girls, and those who are perceived as androgynous.

¹C.R.S. § 24-34-301(7).

²3 CCR 708-1, Rule 81.2(B).

³3 CCR 708-1, Rule 81.2(C).

⁴3 CCR 708-1, Rule 81.2(D).

ADDRESSING THE NEEDS OF STUDENTS IN PUBLIC SCHOOLS

Policies on Nondiscrimination, Bullying, and Harassment

School districts are required under federal and state law to institute board policies that protect employees, the public, and students from discrimination. A recent survey by One Colorado showed school boards have some catching up to do to ensure adequate nondiscrimination policies are in place across the state, specifically ensuring that nondiscrimination policies address the school district’s protection of individuals on the basis of sexual orientation. In March 2012, CASB issued a revised set of nondiscrimination policies, including CASB sample policy AC and its implementing regulation and exhibits, that satisfy the myriad requirements of federal and state law. Additional protections are established through required board policies regarding bullying and harassment (required by HB11-1254) which clearly apply to prohibited conduct directed at students on the basis of the student’s actual or perceived sexual orientation.⁵ Accordingly, complaints of discrimination, bullying, or harassment based on a person’s actual or perceived sexual orientation, including “transgender status,” are to be handled in the same manner as other complaints of discrimination, bullying, or harassment.



Process

All situations with transgender or gender nonconforming students should be handled on a case-by-case basis. To create a safe and supportive environment for the student, the school should hold a meeting with the student (and parents if they are involved in the process) to develop a plan that addresses their desires and concerns. In developing a plan, the school should consider the age of the student, the student’s preferences, any relevant medical needs, the age and nature of other students, the student’s maturity level, and behavior or disciplinary history. The school should train administrators and educators that interact directly with this student on the school’s plan and any relevant legal information regarding the health, well-being, and safety of the student.

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⁵OneColorado Scan of School District Policies (<http://www.one-colorado.org/news/one-colorado-education-fund-releases-scan-of-school-district-policies/>)

The goal for school districts is to ensure the safety, comfort, and healthy development of all students, including transgender or gender nonconforming students. As with any other civil rights protection, the goal is to afford student access to the school district's programs, facilitate students' social integration, and minimize stigmatization. There is no requirement in law for a student to take any medical or legal action in order to assert protections as a transgender individual or on the basis of sexual orientation.

Each school district is required by federal law to have a compliance coordinator who oversees the district's compliance with nondiscrimination laws and policies and receives related complaints or concerns.⁶ It is also helpful for each school to have a contact person who has received education and training in identifying and responding appropriately to student concerns.

Restrooms and Locker Rooms

DORA Rule 81.11 provides:

- (A) Nothing in this Act prohibits segregation of facilities on the basis of gender.
- (B) All covered entities shall allow individuals the use of gender-segregated facilities that are consistent with their gender identity. Gender-segregated facilities include, but are not limited to restrooms, locker rooms, dressing rooms, and dormitories.
- (C) In gender-segregated facilities where undressing in the presence of others occurs, covered entities shall make reasonable accommodations to allow access consistent with an individual's gender identity.



As the DORA rules provide, preferred practice is to allow students access to the restroom or locker room that corresponds to their gender identity consistently asserted at school. In making decisions regarding an individual student's access to restrooms and locker rooms, schools should consider at least the following factors: the student's age, the student's preferences (including the student's need or desire for increased privacy regardless of the underlying reason), any relevant medical needs, the location of facilities in proximity to the student's classes and schedule, the design and layout of the facilities, the age and nature of the other students, the student's maturity level, and behavior or disciplinary

⁶ See 34 CFR § 106.8.

history. It is essential for school districts to ensure whatever arrangements are made for a student do not improperly limit the student's access to instruction or opportunity to participate in physical education classes and sports.

Use of single user restrooms or locker rooms, including but not limited to staff facilities, may be appropriate when all factors are considered, but should not be the assumed answer for students simply because they are transgender or gender nonconforming. Other alternative arrangements may include using a nearby restroom stall with a door, an area separated by a curtain, a P.E. instructor's office in the locker room, a nearby health office restroom, or providing a student a separate changing schedule. Any alternative arrangement should be provided in a way that protects the student's ability to keep his or her transgender status confidential.

Privacy at School

All students have a right to privacy, including the right to maintain privacy about one's transgender status or gender nonconforming presentation at school. Under the Family Education Rights Privacy Act (FERPA), only those school employees with a legitimate educational need should have access to a student's records or the information contained within those records.⁷ Disclosing confidential student information to other employees, students, parents, or other third parties may violate privacy laws, including but not limited to FERPA. Transgender and gender nonconforming students have the ability, as do all students, to discuss and express their gender identity and expression openly and decide when, with whom, and how much of their private information to share with others.

Official Records

The District is required to maintain a mandatory permanent student record, or "official record," that includes a student's legal name and legal gender. However, to the extent that schools are not legally required to use a student's legal name and gender on other school records or documents, schools are encouraged to use the name and gender preferred by the student. School districts should follow local school board policy in addressing requests to alter student records. If a district would revise a current or former student's records to reflect a change of name or marital status, then districts should



⁷ 34 CFR § 99.31.

process a student's request for a name change or gender status change in the same manner. It is not unlawful for a district to require all record revision requests to be supported by documentation of a court order or amendment of state or federally-issued identification. In situations where school staff or administrators are required by law to use or to report a transgender student's legal name or gender, such as for purposes of standardized testing, school staff and administrators should confer with students and, if a concern persists about disclosure of confidential information, should confer with legal counsel.

Working with Families

When contacting parents or guardians of a transgender or gender nonconforming student, school personnel should use the student's legal name and the pronoun corresponding to the student's gender assigned at birth unless the student, parents, and/or guardian has indicated otherwise. When working with the family, it's important to use the following age-appropriate guidance to maintain confidentiality and privacy.

Elementary School: Generally, the parents or guardian will inform the school of their transgender or gender nonconforming child. If school staff believe that a gender identity or expression issue is presenting itself and creating difficulty for the child at school, it is appropriate to approach the parents regarding this issue. Together, the family and the school can identify appropriate steps to support the student.

Secondary School: Generally, the student's parents will be aware of their transgender or gender nonconforming student. In some cases, notifying parents of the student carries risk, such as being kicked out of the home or experiencing rejection from their family. Prior to notification of the family, school staff should work closely with the student and consider the health, well-being, and safety of the student.

Names and Pronouns

Schools should not assume a student's preferred name or pronoun; rather schools should seek out guidance from the student and use the requested names and pronouns consistently. A court-ordered name or gender change is not required, and the student need not change his or her official records. The Colorado Civil Rights Commission specifically identifies prohibited conduct as "deliberately misusing an individual's preferred name, form of address, or gender-related pronouns," such as intentionally referring to the student by a name or pronoun that does not correspond to the student's gender identity.⁸



Dress Code

Schools may enforce dress codes pursuant to District policy. However, students have the right to dress in accordance with their gender identity consistently asserted at school, within the constraints of the dress codes adopted by the school. School staff shall not enforce a school's dress code more strictly against transgender or gender nonconforming students than other students.

CONCLUSION

This document is meant to provide guidance and resources to school districts, educators, and school communities working with and meeting the needs of transgender and gender nonconforming students. While not all situations are addressed in the document, it is best to work collaboratively with the student and the family to meet the needs of the student.

If you have additional questions about meeting this needs of transgender or gender nonconforming students, please contact:

CEA: Amie Baca and Linda Barker, bullyfree@coloradoea.org

CASB: Kathleen Sullivan, ksullivan@casb.org

CASE: Bruce Caughey, BCaughey@co-case.org

ADDITIONAL RESOURCES

Boulder Valley School District, Policy Exhibit AC-E3, Guidelines Regarding the Support of Students who are Transgender and Gender Nonconforming

GLSEN (Gay, Lesbian and Straight Education Network): Model District Policy on Transgender and Gender Nonconforming Students

Office for Civil Rights, Sexual Harassment Guidance, available at www.ed.gov/about/offices/list/ocr/docs/shguide.html

Office for Civil Rights, Dear Colleague letter (from Russlyn Ali, Assistant Secretary for Civil Rights) about Bullying, available at www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf

⁸ 3 CCR 708-1, Rule 81.8(A)(4).

Produced By

