



## Supporting Transgender Students in Schools

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*This presentation is meant to give you some basic information, and the materials are not intended to be relied upon as legal advice. If you have any questions, please contact your attorney or Pemberton Law.*

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## Providing a Safe and Supportive Setting

- Every student deserves to learn in a safe and supportive setting.
- Creating school environments that respect and affirm gender diversity.
  - A safe and supportive environment benefits ALL students.



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## Basic Concepts of Gender



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## Gender Basics

- Gender and Gender Expression
  - Gender is comprised of a person's physical and genetic traits, their own sense of gender identity and their gender expression
    - Gender expression is the way in which a person expresses their gender identity, typically through their appearance, dress, and behavior.
- Gender Identity vs. Sexual Orientation
  - Sexual orientation describes a person's sexual or romantic attraction, while gender identity refers to someone's own personal sense of being male, female, both or neither.



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## Definitions

- Transgender – an umbrella term for people whose gender identity, gender expression or behavior does not conform to that typically associated with the sex to which they were assigned at birth.
- Gender identity – an individual's innate sense of one's own gender; a deeply held sense of psychological knowledge of one's own gender, regardless of the gender assigned at birth.



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## Definitions Continued

- Gender nonconforming – people whose gender expression differs from stereotypical expectation.
- Sexual orientation – refers to the sex of those to whom one is sexually and romantically attracted.



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## Legal Landscape



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### Executive Order 13988

"[A]ll students should be guaranteed an educational environment free from discrimination on the basis of sex, including discrimination in the form of sexual harassment, which encompasses sexual violence, and including discrimination on the basis of sexual orientation or gender identity"

*Executive Order 13988, "Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation"*



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### Title IX of the Educational Amendments of 1972

Title IX of the Education Amendments of 1972 is a federal civil rights law that prohibits discrimination on the basis of sex in federally funded education programs and activities.

The Executive Order issued by the Biden administration expands prohibited forms of sex discrimination under Title IX and Title VII to include discrimination **on the basis of gender identity or sexual orientation.**



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## Title IX

Title IX **REQUIRES** schools "to provide transgender students equal access to educational programs and activities even in circumstances in which other students, parents, or community members raise objections or concerns."

*Dear Colleague Letter on Transgender Student, U.S. Department of Justice and U.S. Department of Education, published May 13, 2016*



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## N.H. v. Anoka-Hennepin School District

- The Minnesota Court of Appeals ruled that it's a violation of the state's constitution and the Minnesota Human Rights Act for school districts to "segregate transgender students from their peers in locker room facilities."
  - Student, N.H. was forced to use separate locker room facilities which lead to harassment, bullying, and threats.
  - Student was awarded \$300,000 settlement



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## Minnesota Human Rights Act

- Prohibits discrimination and harassment in education based on gender expression, actual or perceived gender identity, and actual or perceived sexual orientation.
- Under the Minnesota Human Rights Act, schools must allow transgender and gender-nonconforming students to participate fully in all school activities.



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## Safe and Supportive Minnesota Schools Act

- Defines student bullying and prohibited conduct
  - Including bullying and harassment of students based on gender expression, actual or perceived gender identity and actual or perceived sexual orientation
- Requires implementation of a district-wide policy to prevent and prohibit student bullying
- Publication and maintenance of policy
- Requires training for students, school personnel, and volunteers



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## Ensuring Safe & Supportive Environment

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## Reviewing Policies

- Review policies and practices to ensure they protect the rights of transgender students and employees.
- Review policies to ensure they prohibit discrimination on the basis of sexual orientation or gender identity.
- Review approach to issues such as bathroom and locker-room access, athletics, and preferred name and pronoun policies.



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## Use of Names & Pronouns

- Consistently using a transgender student's chosen name and pronouns signals respect and affirms the transgender student's gender identity.
  - When students are referred to by the wrong pronoun by peers or school staff, students may feel intimidated, threatened, harassed or bullied.

	Subject	Object	Possessive	Pronunciation	Example
Gender Binary	She	Het	Hers	As it looks	She is speaking.
	He	Him	His	As it looks	He is speaking.
Gender Neutral	They (Sing.)	Them	Theirs	As it looks	They are speaking.
	Ze	Hir	Hirs	Zhee, Here, Heres	Ze is speaking.
	Ze	Zir	Zirs	Zhee, Zhere, Zheres	Ze is speaking.
	Xe	Xem	Xyr	Zhee, Zhym, Zhyre	Xe is speaking.



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## Student Records & Privacy

- Schools should ensure that information for the student is properly recorded within the Minnesota Automated Reporting Student System (MARSS).
- Students need not provide schools with legal documents to correct their first name or gender within their student records.



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## Student Records & Privacy Continued

- Schools should note that neither a student's gender nor pronouns are considered public or directory information.
- Casual use of a student's incorrect pronoun or incorrect name may violate FERPA.
  - Intentional misuse may be grounds for harassment.



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## Dress Code

- Transgender students have the right to dress consistent with their gender identity or gender expression.
  - As long as the student's attire complies with the school's dress code.
- Dress codes should be written, enforced, and applied consistently and equally to all students.



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## Activities & School Events

- Schools must provide the same opportunities to transgender and gender nonconforming students that they provide to all students.
  - Schools should not treat students differently on the basis of sex, including gender identity, in any school activities or the application of any school rule
- Homecoming, Prom, and other events
  - Schools should allow transgender students to participate in all school traditions, including sex-separated traditions, in the gender category that matches their gender identity.



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## Athletics

- Sports allow students to work on physical fitness while learning important skills such as teamwork, goal setting, and friendships.
- Title IX requires schools provide transgender students with the right to participate in such activities, including athletics, in a manner consistent with their gender identity.
  - If a student is not allowed to participate in a sport consistent with their gender identity or expression, they can appeal to the Minnesota State High School League (MSHSL).



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## Restrooms & Locker Rooms

- Districts must ensure their restroom and locker room policies provide equal access to students consistent with their gender identity.
- “A policy that requires an individual to use a bathroom that does not conform to his or her gender identity punishes that individual for his or her gender nonconformance, which in turn violates Title IX.”

◦ *Whitaker v. Kenosha Unified School District*, (7th U.S. Circuit Court of Appeals, May 30, 2017)



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## Overnight Trips

- If students are to be separated based on gender, then the transgender student should be allowed to room with peers that match their gender identity.
- Other alternatives may be suggested by the student.
  - Fewer roommates, separate room, etc.
- Remember privacy obligations.



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## Bullying and Harassment

- Gender nonconforming students and transgender students experience higher rates of bullying and harassment.
- Ensure incidents of discrimination, harassment, or violence are investigated and appropriate corrective action is taken.
- Complaints should be handled in the same manner as any other discrimination or harassment complaints.



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## Practical Considerations



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## Parents & Community

- A family's acceptance and support of their child's gender identity is strongly associated with positive mental health and academic achievement.
- It will be important to engage communities regarding policies, regulations, and procedures to ensure equal access to education.
  - For example, engaging students and parents will be critical in developing policies and procedures relating to student privacy and addressing situations where parents are not affirming their child's gender identity.



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## "What if" Concerns

- "What if" concerns:
  - A student who identifies as male claims to be female just so he can enter the girl's facilities?
  - A student has privacy concerns about sharing a restroom with a transgender student?
  - A student is uncomfortable with the transgender student using the locker or restroom?

**REMEMBER:** it is a violation of the state's constitution and the Minnesota Human Rights Act for school districts to segregate transgender students from their peers in locker room facilities.



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## Transitioning Students

- To ensure a safe and supportive transition at school, district leaders and staff should meet with the student and parents to discuss transition.
- Students that are transitioning may need additional support
  - Social transition – may change hair, clothes, makeup, name, pronouns, etc.
  - Medical transition – surgical procedures, hormone medication
  - A support plan might be an option.



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## Tips for Showing Support

- Use welcoming and inclusive language.
- Adopt classroom practices that recognize and affirm all students.
- Treat transgender students according to their gender identity.
  - Don't make assumptions about gender!
- Be open to learning more about transgender issues.
- Facilitate opportunities for students to find support with peers, teachers, faculty, and staff, such as student-led organizations, and identifying safe spaces.



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Questions?

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