TO: All Schools

FROM: Steven Carling, Deputy General Counsel

DATE: September 25, 2019

SUBJECT: **Transgender Students**

There has been some question about what protocols exist for transgender students or students questioning their gender identity. While there may be some debate at the federal level as to the rights and protections for transgender or gender nonconforming students, such is not the case in New York.

In a joint letter from the Commissioner of Education and the New York Attorney General (Appendix A), they made it very clear that both the New York State Human Rights Law and the Dignity for All Students Act apply to transgender and gender nonconforming students. They directed schools to continue to follow the July 2015 guidance document from the Education Department (Appendix B). That is the settled law in New York. Based upon this, the Rochester City School District follows these guidelines:

- If a student who is 18 years or older or a parent of a minor student (or a legal guardian) submits a written statement that the student identifies with a different gender and first name than is in PowerSchool, then the District must:
    - Change both the central cumulative file and the school cumulative and health files to reflect this new information
    - Issue a new identification card with the chosen name
    - Have a conversation with the student, and preferably the parent/guardian, about what bathroom and locker room the student wants to use: a neutral one (such as the nurse's office), the one with which they now identify, or a combination (note: a school cannot compel a student to use a neutral bathroom/locker room in this case, but can offer one)

- If the student is a minor and the parent will not provide a letter of support, then:
    - The District cannot change the official records, but a school can use the preferred name option, as they do this for any student
    - The student also cannot use the bathroom or locker room of their choice, but the school can offer neutral option to make the student more comfortable

If you have any questions about this issue, please feel free to reach out to me for clarification. I am always willing to come to your school to discuss a student request.

APPENDIX

A

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

NEW YORK STATE EDUCATION DEPARTMENT
THE UNIVERSITY OF THE STATE OF NEW YORK

MARYELLEN ELIA
COMMISSIONER OF EDUCATION
PRESIDENT OF THE UNIVERSITY OF THE STATE OF NEW YORK

February 28, 2018

This letter clarifies the rights of all students in New York to enjoy a safe and nondiscriminatory educational environment without regard to their gender identity; and confirms the ongoing obligation of all school districts in New York State to protect those rights under state and federal law.

On Monday, February 12, 2018, the United States Department of Education ("USDOE") confirmed that it would no longer investigate civil rights complaints from transgender students denied access to bathrooms consistent with their gender identity. In light of this announcement, and the February 2017 decision by USDOE and the federal government to rescind guidance that clarified protections for transgender students under federal statutory law, the New York State Office of the Attorney General ("OAG"), the New York State Education Department ("SED") and the New York State Board of Regents find it imperative once again to remind school districts across New York State that – irrespective of the federal government's recent announcement – they have independent duties to protect transgender students from discrimination and harassment in their schools and at all school functions.

Through our offices' joint efforts, we have committed to ensuring that all students in New York State attend school in safe and supportive environments in which they can learn and thrive. Our offices will continue to use all the existing tools of federal, state, and local law to ensure that transgender students are safe in their schools and have equal access to all programming and facilities consistent with their gender identity. Simultaneously, our offices also seek to provide school districts guidance to assist them with legal compliance.

With those twin aims in mind, our offices first seek to clarify for school districts the scope of USDOE's recent announcement. That announcement was limited to USDOE's own interpretation and enforcement of Title IX, the federal statute prohibiting discrimination on the basis of sex in any education program or activity receiving federal financial assistance.[1]

[1] *See* 20 U.S.C. § 1681(a).

However, we note that even after USDOE rescinded its Title IX guidance in 2017, school districts in other states have faced legal action under both Title IX and other federal law – *e.g.*, federal constitutional claims – for restricting transgender students' access to bathrooms consistent with their gender identity.[2]

Furthermore, the USDOE's announcement has no bearing upon school districts' independent duties, under New York State law, to protect their transgender students and ensure those students' equal access to all school resources and programming. Specifically, New York State's Dignity for All Students Act ("DASA") expressly prohibits discrimination and harassment, on school property or at a school function, on the basis of a student's gender identity or expression.[3] Based on this, SED issued guidance to all New York State school districts in July 2015, entitled "Guidance to School Districts for Creating a Safe and Supportive School Environment for Transgender and Gender Nonconforming Students."[4] That guidance specifically addresses gender-segregated facilities, like bathrooms, locker rooms, and changing areas. The guidance also addresses other topics that frequently arise in assuring a safe and supportive environment for transgender students, including (i) the use of names and pronouns to address transgender students, (ii) privacy, confidentiality, and student records, and (iii) other gender-based school policies and practices. Our offices strongly encourage school districts to refer to SED's guidance and modify their policies accordingly.

Our offices take seriously any action that compromises the school climate in which our students come to learn every day, and we have provided resources to help school staff, students, and parents report and address incidents of harassment, bullying, and discrimination.[5] The OAG

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[2] *See Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp.3d 267, 284-95 (W.D. Pa. 2017) (issuing preliminary injunction ordering school to allow transgender students access to restrooms that correspond with their gender identities based on federal equal protection claim); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1049-50 (7th Cir. 2017) (noting that a "policy that requires an individual to use a bathroom that does not conform with his or her gender identity punishes that individual for his or her gender non-conformance, which in turn violates Title IX," and ruling in favor of student on both Title IX and federal constitutional claims). Both of these legal challenges ultimately resulted in six-figure settlements paid by the school districts. *See* "Transgender Pine-Richland Students Receive Thousands as Part of Lawsuit Settlement," *available at* http://www.post-gazette.com/news/education/2017/08/08/Pine-Richland-School-District-transgender-students-lawsuit-settlement-bathroom-policy/stories/201708080093I; "Unified Settles Transgender Lawsuit," *available at* http://www.kenoshanews.com/news/local/unified-settles-transgender-lawsuit/article_b90c8ac8-9b9e-511c-b01b-f59102c7578a.html.

[3] *See* N.Y. EDUC. LAW § 11(6) (including "gender" as a protected category, which is defined as a "person's actual or perceived sex and includes a person's gender identity or expression").

[4] SED's guidance concerning transgender and gender nonconforming students is available at: http://www.p12.nysed.gov/dignityact/documents/Transg_GNCGuidanceFINAL.pdf.

[5] Additional guidance is available at: http://www.p12.nysed.gov/dignityact/.

and SED will continue to provide schools and families with guidance and support to ensure that our schools are safe havens for students where they can focus on learning; their civil rights are protected; and they have opportunities to succeed in school and life.

Sincerely,

Eric T. Schneiderman
Attorney General

MaryEllen Elia
Commissioner of Education

APPENDIX

B

THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

Guidance to School Districts for Creating a Safe and Supportive School Environment For Transgender and Gender Nonconforming Students JULY 2015

Introduction

The New York State Education Department ("NYSED") is committed to providing all public school students, including transgender and gender nonconforming ("GNC") students, with an environment free from discrimination and harassment, to fostering civility in public schools, and to ensuring that every student has equal access to educational programs and activities. The Dignity for All Students Act ("DASA") illustrates the State's commitment to ensuring that all students are educated in a safe and supportive school environment.[1]

New York State Education Law § 3201-a prohibits discrimination based on sex with respect to admission into or inclusion in courses of instruction and athletic teams in public schools.[2] Furthermore, DASA specifically provides that "no student shall be subjected to harassment or bullying by employees or students on school property or at a school function; nor shall any student be subjected to discrimination based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (including gender identity or expression), or sex by school employees or students on school property or at a school function."[3] DASA includes gender as a protected category and defines gender as "a person's actual or perceived sex and includes a person's gender identity or expression."[4]

Title IX of the Education Amendments of 1972 ("Title IX") specifically prohibits discrimination on the basis of sex in federally-funded education programs and activities.[5] The United States Department of Education's Office for Civil Rights has issued guidance recognizing that Title IX protects transgender students against discrimination based on their gender identity.[6]

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[1] N.Y. EDUC. LAW ART 2.

[2] N.Y. EDUC. LAW § 3201-a. Some states and local governments have adopted legislation providing explicit protections for transgender students in public schools. *See e.g.* CAL. EDUC. CODE § 221.5, MASS. GEN. L. CH. 76, § 5. *See also* NEW YORK CITY, N.Y. ADMIN. CODE §§ 8-101 TO 8-1103, BINGHAMTON, N.Y. CODE PT. I, §§ 45, 45-A.

[3] N.Y. EDUC. LAW § 11(7); 8 NYCRR § 100.2[l][2].

[4] N.Y. EDUC. LAW § 11(6). For an extensive resource on the implementation of DASA, please see the New York State Education Department's (NYSED) publication: The Dignity Act, *A Resource and Promising Practices Guide for School Administrators & Faculty available at* http://www.p12.nysed.gov/dignityact/resourceguide.html

[5] 20 U.S.C. § 1681(a); *see also* 34 C.F.R. § 106.31(a); 28 C.F.R. § 54.400(a)

[6] *See* 20 U.S.C. §§ 1681-1688 (2006); 34 C.F.R. Part 106 (2010); 54 C.F.R. Part 54 (2000); United States Department of Education, Office for Civil Rights, Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities (December 1, 2014), available at

Additionally, the U.S. Departments of Education and Justice have stated that under Title IX, "discrimination based on a person's gender identity, a person's transgender status, or a person's nonconformity to sex stereotypes constitutes discrimination based on sex" and asserted a significant interest in ensuring that all students, including transgender students, have the opportunity to learn in an environment free of sex discrimination in public schools.[7]

The purpose of this guidance is to assist school districts in fostering an educational environment for all students that is safe and free from discrimination—regardless of sex, gender identity, or expression—and to facilitate compliance with local, state and federal laws concerning bullying, harassment, discrimination, and student privacy. All students need a safe and supportive school environment to progress academically and developmentally. Administrators, faculty, staff, and students each play an important part in creating and sustaining that environment. This guidance document is intended as a resource guide to help school and district administrators continue to take proactive steps to create a culture in which transgender and GNC students feel safe, supported, and fully included, and to meet each school's obligation to provide all students with an environment free from harassment, bullying and discrimination. This guidance is intended to be complimentary to the existing comprehensive resources made available by NYSED relating to the implementation of DASA.[8]

In order to make this document as helpful as possible, illustrative examples that highlight frequently-asked questions appear throughout in italics. These scenarios and remedies are based on real-life examples from New York-based students and schools, and are not meant to be exhaustive of all potential scenarios or remedies appropriate for each school community.

Definitions

Understanding the common terminology associated with gender identity is important to providing a safe and supportive school environment for students. The following terms appear in this document and we present the following definitions used by research, advocacy and governmental organizations to assist in understanding the guidance presented. Although these are the most commonly used terms, students may prefer other terms to describe their gender identity, appearance, or behavior. Terminology and language describing transgender and GNC individuals can differ based on region, language, race or ethnicity, age, culture, and many other factors. Generally speaking, we recommend that school staff and educators inquire which terms students prefer; a good general guideline is to employ those terms which the students use to describe themselves.

Assigned Sex at Birth: the sex designation, usually "male" or "female," assigned to a person when they are born.[9]

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http://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf, at 25; United States Department of Education, Office for Civil Rights, Questions and Answers on Title IX and Sexual Violence (April 29, 2014), available at http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf, at 5.

[7] Statement of Interest of the United States, *Grimm v. Gloucester County School Board*, Case No. 4:15cv54 (E.D. Virg. filed June 29, 2015), at 2, *available at* https://www.aclu.org/sites/default/files/field_document/stmtinterestunitedstatesecf28_redacted.pdf

[8] N.Y. EDUC. LAW ART. 2.

[9] *See* GLAAD Media Reference Guide – Transgender Issues, *available at* http://www.glaad.org/reference/transgender, Trans Student Educational Resources (TSER) – Definitions, *available*

Cisgender: an adjective describing a person whose gender identity corresponds to their assigned sex at birth.

Gender expression: the manner in which a person represents or expresses gender to others, often through behavior, clothing, hairstyles, activities, voice, or mannerisms.[10]

Gender identity: a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth. Everyone has a gender identity.[11]

Gender nonconforming (GNC): a term used to describe people whose gender expression differs from stereotypic expectations. The terms "gender variant" or "gender atypical" are also used. Gender nonconforming individuals may identify as male, female, some combination of both, or neither.[12]

Sexual Orientation: a person's emotional and sexual attraction to other people based on the gender of the other person. Sexual orientation is not the same as gender identity. Not all transgender youth identify as gay, lesbian or bisexual, and not all gay, lesbian and bisexual youth display gender-nonconforming characteristics.[13]

Transgender: an adjective describing a person whose gender identity does not correspond to their assigned sex at birth.[14]

Transition: the process by which a person socially and/or physically aligns their gender expression more closely to their actual gender identity and away from that associated with their assigned sex at birth.

Understanding School Climate and Transgender Students

Research indicates that transgender and GNC students are targeted with physical violence and experience a hostile school environment at an even higher rate than their Lesbian, Gay, and

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at http://transstudent.org/definitions; *see also* Resolution Agreement Between Arcadia Unified Sch. Dist., the U.S. Dept. of Educ., and the U.S. Dept. of Justice, OCR Case No. 09-12-1020, DOJ Case No. 169-12C-70 (July 24, 2013).

[10] GLSEN Model District Policy on Transgender and Gender Nonconforming Students, *available at* http://www.glsen.org/sites/default/files/Trans_ModelPolicy_2014.pdf; Massachusetts Dep't of Educ. Guidance, *available at* http://www.doe.mass.edu/ssce/GenderIdentity.pdf.

[11] Mass. Gen. Laws ch. 4, § 7; Massachusetts Dep't of Educ. Guidance.

[12] Massachusetts Dep't of Educ. Guidance; *see also* GLSEN Model District Policy on Transgender and Gender Nonconforming Students ("A term for people whose gender expression differs from stereotypical expectations…").

[13] California School Board Association, *Policy Brief: Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students*, 1 (2014), *available at* http://www.csba.org/~/media/E68E16A652D34EADA2BFDCD9668B1C8F.ashx.

[14] *See* GLSEN Model District Policy on Transgender and Gender Nonconforming Students; Massachusetts Dep't of Educ. Guidance; Trans Student Educational Resources – Definitions; GLAAD Media Reference Guide – Transgender Issues.

Bisexual peers, both nationally and in New York State.[15] In one 2013 national survey, 74.1% of LGBT students reported having been verbally harassed in the previous year, 36.2% physically harassed, and 16.5% physically assaulted.[16] These high rates of bullying correspond to adverse health and educational consequences. Transgender and GNC experienced higher rates of verbal harassment and were twice as likely to report feeling unsafe at school than their cisgender peers.[17] A different national survey, also conducted in 2011, found that 51% of respondents who were harassed or bullied in school reported attempting suicide, compared to 1.6% of the general population.[18] Students also suffered harassment so severe that it led almost one-sixth (15%) to leave a school in K-12 settings or in higher education.[19] Moreover, LGBTQ students who are bullied and harassed are more likely to miss days of school, feel excluded from the school community, and have lower academic achievement and stunted educational aspirations.[20]

Both DASA, including its implementing regulations and guidance, and this guidance document reflect the reality that transgender and GNC students are enrolled in New York's public schools. These students, because of the possibility of misunderstanding and lack of knowledge about their lives, may be at a higher risk for peer ostracism, victimization, and bullying. Educators play an essential role in advocating for the well-being of students and creating a supportive school culture.

Understanding Gender Identity

Transgender youth are those whose assigned birth sex does not match their internalized sense of their gender (their "gender-related identity"), and GNC youth are those whose gender-related identity does not meet the stereotypically expected norms associated with their assigned sex at birth.[21] A transgender boy, for example, is a youth who identifies as male, but was assigned the sex of female at birth.[22] A transgender girl is a youth who identifies as female, but was assigned the sex of male at birth.[23] GNC youth vary in the ways in which they identify as male, female, some combination of both, or neither.[24]

The person best situated to determine a student's gender identity is the individual student. In the case of very young students not yet able to advocate for themselves, the request to respect and

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[15] GLSEN (Gay, Lesbian, Straight Education Network), *School Climate in New York (State Snapshot)*, 2 (2013), *available at* http://glsen.org/learn/research/local/state-snapshots (finding the majority of New York K-12 students surveyed reported being verbally harassed based on their gender identity/expression and/or sexual orientation).

[16] GLSEN, *2013 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation's Schools*, xvii (2014), *available at* http://www.glsen.org/sites/default/files/2013%20National%20School%20Climate%20Survey%20Full%20Report_0.pdf [hereinafter "National School Climate Survey"].

[17] *National School Climate Survey*, *supra* note 16 at 88-90.

[18] Jaime M. Grant, et al., National Center for Transgender Equality and National Gay and Lesbian Task Force, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, 3, 45 (2011), http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf

[19] *Id.* at 3.

[20] *National School Climate Survey*, *supra* note 16, at 12, 24, 42, 47, 49, 52, 67.

[21] *See* GLSEN Model District Policy on Transgender and Gender Nonconforming Students; Massachusetts Dep't of Educ. Guidance; Trans Student Educational Resources – Definitions; GLAAD Media Reference Guide – Transgender Issues.

[22] *See id.*

[23] *See id.*

[24] *See id.*

affirm a student's identity will likely come from the student's parent or guardian.[25] One's gender identity is an innate, largely inflexible characteristic of each individual's personality that is generally established by age four, although the age at which individuals come to understand and express their gender identity may vary based on each person's social and familial development.[26]

Schools should work closely with the student and family in devising an appropriate plan regarding the confidentiality of the student's transgender status. In some cases, transgender students may feel more supported and safe if other students are aware that they are transgender. In these cases, school staff should work closely with the student, families, and other staff members on a plan to inform and educate the student's peers. It may also be appropriate to engage with community resources to assist with educational efforts. However, in other cases, transgender students do not want their parents to know about their transgender status. These situations must be addressed on a case-by-case basis and will require schools to balance the goal of supporting the student with the requirement that parents be kept informed about their children. The paramount consideration in those situations is the health and safety of the student and making sure that the student's gender identity is affirmed in a manner in which the level of privacy and confidentiality is maintained necessary to protect the student's safety.

> ***EXAMPLE:***
> *The parents of a pre-school-age child who was assigned "female" at birth noted throughout the child's early years that their child identified as a boy. For as long as the parents could remember, the child preferred to play with boys rather than girls, wanted a short haircut, rejected wearing any clothing that the child identified as "something a girl would wear," and ignored anyone who called him by his stereotypically feminine name. When it was time for the child to enter kindergarten, the child said to his parents, "You have to tell them when I go to kindergarten that I'm a boy."*

It is recommended that schools accept a student's assertion of his/her/their own gender identity. A student who says she is a girl and wishes to be regarded that way throughout the school day should be respected and treated like any other girl. So too with a student who says he is a boy and wishes to be regarded that way throughout the school day. Such a student should be respected and treated like any other boy.

Many transgender people experience discrimination and some experience violence due to their status. Some environments may feel safe and inclusive, and others less so, challenging a person's ability to live consistently with one gender identity in all aspects of life. For example, it is possible that a student assigned "male" at birth, with a female gender identity, who lives as a girl, is not able to express her female gender identity all the time.

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[25] When used in this document, the term "parent" refers to parent as well as legal guardian.

[26] *See* Gerald P. Mallon, "Practice with Transgendered Children," in *Social Services with Transgendered Youth*, 49, 55-58 (Gerald P. Mallon ed., 1999). *See also* Stephanie Brill & Rachel Pepper, "Developmental Stages and the Transgender Child," in *The Transgender Child*, 61-64.

EXAMPLE:
In one case, a transgender female student agreed to present as a boy when visiting relatives until the student's parents could explain the student's transgender identity to them. The fact that the student did not exclusively assert her female identity did not alter the fact that she had a female gender identity.

Confirmation of a student's asserted gender identity is usually as simple as a statement from the student; it may also include a letter from an adult familiar with the student's situation, such as a parent, health care provider, school staff member familiar with the student (a teacher, guidance counselor, or school psychologist, among others), or other family members or friends. A letter from a social worker, doctor, nurse practitioner, or other health care provider stating that a student is being provided medical care or treatment relating to her/his/their gender identity is another form of confirmation of an asserted gender identity. Similarly, a letter from a clergy member, coach, family friend, or relative stating that the student has asked to be treated consistent with her/his/their asserted gender identity, or photographs at public events or family gatherings are other potential forms of confirmation. These examples are intended to be illustrative rather than comprehensive, and in most cases nothing beyond a statement from the student should be required. Transgender and GNC students form a diverse community, and they may differ in how they present, including differences in factors like their comfort level with being known as transgender or GNC, their transition status, their age, and their gender expression. Schools and districts should adopt a flexible approach in this area given that transgender students may not feel comfortable or safe being their authentic selves in all contexts.

EXAMPLE:
In one middle school, a student explained to her guidance counselor that she was a transgender girl who had heretofore only been able to express her female gender identity while at home. The stress associated with having to hide her female gender identity by presenting as male at school was having a negative impact on her mental health, as well as on her academic performance. The student and her parents asked if it would be okay if she expressed her female gender identity at school. The guidance counselor responded favorably to the request. The fact that the student presented no documentation to support her gender identity was not a concern since the school had no reason to believe the request was based on anything other than a sincerely held belief that she had a female gender identity.

Gender Transition

Many, though not all, transgender youth undergo the experience of gender transition. The term "gender transition" describes the experience by which a person socially and/or physically aligns their gender expression more closely to their true gender identity, and away from that associated with their assigned sex at birth. For most youth, and for all young children, the experience of gender transition is focused solely on "social transition," whereby they begin to live as the gender consistent with their gender-related identity.[27] Transgender youth who are in the process

[27] *See, e.g.*, World Professional Association for Transgender Health (WPATH), Standards of Care 7, at 17 ("Social Transition in Early Childhood"), *available at* http://www.wpath.org/uploaded_files/140/files/Standards%20of%20Care,%20V7%20Full%20Book.pdf.

of social gender transition often choose a new name and gender pronouns that better reflect their gender identity, may begin to dress and style their hair in ways that better reflect their gender identity, and, as all young people do, seek social affirmation of their gender identity from peers and other important figures in their lives. Some transgender youth who are close to reaching puberty, or after commencing puberty, may complement social transition with medical intervention that may include hormone suppressants, cross-gender hormone therapy, and, for a small number of young people, a range of gender-confirming surgeries.[28] An individual's decision about whether and how to undergo gender transition is personal and it will depend on the unique circumstances of each student. There is no threshold medical or mental health diagnosis or treatment requirement that any student must meet in order to have his/her/their gender identity recognized and respected by a school.[29]

Some transgender and GNC students have not talked to their families about their gender identity for reasons including safety concerns or a lack of acceptance.[30] School personnel should speak with the student first before discussing a student's gender nonconformity or transgender status with the student's parent or guardian. For the same reasons, school personnel should discuss with the student how the school should refer to the student, e.g., appropriate pronoun use, in written communication to the student's parent or guardian.[31]

Common Areas of Concern Relating to Transgender Students

1: Names and Pronouns

The matter of determining which name and pronoun to use in referring to a transgender student may be one of the first that schools must address in their efforts to create an environment in which that student feels safe and supported. Transgender students often choose to change the name assigned to them at birth to a name that is associated with their gender identity. As with most other issues involved with creating a safe and supportive environment for transgender students, the best course is to engage the student, and possibly the parent, with respect to name and pronoun use, and agree on a plan to reflect the individual needs of each student to initiate that name and pronoun use within the school. The plan also could include when and how this is communicated to students and their parents.

For those students who have been attending a school and undergo gender transition while attending the same school, it is important to develop a plan for initiating use of the chosen name and pronouns consistent with the student's gender identity.

EXAMPLE:

In one situation where a transgender girl was entering high school, she and her parent

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[28] *See id.* at 18-21 ("Physical Interventions for Adolescents").

[29] *See id.*; *see also* GLSEN Model District Policy on Transgender and Gender Nonconforming Students, at 2 (*Medical Considerations and Identity Documents*).

[30] Jaime M. Grant, et al., National Center for Transgender Equality and National Gay and Lesbian Task Force, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (2011), at 88 (53% of transgender people surveyed had experienced family rejection, and 19% experienced domestic violence by a family member because they were transgender), http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf.

[31] *See id.*

asked the principal to inform her teachers that even though her school records indicate that her name is John, she goes by the name Jane and uses female pronouns. With permission from Jane, the school principal sent the following memorandum to the student's classroom teachers: "The student John Smith wishes to be referred to by the name Jane Smith, a name that is consistent with the student's female gender identity. Please be certain to use the student's preferred name in all contexts, as well as the feminine pronouns. It is my expectation that students will similarly refer to the student by her chosen name and preferred pronouns. Your role modeling will help make a smooth transition for all concerned. Continued, repeated, and intentional misuse of names and pronouns may erode the educational environment for Jane. If you need any assistance to make sure that Jane Smith experiences a safe, nondiscriminatory classroom atmosphere, please contact me."

2: Privacy, Confidentiality, and Student Records

New York State Education Law § 2-d prohibits the unauthorized release of a student's personally identifiable information, including but not limited to the student's name, indirect identifiers, and other information that alone or in combination is linked or linkable to a specific student that would allow a reasonable person in the school community to identify the student.[32] The federal Family Educational Rights and Privacy Act (FERPA)[33] also protects the privacy of student educational records and places restrictions on the release of students' personally identifiable information. For specific inquiries regarding what constitutes the unauthorized release of a student's personally identifiable information, school districts should consult their attorneys. For more information on student privacy, in general, see NYSED's Parents' Bill of Rights for Data Privacy and Security at http://www.p12.nysed.gov/docs/parents-bill-of-rights.pdf.

Within the school and school district, when a transgender or GNC student new to a school is using a chosen name, the birth name should be kept confidential by school and district staff. School districts are reminded that, while disclosure of personally identifiable information from a student's education record to other school officials, including teachers, within the district whom the district has determined to have legitimate educational interests may be permissible under FERPA, the district must, among other things, use reasonable methods to ensure that school officials obtain access to only those education records in which they have legitimate educational interests.[34]

Generally, records with the student's birth name should be kept in a separate, confidential file. If the student has previously been known at school or in school records by his/her/their birth name, the principal should direct school personnel to use the student's chosen name and not the student's birth name. To ensure consistency among teachers, school administrators, substitute teachers and other staff, every effort should be made to immediately update student education records (for example, attendance records, transcripts, Individualized Education Programs, etc.) with the student's chosen name and appropriate gender markers and not circulate records with the student's birth name. A school's failure or refusal to amend such records could, for example,

[32] N.Y. EDUC. LAW § 2-d.
[33] 20 U.S.C. 1232g; 34 C.F.R. Part 99.
[34] 34 C.F.R. § 99.31(a)(1).

lead to delays in the student's receipt of appropriate services or create problems related to the award of appropriate high school course credit, thereby imperiling a student's ability to graduate with his or her class.

With respect to student medical records, school nurses and other licensed professionals need accurate and reliable information to confirm a student's identity in order to ensure that the student receives appropriate care and to enable them to coordinate care with other health care providers or licensed professionals, as well as to file health insurance claims with other organizations, such as Medicaid. Nurses are legally required to maintain patient records that accurately document clinical information relating to their patients and must keep their patients' health records confidential.[35] In the case of a transgender student, a school nurse should use the student's chosen name, and should use the student's birth name only when necessary to ensure that the student receives appropriate care and to enable the school nurse to coordinate care for the student with other health care providers or licensed professionals, as well as to file health insurance claims. For more information on the maintenance and confidentiality of student medical records, please contact the New York State Education Department Office of Student Support Services or the New York State Statewide School Health Services Center.

> ***EXAMPLE:***
> *One school administrator dealt with information in the student's file by starting a new file with the student's chosen name, entered previous academic records under the student's chosen name, and created a separate, confidential folder that contained the student's past information and birth name.*

3: Gender-Based Activities, Rules, Policies, and Practices

Gender-based policies, rules, and practices can have the effect of marginalizing, stigmatizing, stereotyping and excluding students, whether they are transgender or GNC or not. For these reasons, school districts should consult with their attorneys to review such policies, rules and practices, and should eliminate any that do not serve a clear pedagogical purpose.

> ***EXAMPLE:***
> *One school that previously had blue graduation gowns for boys and white ones for girls switched to blue gowns for all graduates. The school also changed its gender-based dress code for the National Honor Society ceremony, which had required girls to wear dresses.*

School districts, as well as students and their families, may find the use of restrooms, changing facilities, and participation in extracurricular activities to be among the more important issues in this area. The United States Departments of Education and Justice have stated that:

> [u]nder Title IX, discrimination based on a person's gender identity, a person's transgender status, or a person's nonconformity to sex stereotypes constitutes discrimination based on sex. As such, **prohibiting a student from accessing the restrooms that match his gender identity is prohibited sex discrimination under**

[35] See 8 NYCRR §29.1(b)(8), 29.2(a)(3).

Title IX. There is a public interest in ensuring that all students, including transgender students, have the opportunity to learn in an environment free of sex discrimination (emphasis added). [36]

Alternative accommodations, such as a single "unisex" bathroom or private changing space, should be made available to students who request them, **but should never be forced upon students,** nor presented as the only option. The following are examples of ways in which school officials have responded to situations involving gender-segregated activities or spaces:

EXAMPLES:

In one elementary school, a transgender second-grader socially transitioned from female to male. After consultation with the student's family and in accordance with the student's wishes, the principal informed the staff: In order to foster an inclusive and supportive learning environment, the student will begin using male restrooms, in accordance with the student's male gender identity and expression.

In one high school, a transgender female student was given access to the female changing facility, but the student was uncomfortable using the female changing facility with other female students because there were no private changing areas within the facility. The principal examined the changing facility and determined that curtains could easily be put up along one side of a row of benches near the group lockers, providing private changing areas for any students who wished to use them. After the school put up the curtains, the student was comfortable using the changing facility.

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[36] Statement of Interest of the United States, *Grimm v. Gloucester County School Board*, Case No. 4:15cv54 (E.D. Virg. filed June 29, 2015), at 1, *available at* https://www.aclu.org/sites/default/files/field_document/stmtinterestunitedstatesecf28_redacted.pdf; *See also* Statement of Interest of the United States, *Tooley v. Van Buren Public Schools*, Case No. 2:14-cv-13466 (E.D. Mich. filed Sept. 5, 2014), at 18, *available at* http://blogs.edweek.org/edweek/rulesforengagement/Tooley%20SOI%20-%202-24-15.pdf; U.S. Dep't. of Ed. Office for Civil Rights: *Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities*, 25 (Dec. 1, 2014) (schools "generally must treat transgender students consistent with their gender identity"), *available at* http://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf; *Downey Unified School District Resolution Agreement*, 1-3 (Oct. 8, 2014) (mandating "access to sex-designated facilities for female students at school, and at all District-sponsored activities, including overnight events, try-outs and participation in extracurricular activities on and off campus, consistent with her gender identity" for a transgender student), *available at* http://www2.ed.gov/documents/press-releases/downey-school-district-agreement.pdf; *Questions and Answers on Title IX and Sexual Violence*, (April 29, 2014), *available at* http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf; *Arcadia Unified School District Resolution Agreement*, 3 (July 24, 2013) (mandating "access to sex-specific facilities designated for male students at school consistent with his gender identity" for transgender student), *available at* http://www.justice.gov/crt/about/edu/documents/arcadiaagree.pdf; "Dear Colleague" Letter of Russlynn Ali, Ass't Sec'y for Civil Rights, 7 (Oct. 26, 2010), *available at* http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf; *see also Lusardi v. McHugh et al.*, E.E.O.C. Appeal No. 0120133395 (April 1, 2015), at 8-11 (in the analogous context of Title VII sex discrimination, barring a transgender woman from the communal women's room was "direct evidence of discrimination on the basis of sex," since "where . . . a transgender female has notified her employer that she has begun living and working full-time as a woman, the agency must allow her access to the women's restrooms," and "supervisory or co-worker confusion or anxiety cannot justify discriminatory terms and conditions of employment"), *available at* http://transgenderlawcenter.org/archives/11521.

Similarly, physical education is a required part of the curriculum and an important part of many students' lives. Most physical education classes in New York's schools are coed, so the gender identity of students should not be an issue with respect to these classes. Where there are sex-segregated classes, students should be allowed to participate in a manner consistent with their gender identity.

Resources, Education, and Training for School Districts and Communities

The New York State Education Department continues to be committed to providing all public school students with an environment free from discrimination and harassment, to fostering civility in public schools, and to ensuring that every student has equal access to educational programs and activities. In order to ensure that all students–including transgender and GNC students–are provided with an environment free from discrimination and harassment and to foster civility in the school community, school districts are encouraged to provide this guidance document and other resources, such as trainings and information sessions, to the school community including, but not limited to, parents, students, staff and residents. Such efforts will help to ensure that the school community understands the importance of a safe and supportive school environment for all students and how community members can play an active role in fostering such an environment. Schools should refer to existing New York State Education Department Guidance for expanded resources for fostering an inclusive school community.[37]

As with other efforts to promote a positive school culture, it is recommended that student leaders and school personnel, particularly school administrators, become familiar with applicable law, regulations, guidance, and related resources, and that they communicate and model respect for the gender identity of all students. We also encourage schools to continue to have an open dialogue with their school community when working together to foster an inclusive school environment.

This guidance cannot anticipate every situation in which questions may arise relating to trans-gender and gender non-conforming students. Therefore, the specific needs of each transgender or GNC student should be assessed and addressed on a case-by-case basis. NYSED will continue to provide assistance, support and resources as we work together to create a safe and supportive school environment for all students. For further information or questions about the content of this guidance, please contact the Student Support Services Office at (518) 486-6090.

For additional information and resources regarding transgender students in schools please see below for a small sample of available government and advocacy resources:

New York State Education Department:

The Dignity for All Students Act (DASA) seeks to provide the State's public elementary

[37] For an extensive resource on the implementation of DASA and information on creating an inclusive school community and fostering sensitivity to the school experience of lesbian, gay, bisexual, transgender, queer and questioning (LGBTQ) students, please see the New York State Education Department (NYSED), The Dignity Act, *A Resource and Promising Practices Guide for School Administrators & Faculty, Creating an Inclusive School Community: Sensitivity to the Experience of Specific Student Populations: LGBTQ Children*, Section II (Mar. 11, 2014), *available at* http://www.p12.nysed.gov/dignityact/rgsection2.html (defining LGBTQ as "individuals who self-identify as either lesbian, gay, bisexual, transgender, or questioning").

and secondary school students with a safe and supportive environment free from discrimination, intimidation, taunting, harassment, and bullying on school property, a school bus and/or at a school function.
http://www.p12.nysed.gov/dignityact/

New York City Department of Education:

Pursuant to the New York City Human Rights Law, the New York City Department of Education has issued guidance regarding transgender students within the jurisdiction of NYC DOE. While it does not apply statewide, it can be used as a reference as to what one New York district in has adopted regarding accommodations for transgender students.

http://schools.nyc.gov/RulesPolicies/TransgenderStudentGuidelines/default.htm

Examples of Guidance and Related Materials from Other States With Specific Transgender Student Non-Discrimination Statutes:

Washington:
Prohibiting Discrimination in Washington Public Schools
http://www.k12.wa.us/Equity/pubdocs/ProhibitingDiscriminationInPublicSchools.pdf

Connecticut:
http://www.sde.ct.gov/sde/lib/sde/pdf/equity/title_ix/guidelines_for_schools_on_gender_identity_and_expression2012oct4.pdf

Massachusetts:
The Massachusetts Department of Elementary and Secondary Education,
http://www.doe.mass.edu/ssce/GenderIdentity.pdf

California: Arcadia USD, OCR, and DOJ Resolution Agreement: July, 2013
http://www.nclrights.org/wp-content/uploads/2013/09/Arcadia_Resolution_agreement_07.24.2013.pdf

California: Notification Letter to Arcadia USD from OCR/DOJ:
http://www.justice.gov/crt/about/edu/documents/arcadialetter.pdf

The Department supports the efforts of school communities to implement this guidance which is intended to be a resource for schools and districts. It includes links to websites that contain information, resources, and tools to assist schools and districts. Please evaluate each resource to determine if it is developmentally age appropriate for your school population. The State Education Department does not endorse any particular programs. The intent of this document is to provide information only. Schools, districts and BOCES should consult with their school attorneys regarding specific legal questions. Analyses of examples contained herein do not represent official determination(s) or interpretation(s) by the Department. Examples described in this guidance may be the subject of an appeal to the Commissioner of Education under section 310 of the Education Law; as a result, the information contained herein is advisory only and does not necessarily represent an official legal opinion of the Commissioner of Education or of the State Education Department.