

transcripts after graduation, to ensure that those requesting records (e.g., college admissions offices or potential employers) will only see the name and gender marker corresponding to the student's gender identity.

- 4) Privacy and Confidentiality Regarding Disclosures.** A student's transgender status, birth name, and sex assigned at birth are confidential information and considered personally identifiable information (PII) under FERPA.¹⁶ Schools should engage in reasonable and good faith efforts to protect students' and their family's privacy by not disclosing, or requiring students or their parent/guardian to disclose, PII to the school and/or school community. Such disclosures may be harmful, infringe upon the privacy of students and their families, and may possibly violate FERPA or constitutional privacy protections.

When students have not come out¹⁷ to their parent(s), a disclosure to parent(s) should be carefully considered on a case-by-case basis. School districts should consider the health, safety, and well-being of the student, as well as the responsibility to keep parents informed. Privacy considerations may vary with the age of the students.

- 5) Gender-Segregated Activities and Facilities.** Title IX permits a school to provide gender-segregated restrooms, locker rooms, athletic teams, and classes, as long as they are comparable. When a school provides gender-segregated activities and facilities, transgender students should be allowed to participate in such activities and access such facilities consistent with their gender identity. Providing transgender students with activities and facilities consistent with their gender identity may feel uncomfortable for some students and/or their families. The OCR has emphasized, "a school's Title IX obligation to ensure nondiscrimination on the basis of sex 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. As is consistently recognized in civil rights cases, the desire to accommodate others' discomfort cannot justify a policy that singles out and disadvantages a particular class of students." ¹⁸

- 5a) Restrooms.** Every student needs to be safe in the restroom. For a variety of reasons, a student may have concerns about privacy or comfort when using a restroom with other students. Any student who has a need or desire for increased privacy, regardless of underlying reasons, has the right to access a single-user restroom.¹⁹ Students should be allowed to use the restroom in accordance with their gender identity. Alternative and non-stigmatizing options, such as an all-gender or single-user restroom (e.g., staff bathroom or nurse's office), should be made available to all students who request them. While gender-neutral bathroom facilities are often the solution that works best for all students, including transgender students, districts are reminded that current interpretation of federal civil rights laws protect the right of transgender students to use the bathroom of their gender identity if they so choose.²⁰ By making behavioral expectations clear, supervising facilities appropriately, and enforcing relevant policies, schools can address concerns about safety and privacy in these spaces.

- 5b) Locker Rooms and Changing Facilities.** Every student needs to be safe in locker rooms and changing facilities. For a variety of reasons, a student may have concerns about privacy or comfort when using these facilities with other students. Any student who has a need or desire for increased privacy, regardless of the underlying reasons, may request options such as 1) an adjusted changing schedule; 2) use of a private area in the facility (e.g., nearby restroom stall with a door, an area separated by a curtain, a physical education instructor's office in the locker room); and 3) use of a nearby private area (e.g., restroom, nurse's office). Current interpretation of federal civil rights laws say no

transgender student should be forced to use a changing facility incongruent with their gender identity. Use of these facilities should be determined on a case-by-case basis. By making behavioral expectations clear, supervising facilities appropriately, and enforcing relevant policies, schools can address concerns about safety and privacy in these spaces.

- 5c) Physical Education Classes and Intramural Sports.** Students should be allowed to participate in physical education classes and intramural sports in accordance with their gender identity.
- 5d) Interscholastic Sports.** Generally, students should be allowed to participate in interscholastic sports in accordance with their gender identity.²¹ Eligibility of transgender students in Michigan High School Athletic Association (MHSAA)-sponsored, post-season tournaments is governed by the MHSAA, subject to state and federal civil rights laws.
- 5e) Gender-Based Activities or Practices.** Districts should evaluate all gender-based programs and practices and maintain only those that have a clear and sound educational purpose. Gender-based programs and practices can have the unintentional consequence of marginalizing, stigmatizing, and excluding transgender and GNC students. Moreover, in some circumstances, they may violate state and federal laws. When students are separated by gender in school activities, students should be allowed to participate in accordance with their gender identity. When considering overnight accommodations, situations should be assessed on a case-by-case basis, seeking solutions that are inclusive, respectful, and acceptable to the student and do not impose an additional expense or burden on the student.
- 6) Dress Code.** Students should have the right to express their gender at school, within the parameters of the school's dress code, without discrimination or harassment. The school's dress code should be gender-neutral. In the event that the dress code has differing expectations or practices based on gender, students should be permitted to dress in accordance with their gender identity.

Adopted by the State Board of Education on September 14, 2016.

Definitions

A number of terms are used in this document that may not be commonly known. A short list of definitions is included in the endnotes to facilitate a shared understanding. It is not an all-inclusive list.

Biological sex assigned at birth—a person's biological sex is a combination of bodily characteristics, including chromosomes, hormones, internal and external genitalia, and secondary sex characteristics. At birth, infants are assigned a sex, usually male or female, based solely on the appearance of their external anatomy.

Gender identity—a person's deeply-held internal sense or psychological knowledge of their own gender, regardless of the biological-sex they were assigned at birth.

Gender expression—the manner in which a person represents or expresses gender to others, often through one’s name, pronouns, behavior, clothing, haircut, activities, voice, mannerisms, and other distinctive cultural markers of gender.

Transgender—an adjective describing a person whose gender identity or expression is different from their biological-sex assigned at birth.

Gender nonconforming (GNC)—an umbrella term for people whose gender expression differs from stereotypical expectations of the biological-sex they were assigned at birth. GNC people may identify as girls, boys, neither girls nor boys, or some other gender.

Gender transition—the process in which transgender people begin asserting the sex that corresponds to their gender identity instead of the sex they were assigned at birth. During gender transition, people begin to live and identify as the sex consistent with their gender identity and may dress differently, adopt a new name, and use pronouns consistent with their gender identity. Transition may or may not also include medical and legal aspects, including taking hormones, having surgery, or changing identity documents (e.g. driver’s license, social security record) to reflect one’s gender identity. Gender transition can happen swiftly or over a long duration of time. Not all transgender or GNC people transition or desire to transition in the same way.

Sexual orientation—a person’s emotional, romantic, and/or sexual attraction to other people. Sexual orientation is not the same as gender identity.

Questioning—a person’s process of exploring and discovering their own sexual orientation and/or gender identity.

Endnotes

- ¹ Michigan Department of Education (2016). Risk behaviors and sexual identity report. 2015 Youth Risk Behavior Survey. Unpublished data.
- ² Greytak, E., A., Ksciw, J. G., & Diaz, E. M. (2009). Harsh realities: The experiences of transgender youth in our nation's schools. New York: GLSEN.
- ³ The Department has engaged in numerous initiatives to engage and improve learning outcomes for at-risk populations (e.g., African-American Young Men of Promise). Retrieved from http://www.michigan.gov/mde/0,4615,7-140-6530_30334-297206--,00.html.
- ⁴ As used in this document, the word "perceived" refers to another person's perception of a student's sexual orientation, gender identity, or gender expression.
- ⁵ See State Board of Education Model Anti-Bullying Policy as an example of an enumerated policy that includes sexual orientation, gender identity and gender expression. Retrieved from http://www.michigan.gov/documents/mde/SBE_Model_AntiBullying_Policy_Revised_9.8_172355_7.pdf. The State Board of Education Model Code of Student Conduct, Sample Notice of Discrimination, is another example of enumeration. Retrieved from https://www.michigan.gov/documents/mde/Revised_Code_of_Student_Conduct_SBE_Approved_46540_6_7.pdf.
- ⁶ The introductory workshop (*A Silent Crisis: Creating Safe Schools for Sexual Minority Youth*) and advanced workshop (*Planning for Action: Next Steps in Creating Safe Schools for Sexual Minority Youth*) are available at regional sites throughout the states. For more information, go to www.michigan.gov/mde-smy.
- ⁷ Gay and transgender teens who were highly rejected by their parents and caregivers were at very high risk for health and mental health problems when they become young adults compared with those who were not rejected or were only a little rejected by their parents. For more information, refer to the Family Acceptance Project website at <http://familyproject.sfsu.edu/>.
- ⁸ When used in this document, the term "parent" refers to a parent as well as legal guardian.
- ⁹ In a recent national study, Michigan was one of 20 states that scored an "F" in teaching about civil rights. Retrieved from <http://www.scribd.com/doc/266143260/Teaching-the-Movement-2014>.
- ¹⁰ The Michigan Profiles for Healthy Youth (MiPHY) collects risk data on students in Grades 7, 9, and 11, with questions regarding students who identify as lesbian, gay, or bisexual or engage in same sex sexual behavior. Standard reports include cross tabulations that compare these students with all others on academic achievement. For more information, see www.michigan.gov/miphy.
- ¹¹ See *Dear Colleague Letter on Transgender Students* (2016). Retrieved from <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>.
- ¹² For example, a transgender boy should be treated the same as any other boy, and a transgender girl should be treated the same as any other girl.
- ¹³ For a sample school gender support plan, see educational resources from Gender Spectrum. Retrieved from <https://www.genderspectrum.org/resources/education-2/#more-424>.
- ¹⁴ Note that schools should not be expected to make changes to unofficial student records that existed prior to the request for a name and gender change.
- ¹⁵ C. Foley, U.S. Department of Education, ED*Facts* Partner Support Center, personal communication with C. Jones in CEPI, July 10, 2015.
- ¹⁶ Note that transgender and GNC students, as well as their families, have the right to decide when, with whom, and to what extent to share private information regarding transgender status. These discussions are an important part of a gender support plan.
- ¹⁷ Coming out is a figure of speech that refers to a person's self-disclosure of their gender identity and/or sexual orientation.
- ¹⁸ See *Dear Colleague Letter on Transgender Students* (2016). Retrieved from <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>.

¹⁹ Note that in the event that the school does not have such a facility, every effort must be made to accommodate the student's needs.

²⁰ Note that transgender students already face numerous barriers to acceptance at school; requiring them and not others to use a single stall restroom is stigmatizing. A school's insistence that they be segregated from their peers can increase their sense of isolation and reduce their school connectedness. This can be harmful and also threaten their safety, by inadvertently outing an individual who has chosen to keep their transgender status private. Requiring transgender students to use the single stall option, while not requiring all students to use the single stall option, would be inequitable treatment and may violate Title IX.

²¹ See *Dear Colleague Letter on Transgender Students* (2016) for additional guidance. Retrieved from <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>.