other educators know that you are an ally and share with them the important role they too can play in supporting LGBT students.

LET YOUR ACTIONS SPEAK FOR YOU

Sometimes your actions can speak louder than any button or poster. Here are simple actions you can take that will let staff and students know you are an ally.

- Whake no assumptions. When engaging with students, or even other staff and parents, do not assume you know their sexual orientation or gender identity. Don't assume that everyone is heterosexual or fits into your idea of gender roles be open to the variety of identities and expressions. In our society, students constantly receive the message that everyone is supposed to be straight. Show students that you understand there is no one way a person "should" be.
- ▼ Use inclusive language. Through casual conversation and during classroom time, make sure the language you are using is inclusive of all people. When referring to people in general, try using words like "partner" instead of "boyfriend/girlfriend" or "husband/wife," and avoid gendered pronouns, using "they" instead of "he/she." Using inclusive language will help LGBT students feel more comfortable being themselves and coming to you for support.

Respond to anti-LGBT behavior.

Responding to anti-LGBT behavior when it occurs or when you hear about it will let students know that you do not tolerate homophobia or transphobia. It sends a strong message that anti-LGBT behavior is not acceptable to you and not allowed in your school.

Support Students When They Come Out to You

As an ally, LGBT students may come to you for support, comfort or guidance. You may encounter a situation where a student comes out or reveals their sexual orientation or gender identity to you. You may be the first or only person an LGBT student comes out to. It is important that you support the student in a constructive way. Keep in mind that the student may be completely comfortable with their sexual orientation or gender identity and may not need help dealing with it or may not be in need of any support. It may be that the student just wanted to tell someone, or just simply to tell you so you might know them better. Below you will find more information on the coming out process and how you can be a supportive ally when students come out to you.

WHAT DOES "COMING OUT" MEAN?

Simply put, coming out is a means to publicly declare one's identity, whether to a person in private or a group of people. In our society most people are generally presumed to be heterosexual, so there is usually no need for a heterosexual person to make a statement to others that discloses their sexual orientation. Similarly, most people feel that their current gender is aligned with their sex assigned at birth, therefore never having a need to disclose one's gender identity. However, a person who is LGBT must decide whether or not to reveal to others their sexual orientation or gender identity.

To come out is to take a risk by sharing one's identity, sometimes to one person in conversation, sometimes to a group or in a public setting. The actual act of coming out can be as simple as saying "I'm gay/lesbian/bisexual/transgender," but it can be a difficult and emotional process for an LGBT student to go through,



Anti-LGBT Bias in School

Renisha was a 15-yearold freshman who had just started at the school

where her older brother Michael was a junior. Renisha decided that at this new school, she was going to be herself and not hide that she's a lesbian as she did in junior high. Michael's friends had begun to make fun of his little sister and Michael always defended her, telling his friends "leave her alone, she's just being herself." Michael's friends

continued to tease Renisha calling her "dyke" from across the lunchroom and defacing her locker with anti-LGBT language. Michael decided that this had gone too far and demanded his friends leave his little sister alone. One of his friends started to tease Michael, asking him if "being queer runs in the family." The words had barely made it out of the boy's mouth before Michael punched him. The other friends backed off and stopped the teasing, but Michael was suspended from school for a week and kicked off the basketball team for fighting.

which is why it is so important for a student to have support. One positive aspect of coming out is not having to hide who you are anymore. However, there can be dangers that come with revealing yourself. A student who comes out may be open to more anti-LGBT name-calling, bullying and harassment, yet they may also feel more comfortable and free to be themselves. One of the most important things you as an ally can do for an LGBT student is to be there for them in a safe, respectful and helpful way.

"[Reporting] causes more problems. Teachers and staff do not know how to handle the problem anonymously."

- Student, Grade Not Reported, Texas

SHOULD SCHOOL STAFF BE CAREFUL OF DISCLOSING A STUDENT'S SEXUAL ORIENTATION OR GENDER IDENTITY TO OTHERS?

Absolutely. School staff must at all times be cognizant of the highly sensitive nature of information regarding a student's sexual orientation and gender identity. School staff must exercise the utmost discretion and professionalism and be respectful of student privacy in discussing these matters.

In contrast to coming out, when a person chooses to disclose their sexual orientation or gender identity, "outing" occurs when someone else tells others that a particular individual is LGBT without that person's permission. We often don't know what someone's beliefs are or reactions might be, and outing someone may have large repercussions for students. Although it may be hard to believe, there are students whose emotional and physical safety were jeopardized when school staff outed them to other students and even family members.

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When a Student Comes Out to You...

When a student comes out to you and tells you they are lesbian, gay, bisexual or transgender (LGBT) your initial response is important. The student has likely spent time in advance thinking about whether or not to tell you, and when and how to tell you. Here are some tips to help you support them.

Offer support but don't assume a student needs any help. The student may be completely comfortable with their sexual orientation or gender identity and may not need help dealing with it or be in need of any support. It may be that the student just wanted to tell someone, or just simply to tell you so you might know them better. Offer and be available to support your students as they come out to others.

Be a role model of acceptance.

Always model good behavior by using inclusive language and setting an accepting environment by not making assumptions about people's sexual orientation or gender identity. Addressing other's (adults and students) biased language and addressing stereotypes and myths about lesbian, gay, bisexual and transgender (LGBT) people also position you as a positive role model. By demonstrating that you are respectful of LGBT people and intolerant of homophobia and transphobia, LGBT students are more likely to see you as a supportive educator.

Appreciate the student's courage.

There is often a risk in telling someone something personal, especially sharing for the first time one's sexual orientation or gender identity, when it is generally not considered the norm. Consider someone's coming out a gift and thank them for giving that gift to you. Sharing this personal information with you means that the student respects and trusts you.

■ Listen, listen, listen. One of the best ways to support a student is to hear them out and let the student know you are there to listen. Coming out is a long process, and chances are you'll be approached again to discuss this process, the challenges and the joys of being out at school.

Assure and respect confidentiality.

The student told you and may or may not be ready to tell others. Let the student know that the conversation is confidential and that you won't share the information with anyone else, unless they ask for your help. If they want others to know, doing it in their own way with their own timing is important. Respect their privacy.

Ask questions that demonstrate understanding, acceptance and compassion. Some suggestions are:

- Have you been able to tell anyone else?
- Has this been a secret you have had to keep from others or have you told other people?
- Do you feel safe in school? Supported by the adults in your life?
- Do you need any help of any kind?
 Resources or someone to listen?
- Have I ever offended you unknowingly?

...and Tells You They Are Lesbian, Gay, Bisexual or Transgender

- Remember that the student has not changed. They are still the same person you knew before the disclosure; you just have more information about them, which might improve your relationship. Let the student know that you feel the same way about them as you always have and that they are still the same person. If you are shocked, try not to let the surprise lead you to view or treat the student any differently.
- The Challenge traditional norms. You may need to consider your own beliefs about sexual orientation, gender identity and gender roles. Do not expect people to conform to societal norms about gender or sexual orientation.
- Be prepared to give a referral. If there are questions you can't answer, or if the student does need some emotional support, be prepared to refer them to a sympathetic counselor, a hotline, your school's GSA or an LGBT youth group or community center.

SOME ADDITIONAL THINGS TO KEEP IN MIND WHEN A STUDENT COMES OUT TO YOU AS TRANSGENDER:

Walidate the person's gender identity and expression. It is important to use the pronoun and name appropriate to the gender presented or that the person requests – this is showing respect. In other words, if someone identifies as female, then refer to the person as she; if they identify as male, refer to the person as he. Or use gender neutral language. Never use the word "it" when referring to a person, to do so is insulting and disrespectful.

Remember that gender identity is separate from sexual orientation.

Knowing someone is transgender does not provide you with any information about their sexual orientation.

WHAT NOT TO SAY WHEN SOMEONE COMES OUT TO YOU

- "I knew it!" This makes the disclosure about you and not the student, and you might have been making an assumption based on stereotypes.
- "Are you sure?" "You're just confused." "It's just a phase – it will pass." This suggests that the student doesn't know who they are.
- "You just haven't found a good woman yet" said to a male or "a good man yet" said to a female. This assumes that everyone is straight or should be.
- "Shhh, don't tell anyone." This implies that there is something wrong and that being LGBT must be kept hidden. If you have real reason to believe that disclosing this information will cause the student harm, then make it clear that is your concern. Say "Thanks for telling me. We should talk about how tolerant our school and community is. You may want to consider how this may affect your decision about who to come out to."
- "You can't be gay you've had relationships with people of the opposite sex." This refers only to behavior, while sexual orientation is about inner feelings.

WWW.GLSEN.ORG SUPPORT

Know Your Rights!

A Guide for LGBT High School Students



Lesbian, gay, bisexual, and transgender (LGBT) students face discrimination and harassment at school all too often. Unfortunately, many school officials know very little about how the law requires them to protect LGBT students. And sometimes they do know that they're breaking the law, but they think that students won't question their actions. That's why it's important for you to learn about your rights and what you can do if your school isn't treating you fairly!

Harassment

Anti-LGBT harassment is one of the most pervasive, frightening, and potentially damaging threats LGBT students face in our public schools. If you're being bullied, called names, threatened, or physically harmed at your school because of your sexual orientation, you don't have to take it!

Under the U.S. Constitution, public schools have to address any harassment against LGBT students the same way they would address harassment against any other student. And a federal education law called Title IX bars public schools from ignoring harassment based on gender stereotyping. What this all means is that public schools can't ignore harassment based on appearance or behavior that doesn't "match" your gender: boys who wear makeup, girls who dress "like a boy," or students who are transgender. Nor can school officials tell you that you have to change who you are or that the harassment is your fault because of how you dress or act.

If anyone at school is harassing or threatening you, it's crucial that you report it to a principal or counselor. Then the school has been put on notice and can be held legally responsible for protecting you. And keep notes about all incidents of harassment and interactions with the school about it. There are tips on how to effectively do this at the end of this handout.

If you've reported harassment to your school and they've done little or nothing to stop it, contact your local ACLU affiliate or the ACLU LGBT Project.

Privacy

Your school does NOT have the right to "out" you to anyone without your permission, even if you're out to other people at school.

Doing this to a young person can have tragic consequences, such as when police officers in 1997 told a young man in Pennsylvania that they were going to tell his family he was gay. He committed suicide rather than face what he feared would be rejection from his family. His mother sued, and a federal appeals court has held that threatening to disclose private information violated the teenager's Constitutional right to privacy. This applies to schools, too.

If a teacher, counselor, or any other school official threatens to tell your parents or anyone else that you're gay and you don't want them to, make it clear that this is against your wishes. If they still do it or threaten to do so, you should contact your local ACLU affiliate or the ACLU LGBT Project.

Freedom of Speech

Sometimes schools try to silence students who are open about their sexual orientation. But you have a Constitutional right to be out of the closet at school if you want to be. Sometimes schools punish students for talking about being gay. Sometimes schools censor students for wearing gay-themed t-shirts, even when the shirts aren't obscene and other students are allowed to wear t-shirts expressing their views on political or cultural issues.

In *Tinker v. Des Moines*, over 40 years ago, the U.S. Supreme Court ruled that

students don't "shed their constitutional rights to freedom of speech at the schoolhouse gate." The only time a school can legally restrict a student's speech is when it causes significant disruption in the classroom. And while schools often use disruption as an excuse to censor student speech, there are clear legal guidelines about disruption really is. It's not just whenever a school administrator says something is disruptive. For example, yelling, "I'm gay!" in the middle of English class isn't okay, but talking about being gay with other students between classes or at lunch is. Nor is your speech disruptive just because someone else might not like it. And if your school's dress code allows other students to wear t-shirts about their beliefs, then it's illegal for them to ask you to take off your t-shirt just because it has a rainbow or says something about gay pride.

If your school is trying to keep you from talking about your sexual orientation or expressing your beliefs about it, you should contact your local ACLU affiliate or the ACLU LGBT Project.

Transgender and Gender Nonconforming Students

Everyone has the right to be themselves in school — including you! Your gender expression is protected by the U.S. Constitution, Title IX, and any state or local law that bans discrimination based on gender identity. This right to free expression includes your choice of clothes. As long as what you want to wear would be appropriate if worn by other students — a skirt, for example, or a

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Know Your Rights! A Guide for LGBT High School Students

tuxedo — then you should be able to wear that clothing even if it isn't stereotypically associated with your gender.

Your right to be yourself in school includes the right to be transgender or to transition your gender in school. Unfortunately, there aren't yet clear rules in most places about how schools should accommodate students when they transition. There are often many obstacles to deal with, including restroom and locker room accessibility, your name and what pronouns to use when talking about you, and how official records classify you. Call your local ACLU affiliate or the ACLU LGBT Project if you want help making sure your school treats you with respect and keeps you safe.

Gay-Straight Alliances

Gay-Straight Alliances (GSAs) are student clubs, just like Drama Club or Key Club, that allow students with a common interest to get together and have discussions or activities about that interest. GSAs are made up of students of any sexual orientation or gender identity, not just gay students. They can be support groups, social groups, or they can be activist organizations dedicated to making school safer for all students, or some combination of any of those.

The federal Equal Access Act says that if a public school permits any noncurricular clubs, then it must allow students to form a GSA if they want to, and the school can't treat it differently from other noncurricular clubs. Noncurricular clubs are groups

that aren't directly related to classes taught in the school. For example, Math Club is curricular but Chess Club isn't.

Starting a GSA is like starting any other club! Find out your school's rules for forming an official student organization (like getting a faculty sponsor if one is required, etc.) and then follow those rules carefully. And document everything just in case the school gives you a hard time about your GSA. There are tips on how to do this at the end of this handout.

We've found that school officials often don't know much about the law or think they can find some way to get around it. Blocking a GSA from forming or treating it differently from other noncurricular clubs is against the law, and if your school does it you should contact your local ACLU affiliate or the ACLU LGBT Project.

Prom, Homecoming, and other School Events

If you're a girl, can you go to homecoming with another girl? If you're a boy, can you run for Prom Queen? Yes! The First Amendment and your right to equal protection guarantee you the right to express yourself by bringing a same-sex date to the prom or homecoming. Similar protections should apply if you are a boy and want to run for Prom Queen or if you're a girl and want to run for Prom King.

If you go to a public school and school officials try to tell you that you can't bring a same-sex date to prom, you

can contact your local ACLU affiliate or the ACLU LGBT Project.

General Tips

If you ever suspect that your school is treating you wrong because of your sexual orientation or gender identity:

Be respectful and follow the rules

Don't give your school any excuses for treating you badly by behaving badly or losing your temper.

Document everything

Keep detailed notes about everything: dates, where things happened, who was there, who said or did what, and any other details that might come in handy. If the school gives you anything in writing or if you submit anything in writing yourself, keep copies. If you have to fill out any forms or submit anything in writing, keep copies of those things. The more you document what you're going through, the better your chances of getting it addressed.

Get support

There are groups all over the country for LGBT youth, and if you live somewhere that doesn't have one, you can probably find an online discussion forum where you can be yourself and get reassurance that you're not alone.

Don't just believe what school officials tell you

A lot of the time, school officials either don't know what the law requires them to do or they're just betting that you won't question what they say. Don't take their word for it!

Want to know more?

Has something happened at your school that you think may have violated your rights? Do you want to talk with someone about what you can do about it? Contact us at ACLU.org/safeschools! We won't ever talk to your school or anyone else without your okay, and any communication between you and the ACLU will be kept private.



The American Civil Liberties Union Lesbian, Gay, Bisexual, Transgender Project 125 Broad St., 18th Floor New York, NY 10004 212-549-2673 ACLU.org/safeschools



TRANSGENDER AND GENDER NON-CONFORMING STUDENTS: YOUR RIGHTS AT SCHOOL

April 2014

Bullying, harassment, or discrimination against transgender or gender nonconforming students is covered by Title IX, a federal law that prohibits sex discrimination in schools. This resource outlines the rights trans and gender nonconforming students have in schools and how to file formal complaints. While NCTE does not provide legal services, we encourage anyone who cannot resolve issues through the complaint processes discussed here to seek legal counsel.

WHAT LAWS PROTECT YOU AT SCHOOL?

The following laws offer protection for trans and gender non-conforming students:

- Title IX is a federal law prohibiting sex discrimination in schools. Courts and federal agencies have
 concluded that discrimination or harassment because a person is transgender or gender nonconforming constitute sex discrimination. Title IX applies to all schools (K-12 and post-secondary)
 that accept federal funds, including nearly all public schools. Complaints of discrimination or
 harassment can be filed with the U.S. Department of Education.
- State laws and school district policies in many jurisdictions also explicitly prohibit discrimination in schools based on gender identity or expression as well as sexual orientation. As of May 1, 2012, California, Colorado, Connecticut, the District of Columbia, Illinois, Iowa, Maine, Massachusetts, Minnesota, New Jersey, Oregon, Vermont and Washington State have such laws, which are enforced by state civil or human rights agencies. Many school districts also have policies prohibiting discrimination based on gender identity or expression or sexual orientation.
- The Equal Access Act requires all school-affiliated student organizations, such as a Gay-Straight
 Alliance or Pride Alliance, to be treated equally. This means that schools cannot ban certain types of
 groups or single them out for worse treatment.
- The Family Educational Rights and Privacy Act protects personal information about students in school records, and in most circumstances prohibits release of this information without consent.
- The First Amendment of the U.S. Constitution protects the right of students to free speech and freedom of expression, including expression of one's gender identity.

WHAT ARE YOUR RIGHTS AT SCHOOL?

You have the right not to be targeted for bullying or harassment because you are transgender or gender non-conforming. If school administrators become aware of bullying or harassment they have an obligation to take action to stop it.

You have the right to equal educational opportunities regardless of your gender identity or expression. This includes not being disciplined or excluded from school, athletic or extracurricular activities, or other school events because you are transgender or gender non-conforming. You also have the right to be free from discrimination based on your race, color, national origin, or disability.

WHAT ARE YOUR RIGHTS AT SCHOOL? (CONTINUED)

You have the right to wear clothing and otherwise present yourself in a way that is consistent with your gender identity, so long as you follow rules for appropriate dress that apply to all students. Disciplining you for doing so may constitute discrimination or violate your right to free expression.

You have the right to privacy concerning your transgender status and gender transition. Any such information that is recorded in school records must be treated as confidential and not disclosed to others without your consent. You have the right to form and participate in student groups, such as a Gay-Straight Alliance or Pride Alliance, and to have your group treated like other student groups.

WHAT CAN YOU DO ABOUT DISCRIMINATION AT SCHOOL?

If you or someone close to you has experienced bullying, harassment, or intimidation, you can start by bringing your concerns to school and district officials. Contact your school district, find out about its nondiscrimination and antibullying policies, and to try to reach an appropriate resolution.

If you cannot resolve the issue at the district level or if you fear retaliation, filing a formal complaint of discrimination is one major action you can take. These complaints can lead to actions by schools to stop ongoing problems, change policies, train staff, and take other steps to protect students. They also help build a record of discrimination against trans and gender non-conforming students, which can be used to advocate for stronger protections at the local, state, and national level.

The U.S. Department of Education, through its Office for Civil Rights (OCR), is charged with enforcing Title IX. Complaints of gender-based bullying, harassment, or discrimination at school, you can file a complaint directly with OCR. In cases where OCR declines to pursue a case, state and local laws may offer additional protections.

In addition to addressing individual complaints, OCR's field offices also engage in a variety of activities to help schools better address bullying, harassment, and discrimination. Parents, students and community organizations can contact OCR field offices to see how they can work with you to enhance your local schools' capability to prevent and respond to bullying, harassment and discrimination.

HOW DO I FILE A COMPLAINT?

You can file a complaint with OCR by filling out a complaint form online at: http://www.ed.gov/about/offices/list/ocr/complaintintro.html. You can also download a complaint form to submit by mail or email here: http://www2.ed.gov/about/offices/list/ocr/complaintform.pdf.

There are a few important things to know about filing a complaint:

- File as soon as possible. A complaint must be filed within 180 days of when the discrimination or bullying and harassment occurred. If the complaint is not filed on time, you should provide the reason for the delay and request a waiver of the deadline.
- Report it as "sex discrimination." In order to for the claim to be covered under Title IX, It is important to report "sex" as the basis of the discrimination.
- Complete the entire form. Incomplete complaints won't be investigated. If OCR needs more information in order to process the complaint, it may contact you for more information. You will then have 20 calendar days within which to respond to OCR's request for information.
- Provide details. Include in your complaint as many details as you can regarding the people and events involved, and when and where events occurred.
- Complaints are confidential. Information about your complaint will not be shared without permission.

HOW DO I FILE A COMPLAINT? (CONTINUED)

- Family, friends, or other supporters can file a complaint. Complaints do not need to be filed by the
 person(s) experiencing the bullying, harassment or discrimination. Anyone, including friends, family,
 and school staff, can file the complaint.
- The school can't retaliate against you. It is illegal for a school to retaliate in any way because a
 person made a complaint or testified, assisted, or participated in any manner in a complaint under
 Title IX.

WHAT HAPPENS AFTER I FILE A COMPLAINT?

The Office for Civil Rights will investigate and attempt to resolve the complaint, provided it involves some form of harassment or discrimination based on sex, race, color, national origin, or disability. If OCR finds that discrimination has occurred, it will work with the school to develop a voluntary agreement to resolve the problem. Such agreements can involve adopting anti-bullying policies, training for staff and students, and specific actions to address the specific incidents that occurred and help the student(s) affected. Most cases are resolved voluntarily. In the rare event that it cannot obtain a voluntary agreement, OCR has the power to cut off federal funding for the school, or to refer the case to the Department of Justice for legal action.

In some situations where OCR dismisses a complaint, state or local laws or policies may offer greater protection. For example, if your state explicitly prohibits gender identity and sexual orientation discrimination in schools, you can file a complaint with your state's human or civil rights enforcement agency on that ground. The U.S. Department of Justice keeps a list of contact information for state human rights agencies here: http://www.justice.gov/crt/legalinfo/stateandlocal.php.

CAN I FILE A LAWSUIT?

You may choose to file a discrimination claim in federal or state court, regardless of OCR's findings. You do not have to first go through the OCR process in order to file a lawsuit. However, filing a lawsuit first means you cannot use the OCR complaint process. This type of lawsuit is complex and you will probably need to hire a lawyer to help you.

GET HELP

We strongly encourage you to contact the national offices of GLSEN (Gay, Lesbian and Straight Education Network) at http://www.glsen.org or PFLAG at http://www.pflag.org with any questions regarding the OCR complaint process or for help with crafting a complaint.

If you are considering filing a lawsuit, we strongly encourage you to seek legal counsel. While NCTE does not provide legal services or referrals, there are many other groups that may give you referrals or maintain lists of local lawyers. Local legal aid or legal services organizations may provide free help for certain types of legal problems if your income is below a certain threshold. There are many larger groups – such as Lambda Legal, the National Center for Lesbian Rights, the ACLU, the Transgender Law Center, and others listed on NCTE's website – that may help if they feel that your case is particularly strong and fits within their priorities and strategy; however, they usually hear about many more cases than they can pursue. If they cannot help you directly these organizations may give you referrals or maintain lists of local lawyers with expertise in LGBT issues.

SHARE YOUR STORY

If you are facing discrimination, consider sharing your story with NCTE so we can use it in advocacy efforts to change policies and improve school environments for trans and gender nonconforming people. If you successfully resolve issues in your school, and especially if any of the material here helped, we want to hear from you as well.

Additional Resources

U.S. Department of Education, Office for Civil Rights: http://www.ed.gov/ocr

OCR "Dear Colleague" Letter to School Administrators: http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf

Claim Your Rights resources from PFLAG and GLSEN: http://community.pflag.org/claimyourrights

Model School District Policy on Transgender and Gender Nonconforming Students from NCTE and GLSEN: http://www.transequality.org/PDFs/Trans_ModelPolicy_2013.pdf

Gender Spectrum: http://www.genderspectrum.org

Trans Youth Family Allies: http://www.imatyfa.org

Links to State and Local Human Rights Agencies: http://www.justice.gov/crt/legalinfo/statean-dlocal.php

Links to LGBT Legal Organizations: http://transequality.org/Resources/links.html#legal

Links to Legal Services Organizations: http://www.lsc.gov/find-legal-aid

TRANSGENDER AND GENDER NONCONFORMING STUDENTS: ADVOCATE FOR BEST PRACTICES

BY CAROLYN STONE, ED.D.



Scenario: A middle school student who was in the process of transitioning from male to female was told by school officials that she could not wear feminine attire and was sent home every time she came to school wearing makeup, hair adornments and /or dresses. Her parents sued. How did the courts rule?

Federal, state, constitutional and case law have all been successfully applied to protect transgender students. Title IX of the Education Amendment Acts of 1972 prohibits discrimination based on sex in education programs and activities receiving federal funding. Students do not leave their free speech rights at the schoolhouse door. Under the First Amendment, educators cannot censor a student's speech or expression

without a compelling reason to do so, such as the speech will create a substantial disruption to the educational process.

A growing body of judicial decisions such as Doe v. Yunits (2000) applied state antidiscrimination statutes to protect transgender youth. The Doe case involved a Massachusetts middle-school student who transitioned from male to female. Doe was continually disciplined and sent home for wearing feminine clothing and makeup. Her school attendance was predicated on the principal approving her dress every day. Doe missed so many days of school she failed the grade. The court ordered the school to permit the student to wear any clothing allowed of any other girl in the school.

Scenario: A middle-school student who transitioned from male to female during her seventh-grade year was supported by the school and her parents to use the faculty women's restroom. The school was discreet in addressing her request, but rumors flew, and a vocal critic coached his son to come to school and demand to be allowed to use the women's restroom. Did the school act according to best practice by allowing the transitioned student to use the women's restroom? Must the school allow the protesting student to use the women's restroom?

Transgender students must be allowed to have equal access to school facilities and to be treated according to their gender identity. There will be situations where students, transgender or not, will be uncomfortable using shared restroom facilities, which is something administrators must weigh when trying to create a safe and included environment for transgender students. The school's response should be to provide the transgender student with a nonstigmatizing option. The Gay, Lesbian, Straight Educators Network (GLSEN) Model District Policy on Transgender and Nonconforming Students has a guide for model behavior educators can use when working through ways to support transgender youth. GLSEN recommends schools assess their existing facilities and convert those that are designed for single users to be more gender-neutral. In this scenario, the school worked responsibly with the parents and transgender student. The school does not have to accommodate the protesting student.

predicated on the principal approving her dress every day. Doe missed so many days of school she failed the grade. The court ordered the school to permit the student to wear any clothing allowed of any other girl in the school.

Scenario: Cedric is a third-grader who expresses himself as a female. School officials have talked to Cedric's parents about his academic issues but not the fact that they suspect the root of Cedric's struggles stem in part from grappling



with gender identity. It is apparent Cedric's parents are not aware of his nonconforming gender expressions and the connection this focus is having on his school success. The educators want to help Cedric but are uncertain if they should say anything about his gender expressions to his parents.

Families and schools working together is a powerful alliance for a safe, respectful school for children's well-being. Parents of elementary-age children ideally and typically approach educators for support in their child's transition or nonconforming gender expression. However, when parents are not aware of or seem not to be addressing a struggling child's need for support, the educators must decide if the difficulty the child is experiencing tips the balance in favor of approaching parents about the suspected underlying reasons for their child's struggles.

When a student is in middle school or high school, the decision is easier as the students can be consulted and can shed light on many of the issues surrounding parental notification, such as how safe they feel in involving their parents. Even with middle- and high-school students, assessing the student's developmental level is a crucial consideration and one very much in the forefront when making decisions about an elementary-school child. Frr on the side of caution when struggling for an answer as to whether or not to inform parents. There should be an overriding and compelling reason to do so. Avoiding the wrath of parents who believe they should have been told is not a compelling reason. It can be dangerous for a gay or lesbian child to be outed to their parents, and, likewise, transgender students can also be vulnerable to homelessness, rejection or abuse. Proceed with great caution and, if possible, with student involvement.

Scenario: Ronaldo is a male student who wears feminine attire. Despite educators' efforts to protect him, he is taunted daily. The school has tried many approaches: walking in the same hall as he goes to class to keep a sharp eye on his welfare, making a special schedule with teachers who have a no-tolerance for bullying attitude and who will affirm Ronaldo, and

having him work as a lunchtime office aide so he can eat with his peers who are also office aides and appear to enjoy Ronaldo. These good-faith efforts have gone a long way to help Ronaldo feel safe, but in this huge school of 1,700 students, incidents still happen. The district has offered Ronaldo a special assignment to the school of the arts where peers celebrate student differences. Science and engineering, not arts, are Ronaldo's focus, but he agrees to go as he is worn down from the daily insults.

All educators will agree the victim should not be punished because of the difficulties of stopping the perpetrators. Transferring students should not be the desired solution, unless it's the student's preferred solution or a last resort after many other efforts have been tried. Ronaldo and his parents have to agree to the transfer without being coerced by educators. Ronaldo has to be supported with the same academic opportunities he had in his former school.

Scenario: Your state but not your school district has an anti-bullying policy, but the law doesn't speak to transgender and gender-nonconforming students as protected students. You know at least two of your students who would be better protected with a stronger state and district policy, but you are told the state policy covers what is needed. You think it would be helpful if your district has an anti-bullying policy. Are you right?

All states have an anti-bullying law, something unheard of just two decades ago. The progress made in anti-bullying legislation is a direct result of the correlation between bullying and school success. In July 2015, GLSEN released the study From Statehouse to Schoolhouse: Anti-Bullying Policy Efforts in U.S. States and School Districts. State antibullying laws appear to influence policy at the local level. From 2008-2011, GLSEN assessed the existence of antibullying policies in all 13,181 public school districts from all 50 states and the District of Columbia. Policies existed for 9,296 districts (70.5 percent). Of the 70.5 percent of U.S. school districts with anti-bullying policies, only 14.1 percent enumerated protections



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On documents where the school is not legally required to use a student's legal name and gender, it is best practice to use the name and gender preferred by the student.

for students based upon their gender identity and/or gender expression. Only 3 percent of district policies included all three elements recommended by GLSEN: LGBT enumeration, professional development requirements and accountability stipulations. school climates, feel protected and are more likely to report incidents of bullying when they occur.

**Scenario: Sam, formerly Samantha, is a middle-school student who transitioned from his female birth assignment to Sam

The school counselor in this scenario is right in advocating for a stronger state and district policy providing explicit protection to students based on sexual orientation, gender identity and gender expression. GLSEN's National School Climate Survey (2014) suggests LGBT students who believe their schools have LGBT-inclusive policies experience better

school climates, feel protected and are this information is protected.

Scenario: Sam, formerly Samantha, is a middle-school student who transitioned from his female birth assignment to Sam with the full support of his parents and school staff. Sam wants to wipe his educational records clean of ever having been a female. Can the school comply?

Privacy of the student's educational records

Privacy of the student's educational records will be a key component to a successful transition. Students should not live in fear that they will be identified. Educational records as defined by FERPA are legal documents and must have a student's legal name and gender. Therefore, a court order is needed to change a student's name and gender on these records. For purposes of standardized testing and other situations where educators have to report a legal gender and legal name, GLSEN suggests districts adopt policies and practices above and beyond the usual compliance to ensure this information is protected.

On documents where the school is not legally required to use a student's legal name and gender, it is best practice to use the name and gender preferred by the student. For example, Sam's identification badge is not a legal document and can be changed from Samantha to Sam. A court order isn't needed to address a student by a name and pronoun that matches his or her gender identity even if it does not match his or her educational record.

Scenario: A 15 year old wants to transition from female to male at school and is adamant that he believes his parents will

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reject him if they know. Should the school support him to transition in isolation of parental involvement with the full knowledge that his parents would object?

Every educator can appreciate how critically important parental support is for transitioning students. The hard part for educators is when they know that gender-nonconforming students want desperately to be able to express their deeply held sense of their own gender but don't feel emotionally or physically safe letting their parents know. Like so many issues we face as school counselors, this one is context-dependent without a hard-and-fast answer, but there is some guidance.

What we do know through laws applied in court cases is that transgender and gender-nonconforming students have the right to express their gender identity openly at school. What is not clear is how educators apply parental rights to be the guiding voice in their children's lives when a student is in the throes of this complex issue and wants to negotiate it without parental involvement. The context of this scenario is that the student placed the educators on notice that he might be in harm's way if his parents are called. A skilled educator such as the school counselor could work with the student to uncover any additional information that might shed light on his fear of involving his parents and to help the student consider possible scenarios and implications if his parents accidentally learn of his transition. This conversation should not discourage the student from moving forward but help him weigh the possible good and bad consequences of not telling his parents and possibly serve to help him become empowered so he can involve his parents.

A strong secondary goal is to help the student's family accept his gender identity. The publication "Schools in Transition: A Guide for Supporting Transgender Students in K-12 Schools" helps educators better serve students who decide to transition alone with best practices such as using the student's legal name and corresponding pronoun when contacting parents.

Educators who help a student transition in school in absence of parental

involvement will likely bring on the parents' wrath if they learn the school was in "collusion" with their child. There could be a threat of a lawsuit, although no such lawsuit has currently been filed. This is a risk educators have to strongly consider taking when students are suffering, know conclusively they must transition and express fear of harm should parents know. Educators cannot practice risk-free, but they must weigh the student's greater good against potential fallout for the district. Parents' negative reaction might come from their fear that their child will be mistreated or have a difficult life - fears educators can help allay.

The tug of war for educators is that we would not want to place students in harm's way, nor should we prevent them from expressing their gender identity. Proceed with as many facts as you can and with as much guidance as the student is developmentally able to give you.

Schools are working to reduce the stigmatization of transgender and gender-nonconforming students and supporting them to enjoy their days at school comfortable in their identified gender. Progress has been made, but the courts will continue to build case law that gives educators guidance in this area. Keep up to date on changes, as the above scenarios are not intended to be the final word or legal advice. We are all paddling this canoe as we build it.

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