

TRANSGENDER STUDENTS: IS YOUR DISTRICT READY TO ADDRESS THIS GROWING POPULATION?

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BASIC IDEAS

- ▶ DEFINITIONS:
- ▶ The term “transgender” generally refers to individuals whose gender identity is different than the sex they were assigned at birth.
- ▶ The term can encompass those individuals who identify outside the standard male or female binary system.
- ▶ Individuals who study gender differences posit that gender is more appropriately seen as a spectrum of possibilities rather than as only male or female.

BASIC IDEAS

- ▶ In Latin, the prefix “trans” means “across or on the other side.” (Think transatlantic flight.)
- ▶ To describe “normal” students, the terms gender normative or cisgendered are appropriate. In Latin, the prefix “cis” means “on the same side, on this side.”
- ▶ Experts say that the difference between transgender children and other children is that they are persistent, insistent, and consistent with their identification with the opposite gender.

GENDER SPECTRUM



WHY DO WE NEED TO WORRY ABOUT TRANSGENDER STUDENTS?

- ▶ Many South Carolina school districts have transgender students enrolled already.
- ▶ There is an enormous focus on transgender people in American society—students are seeing transgender individuals on TV and the internet all the time.
- ▶ Transgender students are much more likely than their gender normative peers to experience bullying, depression, drug/alcohol abuse, and suicidal behavior.
- ▶ Students who feel safe at school learn better and are more likely to succeed academically than students who feel threatened, bullied, or teased.

LEGAL PROTECTIONS FOR TRANSGENDER STUDENTS

- ▶ While South Carolina does not have a specific law that prohibits bullying or harassment of transgender students, many other laws protect these students' rights.
- ▶ South Carolina has the Safe Schools Climate Act that protects all students from bullying and harassment;
- ▶ Federal laws and the US Constitution also protect transgender students.

LEGAL PROTECTIONS FOR TRANSGENDER STUDENTS

- ▶ SC Safe School Climate Act
- ▶ As used in this article:
 - (1) "Harassment, intimidation, or bullying" means a gesture, an electronic communication, or a written, verbal, physical, or sexual act that is reasonably perceived to have the effect of:
 - (a) harming a student physically or emotionally or damaging a student's property, or placing a student in reasonable fear of personal harm or property damage; or
 - (b) insulting or demeaning a student or group of students causing substantial disruption in, or substantial interference with, the orderly operation of the school.
- ▶ 59-63-110 et seq.

LEGAL PROTECTIONS FOR TRANSGENDER STUDENTS

- ▶ The U.S. Constitution through the 14th Amendment provides **equal protection** under the laws to all individuals.
- ▶ "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."
- ▶ The equal protection clause gives transgender students the right to be treated the same way that their gender normative peers are treated. Schools cannot discriminate against transgender students because they are different from the norm.
- ▶ Schools have an obligation to protect these students from harassment in the same way they protect other students from harassment.

LEGAL PROTECTIONS FOR TRANSGENDER STUDENTS

- ▶ **Title IX** prohibits discrimination on the basis of sex.
- ▶ “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”
- ▶ OCR has taken the position that Title IX protects transgender students and that schools are required to take action to respond to claims of harassment or assault of transgender students.

LEGAL PROTECTIONS FOR TRANSGENDER STUDENTS

- ▶ In 2014 the US Dept. of Education released a memo that said, “[a]ll students, including transgender students and students who do not conform to sex stereotypes, are protected from sex-based discrimination under Title IX. Under Title IX, a recipient generally must treat transgender students consistent with their gender identity ... in single-sex classes.”
- ▶ Title IX requires school administrators to intervene and rectify any harassment of a sexual nature directed at a student that is severe enough to prevent the student’s access to, or enjoyment of, a school program, including academic, education, extracurricular, athletic, and other programs of the school.

LEGAL PROTECTIONS FOR TRANSGENDER STUDENTS

- ▶ The **First Amendment** protects self-expression.
- ▶ “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”
- ▶ Transgender students have the right to express their sexual orientation or gender identity as they choose. If school staff members discourage transgender students from dressing in accordance with their gender identity (even in an effort to protect the child from harassment or bullying), they may be held liable for infringing on the students’ First Amendment rights to free expression.

LEGAL PROTECTIONS FOR TRANSGENDER STUDENTS

- ▶ Transgender students and their families can file complaints with the United States Department of Education Office for Civil Rights or can file lawsuits in federal court based on discrimination.
- ▶ There are several cases from other states dealing with transgender students that give us some guidance on how to best address this growing population.

WHAT IS OUR ROLE?

- ▶ Regardless of personal beliefs, educators are responsible for ensuring that their students are learning and are safe.
- ▶ School staff do not have to accept students' behavior or believe their choices are appropriate; staff must educate students, keep them safe, and help make them feel accepted.

CAN SCHOOLS TALK ABOUT TRANSGENDER ISSUES?

- ▶ Staff members may question if discussion of transgender students violates South Carolina's Comprehensive Health Education law. The law prohibits "discussion of alternate sexual lifestyles from heterosexual relationships including, but not limited to, homosexual relationships except in the context of instruction concerning sexually transmitted diseases." (S.C. Code Ann. § 59-32-30(5)) Discussion of inclusion and acceptance of transgender people is more akin to discussing other types of diversity acceptance; it is not a discussion of sexuality or sexual orientation.

WHAT SHOULD WE BE DOING?

- ▶ There are two separate actions that schools must take when dealing with transgender students.
 1. Schools must ensure that transgender students are not being bullied, harassed, or discriminated against based on their gender identity.
 2. Schools should begin the discussions regarding tolerance and acceptance of these students.

RESOURCES

- ▶ There are many books available that discuss transgender children, and genderspectrum.org has lesson plans for teachers to use to help students learn about transgender classmates.
- ▶ If your community is not prepared for such books/lessons, consider broader discussions of acceptance and tolerance of differences.
- ▶ If a transgender student enrolls in school, make sure there is open and continuing communication with the family about their expectations, the school climate, and the student's needs.
- ▶ Consider talking with the student's family about meeting with other parents to lessen fears and possible discriminatory actions.
- ▶ Genderspectrum.org also has a wealth of resources for schools and parents to plan for a transgender child.

PRIVACY

- ▶ When a person “transitions” to his/her identified gender, it is hard to keep that fact secret.
- ▶ Transgender students may move from one school in a district to another to keep their former gender secret. Many families believe this is a very private matter.
- ▶ Keep in mind FERPA considerations, and have open and continued conversations with the family about the level of privacy the family wants.
- ▶ Consider that sharing the child’s transgender status can be a FERPA violation and could subject the child to harassment and bullying.
- ▶ For children who are only “out” at school, schools must know how the child wants the teachers to communicate with parents.

SIBLINGS/COUSINS AT SAME SCHOOL

- ▶ Family members of transgender students may also experience bullying and harassment.
- ▶ These students may need extra support or supervision.
- ▶ For students whose families are not aware of their transgender status, talk with the student about how to address family members that attend the same school.

BATHROOMS

- ▶ Transgender students' biggest struggle can be school bathrooms! Many transgender students have reported kidney and urinary tract problems because they did not use the restroom during the school day. These students have reported that they were too scared to use the bathroom at school or were not allowed to go to the bathroom of their choosing and felt uncomfortable in another bathroom.
- ▶ Some transgender students prefer to use a unisex, private bathroom (such as the nurse's office or a faculty bathroom);
- ▶ Others prefer to use the bathroom of their identified gender.
- ▶ Discuss the student's preferences with the student, his/her parents, and legal counsel.
- ▶ Schools likely cannot force students to use a particular bathroom and must ensure that all students are safe in bathrooms.

BATHROOMS

- ▶ Consider adding more staff/supervision for all bathrooms.
- ▶ Ensure that there are stalls with doors in every bathroom.
- ▶ Both DOE and DOJ have settled discrimination cases against school districts by requiring school districts to allow transgender students to use bathrooms and locker rooms that accord with their gender identity.
- ▶ Transgender student in Virginia filed a case requesting that the court issue an injunction to force the school to allow him to use the bathroom of his choice rather than a unisex bathroom. In late July, 2015, the judge refused to issue the injunction and dismissed the student's Title IX discrimination claim. The case is still ongoing because the judge allowed the student's equal protection claim to go forward.
- ▶ Many schools worry that students will claim that they are transgender so that they can use the restroom of the opposite sex. Schools who have allowed transgender students to use the restroom of their choosing have not reported this problem.

BATHROOMS

- ▶ Parents may have concerns that their child will be uncomfortable in a bathroom with a transgender student.
- ▶ Consider allowing individual students who do not feel comfortable (trans- or cisgendered students) to use the restroom at different times—during class rather than at class changes; after lunch instead of before; etc.
- ▶ If teachers have gendered bathroom passes, consider using a unisex pass.
- ▶ The buddy system may be effective for comfort levels, too. (Students who feel worried or uncomfortable can go to the bathroom with a friend.)
- ▶ If children are not physically comfortable at school, they cannot learn!

SPORTS TEAMS

- ▶ Allowing a transgender student to participate in gender-specific sports teams raises many questions that must be discussed with the student, his/her parents, and coaches.
- ▶ Based on current case law and statements from OCR and the US Dept. of Education, students likely need to be allowed to participate on the team of their identified gender.
- ▶ Consider locker room use—can the student have a private area for changing/showering, or change/shower at a different time than other teammates? Transgender student may need a locker closest to the coach's office to limit opportunities for bullying/harassment.
- ▶ Consider any possible advantages/disadvantages based on physical characteristics.
- ▶ Ensure supervision of athletes, especially on buses and other down times.

SPORTS TEAMS

- ▶ Remember that school safety rules are designed to protect students of all sizes.
- ▶ No obligation to alter try-out rules/procedures. If a transgender student does not have the physical/technical abilities to make the team, he or she can be cut like other students.
- ▶ The differences in males/females playing sports are less of a concern in K-12 setting than in college and beyond.

NAMES & PRONOUNS

- ▶ Communicate with the child and parents about what name the child wants to use and what pronouns are appropriate.
- ▶ Most transgender students want to use the pronouns associated with their identified gender.
- ▶ Teachers should respect the child's choice—we allow other students to be referred to by nicknames, middle names, etc.
- ▶ The child's chosen name should be on his her ID and in the teacher's informal records.

POWER SCHOOL/STUDENT RECORDS

- ▶ Families of transgender students frequently request that the student's status as transgender be kept as private as possible.
- ▶ The student's gender and name in Power School must reflect what is on the birth certificate, but teachers can change their "unofficial records" to protect the privacy of a student from other students and/or substitute teachers.
- ▶ If a family gets a court order to have the child's name changed, Power School records should reflect the change.
- ▶ There are many options for Power School records if this is a significant issue for a family.
- ▶ Teachers should plan for how substitute teachers will be informed of a transgender student.

DRESS CODES

- ▶ Ensure that dress codes are being applied uniformly to males and females. For example, if a transgender female (born male; identifies as female) wears a skirt, it must be fingertip length. If cisgender females are allowed to wear skirts, transgender females must be allowed to do so as well.
- ▶ If a transgender male student (born female; identifies as male) wants to wear a suit to the prom, he should be allowed to do so (and vice versa).
- ▶ Schools may argue that students wearing clothes of their identified gender will cause a substantial disruption to the educational environment. This is probably a losing argument.

GENDER-SPECIFIC EXTRACURRICULAR GROUPS

- ▶ Consider groups such as all-male civic groups or all-female choirs.
- ▶ What purpose do these groups serve?
- ▶ What impact will allowing a transgender student to participate in these groups have on the group as a whole?

HOMECOMING/PROM—KINGS AND QUEENS

- ▶ These events are very important at most schools but can also exclude transgender students.
- ▶ Consider changing titles to “royalty” or something similar.
- ▶ Consider allowing transgender students to run for the position that they identify as.
- ▶ Also keep in mind all of the instances where one male and one female are selected to do certain things (senior superlatives, student council, etc.)
- ▶ Weigh the importance of these traditions with the importance of having all students feel included. Be creative!

WHAT IF PARENTS DO NOT SUPPORT CHILD'S TRANSITION?

- ▶ This could be a very, very difficult situation!
- ▶ Consider the well-being of the child and the right of the parents to make choices for their children.
- ▶ Open and honest communication is key!