

Note: This is draft guidance that Garden State Equality put together for the NJ Department of Education. Despite our best efforts, the NJ DOE has not yet adopted this guidance. **This guidance is a draft, and is not yet policy.**

Transgender Students

The NJ DOE is committed to providing safe, supportive, and inclusive learning environments for all of our students, including transgender students, and to ensuring that every student has equal access to their district's educational programs, services, and activities. The purpose of this advisory is to provide New Jersey school districts with updated guidance on the minimum requirements for compliance with New Jersey's prohibition on gender identity and gender expression discrimination.

State and federal law generally prohibits discrimination, harassment, intimidation and bullying of students based on their actual or perceived sex, gender, sexual orientation, gender identity or expression, race, color, ancestry, national origin, ethnic group identification, age, religion, marital or parental status, physical or mental disability or genetic information, or association with a person or group with one or more of these actual or perceived characteristics. (N.J.S.A. 10:1 *et seq*; N.J.S.A.18A:37-13 through 17; N.J.S.A. 2C:16-1; 42 U.S.C. sections 2000d-2000e-17, 2000h-2000h-6; Title IX, 20 U.S.C. § 1681.)

The New Jersey Law Against Discrimination requires that all public accommodations, including public schools, permit access to sex-segregated facilities on the basis of gender identity (N.J.S.A. 10:5-12(f)(1)).

Therefore, New Jersey and federal law require schools to afford students equal opportunity and access to the school's facilities, activities, and programs, in a manner that is consistent with each student's gender identity, irrespective of whether the student's gender identity matches the student's assigned sex at birth. Creating that type of school environment will help ensure that all students will be provided an environment that will nurture their growth, both academically and developmentally.

This website contains materials meant to aid districts in ensuring compliance with state and federal law as they apply to transgender students. It is recommended that these materials are reviewed by superintendents, principals, anti-bullying coordinators, and anti-bullying specialists to ensure compliance with the educational equity and nondiscrimination requirements of the New Jersey Law Against Discrimination and the New Jersey Anti-Bullying Bill of Rights.

Definitions

These definitions are not meant to label any student, but are intended as functional descriptors. Students may or may not use these terms to describe themselves.

Gender: Socially determined characteristics, roles, behaviors, and attributes a society expects from and considers appropriate for males and females; these characteristics are often referred to as “feminine” and “masculine.”

Gender Expansive: A term that conveys a wider, more flexible range of gender identity and/or expression than typically associated with the binary gender system.

Gender Expression: A person’s gender-related appearance and behavior, whether or not stereotypically associated with the person’s assigned sex at birth. It is the manner in which a person represents or expresses their gender to others, such as through their behavior, clothing, hairstyles, activities, voice or mannerisms.

Gender Identity: A person’s internal, deeply held sense of their own gender, regardless of the gender they were assigned at birth. All people have a gender identity, not just transgender people.

Gender Nonconforming: Displaying gender traits that are not consistent with stereotypical characteristics associated with one’s legal sex assigned at birth, or others’ perceptions of that sex. This term can be used to describe people whose gender expression differs from stereotypical expectations about how boys and girls are “supposed to” look or act. Sometimes referred to as gender creative or non-binary.

LGBTQ: An umbrella term that stands for “lesbian, gay, bisexual, transgender, and queer or questioning.”

Sexual Orientation: A person’s romantic or sexual attraction to people of the other and/or same gender. Common terms used to describe sexual orientation include, but are not limited to, heterosexual, lesbian, gay, and bisexual. Sexual orientation and gender identity are different. Transgender students may identify as gay, lesbian, bisexual, or heterosexual.

Transgender: A term for people whose gender identity, expression or behavior is different from those typically associated with their assigned sex at birth.

Transition: The process through which a person brings their outer appearance into closer alignment with their gender identity. This process can have a number of different components, including legal, medical, and social, and will look different for each person. Thus, there is no one step or series of steps that “makes” the person who they are. A person is entitled to have their gender identity respected and affirmed based on their declaration alone.

Determination of Gender Identity

The responsibility for determining a student's gender identity rests with the student or, in the case of young students not yet able to advocate for themselves, with the parent or guardian.

A school should accept a student's asserted gender identity when there is evidence that it is a sincerely held part of the student's core identity. A school may not question or disregard the student's assertion of his or her gender identity unless school personnel have a credible basis for believing that the student is asserting a particular gender identity for some improper purpose. In those situations, the school administrator shall document those concerns to the student and provide the student an opportunity to present documentation or other information demonstrating the sincerity of their gender identity. There is no threshold medical or mental health diagnosis or treatment requirement that any student must meet in order to have his or her gender identity recognized and respected by a school.

Privacy

All persons, including students, have a right to privacy: the right to decide when, with whom, and how much highly personal information one wants to share about oneself to others. This includes the right to control dissemination of highly personal and private information such as one's transgender status or sexual orientation.

District and school personnel should not disclose a student's transgender status to others, including, but not limited to, other students, parents, and/or other school personnel, unless they are legally required to, or the student has authorized such disclosure, or there is a specific and compelling "need to know" in order to protect the transgender student's interests. In those rare circumstances where disclosure is deemed to be absolutely necessary, before making any disclosure, school officials should inform the transgender student of the need to disclose and provide them with the opportunity and resources they may need to make the disclosure themselves.

District and school personnel may encounter situations where a transgender student has not disclosed their transgender status to their parents. Whenever possible, school administrators should speak with the student to confirm the manner in which the student will be referred to in conversation with the parent/guardian. Generally, when contacting the parent or guardian of a transgender student, school personnel should use the student's legal name and the gender pronoun that corresponds to their legal sex, unless the student, parent, or guardian has specified otherwise.

All students, including transgender students, have the right to openly discuss and express their gender identity or transgender status and to decide when, with whom, and how much to share that private information. In sharing this information, a student does not give up the right to privacy and at no time may the school use a student's self-disclosure as grounds for sharing information about the student's gender identity or transgender status without the student's written permission.

Names/Pronouns

Should a student or parent/legal guardian request to have the student addressed by a name and pronoun different from those associated with the student's sex at birth, the school will honor that request and set expectations for their consistent use.

District and school officials may not require proof of a court-ordered name or gender change before honoring such a request. Districts and schools should also endeavor to proactively adapt student information systems to accommodate requested names and pronouns to prevent inadvertently revealing information that would violate the student's privacy.

While inadvertent slips or honest mistakes in the use of names or pronouns may occur, staff or students intentionally and persistently refusing to respect a student's gender identity by using the wrong name and gender pronoun is discriminatory and is a violation of this policy.

School Records

School Districts are required to maintain an official, permanent pupil record with the legal name and gender appearing on the student's birth certificate. A student's legal name is not determined solely by their birth certificate, New Jersey recognizes common law name changes even for students under the age of 18 with parental consent. However, a school district's obligation to treat a student in accordance with their gender identity does not hinge on the student's ability to obtain a court-ordered or other type of official name or gender marker change. Thus, irrespective of the student's permanent pupil file, on all other school-related records or documents, at the request of the student or with the consent of the student's parent/legal guardian (unless the student is over 18), schools should use a transgender student's requested name, gender marker, and gender pronoun. This would include physical records and documents, diplomas and other certificates of advancement, electronic records and documents, and school IDs. Every effort should be made to update student records with the student's correct name and gender marker, and not to circulate records with the student's assigned birth name or gender marker. Schools should also identify routine areas where a transgender student's privacy could be violated by the improper usage of the legal name and gender marker. These include but are not limited to pre-printed labels, standardized tests, student IDs or library cards, lunch tickets, school photos, notices from the main office, attendance slips, grade books, posted lists of student names, lesson plans, seating charts and roll sheets used by substitute teachers, and any other places where students' names are commonly written.

In order to protect the student's privacy, and to prevent accidental disclosure of a student's transgender status, the school should maintain the official, permanent pupil record in a secure location, separate from the student's other records. If the official record is maintained electronically, similar security measures should be implemented to protect student privacy.

In the event that a student identifies as transgender, but is unable to obtain consent from a parent or legal guardian, a school administrator should meet with the

student to discuss how the student would like to be addressed at school and implement a plan to ensure that the student's privacy is protected. When a student or parent/legal guardian presents the school with documentation of a court-ordered legal name and/or gender change, the school must then change the official, permanent pupil record, to reflect the student's new legal name and gender. Transgender students who transition after having graduated may ask their previous schools to amend school records or a diploma or transcript that include the student's birth name and gender. When requested, schools should amend the student's record, including reissuing a high school diploma or transcript, to reflect the student's current name and gender.

Dress Codes and Uniforms

All students have the right to dress in accordance with their gender identity and gender expression. School dress code and uniform policies should be gender-neutral, and should not restrict students' clothing choices on the basis of gender or traditional stereotypes about what males and females "should" wear.

Restrooms

Schools may maintain separate restroom facilities for male and female students. However, students shall have access to the restroom that corresponds to their gender identity (N.J.S.A. 10:5-12(11)(f)(1)).

Where available, a single stall, "gender inclusive" restroom (such as in the health office) may be used by any student who desires increased privacy, regardless of the underlying reason. The use of such a "gender inclusive" restroom shall be a matter of choice for a student and no student shall be compelled to use such a restroom.

As a proactive measure, administrators should take steps to identify private gender-inclusive restrooms on their campus, as well as to de-stigmatize the use of such private options. Establishing clear guidelines and expectations with regards to students' physical privacy and boundaries is also important. Both can be reinforced through language in student handbooks, posted expectations, and through orientation and other processes for familiarizing students and guardians to the school and its facilities.

Locker Rooms

Schools may maintain separate locker room facilities for male and female students. However, students shall have access to the locker room facility that corresponds to their gender identity.

If any student has a need or desire for increased privacy or safety, regardless of the underlying reason, they may be provided access to a reasonable alternative changing area or locker room such as:

- Use of a private area in the public area of the locker room facility (i.e., a nearby restroom stall with a door, an area separated by a curtain, or a P.E. instructor's office in the locker room).
- A separate changing schedule (either utilizing the locker room before or after other students).
- Use of a nearby private area (i.e., a nearby restroom or a health office restroom). However, use of such an alternative changing space shall be a matter of choice for a student and no student shall be compelled to use such an alternative. School administrators should also work to de-stigmatize the use of such options, as well as to establish clear guidelines and expectations with regard to respecting privacy and boundaries in changing areas and other close quarters.

Physical Education and Sports Participation

Transgender students shall be permitted to participate in physical education classes, intramural sports, and competitive athletic activities in a manner consistent with their gender identity. This is consistent with New Jersey and federal law as well as the policies established by the New Jersey State Interscholastic Athletic Association (NJSIAA). For rules and procedures governing sports eligibility for transgender student-athletes, please review the NJSIAA Handbook, available at www.njsiaa.org.

Harassment and Bullying

Each school must ensure that all students, including transgender students, are provided a safe and supportive learning environment that is free of discrimination, harassment, and bullying. Administrators, faculty and staff are required to intervene when they witness discrimination, harassment, or bullying of any student if they can do so safely. Complaints alleging discrimination, harassment or bullying based on a student's gender identity, gender expression, or gender nonconformity, are to be handled with the same seriousness as other discrimination/harassment/bullying complaints. Complaints alleging discrimination or harassment based on a student's gender identity, gender expression, or gender nonconformity should be given immediate attention; fully and appropriately investigated in a timely manner; and resolved through appropriate corrective action.

School Climate and LGBT Students

A growing body of research has found that LGBT students face elevated levels of harassment, intimidation, and bullying (HIB) when compared to their non-LGBT peers. Additionally, bullying around perceived LGBT status affects all children, not just those who are LGBT identified. Research also shows LGBT youth and those who are gender nonconforming receive more putative school and criminal justice sanctions than their non-LGBT peers. LGBT students of color experience more of these negative experiences (HIB, school sanctions, and contact with the juvenile

justice system) and corollary negative behavioral outcomes (depression, drug abuse, and suicide) than their white LGBT peers.

LGBT youth are also at greater risk of family abandonment and homelessness. National survey data, as well as data focused on New York City, has found that LGBT youth make up over 40% of the unaccompanied homeless youth population, despite being only an estimated 3-6% of the overall youth population.¹ Because of the potential for family abuse and abandonment, schools must be careful in the handling of sensitive information pertaining to sexual orientation, gender identity, and gender expression. National data shows that for transgender individuals the incidence of homelessness is even greater, with over 20% of transgender people reporting that they have experienced homelessness.²

Schools can help address these issues by creating supportive school climates through the creation of Gay/Straight Alliances (GSAs) and other LGBT youth groups. Curriculum is another important factor in building a supportive climate, with research showing that including LGBT lives and history in K-12 education is the single most significant factor in reducing bullying and changing school climate.

Research on Transgender Youth in Schools

- [CDC report on Health Risks Among Sexual Minority Youth](#)
- [GLSEN 2013 National School Climate Survey](#)
- [Harsh Realities: The Experiences of Transgender Students in our Nation's Schools](#)
- [Injustice at Every Turn: A Report of the National Transgender Discrimination Survey](#)
- [Schools in Transition: A Guide for Supporting Transgender Students in K-12 Schools](#)
- [Unjust: How the Broken Criminal Justice System Fails LGBTQ Youth](#)

Policies on Transgender Students

Many New Jersey school districts have taken the step of adopting a policy on transgender students. These policies are intended to ensure that transgender students, like all students, are able to learn in a safe, supportive, and nondiscriminatory school environment. They also provide guidelines for administrators, teachers, and staff on common questions and concerns, while making certain that the district is in compliance with the New Jersey Law Against

¹ Citations on LGBT youth homelessness. I can add these, but they might work better in the “Research” section as links... open to your thoughts.

² Citations on transgender people and homelessness. I can add these, but they might work better in the “Research” section as links... open to your thoughts.

Discrimination, the New Jersey Anti-Bullying Bill of Rights, and Title IX of the U.S. Education Amendments.

Policy Examples and Guidelines

- [US Department of Education, Examples of Policy](#)
- [Schools in Transition](#)
- Garden State Equality Policy (pdf)
- GLSEN Policy (pdf)
- NJSBA Policy (pdf)

National Resources

For curricular resources for K-12 classrooms see [Advocates for Youth](#), [GLSEN's Educator Resources](#), [Teaching Tolerance](#), and [Welcoming Schools](#).

For crisis intervention contact [The Trevor Project](#). If a child is being threatened by conversion therapy contact [Garden State Equality](#). Conversion therapy is a dangerous and discredited practice, where a therapist attempts to change an individual's sexual orientation or gender identity. The practice of conversion therapy is illegal in New Jersey. All the major expert psychiatric and medical organizations reject the practice of conversion therapy. For resources and social science data on the harm done by conversion therapy see the American Psychological Association's [Just the Facts](#). See also [#Born Perfect: The Campaign to End Conversion Therapy](#).

Local Resources for Families, Schools, and Students

[ACES for Bullying Prevention](#)

ACES for Bullying Prevention is the Alliance for Comprehensive and Effective Strategies (ACES) for preventing and addressing bullying, a coalition of organizations and individuals in New Jersey. The website, managed by Dr. Paula C. Rodríguez Rust, contains information about issues related to the use of evidence-based practice, and the implementation of the Anti-Bullying Bill of Rights in New Jersey. Some members of the Alliance provide services to schools. You can find information on [ABR Implementation Concerns for LGBT students](#) at ACES.

[Garden State Equality](#)

Garden State Equality is New Jersey's largest LGBT civil rights and advocacy organization. GSE is a recognized leader in New Jersey on the rights of LGBT students and best practices in working with LGBT youth. GSE provides training to teachers and staff, curricular development workshops for teachers and staff, and workshops for students in grades K-12.

[GLSEN Central NJ](#)

GLSEN (Gay, Lesbian, Straight Education Network) is a national organization with chapters in New Jersey. GLSEN is dedicated to supporting schools in becoming safe and welcoming to all students, regardless of sexual orientation, gender identity or gender expression. GLSEN Central NJ offers professional development, help establishing Gay-Straight Alliances (a.k.a. Gender & Sexuality Alliances), and policy development. GLSEN is the organizer, or a co-sponsor, of many annual events including GSA Forum, Trans Forum, Ally Week, Day of Silence, etc. Website includes downloadable toolkits and information for educators.

[GLSEN Northern NJ](#)

GLSEN Northern New Jersey is a new local chapter of the GLSEN National organization serving and connecting LGBTQ+ youth and school communities with events, trainings, and information in Bergen, Essex, and Hudson Counties.

[HiTOPS](#)

HiTops is a health education and advocacy organization dedicated to ensuring every adolescent safe passage to adulthood by providing comprehensive sexuality education and promoting healthy relationships and supportive connections. HiTOPS offers support groups and peer leadership development opportunities for LGBT youth, as well as trainings and programs for schools.

[HMI: New Jersey](#)

The Hetrick Martin Institute offers a myriad of training options to youth serving providers. These trainings are intended to build the skills and competencies of service providers regarding best practices for working with and developing targeted programming to meet the specific needs of LGBTQ youth. Additionally, HMI runs direct-service programming for LGBTQ identified youth in Newark, NJ.

[PFLAG](#)

PFLAG (Parents and Friends of Lesbians and Gays) is the nation's largest family and ally organization. There are a number of chapters in New Jersey, offering support to families of LGBT youth. They are, [PFLAG Bergen County](#), [PFLAG Collingswood](#), [PFLAG Jersey Shore](#), [PFLAG Northern NJ](#), [PFLAG Princeton](#), and [PFLAG Sparta](#). You may also wish to check out the link to the national organization, as new chapters may be added after this listing. You can also find information there on starting your own chapter. While all PFLAG chapters offer support to families of transgender youth (as well as lesbian, gay, and bisexual youth), many of the PFLAGs chapters in NJ have support groups specifically for families and friends of transgender youth.

[The Pride Network](#)

The Pride Network strives to develop a more involved and informed LGBTQ community through leadership programs and practical solutions that build, educate and empower sustainable community networks.

[Spectrum Diversity](#)

Spectrum Diversity is owned by Dr. Rodríguez Rust, Sociologist and Educational Consultant. Provides professional development and consultation services to schools on multiple topics including evidence-based practices in managing school climate, cultural competence and equity, sexual orientation/gender identity/gender expression diversity (LGBT), and bullying prevention and response customized for compliance with New Jersey law. Website includes free information about the Anti-Bullying Bill of Rights, implementation concerns, policy issues in New Jersey, evidence-based practices, cultural diversity, and resources.

Local Health Care Providers

For a list of health care professionals who work with transgender youth and their families, providing therapy and transition-related care, see [Map + Expand](#), a project of [Garden State Equality](#).