

PROTECTED CLASS: TRANSGENDER STUDENTS

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Topics to be Discussed

- Title IX
- EOBOE Policy 5756
- Updates on Transgender Student Rights

United States Department of Justice

- Compliance with Title IX
 - Schools receiving funds will not exclude, separate, deny benefits or treat differently on the basis of sex.
 - Student and/or parent notifies school of gender identity
 - Not required to provide documentation of “new/different” identity
 - Equal access to educational programs and activities
- 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.

East Orange School District Policy 5756

- The Board of Education is committed to provide a safe, supportive, and inclusive learning environment for all students. In furthering this goal, the Board adopts this Policy to ensure all students, including transgender students, have equal educational opportunities and equal access to the school district's educational programs and activities. The Board of Education, administration, and all school staff members will comply with Federal and State laws and regulations regarding transgender students and no student shall be subjected to discrimination on the basis of gender identity or expression.
- The Board of Education believes 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.

Adopted 10/15/15

Terminology

- “Gender expression” refers to the way a student represents or expresses gender to others, often through behavior, clothing, hairstyles, activities, voice, or mannerisms.
- “Gender identity” means a student's deeply held sense or psychological knowledge of their own gender, regardless of the gender they were assigned at birth.
- “Gender identity or expression” also means having or being perceived as having a gender- related identity or expression whether or not stereotypically associated with a person’s assigned sex at birth.
- “Gender nonconforming” describes a student whose gender expression differs from stereotypical expectations, such as "feminine" boys, "masculine" girls, and those who are perceived as androgynous.
- “Transgender” describes students whose gender identity is different from their gender assigned at birth.

Adopted 10/15/15

Provisions Under The Law

- Names/Pronouns
- Student Records
- Restrooms
- Locker Rooms
- Physical Education Classes
- Intramurals Programs
- Interscholastic Athletics
- Dress Codes

Adopted 10/15/15

Transgender Student Rights Updates



NJDOE Transgender Student Guidance - 9/28/18

<https://www.state.nj.us/education/news/2018/0827trans.htm>

- Resources

- <https://nj.gov/education/students/safety/sandp/transgender/Transgender%20Guidance%20Resources%202018.pdf>

- Definitions

- “A safe and supportive environment within a school begins with understanding and respect.
- Students, teachers, and administrators should be provided with common terminology associated with gender identity.
- Although these terms are commonly used by advocacy and human rights groups, students may prefer other terms to describe their gender identity, appearance, or behavior.”

NJDOE Transgender Student Guidance - 9/28/18

<https://www.state.nj.us/education/news/2018/0827trans.htm>

Gender Identity means a person's internal, deeply held sense of gender. All people have a gender identity, not just transgender people. For transgender people, the individual's internal gender identity is not the same as the gender assigned at birth.

Gender Expression means external manifestations of gender, expressed through a person's name, pronouns, clothing, haircut, behavior, voice, and/or body characteristics. Society identifies these cues as masculine and feminine, although what is considered masculine or feminine changes over time and varies by culture.

Assigned Sex at Birth (ASAB) refers to the biological sex designation recorded on a person's birth certificate upon the initial issuance of that certificate, should such a record be provided at birth.

Gender Assigned at Birth refers to the gender a child is assigned at birth or assumed to be, based on their biological sex assigned at birth.

Sexual Orientation describes a person's enduring physical, romantic, and/or emotional attraction to another person. Gender identity and sexual orientation are not the same. A transgender person may be straight, lesbian, gay, bisexual, or asexual. For example, a person who transitions from male to female and is attracted solely to men may identify as a straight woman.

Transgender is a term for an individual whose gender identity and/or gender expression differs from those typically associated with the sex and gender assigned at birth.

Transition is the process by which a transgender person recognizes that their authentic gender identity is not the same as the gender assigned at birth, and develops a more affirming gender expression that feels authentic. Some individuals socially transition, for example, through dress, use of names and/or pronouns. Some individuals may undergo a physical transition, which might include hormone treatments and surgery. School district personnel should avoid the phrase "sex change," as it is an inaccurate description of the transition process; the process is more accurately described as "gender-confirming."

LGBTQ is an acronym for "lesbian, gay, bisexual, transgender, and queer/questioning."

Gender nonconforming describes a person whose gender expression does not conform to the gender expectations of their family or community. Gender nonconformity is not necessarily an indication that a youth is transgender; many non-transgender youth do not conform to stereotypical expectations.

Gender Expansive/Gender Diverse/Gender Fluid/Gender Non-Binary/Agender/Gender Queer are terms that convey a wider, more flexible range of gender identity and/or expression than typically associated with the binary gender system. For example, students who identify as gender queer or gender fluid might not identify as boys or girls; for these students, the non-binary gender identity functions as the student's gender identity.

Cisgender refers to individuals whose gender identity, expression, or behavior conforms with those typically associated with their sex assigned at birth.

NJDOE Transgender Student Guidance - 9/28/18

<https://www.state.nj.us/education/news/2018/0827trans.htm>

Student-Centered Approach

- “A SD shall accept a student’s asserted gender identity; **parental consent is not required.**” (emphasis added)
- No threshold diagnosis or treatment requirements to have his or her gender identity recognized by the SD, school or school personnel.
- No legal or court-ordered name change required.
- No affirmative duty for any SD personnel to notify a student’s parent or guardian of the student’s gender identity or expression.

When the Parent/Guardian Disagrees

- Parent/Guardian may object to the minor student's name change request.
- "SD should consult their Board Attorney regarding the minor student's civil rights and protections under the NJLAD.
- Staff should continue to refer to the student in accordance with the student's chosen name and pronoun at school and may consider providing resource information regarding family counseling and support services outside of the SD.

Communication

- SD personnel should have an open, but confidential discussion with the student to ascertain the student's preference on matters such as chosen name, chosen pronoun to use, and parental communications.
 - SDs shall ensure that a transgender student is addressed at school by the name and pronoun chosen by the student, regardless of whether a legal name change or change in official school records has occurred.
 - SDs shall issue school documentation for a transgender student, such as student ID cards, in the name chosen by the student.
 - A transgender student shall be allowed to dress in accordance with the student's gender identity.

Disclosure

- FERPA Compliance
- “SD should discuss with the student, and any other individuals at the student’s request, the risks associated with the student’s transgender status being inadvertently disclosed.”
 - Other students’ discussions at home
 - Activities or events
 - HIB

Safe & Supportive Environment

- “Each SD shall develop policies and procedures to ensure that its schools provide a safe and supportive learning environment...”
- See NJSBA’s Sample Policy (Drop Box Attachment)
 - <https://www.njsba.org/wp-content/uploads/2017/02/Gender-Identify-and-Expression.pdf>
- Staff Sensitivity Training
- “SD shall honor and recognize a student’s asserted gender identity, and shall not require any documentation or evidence in any form, including diagnosis, treatment, or legal name change.”

School Records

- “If a student has expressed a preference to be called by a name other than their birth name, permanent records containing the student’s birth name should be kept in a separate, confidential file.
 - This file should only be shared with appropriate school staff after consultation with the student.
 - A separate file containing records bearing the student’s chosen name may also be kept.”
- “To ensure consistency among teachers, school administrators, substitute teachers and other staff, every effort should be made to immediately update student education records (e.g. attendance records, transcripts, IEP’s, etc.) with the student’s chosen name and gender pronouns, consistent with the student’s gender identity and expression, and not circulate records with the student’s birth name, unless directed by the student.”

School Records

- “Districts shall report to the NJDOE through NJ SMART a student’s name or gender based upon that student’s chosen name and corresponding gender identity.
 - Changing the name or gender identity from what was reported in previous years will not affect the reliability of the data reported.”
- “If a district changes a student’s name or gender identity, it must also maintain locally a separate record reflecting the student’s legal name and sex assigned at birth until receipt of documentation of a legal change of name or gender.”

Use of Facilities

- “All students are entitled to have access to restrooms, locker rooms and changing facilities in accordance with their gender identity to allow for involvement in various school programs and activities.”
- “In all cases, the school principal must work with the student and staff so all parties are aware of facility policies and understand that the student may access the restroom, locker room, and changing facility that corresponds to the student’s gender identity.”
- “Transgender students who are uncomfortable using a sex-segregated restroom should be provided with a safe and adequate alternative, such as a single “unisex” restroom or the nurse’s restroom.”
- “Non-transgender students should also be afforded the option to use a private facility, such as a unisex facility or the nurse’s restroom, should they feel uncomfortable.”

References and Resources

- EOBOE Policy 5756 Transgender Students
- www.ed.gov/oese/oshs/emergingpractices.pdf
- www.ed.gov/ocr/lgbt.html
- www.dol.gov/ofccp/regs/compliance/directives/dir2014_02.html
- www.ed.documents/press-releases/downey-school-district-agreement.pdf
- www.ed.gov/ocr/docs/qa-201404-title-ix.pdf