

Guidance on Civil Rights Protections
and Supports for Transgender Students

Frequently Asked Questions



CONNECTICUT STATE
DEPARTMENT OF EDUCATION

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Introduction to Resources

On February 23, 2017, Governor Dannel P. Malloy and Commissioner Dianna R. Wentzell jointly issued a memorandum to Connecticut Superintendents of Schools reaffirming the State of Connecticut’s unwavering commitment to provide every student in Connecticut with access to a high quality education in a safe, supportive, inclusive and welcoming environment. On the same day, the Governor issued Executive Order No. 56, directing the State Department of Education (“SDE”), in consultation with the Connecticut Commission on Human Rights and Opportunities (“CHRO”), to develop guidance for Connecticut school districts on the rights, responsibilities and best educational practices for transgender students. The guidance document, accompanying these Frequently Asked Questions (“FAQ”), is designed to assist schools and districts in implementing civil rights protections for transgender students under state and federal laws and to foster an educational environment that is safe and inclusive. We encourage districts to develop and implement professional development programming for school staff using the guidance and the following FAQs to best meet the needs of transgender students and ensure consistent execution of federal and state protections.

While school boards, as a general rule, have protective anti-discrimination policies to advance the safety and well-being of the student population, school districts are faced with more difficult conversations about how to implement those policies on a day-to-day basis. How do schools allow equal access, but respect privacy for transgender and other students? How does a school district apply its dress code for transgender students? And how do schools regulate student use of single-sex restrooms and locker rooms? School boards and school staff must answer these increasingly common questions through policy and daily on-the-ground decisions.

There are no quick and easy answers to these and other questions that school staff encounter in today’s society. These FAQs are intended to assist school districts’ efforts to engage in these important conversations and to make balanced choices, while navigating a sometimes confusing legal landscape. The primary goal of these FAQs is to support district leaders in identifying issues, understanding existing legal frameworks, and, where appropriate, offering recommendations to help schools ensure that all students, regardless of gender identity, are safe and learning at school.

While SDE’s guidance document covers a range of educational topics relevant to transgender students and educators, the FAQs are provided to afford easy access to direction and information on various situations that affect the rights and well-being of transgender students on a daily basis. By providing ready access to understandable information, the FAQs are intended to promote the goals of improving the educational integration of transgender and gender non-conforming students, maintaining the privacy of all students, and supporting positive communication between educators, students, and parents to further the successful educational development and well-being of every student. Neither the guidance document nor these FAQs are intended as one-size-fits-all legal advice. The issues that arise often must be resolved in the context of local communities, and school district leaders should consult their legal counsel regarding how the applicable laws and regulations may affect the policy decisions they are making for their schools.

Legal Responsibilities and Civil Rights Protections

Under state and federal laws, students are entitled to equal access to educational programming and activities free of discrimination. Connecticut was among the first states to recognize and affirm nondiscrimination protections based on gender identity and expression. SDE's guidance document, together with this FAQ, is designed to assist school districts with understanding and implementing their legal responsibilities to transgender students. Although the FAQ and guidance document are intended as helpful resources, school district leaders should rely on school district counsel to respond to the often-uncertain legal issues that may arise regarding this evolving area of law.

1. What civil rights protections are afforded to transgender and gender non-conforming students in Connecticut public schools?

Connecticut public schools must provide students with an equal opportunity to participate in school activities, programs and courses of study without discrimination on account of gender identity or expression. This obligation applies irrespective of concerns or objections raised by other students, parents, staff, or other community members. The questions and answers that follow provide more specific details concerning civil rights protections afforded to transgender and gender non-conforming students in the public school environment.

2. Are there laws protecting students against discrimination based on gender identity or expression?

There are both federal and state laws that protect transgender and gender non-conforming students from discrimination. On the federal side, Title IX of the Education Amendments Act of 1972 prohibits discrimination in schools on the basis of sex, which has been interpreted by courts to include gender identity discrimination. On the state side, Public Act 11-55 specifically addressed antidiscrimination on the basis of gender identity and expression. Thus, since 2011, Connecticut's antidiscrimination statutes, enforced by the CHRO, prohibit discrimination based on gender identity or expression in employment, public accommodations, housing, credit, and education. Section 10-15c of the Connecticut General Statutes ("C.G.S.") requires public schools to provide students with an equal opportunity to participate in school activities, programs and courses of study free of discrimination on account of gender identity or expression (as well as several other protected categories). Please refer to the guidance document and legal counsel for further information about state and federal antidiscrimination laws.

3. What is the federal transgender guidance under Title IX and what happens now that the guidance was withdrawn?

In May 2016, the U.S. Departments of Justice and Education ("DOJ/DOE") issued nationwide guidance to school districts to communicate DOJ/DOE's official position with regard to future enforcement of Title IX by the federal government. That position included notice that Title IX protected students from discrimination in school on the basis of gender identity, including in regard to names and pronouns, restrooms, and dress codes.

In February 2017, the Trump Administration rescinded the May 2016 DOJ/DOE guidance. This action did not change federal law — that can be done only by Congress or the courts. Rather, it changed how Title IX would be interpreted by DOJ/DOE, leaving questions about if and how DOJ/DOE would enforce Title IX in cases of gender identity discrimination. At all times, students and parents/guardians have the right to enforce Title IX directly by filing a lawsuit in court and/or seeking enforcement by appropriate state authorities. Moreover, students and parents/guardians also have the right to enforce the protections against gender identity discrimination established by Connecticut law.

4. Where can a student or parent/guardian go to complain about unlawful discrimination in school?

CSDE encourages students and parents/guardians to report discriminatory treatment to appropriate school and district officials because the school district not only has the responsibility to address and remedy any issues but also is normally in the best position to take timely corrective action. Parents/guardians and students also may file discrimination complaints with state or federal courts, the CHRO or the Office of Civil Rights (“OCR”) of the DOE for alleged violations of antidiscrimination statutes, including claims based on gender identity or expression.

Because of uncertainty concerning how OCR will handle complaints of gender identity discrimination during the Trump administration, CSDE recommends that students, parents and guardians file complaints with OCR *and* CHRO if they are unable to resolve issues directly with the school district. In addition, while CSDE lacks the type of direct enforcement authority that CHRO has, CSDE nevertheless can play an important role in assisting families seeking to resolve discrimination concerns with a school district, and assisting districts in implementing their legal responsibilities in this area.

Contact information:

Commission on Human Rights
and Opportunities
CAPITOL REGION OFFICE
450 Columbus Boulevard, Suite 2
Hartford, CT 06103-1835
Phone: 860-566-7710
Fax: 860-566-1997
TDD: 860-566-7710
<http://www.ct.gov/chro/site/default.asp>

Office for Civil Rights
U.S. Department of Education
5 Post Office Square, 8th Floor
Boston, MA 02109-3921
Phone: 617-289-0111
Fax: 617-289-0150
Email: OCR.Boston@ed.gov
<https://www2.ed.gov/about/offices/list/ocr/index.html>

United States District Court
Abraham Ribicoff Federal Building
United States District Court
450 Main Street
Hartford, CT 06103
Phone: 860-240-3200
<http://www.ctd.uscourts.gov/>

Connecticut Superior Court
To find appropriate court location, visit
http://www.jud.ct.gov/directory/court_directions.htm#JD
or call 860-548-2700

Dr. Adrian R. Wood
State Title IX Coordinator
CT State Department of Education
Turnaround Office
450 Columbus Boulevard, Suite 602
Hartford, CT 06103-1841
Phone: 860-713-6795
Email: adrian.wood@ct.gov

Organizations providing legal aid, resources or other support to victims of discrimination:

Greater Hartford Legal Aid
999 Asylum Avenue, 3rd Floor
Hartford, CT 06105-2465
Phone: 860-541-5000
Fax: 860-541-5050
Email: ghla@ghla.org
<https://www.ghla.org>

True Colors, Inc.
30 Arbor Street, Suite 201A
Hartford, CT 06106
Phone: 860-232-0050
Fax: 860-232-0049
<https://www.ourtruecolors.org>

New Haven Legal Assistance Association, Inc.
426 State Street
New Haven, CT 06510-2018
Phone: 203-946-4811
Fax: 203-498-9271
<https://nhlegal.org>

Connecticut Legal Services
62 Washington Street
Middletown, CT 06457
Phone: 860-344-0447
Fax: 860-346-2938
<https://ctlegal.org>

5. What if the family of another student raises religious freedom as an objection to school policies to protect transgender students?

In the public school setting, all students are entitled to equal treatment. Protecting one student's civil right to equal treatment does not violate the religious freedoms of other students. In explaining this to families who raise objections, school officials may find it helpful to note that all students will be afforded privacy.

6. Do transgender students need to provide documentation of their gender identity?

No. Students are not required to produce documents that reflect their gender identity in order to have the right to be treated consistent with their gender identity. Under the relevant laws, schools are expected to treat students consistent with the student's stated gender identity even if the education records or identification documents indicate a different sex. Similarly, the school's obligation to treat a student consistent with the student's gender identity or expression does not require notice from the parent or guardian.

If a school determines that it is necessary to confirm a student's stated gender identity, it should do so in accordance with the law. Governing law provides that transgender students have a variety of different ways of establishing their gender identity, including, but not limited to: (1) medical history, (2) care or treatment of the gender-related identity, (3) consistent and uniform assertion of such an identity, or (4) any other evidence that the identity is sincerely held, part of the student's core identity, or that the student is not asserting such an identity for an improper purpose. This is not an exhaustive list and schools should consult district officials and counsel for further guidance.

7. Is consistent expression of a particular gender identity required to establish gender-identity?

No. Consistency and uniform assertion of a gender identity is one way for an individual to indicate their gender identity, but it is not a requirement that an individual consistently and uniformly assert or express themselves as male or female. Some students may not identify as the same gender all the time but consistently assert their identity as gender fluid. Students who identify as gender fluid may express their gender in ways which conform with more than one gender, even from one day to the next.

8. What pronouns should school districts and staff use with transgender and gender non-conforming students?

Students have the right to be addressed by a name and pronoun that the student prefers and corresponds to their gender identity even if education records or identification documents indicate a different name or sex. Using the student's chosen name and pronoun is important not only for legal compliance but also for ensuring the student's dignity and well-being. If school staff are unsure what name and pronoun to use, privately asking students what their preferred gender pronouns and names are in an age-appropriate manner is the best place to start. It is important to remember that some students may not identify as male or female but, instead, consider themselves non-binary (i.e., otherwise not conforming to gender binary references to the two categories of male and female). Using these terms may be unfamiliar at first and it may take time for school staff to become accustomed to new terminology on gender identity, but, as with any new term or usage, these terms will become familiar with practice, appropriate training and support.

9. What should schools/districts do to ensure equal treatment of transgender students if they have rules or policies concerning clothing, dress codes and graduation attire?

Under applicable law, transgender and gender non-conforming students have the right to dress in accordance with their gender identity and wear clothing appropriate for students with the same gender identity. Thus, if a school maintains a particular dress code or uniform policy, the law requires the school to allow transgender students to dress in accordance with the code or policy consistent with their gender identity or expression. This requirement also applies to graduation attire and requires schools to allow transgender students to wear the graduation attire consistent with their gender identity or expression.

Single-Sex Facilities and Activities

As a general rule, schools may not separate or otherwise distinguish students on the basis of their sex, including gender identity or expression, in any school activities or the application of any school rule. State and federal laws, however, do permit school districts to provide single-sex restrooms, locker rooms, shower facilities, and athletic/physical education activities. School districts have certain obligations in protecting the rights of their transgender students with respect to single-sex facilities and activities. The following FAQs address these issues.

1. What restrooms should students use?

Most schools divide restrooms by sex. Under federal and state laws, CSDE policies and procedures, and Executive Order No. 56, schools are required to provide access to the restroom that corresponds to a student's gender identity at school, even when this differs from their sex assigned at birth. For example, a student whose sex assigned at birth is female but who identifies as male has a right under the law to use the restroom designated for male students if the student wishes, and it would be a violation of law to require this student to use the restroom designated for female students or an individual restroom. In communicating with students, families and staff about this requirement, schools may find it helpful to note that a private restroom option will be made available to any student.

2. How can schools ensure privacy for all students?

Some students may seek greater privacy than may be available in a multi-stall restroom. To meet this need, a private restroom option should be made available to any student seeking additional privacy. In practice, this means selecting a reasonable alternative restroom or restrooms, such as a single stall "unisex" restroom or the health office restroom, and designating such restroom(s) as private options available for all students.

3. May a school designate certain restrooms or individual-user facilities for use by transgender students?

No. As noted above, schools may maintain separate restroom facilities for male and female students provided they allow students to access them based on their gender identity and not based solely on students' sex assigned at birth. In addition to providing a private option as discussed above, schools may, but are not required to, make separate gender-neutral restrooms available to all students. Students may then choose to use such facilities or single-sex facilities consistent with their gender identity, or students may choose the private option available to all students.

4. What locker rooms should students use?

Like access to single-sex restroom facilities, students should have access to the locker room that corresponds to their gender identity asserted at school. A private option should be made available to any student interested in additional privacy. In locker rooms, additional privacy may be accomplished through use of a reasonable alternative changing area such as a private area (e.g., a nearby restroom stall with a door, an area separated by a curtain, a vacant office in the locker room, or a nearby health office restroom), or with a separate changing schedule (e.g., giving a student the option of using the locker room that corresponds to their gender identity before or after other students). If a transgender student seeks an alternative arrangement, such arrangement should be provided in a way that protects the student's ability to keep the individual's transgender status confidential. In no case shall a transgender student be required to use a locker room that conflicts with the student's gender identity.

5. Where should private or gender-neutral restrooms/locker room facilities be located?

In providing private and gender-neutral options as alternatives to standard restrooms or locker rooms, schools should, to the extent feasible, select an alternative facility that is as close as possible to the facilities other students are using. These facilities should not be located in another building.

6. What if parents, students or staff raise objections to a school's policy regarding restroom or locker room facilities?

A school's obligation to provide transgender and gender non-conforming students with equal access to educational programs, activities and facilities, including restrooms and locker rooms, applies irrespective of concerns or objections raised by other students, parents, staff or community members. A desire to accommodate others' discomfort is not a permissible basis for failing to treat students consistent with their gender identity or expression.

While the objections of others cannot serve as the basis for failing to provide access to facilities consistent with the student's gender identity, as noted above, appropriate accommodations must be provided for any student seeking additional privacy. Schools may find it helpful to note the availability of the private option in addressing objections from students, parents/guardians or staff.

7. What physical education activities should students participate in?

Transgender and gender non-conforming students must be allowed to participate in physical education (and intramural sports, if the school provides any) in a manner consistent with their gender identity at school. While schools may separate intramural sports activities and gym classes for male and female students, transgender students must be allowed to participate in gym class and on intramural sports teams consistent with their gender identity and not based solely on their sex assigned at birth.

8. Do the same policies apply to Interscholastic Competitive Sports Teams?

For issues concerning participation in interscholastic competitive sports, schools and districts should consult their counsel and the Connecticut Interscholastic Athletic Association ("CIAC").

Student Data and Records

Transgender students may seek to change gender and name information on their student records to reflect their gender identity and chosen name, regardless of whether they have completed a legal name change. Transgender students are entitled to equal treatment and, thus, schools should treat requests to change student records based on transgender status no differently than they would treat any other request for a change to student records. Updating a transgender student's education records to reflect the student's gender identity and chosen name protects the student's privacy and ensures that school staff consistently use appropriate names and pronouns.

1. What name and gender should be reported to the Public School Information System (PSIS)?

If a transgender student requests a change to educational records to reflect the student's stated gender identity and chosen name, schools should correct student education records to accurately reflect the student's chosen name and gender identity, regardless of whether the student has completed a legal name change. Similarly, gender and name information reported in PSIS should reflect a student's stated gender identity and chosen name.

2. What if a student identifies as neither male nor female? In that case, what should be reported to the PSIS?

Students who do not identify exclusively as male or female should be reported as *Non-Binary* in PSIS.

3. What procedure must the district follow to make changes to a student's educational records?

Districts must treat requests from transgender and gender non-conforming students to change their educational records in the same manner as any other records change request. This process should not require unique hurdles for students and their families.

4. What steps should a school or school district take to protect a transgender or gender non-conforming student's right to privacy?

To prevent accidental disclosure of a student's transgender status, schools should keep records that reflect a transgender student's birth name and assigned sex (e.g., copy of the birth certificate) apart from the student's cumulative school records in a separate file. Schools should also implement similar safeguards to protect against disclosure of information contained in electronic records.

In instances where a student is using a chosen name, the student's birth name and gender information is considered private information and may not be disclosed except as permitted by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g ("FERPA"). Inappropriately disclosing personally identifiable information from education records to the school community may violate FERPA and interfere with transgender students' rights under antidiscrimination laws.

5. What role does FERPA play when students or parents/guardians request to change educational records without a legal change in name?

Under FERPA, school districts are free to change educational records based on the request of a minor student or a parent/guardian. Moreover, where a change of records is requested in order to conform a student's records to the student's gender identity, the change may be required under separate federal and state laws protecting against gender identity discrimination. These laws are independent of FERPA and may require changing student records even where FERPA does not clearly provide a mechanism for doing so.

In addition, FERPA provides students who are 18 and older and parents/guardians with a legal right to request an amendment to a student's education record to correct inaccurate or misleading information, which can include correcting name or gender identity information. For further information on the interplay between FERPA and school districts' obligations under antidiscrimination laws, districts should consult with their legal counsel and review CSDE's guidance document.

6. What if a student's parents do not consent to a school changing educational records or using the student's stated gender identity or chosen name?

There may be instances where a parent or guardian of a student who is under 18 disagrees with the student regarding the name, gender marker and pronoun to be used at school and in the student's education records. Current law does not provide a clear rule for school districts to follow as to whether a school should change a minor student's educational record at the student's request if the parents object. However, declining to use a student's chosen name, gender marker and pronoun simply because a parent/guardian objects would raise serious concerns under existing law and could cause severe psychological/emotional harm to the student. In such instances, districts should refer to their legal counsel for guidance concerning their obligations under the law and focus on appropriately ensuring the well-being of the student in light of the dispute, including by referral to appropriate counseling and support services for the student and family.

It is recommended that schools use a transgender student's chosen name, gender marker and pronoun at school to ensure the well-being of the student and protect the student's right to equal treatment, pending further guidance from district counsel and/or appropriate counseling staff or providers.

Understanding Gender Identity

There are a number of developing terms used to describe transgender characteristics and experiences, which may differ based on region, age, culture, or other factors. While many of these terms are not defined by law, several common definitions have been used by the courts, the U.S. Department of Education, and a number of groups with educational equity expertise. Any definitions provided in these materials are included to facilitate safe and nondiscriminatory learning environments and are not provided for the purpose of labeling any students.

1. What is gender identity and gender expression?

Gender identity refers to a person's innate, deeply-felt psychological identification as a man, woman or some other gender. Gender expression describes the ways in which individuals communicate their gender to others. People express and interpret gender through hairstyles, clothing, physical expression and mannerism, physical alterations of their body or by choosing a name that reflects their gender identity.

2. What is gender non-conforming?

Gender non-conforming is a broad term referring to people who do not behave in a way that conforms to the traditional expectations of their gender, or whose gender expression does not fit neatly into a category.

3. How is sexual orientation different from gender identity?

Sexual orientation describes a person's enduring physical, romantic, and/or emotional attraction to another person (for example: straight, gay, lesbian, bisexual), while gender identity describes a person's, internal, personal sense of being a man or a woman, or someone outside of the gender binary.

4. What name and pronoun should schools use?

Respect the name a transgender person is currently using. Sharing a transgender person's birth name and/or photos of a transgender person before their transition is an invasion of privacy, unless they have given you permission to do so. Transgender people must be identified by the pronouns associated with their chosen gender. For example, such pronouns may include him, her, they, them, thee, she or he, among others. Not sure what name and pronoun to use? It is appropriate to respectfully ask a person what name and pronoun should be used.

5. What does it mean to be “genderqueer”?

Genderqueer is an umbrella term for gender identities other than man and woman. People who identify as “genderqueer” may see themselves as being both male and female, neither male nor female or as falling completely outside these categories.

6. Is being transgender a mental disorder?

No. Transgender identity is not a mental illness that can be cured with treatment. Some transgender people often do experience a persistent and authentic disconnect between the sex assigned to them at birth and their internal sense of who they are. This disconnect is referred to by medical professionals as “gender dysphoria” because it can cause undue pain and distress in the lives of transgender people.

7. How does someone know that they are transgender?

People can realize that they are transgender at any age. Some people can trace their awareness back to their earlier memories. Others may need more time to realize that they are transgender. Some people may spend years feeling like they do not fit in without really understanding why. For many transgender people, recognizing who they are and deciding to start gender transition can take a lot of reflection. Transgender people risk social stigma, discrimination, and harassment. Parents, friends, coworkers, classmates, and neighbors may be accepting, but they also might not be, and many transgender people fear that they will not be accepted by their loved ones and others in their lives.

8. What is the difference between being transgender and being gender non-conforming?

Being gender non-conforming means not conforming to gender stereotypes. For example, someone's clothes, hairstyle, speech patterns, or hobbies might be considered more "feminine" or "masculine" than what is stereotypically associated with their gender. Gender non-conforming people may or may not identify as transgender.

9. What does it mean to have a gender that is not male or female?

Most transgender people identify as men or women. But some people have gender identities that do not neatly fit into the categories of man or woman or male or female. For example, some people have a gender that blends elements of being a man or a woman, or a gender that is different than either male or female. Some people do not identify with any gender. Some people's gender fluctuates over time. People whose gender is not male or female may use many different terms to describe themselves. One term that some people use is non-binary, which is used because gender binary refers to the two categories of male and female. Another term that people use is genderqueer. It is important to remember that if someone is transgender, it does not necessarily mean that they have a "third gender." Most transgender people do have a gender identity that is either male or female, and they should be treated like any other man or woman.

10. What does "gender transition" mean?

Transitioning is the time period during which a person begins to live according to their gender identity, rather than the gender they were thought to be at birth. While not all transgender people transition, a great many do at some point in their lives. Gender transition looks different for every person. Possible steps in a gender transition may or may not include changing clothing, appearance, name, or the pronoun people use. Some people are able to change their identification documents, like their driver's license or passport, to reflect their gender. And some people undergo hormone therapy, gender alignment surgery or other medical procedures to change their physical characteristics and make their body better reflect the gender they know themselves to be.

11. What is gender dysphoria?

For some transgender people, the difference between the gender they are thought to be at birth and the gender they know themselves to be can lead to serious emotional distress that affects their health and everyday lives if not addressed. Gender dysphoria is the medical diagnosis for someone who experiences this distress. Not all transgender people have gender dysphoria. On its own, being transgender is not considered a medical condition. Many transgender people do not experience serious anxiety or stress associated with the difference between their gender identity and their gender of birth, and so may not have gender dysphoria. Gender dysphoria can often be relieved by expressing one's gender in a way that the person is comfortable with.

12. Have transgender people always existed?

Transgender persons have been documented in many indigenous, Western, and Eastern cultures and societies from ancient times until the present day. However, the meaning of gender nonconformity may vary from culture to culture.

13. What is the difference between a transgender person and a transsexual person?

The term transgender is often used to refer to anyone who differs from the very strict gender norms of our binary gender system, either intentionally or unintentionally. Those who transgress gender norms often suffer repercussions, in the form of discrimination or even violence. A more narrow and specific definition of transgender would be a person whose gender identity is not in alignment with his or her physical body, either all or part of the time.

The term transsexual is generally used to refer to a person who has undergone medical treatments, such as hormones and/or surgery, to align the physical body to match his, her or their gender identity. The term can also be used to refer to a person who has not undergone any physical gender change but dresses, behaves and identifies as a gender other than the sex assigned at birth.

