

# NAIS LEGAL ADVISORY

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## The Transgender Student

### Guidelines for Independent Schools Working with and Supporting Transgender and Gender Nonconforming Students

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**CONTENTS**

*Are You Prepared To Deal with the Following?* ..... *iv*

*Part I: Introduction* ..... *1*

*Part II: Definitions*..... *3*

*Part III: State and Federal Laws* ..... *7*

    State Laws .....7

    Federal Laws ..... 9

    Application of State and Federal Transgender Discrimination Laws to Private and Religious Schools .....10

*Part IV: Cases Involving Transgender Students*..... *11*

    Maine Supreme Court Decision: 2014 ..... 11

    California Dept. of Justice Order: 2013 .....13

    Colorado: 2013 .....13

    Massachusetts Superior Court: 2001 .....14

*Part V: Statistics* ..... *15*

*Part VI: Recommended Approach and Overall Guidelines for Schools* .....*17*

    A Checklist of Considerations for Working with Transgender and Gender Nonconforming Students..... 17

    Proactive Approach .....19

    Response Team ..... 20

    Pronoun Use..... 21

    Bathrooms ..... 21

    Locker Rooms/Showers ..... 21

    Confidentiality/Medical Privacy ..... 22

    Healthcare Centers and Services..... 22

    Admissions ..... 23

    Bullying or Harassment ..... 23

    Sample Policies ..... 24

    Parental Concerns ..... 25

    Athletics..... 25

    School Activities/Field Trips..... 26

    Dormitories ..... 26

    Conflict Response..... 27

    Dress Code..... 27

Transition ..... 28

Education and Training ..... 28

School Climate Surveys ..... 29

Student/Family Support ..... 30

*Conclusion* ..... 30

*Recommended Resources* ..... 31

    Particularly Good State DOE Guidelines ..... 34

*Addendum: GLADD “Tips for Allies” of Transgender People* ..... 35

*About the Author* ..... 40

**DISCLAIMER**

**This article is intended to provide an overview and guidance to independent schools in dealing with the needs and interests of transgender students. *It is not legal advice.* Schools should consult with legal counsel for advice as to specific situations or questions they may have in this area, and to inquire about any federal or state specific laws that may apply.**

## Are You Prepared To Deal with the Following?

1. A biologically male student who self-identifies as a female seeks to use the girl's bathroom.
2. A biologically female student, who has been at your school for two years, returns in her/his junior year as a male. (Also ask yourself: which pronoun is the correct one to use in this sentence?)
3. A transgender female student seeks to play on the girls' basketball team.
4. You are making roommate assignments for your school's annual trip to Washington, D.C.; two students per room. In what room do you place the student who has confidentially disclosed to the school that she is a transgender female? Do you violate her rights by putting her in a single room?
5. A parent calls to report that their child is being bullied by other students based on gender identity.
6. A parent calls to tell the school that the school cannot acknowledge his child's gender identity.
7. The school's GLBT group has asked the school to include "gender identity" in its anti-discrimination policy.

If you are scratching your head about any of the above, read on....

## Part I: Introduction

Across the country, schools are increasingly experiencing a new face of diversity – youth who self-identify as transgender; some as young as the early elementary grades.<sup>2</sup> In growing numbers, transgender and gender non-conforming students are coming forth in schools, and many schools are simply not prepared to know how to respond to, communicate with, and support these applicants and students. As with most new issues that a school faces, the time to figure out how to best support and care for the needs of a transgender student is not when the situation arises. Rather, even before a transgender student applies to attend, or transitions while at the school, schools should proactively take steps to understand the rights and needs of a transgender student, and how to best support and protect the student, and provide for the well-being of what is often a vulnerable youth population. The overall well-being and development of every student is a school's primary concern. Knowing how to handle the kinds of issues that can arise can make a difference in the positive development and future of the student.

Although schools are sometimes mandated to act because of state legislation or new federal regulations, the legal protection of transgender students has not found its way into every state. Some states have adopted legislation that either modifies existing discrimination laws or creates new transgender anti-discrimination laws, but the vast majority of states have not done so.<sup>3</sup> A small number of states have passed legislation making discrimination of transgender students illegal, but the majority of those laws apply only to public schools.<sup>4</sup> Independent schools are thus left to address the issues surrounding the enrollment and support of transgender students on their own with little to no guidance from state or federal rules and regulations.

All students need a safe and supportive school environment to best assist them to grow and succeed academically, socially, and developmentally. This publication will address the kinds of

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<sup>2</sup> Dan Frosch, *Dispute on Transgender Rights Unfolds at a Colorado School*, N.Y. Times (Mar. 17, 2013), <http://www.nytimes.com/2013/03/18/us/in-colorado-a-legal-dispute-over-transgender-rights.html>; MaryAlice Gill, *Nashua School District Applauded for Accommodating Transgender Third-Grader*, Nashua Telegraph (Sept. 23, 2012), <http://www.nashuatelegraph.com/news/976504-469/nashua-school-district-applauded-for-accommodating-transgender.html>.

<sup>3</sup> *Non-Discrimination Laws: State by State Information*, ACLU.COM, <https://www.aclu.org/maps/non-discrimination-laws-state-state-information-map> (last visited Feb. 13, 2014) [hereinafter *Laws*].

<sup>4</sup> *Id.*

issues schools may face regarding a transgender student, the applicable federal and state laws in this area, statistics about transgender student issues at school (such as victimization, bullying, and accommodations, etc.), recent cases, and various questions that should be asked about how to handle issues that can arise. The publication will also provide some practical guidelines about how a school can best be prepared to do the right thing when it comes to partnering with and supporting a transgender student and his or her family, including educating school faculty, staff, other students, and families about the rights and needs of transgender students.

Experience has shown that schools and school personnel may not have always done the best job possible in addressing the needs of homosexual students. Great gains in that area have been made over a short period of time, but it has not always been a smooth road. This publication will help schools to be proactive in their understanding about the needs of transgender students and provide steps schools can take to best help these students develop and succeed. After all, in the world of education, it is all about the students. Although this article highlights many areas to assist schools in understanding the rights and needs of transgender students, it is only a beginning. As more and more schools have experience in embracing this new face of diversity, we will hopefully share those experiences with one another to further educate all schools on best practices and, overall, to provide the most supportive school environment possible for all students.<sup>5</sup>

*“Ensuring a safe, nurturing and equal educational environment for [transgender] children and youth involves a system-based approach. It is imperative that the [school] along with faculty and educational professionals be supportive role models and strong advocates for the safety and well-being of [transgender] children including full respect for the expression of the student’s identity”<sup>6</sup>*

*“There is evidence that a school’s failure to recognize and support a child’s gender identity or expression can result in significant harm to the child....[Transgender youth], because of widespread misunderstanding and lack of knowledge about their lives, are at a higher risk for peer ostracism, victimization, and bullying in the school environment, in addition to the*

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<sup>5</sup> ***If you are willing to share your school’s experience in addressing the needs of transgender students, please email the author, Linda Johnson, Esquire at [linda.johnson@mclane.com](mailto:linda.johnson@mclane.com). It helps when we can all learn from each other.***

<sup>6</sup> Connecticut Safe School Coalition “Guidelines for Connecticut Schools to Comply with Gender Identity and Expression Non-Discrimination Laws” at page 5.

*psychological harm they may suffer in an environment that rejects them for their gender identity.”<sup>7</sup>*

## Part II: Definitions

Understanding the terminology associated with gender identity is important to the overall goal of providing a supportive school environment for transgender and gender nonconforming students. The following definitions are common words or phrases when discussing transgender students. Unless otherwise noted, these definitions are taken from the Gay, Lesbian & Straight Education Network, Model District Policy on Transgender and Gender Nonconforming Students.<sup>8</sup>

**Sex:** Refers to a person’s biological status as male, female or intersex. Intersex is the atypical combination of features that usually distinguish male from female. There are a number of indicators of sex which include sex chromosomes, gonads, internal reproductive organs, and external genitalia.<sup>9</sup>

**Gender:** For many people the terms “gender” and “sex” are used interchangeably.<sup>10</sup> However, biological sex and gender are not the same, and gender is not inherently connected to one’s physical anatomy.<sup>11</sup> “Gender” refers to the attitudes, feelings, and behaviors that a given culture associates with a person’s biological sex. As the World Health Organization describes it: “To put it another way: ‘male’ and ‘female’ are sex categories, while ‘masculine’ and ‘feminine’ are gender categories. Aspects of gender will not vary substantially between different human societies, while aspects of gender may vary greatly.”<sup>12</sup> Behavior that is compatible with cultural expressions is referred to as *gender normative*, and behavior that is viewed as incompatible with these expectations constitutes *gender non-conformity*.<sup>13</sup>

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<sup>7</sup> Connecticut Safe School Coalition “Guidelines for Connecticut Schools to Comply with Gender Identity and Expression Non-Discrimination Laws,” at page 5.

<sup>8</sup> GAY, LESBIAN & STRAIGHT EDUCATION NETWORK, MODEL DISTRICT POLICY ON TRANSGENDER AND GENDER NONCONFORMING STUDENTS 3-4 (2013) [hereinafter POLICY].

<sup>9</sup> “Definition of Terms, Sex, Gender, Gender Identity, Sexual Orientation” by the American Psychological Association excerpted from “The Guidelines for Psychological Practice with Lesbian, Gay, and Bisexual Clients,” 2011, adopted by the APA, found at <http://www.apa.org/pi/lgbt/resources/guidelines.aspx>.

<sup>10</sup> From “Understanding Gender” by gender spectrum at <https://www.genderspectrum.org/understanding-gender>

<sup>11</sup> *Id.*

<sup>12</sup> [www.who.int/gender/whatisgender/en/](http://www.who.int/gender/whatisgender/en/)

<sup>13</sup> *Id.*

**Gender Identity:** A person’s deeply held sense or psychological knowledge of his or her own gender which may or may not correspond to the person’s body or designated sex at birth (meaning what sex was originally listed on a person’s birth certificate.)<sup>14</sup>

In the Massachusetts anti-discrimination transgender law, which became effective on July 1, 2012 (and applies only to public schools), “gender identity” is more elaborately defined as “a person’s gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance is different from that traditionally associated with the person’s physiology or assigned sex at birth.”<sup>15</sup>

**Gender Expression:** The manner in which a person represents or expresses gender to others, often through behavior, clothing, hairstyles, activities, voice, or mannerisms. Readers should note that often social or cultural norms vary, and some characteristics that may be accepted as feminine, masculine, or neutral in one culture may not be assessed similarly in another culture.<sup>16</sup>

**Gender Role:** Gender role is the set of roles, activities, expectations, and behaviors assigned to females and males by a given society. The American culture recognizes two basic gender roles: masculine (having the qualities attributed to males) and feminine (having the qualities attributed to females). It should be noted that not all cultures have only these two basic gender roles.<sup>17</sup>

**Gender Normative:** Gender normative also known as *cisgender* refers to people whose sex assignment at birth corresponds to their gender identity and expression.<sup>18</sup>

**Gender Nonconforming:** A term for people whose gender expression differs from stereotypical expectations, such as “feminine” boys, “masculine” girls, and those who are perceived as androgynous. The terms “gender variant” and “gender atypical” are also used.<sup>19</sup>

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<sup>14</sup> See “Sexual Orientation and Gender Identity: Terminology and Definitions” from The Human Rights Campaign at <http://www.hrc.org/resources/entry/sexual-orientation-and-gender-identity-terminology-and-definitions>.

<sup>15</sup> Massachusetts General Laws Chapter 4 section 7.

<sup>16</sup> See “Sexual Orientation and Gender Identity: Terminology and Definitions” at note 10.

<sup>17</sup> From “Understanding Gender” by gender spectrum at <https://www.genderspectrum.org/understanding-gender>.

<sup>18</sup> *Id.*

<sup>19</sup> From “Guidance for Massachusetts Public Schools Creating a Safe and Supportive School Environment” by the Massachusetts Department of Elementary and Secondary Education, at page 2.

**Gender Fluidity:** Gender fluidity refers to a flexible range of gender expression that can change from day to day. A person may not feel confined to the restrictive boundaries of stereotypical expectations of boys or girls, or males and females; and can change in their expression from one day to the next; or one period to the next.<sup>20</sup>

**Gender Diversity:** Gender diversity is a term that recognizes that many people's preferences and self-expression may fall outside commonly understood gender norms.<sup>21</sup>

**Transgender:** An adjective describing a person whose gender identity or expression is different from that traditionally associated with an assigned sex at birth. Other similar terms include transsexual and trans. It may also be an umbrella term that includes people who are transsexual, cross-dressers, or otherwise gender-nonconforming. Not all people who consider themselves, or may be considered by others as, transgender will undergo a gender transition.<sup>22</sup> A person who is born male and transitions to become female is a *transgender woman*, whereas a person who is born female and transitions to become male is a *transgender man*.<sup>23</sup>

**Transition:** The process in which a person goes from living and identifying as one gender to living and identifying as another. "Transitioning" typically refers to "the process through which a person modifies his or her physical characteristics and/or manner of gender expression to be consistent with his or her gender identity. This transition may include hormone therapy, sex-reassignment surgery, and/or other components, and is generally conducted under medical supervision based on a set of standards developed by medical professionals. The transition process typically includes one year of 'real life experience' in which the individual lives and presents consistently with their gender identity under medical supervision."<sup>24</sup>

**Coming Out:** Refers to the process in which one acknowledges and accepts one's own sexual orientation. It also encompasses the process in which a person discloses his or her sexual orientation to others, as opposed to "closeted," which refers to a state of secrecy or cautious privacy about one's sexual orientation.<sup>25</sup>

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<sup>20</sup> From "Understanding Gender" by gender spectrum at <https://www.genderspectrum.org/understanding-gender>.

<sup>21</sup> From "Understanding Gender" by gender spectrum at <https://www.genderspectrum.org/understanding-gender>.

<sup>22</sup> See "Sexual Orientation and Gender Identity: Terminology and Definitions" at note 10.

<sup>23</sup> From GLAAD Media Reference Guide - Transgender Glossary of Terms at <http://www.glaad.org/reference/transgender>.

<sup>24</sup> See "Sexual Orientation and Gender Identity: Terminology and Definitions" at note 10.

<sup>25</sup> See "Definition of Terms, Sex, Gender, Gender Identity, Sexual Orientation" at note 8.

**Transsexual:** Transsexual refers to a person who has changed, or is in the process of changing his or her physical and/or legal sex to conform to his or her internal sense of gender identity. Transsexual can also be used to describe people who, “without undergoing medical treatment, identify and live their lives full-time as a member of the gender opposite their birth sex. Transsexuals transitioning from male to female are often referred to as ‘MTFs.’ Similarly, female-to-male transsexuals are frequently called ‘FTMs.’”<sup>26</sup>

**Trans\*:** A recent term being used is “trans\*.” As explained by Nash Jones at Portland, Oregon’s Q Center: “[w]hen the asterisk is put on the end of trans\*, it expands the boundaries of the category to be radically inclusive. It can be understood as the most inclusive umbrella term to describe various communities and individuals with nonconforming gender identities and/or expressions en masse. In addition to its use as an umbrella term, it is also used by some individuals as an identity to describe just themselves (e.g. ‘I identify as trans\*’).”<sup>27</sup>

**Sexual orientation:** Sexual orientation refers to the sex of those to whom someone is sexually or romantically attracted. Categories of sexual orientation typically include (1) gay men or lesbians – people attracted to members of one’s own sex; (2) heterosexuals – attraction to members of the other sex; and (3) bisexual – attraction to members of both sexes.<sup>28</sup> A person’s sexual orientation is distinct from a person’s gender identity and expression.<sup>29</sup> Like anyone else, a transgender person can be homosexual, heterosexual, or bisexual.

**Cross-Dresser:** A cross-dresser wears the clothing, make-up, and accessories that are considered by society to correspond to the opposite sex. Unlike transsexuals, cross-dressers typically do not seek to change their physical characteristics and/or manner of expression permanently or to live full-time as the opposite gender. Cross-dressers are sometimes called *transvestites*, but The Human Rights Campaign points out that this term is considered pejorative.<sup>30</sup>

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<sup>26</sup> See “Sexual Orientation and Gender Identity: Terminology and Definitions” at note 10.

<sup>27</sup> *Bridging The Gap – Trans\*: What Does the Asterisk Mean and Why Is It Used?* by Nash Jones, at <http://www.pdxqcenter.org/bridging-the-gap-trans-what-does-the-asterisk-mean-and-why-is-it-used/> See also [http://www.slate.com/blogs/outward/2014/01/10/trans\\_what\\_does\\_it\\_mean\\_and\\_where\\_did\\_it\\_come\\_from.html](http://www.slate.com/blogs/outward/2014/01/10/trans_what_does_it_mean_and_where_did_it_come_from.html)

<sup>28</sup> See “Definition of Terms, Sex, Gender, Gender Identity, Sexual Orientation” at note 8.

<sup>29</sup> See Sexual Orientation and Gender Identity: Terminology and Definitions” at note 10.

<sup>30</sup> *Id.* The Human Rights Campaign states that it is “America’s largest civil rights organization working to achieve lesbian, gay, bisexual and transgender equality.”

**Gender Identity Disorder (GID):** also known as **gender dysphoria**, is defined as “a formal diagnosis used by psychologists and physicians to describe people who experience significant dysphoria or discontent with the sex they were assigned at birth and/or the gender roles associated with that sex.”<sup>31</sup> Not all transgender people experience gender dysphoria or are diagnosed with GID.<sup>32</sup> It should also be noted that psychologists do not consider being lesbian, gay, or of a certain sexual orientation to be mental illnesses.<sup>33</sup>

**Bullying:** Written, verbal, or physical conduct that adversely affects the ability of one or more students to participate in or benefit from the school’s educational programs or activities by placing the student (or students) in reasonable fear of physical harm.

**Harassment:** Written, verbal, or physical conduct that adversely affects the ability one or more students to participate in or benefit from the school’s educational programs or activities because the conduct is so severe, persistent or pervasive.

## Part III: State and Federal Laws

### State Laws

Although individuals have long been afforded legal remedies for most types of discrimination and harassment including sex discrimination, until recently, gender identity has not been among the legally protected categories.<sup>34</sup> A growing number of states are adopting laws making discrimination on the basis of both sexual orientation and gender identity illegal. According to the American Civil Liberties Union, as of April 2013, 15 states had laws that protect transgender students from harassment or discrimination.<sup>35</sup> These states include California, Colorado, Hawaii, Illinois, Iowa, Maine, Maryland, Minnesota, New Jersey, New York, North Carolina,

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<sup>31</sup> Wikipedia *citing* Heylens, G; De Cuyper, G; Zucker, K; Schelfaut, C; Elaut, E; Vanden Bossche, H; De Baere, E; T’Sjoen, G (2012). "Gender Identity Disorder in Twins: A Review of the Case Report Literature". *The Journal of Sexual Medicine* 8(3): 751–757. doi:10.1111/j.1743-6109.2011.02567.x.

<sup>32</sup> See “Sexual Orientation and Gender Identity: Terminology and Definitions” at note 8.

<sup>33</sup> See “Practice Guidelines for LGB Clients – Guidelines for Psychological Practice with Lesbian, Gay and Bisexual Clients” adopted by the American Psychological Association on February 8-20, 2011, found at <http://www.apa.org/pi/lgbt/resources/guidelines.aspx>.

<sup>34</sup> GAY & LESBIAN ADVOCATES & DEFENDERS, TRANSGENDER LEGAL ISSUES 10-11 (2014) [hereinafter GLAD]. See also “Know Your Rights – Transgender People and the Law” at <https://www.aclu.org/translaw>.

<sup>35</sup> See ACLU “Know Your Rights...” *supra* at note 32.

Oregon, Vermont, Washington, and the District of Columbia.<sup>36</sup> Massachusetts also has a law that provides rights to transgender students in public schools.<sup>37</sup> Some of these state laws explicitly apply to education while others of them classify public schools as public accommodations where gender identity is prohibited (*e.g.*, Colorado, Illinois, Maine, New Jersey, Nevada, Vermont, and Washington).<sup>38</sup> Independent schools should check the laws in their state to determine if there is any state anti-discrimination law based on gender identity or other legal protections for transgender students that apply to independent schools. For instance, currently the states of Iowa,<sup>39</sup> Maine,<sup>40</sup> Minnesota,<sup>41</sup> Nevada<sup>42</sup> and the District of Columbia<sup>43</sup> have laws that apply to independent schools.<sup>44</sup> In addition, many cities, towns, and municipalities in states that have not adopted such laws, have adopted their own regulations to prohibit gender identity discrimination.<sup>45</sup> Unfortunately, the laws already in place do not always cover every area of discrimination and, more often, only prohibit discrimination in housing or employment with only a few that provide more comprehensive prohibitions, including education and public accommodations.<sup>46</sup>

Some states, individual school districts and even independent schools have taken the step to specifically prohibit gender identity discrimination of students.<sup>47</sup> California and Massachusetts in particular have passed legislation that protects transgender students from discrimination and gives transgender students' rights such as the right to use facilities associated with their identified gender and the right to play on the sports teams of their identified genders.<sup>48</sup> The laws have been met with resistance, however, with some groups seeking to overturn them.<sup>49</sup>

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<sup>36</sup> *Id.* See also *Laws*, *supra* note 3.

<sup>37</sup> See Massachusetts General Law Chapter 76, Section 5 which became effective on July 2, 2012.

<sup>38</sup> See ACLU "Know Your Rights..." *supra* at note 32.

<sup>39</sup> Iowa Code Ann. section 216.9 (2008).

<sup>40</sup> Me. Rev.Stat. Ann. Title 5, section 4601 (2013)(for private schools that have been approved for tuition purposes). See also 5 Me. Rev. Stat. sec. 4553 (2) (A) (definition of "educational institution").

<sup>41</sup> Minn.Stat. Ann. section 363A.13 (2013). See also definition of education institution at Minn.Stat. Ann. section 363A.03, subd. 14.

<sup>42</sup> Nev.Rev.Stat. Ann. section 651.070 (2011).

<sup>43</sup> D.C. Code section 2-1402.41 (2001). See definition of educational institution at D.C. Code section 2-1402.02(8).

<sup>44</sup> See also ACLU "Know Your Rights..." *supra* at note 32.

<sup>45</sup> AMERICAN CIVIL LIBERTIES UNION, TRANSGENDER PEOPLE & THE LAW, 2 (n.d.) [hereinafter PEOPLE]. Reason this is capped?

<sup>46</sup> *Id.*

<sup>47</sup> *Know Your Rights-Transgender People and the Law*, ACLU.ORG, <https://www.aclu.org/translaw> (last visited Feb. 13, 2014).

<sup>48</sup> Alejandro Lazo, *Transgender Students Get New Options in California*, WALL ST. J., Jan. 22, 2014, available at <http://online.wsj.com/news/articles/SB10001424052702303819704579318953771248802>.

<sup>49</sup> PEOPLE, *supra* note 34.

Other state laws that might afford transgender students some legal rights include state hate crime laws and state anti-bullying laws.<sup>50</sup>

## Federal Laws

The federal government has also been slow to adopt laws specifically prohibiting gender identity discrimination. The Employment Non-Discrimination Act (ENDA) is legislation proposed in the United States Congress that would prohibit discrimination in hiring and employment on the basis of sexual orientation or gender identity by employers with at least 15 employees.<sup>51</sup> This bill passed in the Senate on November 7, 2013, and goes to the House next for consideration. Although it appears to have the support of President Barack Obama, it is predicted that it has little chance of being enacted.<sup>52</sup>

In 2012, in the landmark case of *Macy v. Bureau of Alcohol, Tobacco, Firearms and Explosives*, the EEOC has held that discrimination against an individual because that person is transgender is discrimination because of sex covered under Title VII of the Civil Rights Act of 1964.<sup>53</sup> Although the *Macy* case involved a federal employer, it is likely that this ruling will be expanded to cover private employers as well. Likewise, several federal courts have recognized gender identity discrimination as being covered by the sex discrimination laws of Title VII.<sup>54</sup>

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<sup>50</sup> See the Human Rights Campaign website for maps which depict “State Hate Crimes Laws,” “Statewide School Anti-bullying Laws & Policies” and “Statewide School Non-discrimination Laws and Policies.”

<sup>51</sup> See <https://www.govtrack.us/congress/bills/113/s815>. It is reported that ENDA has been introduced in every Congress since 1994 except the 109th, and that similar legislation has been introduced without passage since 1974. See [http://en.wikipedia.org/wiki/Employment\\_Non-Discrimination\\_Act\\_citing\\_\"Nondiscrimination\\_legislation\\_historical\\_timeline.\"\\_National\\_Gay\\_and\\_Lesbian\\_Task\\_Force](http://en.wikipedia.org/wiki/Employment_Non-Discrimination_Act_citing_\). Retrieved November 1, 2011.

<sup>52</sup> *Id.*

<sup>53</sup> U.S. EEOC “Facts about Discrimination in Federal Government Employment Based on Marital Status, Political Affiliation, Status as a Parent, Sexual Orientation, or Transgender (Gender Identity) Status” found at [http://www.eeoc.gov/federal/other\\_protections.cfm](http://www.eeoc.gov/federal/other_protections.cfm). See *Macy v. Department of Justice*, EEOC Appeal No. 0120120821 (April 20, 2012).

<sup>54</sup> Chris Geidner, *Transgender Breakthrough*, MetroWeekly (Apr. 23, 2012), <http://www.metroweekly.com/news/?ak=7288>. See also *Hunter v. UPS* (Eighth Circuit Court of Appeals, September 17, 2012; Rapid City Market \$50,000 EEOC settlement reported on September 16, 2013 (“Well-Performing Employee Fired Because of Gender Identity, Agency Charged”) at EEOC Newsroom; 2013 EEOC complaint regarding Cori McCreery and Don’s Valley Market. See also *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) in which the Supreme Court held that sex discrimination protections under Title VII include discrimination based on “sex stereotypes,” i.e. that individuals do not conform with the social norms attributed to their biological sex. Case involved a claim by a woman that she was denied promotion to partnership based on sex-stereotyping against her gender nonconformity. She was described as being aggressive, demanding, and impatient with staff members.

In the education area, a federal law specifically prohibiting discrimination of students on the basis of gender identity has yet to be adopted.<sup>55</sup> The Student Non-Discrimination Act, which would have done so, was introduced to Congress several years back, but has not passed.<sup>56</sup> However, a resolution agreement was reached in July 2013 in a landmark case brought by the United States Department of Education and the United States Department of Justice against the Acadia Unified School District in California claiming discrimination on the basis of sex regarding a transgender boy under Title IX of the Education Amendments of 1972. That case is discussed in more detail later in this publication under the “Recent Cases” section of this article. Title IX of the Education Amendments Acts of 1972 prohibits discrimination based on sex in education or activities but does not specifically mention transgender students and only applies to independent schools in limited circumstances, such as when the school participates in certain federal programs.<sup>57</sup> Federal courts, to this point, have had limited opportunity to hear cases regarding discrimination of transgender students, and it remains to be seen how the courts will handle this issue in future cases.

Another applicable federal law in the area of transgender rights is the Family Educational Rights and Privacy Act (FERPA), which serves to protect the privacy of students by prohibiting the disclosure of any personally identifiable information derived from education records.<sup>58</sup> This law protects students hoping to keep their transgender status private/confidential, unless the students themselves choose to share that information. FERPA applies only to schools which receive federal funds from the Federal Department of Education.

### Application of State and Federal Transgender Discrimination Laws to Private and Religious Schools

An important point to note for independent schools is that most of the state laws discussed above only apply to public school systems.<sup>59</sup> This is an evolving area of the law, and all independent schools should check to see if there are any transgender laws in their state which

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<sup>55</sup> Wikipedia, *Student Non-Discrimination Act*, [http://en.wikipedia.org/wiki/Student\\_Non-Discrimination\\_Act](http://en.wikipedia.org/wiki/Student_Non-Discrimination_Act) (as of Oct. 7, 2013).

<sup>56</sup> *Id.*

<sup>57</sup> *Title IX and Sex Discrimination*, ED.GOV, [http://www2.ed.gov/about/offices/list/ocr/docs/tix\\_dis.html](http://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html) (last visited Feb. 12, 2014).

<sup>58</sup> *FERPA for Students*, ED.GOV, <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/students.html> (last visited Feb. 12, 2014).

<sup>59</sup> PEOPLE, *supra* note 38.

apply to independent schools. Most private or independent schools will have the freedom to choose whether to adopt gender identity discrimination policies. Likewise, as mentioned above, federal laws such as Title IX and FERPA only apply to public schools or independent schools that are receiving federal funds or participating in federal programs that cause the school to be viewed as receiving federal financial assistance.<sup>60</sup> This again allows independent schools that are not covered by a state specific law and also not receiving federal funding the flexibility to adopt their own policies regarding gender identity discrimination and harassment.

In addition, Title IX does “not apply to any educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization.”<sup>61</sup> The religious exception allows religious schools to make decisions about students and policies for a variety of reasons, including sexual orientation and gender identity.

## Part IV: Cases Involving Transgender Students

Recently, media attention has focused on several cases involving claims against schools by transgender students alleging discrimination. The four cases discussed below involve the schools’ policies regarding the bathroom use by transgender students. For the various reasons discussed below, the schools were found to have discriminated against the transgendered students, and were either ordered to, or agreed to, change the existing policies and procedures relating to transgender students’ use of the bathroom of the gender with which they identified, and regarding dress code violations.

### Maine Supreme Court Decision: 2014

The Maine case of *Doe v. Regional School Unit No. 26* was decided by the Maine Supreme Court on January 30, 2014. This case involved a fifth-grade transgendered girl who was not allowed to use the girls’ bathroom following two incidents in which a boy, on instructions from his grandfather (who strongly opposed the school’s decision to allow the transgender girl to use the

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<sup>60</sup> *Id.*; Family Educ. Rights and Privacy Act (FERPA), ED.GOV, <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html> (last visited February 12, 2014).

<sup>61</sup> Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 (2006).

girls' bathroom) followed her into the girls' bathroom.<sup>62</sup> The transgender student had received a diagnosis of gender dysphoria, which the court described as “the medical term for psychological distress resulting from having a gender identity different from the sex that one is assigned at birth.”<sup>63</sup> The court also noted that school officials recognized that it was important to the student's psychological health that she live socially as a female.”<sup>64</sup> The harassed student, born male, exhibited the gender identity of a female as early as age two, and through the end of fourth grade she was supported by the school and encouraged to use the single stall girls' bathroom.<sup>65</sup> Although the student started the fifth grade using the girls' communal bathrooms, the harassment incidents prompted the school to insist she use the unisex faculty bathroom.<sup>66</sup> A suit was filed by the student's parents alleging “unlawful discrimination in education and unlawful discrimination in a place of public accommodation on the basis of sexual orientation.”<sup>67</sup> This was the first case that required the Maine Supreme Court to interpret the Legislature's 2005 amendments to the Maine Human Rights Act that prohibit discrimination based on sexual orientation in public accommodations, educational opportunities, employment, housing, and other areas.

The Supreme Judicial Court of Maine held that the school's action of prohibiting the student from using the girls' bathroom was discrimination based on sexual orientation because it was based “not on a determination that there had been some change in [the student's] status but on others' complaints about the school's well-reasoned decision [to allow her to use the bathroom.]”<sup>68</sup> The Court explained that “in this case, the school had a program carefully developed over several years and supported by an educational plan designed to sensitively address [the student's] gender identity issues. The determination that discrimination is demonstrated in this case rests heavily on [the student's] gender identity and gender dysphoria, both of which were acknowledged and accepted by the school.”<sup>69</sup> The Court pointed out that its decision was not intended to grant any self-declared transgendered individual the right to demand access to any school facility or program without “the plans developed in cooperation with the school and the accepted and respected diagnosis that are present in this case.”<sup>70</sup> The

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<sup>62</sup> Doe v. Reg'l Sch. Unit 26, No. Pen-12-582, 2014 WL 325906 2014, at \*1 (Me. Jan. 30, 2014).

<sup>63</sup> *Id.* at 3.

<sup>64</sup> *Id.* at 3.

<sup>65</sup> *Id.* at 2.

<sup>66</sup> *Id.* at 4.

<sup>67</sup> *Id.* at 2.

<sup>68</sup> *Id.* at 5.

<sup>69</sup> *Id.* at 13.

<sup>70</sup> *Id.* at 5.

court also pointed out that the prohibition against discrimination based on sexual orientation applied to educational institutions and educational opportunities subject only to an exception for religious institutions and programs that do not receive public funds.<sup>71</sup> According to GLAD, this is the first time that a state's highest court ruled that a transgender person should be entitled to use the bathroom of the gender with which they identify.<sup>72</sup>

### California Dept. of Justice Order: 2013

In July 2013, the Arcadia Unified School District in California entered into a voluntary resolution agreement with the U.S. Dept. of Education, Office for Civil Rights and the U.S. Dept. of Justice, Civil Rights Division.<sup>73</sup> The agreement resulted from a 2011 complaint alleging the school district would not allow a transgender ninth-grade student, living as a boy since the fifth grade, to use the boys' bathrooms or locker rooms, including while on field trips.<sup>74</sup> Following the complaint, in February 2012 the student received judicial approval to change his birth certificate identity from female to male prompting the Arcadia Unified School District to allow the student to use the male facilities.<sup>75</sup> The school district agreed to allow the student to use male facilities at school and while on school-sponsored field trips; treat the student as a boy in all respects; and take actions to ensure nondiscriminatory treatment of all students including amending the district policies and procedures, training staff, and ensuring the availability of support for the student at issue here and all other students who request it.<sup>76</sup>

### Colorado: 2013

In the 2013 Colorado case of *Coy Mathis v. Colo. Dept. of Regulatory Agencies, Division of Civil Rights*, the Department of Regulatory Agencies, Division of Civil Rights found that a Colorado school discriminated against a transgender first-grader when the school did not allow her to use the girls' bathroom.<sup>77</sup> The first-grade student had been identifying as a female since about 18 months old, was enrolled in the school district as a female, and began the 2012 school year with

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<sup>71</sup> *Id.* at 9.

<sup>72</sup> As cited in "Court rules in favor of transgender pupil," by David Sharp, Associated Press, February 1, 2014.

<sup>73</sup> ED issues release of school district's agreement to continue to treat gender identity student as it has, LEGALCLIPS.NSBA.ORG, why caps? (Aug. 1, 2013), <http://legalclips.nsba.org/2013/08/01/sua-sponte-ed-issues-release-of-school-districts-agreement-to-continue-to-treat-gender-identity-student-as-it-has/#sthash.iIamYIrB.dpuf>.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Coy Mathis*, Colo. Dep't of Regulatory Agencies, Division of Civil Rights, Charge No. P20130034X, at 3 (June 17, 2013) (determination).

her teacher allowing her to use the female facilities at the school.<sup>78</sup> In November 2012, the bathroom use by the student was reported to the school superintendent, at which point the school prohibited the student from using the girls' bathroom and instead instructed her to use the unisex staff bathroom.<sup>79</sup> The student's parents claimed this practice created an unsafe situation for their daughter and requested reconsideration, but their request for future consideration was denied by the school.<sup>80</sup> Since 2008, Colorado has had regulations in place to prevent the discrimination of, among other things, "transgender status, in employment, housing, public accommodations, and advertising."<sup>81</sup> The school, however, alleged the laws permitted the school to "segregate the restrooms based on sex if such restriction has a bona fide relationship to the goods, services, facilities, privilege, advantages, or accommodations of such place of public accommodation."<sup>82</sup> The Civil Rights Division found that the school had no basis to discriminate in this manner and ordered the parties to attempt resolution of the matter.<sup>83</sup> The student along with two siblings have since been taken out of the school and are now being home-schooled.<sup>84</sup>

### Massachusetts Superior Court: 2001

The 2001 Massachusetts case of *Doe ex rel. Doe v. Yunits* involved a 15-year-old student in the eighth grade, who had been diagnosed with gender identity disorder and who was seeking to wear female clothing to school, which was a violation of the school's dress code.<sup>85</sup> During two school years, the plaintiff often wore female clothing and wigs as an expression of her gender identity, but also engaged in otherwise disruptive behavior.<sup>86</sup> She was eventually required to repeat the eighth grade due to repeated absences caused by her being sent home to change clothes and often not returning.<sup>87</sup> The case was brought to allow her to re-enroll in the eighth grade after being refused by the school unless she agreed not to wear female clothing.<sup>88</sup> In describing the facts, the court stated: "[p]hrased simply in non-medical terminology, Doe has

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<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 4.

<sup>80</sup> *Id.* at 2.

<sup>81</sup> *Id.* at 7.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 14.

<sup>84</sup> Frosch, *supra* note 2.

<sup>85</sup> *Doe ex rel. Doe v. Yunits*, 2000 WL 33162199, at \*1 (Mass. Super. Oct. 11, 2000).

<sup>86</sup> *Id.* at 2.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

the soul of a female in the body of a male.”<sup>89</sup> The court granted an injunction enjoining the school from preventing her from wearing any clothing or accessories that any other male or female student could wear to school without being disciplined.<sup>90</sup>

## Part V: Statistics

A 2011 National School Climate Survey was conducted by GLSEN and includes some figures that make specific reference to the transgender survey respondents.<sup>91</sup> The study consisted of 8,584 students aged 13-20, grades 6-12, from 20 states and the District of Columbia, while representing 3,224 unique school districts. Of the respondents, 67.9% were white, 61.3% identified themselves as gay or lesbian, and 8.3% transgender, with another 7.0% of respondents identifying themselves as “other gender”, i.e. androgynous.<sup>92</sup> The statistics show that transgender students are often discriminated against or harassed while not always receiving the support that most students would likely expect such as teacher or staff intervention. One of the most alarming statistics is that 43.9% of transgender students frequently felt unsafe at school. Other statistics appear in the chart below:

| <b>2011 GLSEN Climate Survey:<br/>Transgender Specific Statistics (%)</b> | <b>Frequently<br/>or Always</b> | <b>Often or<br/>Most</b> | <b>Sometimes<br/>or Some</b> | <b>Rarely<br/>or Few</b> |
|---|---------------------------------|--------------------------|------------------------------|--------------------------|
| Percentage of students who felt unsafe at school                          | 43.9                            | -                        | -                            | -                        |
| Freq. of hearing biased language from students                            | 31.3                            | 30.1                     | 25.3                         | 9.2                      |
| No. of students making biased remarks                                     | -                               | 23.8                     | 44.6                         | 30.8                     |
| Freq. hearing remarks about gender expression (masculine)                 | 27.8                            | 27.9                     | 27                           | 11.5                     |
| Freq. hearing remarks about gender expression (feminine)                  | 18.5                            | 19.5                     | 26.8                         | 24.2                     |

<sup>89</sup> *Doe v. Yunits*, February 26, 2001 order on Motion to Dismiss, 15 Mass. L. Rptr. 279

<sup>90</sup> *Doe v. Yunits*, *supra* note 78 at 8.

<sup>91</sup> GAY, LESBIAN & STRAIGHT EDUCATION NETWORK, 2011 NATIONAL SCHOOL CLIMATE SURVEY (2011). AGAIN, ALL CAPS. REASON?

<sup>92</sup> *Id.*

|  |      |      |      |      |
|--|------|------|------|------|
| Freq. hearing biased language from teachers or staff         | 2.6  | 6.1  | 19.8 | 28.4 |
| Presence of school staff when remarks made                   | 4.6  | 21.6 | 50.4 | 23.3 |
| Freq. of teachers or staff intervention after biased remarks | 2.3  | 9.0  | 39.8 | 48.9 |
| Freq. of student intervention when remarks made              | 1.1  | 5.1  | 39.8 | 54   |
| Freq. of verbal harassment in past school year               | 11.3 | 13.3 | 20.5 | 18.8 |
| Freq. of physical harassment in past school year             | 4.1  | 3.8  | 8.1  | 11.1 |
| Freq. of physical assault in past school year                | 1.9  | 1.4  | 3.4  | 5.7  |

Another study published in 2011 by the National Gay and Lesbian Task Force and the National Center for Transgender Equality involved a survey of 6,450 transgender and gender non-conforming participants.<sup>93</sup> Among its reported survey results are that “those who expressed a transgender identity or gender non-conformity while in grades K-12 reported alarming rates of harassment (78%), physical assault (35%) and sexual violence (12%); harassment was so severe that it lead almost one sixth (15%) to leave a school in the K-12 settings or in higher education.” It also revealed that the respondents “who have been harassed and abused by teachers in K-12 settings showed dramatically worse health and other outcomes than those who did not experience such abuse. Peer harassment and abuse also had highly damaging effects.”<sup>94</sup>

By far one of the most alarming statistics about transgender individuals is the number of them who have attempted suicide. In a survey the National Center for Transgender Equality conducted with the National Gay and Lesbian Task Force in 2009, 41% of the respondents said yes to the question: “Have you ever attempted suicide?”

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<sup>93</sup> *Injustice at Every Turn – A Report of the National Transgender Discrimination Survey*,” by Jaime M. Grant, Ph.D., Lisa A. Mottet, J.D., Justin Tanis, D.Min. with Jack Harrison, Jody L. Herman, Ph.D., and Mara Keisling. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force. 2011.

<sup>94</sup> *Id.* at page 3 Executive Summary.

*“Suicide sadly remains all too prevalent in the transgender community. Unremitting discrimination takes its toll and transgender people pay the price for the prejudice of others...”<sup>95</sup>*

Researchers from the American Foundation for Suicide Prevention and the Williams Institute at UCLA School of Law found that the risk of attempting suicide is especially severe for transgender or gender nonconforming people who had suffered discrimination or violence, such as being physically or sexually assaulted at work or at school.<sup>96</sup> According to a Washington State survey, more than 50% of transgender youth will have had at least one suicide attempt by their 20<sup>th</sup> birthday.<sup>97</sup>

These statistics show that there is a clear need for school administration to take proactive steps to support and care for transgender students. One step to begin to drive these numbers down is the education of the school community regarding overall discrimination, harassment, and biases, and also educating faculty and staff on what to do when they see unacceptable behavior taking place.

## Part VI: Recommended Approach and Overall Guidelines for Schools

All students need a welcoming, safe, and supportive school environment to best develop academically, socially, and developmentally. School administrators, faculty, staff, and fellow students all play an important role in helping to create and maintain such an environment. To assist schools in understanding what steps they can take to create a culture in which transgender and gender nonconforming students can feel safe and supported, the following is a checklist of basic considerations followed by more in-depth discussion about particular items.

### A Checklist of Considerations for Working with Transgender and Gender Nonconforming Students

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<sup>95</sup> “Preventing Transgender Suicide,” by the National Center for Transgender Equality, September 2010.

<sup>96</sup> See “Discrimination May Be A Risk Factor for Transgender Suicide Attempts” by Zack Ford, January 28, 2014 at [thinkprogress.org](http://thinkprogress.org). See also USA Suicide, 2002, “Final Data” prepared for the American Association of Suicidality by John L. McIntosh, PhD.; [www.livescience.com/11208-high-suicide-risk-prejudice-pl](http://www.livescience.com/11208-high-suicide-risk-prejudice-pl).; “High Suicide Risk, Prejudice Plague Transgender People,” by Clara Moskowitz, November 19, 2010 at [livescience.com](http://livescience.com)

<sup>97</sup> “Statistics About Youth Suicide” by the Youth Suicide Prevention Program at <http://www.yspp.org/about-suicide/statistics.htm>.

\_\_\_1. *Proactive Approach*: School administrators should educate themselves about the area of transgender students and ways in which schools should support them even before the need arises to work with and support a particular transgender student.

\_\_\_2. *Professional Development*: The school should provide professional development for all faculty and staff to understand transgender terminology and how to work with transgender students.

\_\_\_3. *Policies*: The school should evaluate their existing student and employee handbook policies and consider adoption of anti-discrimination and anti-harassment policies as well as expansion of anti-bullying policies, to include gender identity.

\_\_\_4. *Facilities (including bathrooms, locker rooms, and dorm rooms)*: The school should proactively evaluate how to accommodate transgender bathroom and locker room use as well as dorm room placements. For instance, the creation of gender neutral bathrooms and locker rooms, single stall bathrooms, use of curtains, single rooms, etc.

\_\_\_5. *Student Awareness and Training*: Schools should engage in training programs that include gender identity as a protected class, and educate students about embracing diversity in all its forms including gender identity.

\_\_\_6. *Response Team*: When actual situations arise, schools should consider constituting a response team which includes the head of school, dean of students, school counselor, and student's advisor, who can work cooperatively with the student and his or her family to deal with issues as, or before, they arise. Among the areas that may need to be addressed, on a case by case basis are:

- \_\_\_a. Pronoun use.
- \_\_\_b. Bathroom, and locker room use.
- \_\_\_c. Dormitory room assignment.
- \_\_\_d. Confidentiality and medical privacy.
- \_\_\_e. Sports participation.

- \_\_\_f. School activities and field trips.
- \_\_\_g. Conflict response and where to go to seek help.
- \_\_\_h. Dress code.
- \_\_\_i. Transition support needs, if any.
- \_\_\_j. Counseling and other student or family support.
- \_\_\_k. Other student or family concerns.
- \_\_\_l. Safety- protections from harassment and bullying.
- \_\_\_m. Healthcare services and facilities.

\_\_\_7. *Safe, Welcoming, and Inclusive School Environment*: Overall, schools should work to create an overall safe, welcoming, and inclusive school environment.

### Proactive Approach

While the majority of schools have not, as yet, dealt with the enrollment of a transgender student or the transition of a current student, there are many steps a school can take now to make the process go more smoothly when it actually arises. In addition to any changes to the school's written policies, schools should take a proactive approach to educating its administrators, faculty, and staff in understanding issues related to transgender and gender nonconforming students (and faculty) so that it will be prepared to handle the issues as best it can for the student, his or her family, for the school, and for the greater school community. Very often a school will wait until an issue presents itself, and it may take some time to figure out how to appropriately deal with the various issues that can arise. This can create unnecessary communication issues, delays, and hurtful feelings that could be averted if the school plans now for what may be needed. Questions such as what to call the student, what bathroom a student can use, what gym class the student should be in, whether the gender identity is maintained in confidence, how to maintain records, who to share the information with, and how outside associations, such as the athletic associations deal with the issue are among those that a school should be prepared to address. As further discussed below, a school should also provide some education and training to the school community including, at a minimum, students and employees about the school's adoption of any new gender identity policy and about the expectation that no harassment or discrimination will be tolerated.

With increased involvement from rights groups such as the ACLU and GLAAD, there are many resources available to help schools and other individuals address the needs and concerns of

transgender students. Schools should review available resources to educate themselves on current state laws or federal regulations applicable to them and consider policies and procedures adopted by other schools. Each situation will need to be reviewed on a case by case basis taking into consideration the unique needs and circumstances of each child. In addition to the student's situation being unique, each school is different and needs to determine what resources and facilities are available and how to use those to reach the best possible outcome for all parties involved.

One of the primary questions that often arises with a transgender student is whether the transgender student will be allowed to use the facilities of the sex with which he or she identifies. As children grow older and move further along in school, the situations being encountered often result in a school changing its prior accommodation. As recent cases have shown, a decision about bathroom facilities can significantly change from a first grader using a classroom's single unisex bathroom to a fifth grader now using communal bathrooms. The below listing is an overview of some of the common situations that schools may need to address when working with a transgender student.

For each of the described situations, the most inclusive policy would be to let transgender students use the facilities, or join the team of the gender with which they identify. Unfortunately, that may not be possible in all cases. Various aspects of the activities or facilities must be addressed, making the overall process of developing policies and practices for transgender students one of considerable adaptation and constant review.

### Response Team

When developing policies or procedures and implementing them, engaging various members of the school community can help to better assess the needs of transgender students. These "response teams" can consist of the head of school, dean of students, school counselor, an advisor or teacher, and/or any others who the school administration thinks would best be able to address the student's needs. The team should also engage the transgender student and his or her family. Privacy and confidentiality must also be considered. Engaging many faculty or staff in the discussion can open the door to a violation of the student's privacy or confidentiality and should always be closely watched. The response team would be responsible for addressing issues that arise, and assisting the student and school community in necessary changes, education, and other steps or actions that may need to be taken.

## Pronoun Use

Confusion can often arise when discussing a transgender student and whether to use he or she when referring to the particular student. The Human Rights Campaign explains that a person representing themselves as female should be called “she,” while “he” should be used for a person representing himself as male, and if you are not sure, you can simply ask the student which he or she prefers.<sup>98</sup>

## Bathrooms

One of the more common situations arising with transgender students is the decision as to which bathroom facilities the student is to use. A decision to allow use of one bathroom versus another can be complicated by the age of the transgender student, the grade he or she is in, the reaction of other students, and the school facilities available. Schools should seek to address the long-term use of bathroom facilities by the students to ensure compliance with any applicable laws or regulations, but also for the long-term well-being of the students. In planning new buildings or renovating an existing building, consideration should be made for incorporating single stall bathrooms.

Some of the questions to be considered include: Which bathrooms will a transgender child use? Should a transgender child use the bathroom of his or her choosing or will there be gender-neutral bathrooms available to choose from as well? Will the school allow a transgender student to use the communal bathrooms of the sex the student identifies with? How will this policy work in different grades?

## Locker Rooms/Showers

Like the bathrooms, schools will need to assess the needs of transgender students regarding locker rooms, changing facilities and showers, as well as the ability of the school to make accommodations considering the existing facilities of the school. Schools should make sure transgender students and other students have access to facilities that they feel comfortable using, such as unisex bathrooms, private changing areas, and partitioned rooms.<sup>99</sup> As the school makes renovations or undertakes new building projects, consideration of these transgender

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<sup>98</sup> HUMAN RIGHTS CAMPAIGN FOUNDATION, *TRANSGENER AMERICANS: A HANDBOOK FOR UNDERSTANDING* (2008).

<sup>99</sup> POLICY, *supra* note 4, at 6.

student needs should be factored into the planning, even if the school does not currently have a transgender student.

Some of the questions to consider are: Are individual changing stalls available? Will transgender students be allowed to use communal showers? Are individual shower stalls available? Which gender locker room or shower room will the transgender student use?

### Confidentiality/Medical Privacy

Students and families have certain rights when it comes to keeping information confidential under federal law (FERPA highlighted above), but this law only applies to public schools and independent schools accepting federal funds. FERPA and other state privacy/confidentiality laws limit the type of information that schools can provide to the individual or organization making the request. Typically, personal or other information identifying a student can only be released with the permission of the student or parents/guardians. Schools should already have confidentiality/privacy measures in place and can likely extend the current policies to the transgender status of a student. A student's decision to discuss his or her own transgender status does not necessarily allow the school to disclose further information regarding that student.<sup>100</sup>

Will your school maintain the confidentiality of transgender students or those students in transition? How will requests for information be handled? What if the confidential nature of the student's status is compromised? Does the student and his or her family wish to have the transgender status of the student maintained in confidence? What policies and forms should the school prepare now to be prepared for the future on this issue?

### Healthcare Centers and Services

Currently, most independent school health and counseling staff have not been trained on transgender issues. As a result, schools may unnecessarily fail to best provide for the healthcare needs of transgender students. School counselors and health center employees need to be sensitive to, and knowledgeable about, the medical and emotional needs of transgender students. Independent schools should require or strongly encourage staff to attend training on transgender issues. In addition, health facilities should take into account the needs of

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<sup>100</sup> *Id.*

transgender students. For example, schools should provide gender neutral bathrooms, changing rooms, and examining spaces.

### Admissions

Like the healthcare personnel education discussed above, a school's admissions staff needs education and training now so that when a transgender or gender non-conforming student applies to the school, admissions can provide as welcoming a school environment as possible. This would include impressing the student and parents that the school is knowledgeable about some of the unique issues that a transgender student may face in school, and that the school is open to partner with them to support the student. This would involve undertaking a case-by-case evaluation of the support the student and/or his or her parents believe is necessary for the student's successful enrollment and attendance at the school. As with all student applicants, each case may be different in wants or needs of the student and family, and the school should be willing to have ongoing and open communication with them to help them decide if the school is the right fit and, once enrolled, that the school will continue to partner with them to address any concerns or needs as they arise.

### Bullying or Harassment

Most if not all independent schools already have anti-bullying and anti-harassment policies in place, but schools should consider amending them to include gender identity. Careful evaluation should be done, however, if a school is considering including gender identity into the school's anti-discrimination policies. An online review of some independent school anti-discrimination policies reveals that increasingly schools are adding "gender identity." But is that really best for the school? Independent schools should consider that recent cases held that requiring a transgender student, for instance, to use the staff unisex bathroom was discrimination under the anti-discrimination law. Independent schools could lose the flexibility to consider some of these kinds of accommodations that could work, but might not be enough if gender identity is part of the school's anti-discrimination policy and a parent or student pushes the issue in court.

Unless it is required by a state specific law, for most independent schools, there is no legal requirement to adopt a policy of anti-discrimination based on gender identity or gender expression. A school can certainly do so, especially a school that wishes to promote diversity in all the many respects that people can be different. The school should consider that not every

member of the school community will be supportive of such an expansion of the school's policy, and the school should be prepared to address such concerns if raised.

Rather than including gender identity in the school's anti-discrimination policy, an alternative would be to adopt an approach of "promoting respect for" and not tolerating harassment or bullying of, rather than an anti-discrimination policy. The "promoting respect" statement would still raise awareness about, and exhibit the school's commitment to, embracing diversity including differences based on gender identity, without imposing some of the stricter legal obligations that an anti-discrimination policy could impose. And, even if a school does not adopt any change in policy, the time has come for all schools to have proactive dialog and awareness training about how to deal with transgender student and faculty in the most respectful and thoughtful manner.

### Sample Policies

As to a suggested change to a school's current policy, the student handbook anti-discrimination policy could say:

*"Johnson Academy prohibits discrimination against any student or applicant because of race, color, religion, sex, gender, ethnic or national origin, sexual orientation, qualified individuals with disabilities on the basis of disability, or any other category which may be protected by applicable state or federal law. The Academy also promotes respect for all people, and will not tolerate harassment based on any of these characteristics nor on differences based on gender identity or expression."*

As to the employee handbook, the policy might read:

*"Johnson Academy prohibits discrimination against, and harassment of, any employee or applicant for employment, because of race, color, religion, sex, gender, pregnancy, genetic information, ethnic or national origin, sexual orientation, marital status, familial status, military or veteran status, qualified individuals with a disability on the basis of the disability, or any other category which may be protected under applicable state or federal law. The Academy also promotes respect for all people, and will not tolerate harassment based on*

*any of these characteristics nor on differences based on gender identity or expression.”*

In addition to adding gender identity and gender expression to the school’s diversity statement (as suggested above), gender identity should also be added to a school’s anti-harassment and anti-bullying policies so it is clear that the school affords the same protection.

Does your school have a bullying or harassment policy? Does the policy include transgender students or create a blanket prohibition on bullying or harassment? What state or federal laws does the school need to follow?

### Parental Concerns

Parents are often involved with their children’s schooling and want to see their child raised in the manner the parents believe to be best. A parents’ concern for their child’s school environment can lead some parents to question school policies. Schools should have policies or procedures that adequately address how parent concerns are handled and what type of reporting avenues are available to those parents with concerns about bullying and harassment.

How will you address parents questioning the policies or procedures dealing with transgender students? Will this be done confidentially or involve all parties? What if the parents of the transgender student disagree with their child’s decision about his or her gender identity?

### Athletics

A school’s decision to allow or disallow transgender students to play on sports team matching the student’s gender identity may be criticized by other organizations the school competes against, and could run afoul of the sports league’s policies that the school belongs to. A school’s policy on sports for transgender students usually involves other schools, students, and athletic associations, each of which may have different views on allowing transgender student athletes to play on various teams.

What are the policies of the teams or organizations the sports teams will interact with? Are you in compliance? Are some schools unwilling to participate in events with your school based on your transgender policy? Do policies vary from grade school through high school?

Currently, for a transgender female to play on a female sports team in the Olympics, the International Olympic Committee requires gender reassignment surgery, legal recognition of the athlete's assigned gender, and two years of hormone therapy to have taken place.<sup>101</sup> The NCAA also requires transgender females to be receiving hormone therapy, but doesn't require the same of transgender males wishing to play on male sports teams.<sup>102</sup> High schools usually do not have the same type of restrictions. California recently passed legislation allowing transgender students to participate on the team corresponding to their gender identity, while other states such as Massachusetts are considering such measures.<sup>103</sup> Individual athletic associations and leagues usually have their own policies for athlete participation. Schools should check with its respective leagues for transgender athlete policies.

### School Activities/Field Trips

Despite having policies in place for the normal school day, going on field trips or involving transgender students with school activities can add a new consideration as to which bathrooms are used or how to prevent bullying or harassment outside of the classroom. The GLSEN Model Policy recommends that the scope of transgender policies cover conduct at the school, on school property, at school-sponsored functions and activities, on school buses or vehicles, and at bus stops.<sup>104</sup>

Will you keep the same policies? Will teachers or chaperons be aware of the status of transgender students, keeping in mind confidentiality concerns?

### Dormitories

Schools who board students overnight must consider many unique situations involving transgender students. Some colleges and universities are addressing this issue by creating gender-neutral housing with roommates assigned regardless of gender, such as suites with

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<sup>101</sup> John Van Der Luit-Drummond, *Sport and transgender athletes*, LawInSport (June 2, 2013), <http://www.lawinsport.com/articles/regulation-a-governance/item/sport-and-transgender-athletes>.

<sup>102</sup> NCAA, NCAA INCLUSION OF TRANSGENDER STUDENT-ATHLETES (2011).

<sup>103</sup> Ian Lovett, *Changing Sex, and Changing Teams*, N.Y. Times, May 10, 2013

<http://www.nytimes.com/2013/05/07/us/transgender-high-school-students-gain-admission-to-sports-teams.html>

<sup>104</sup> POLICY, *supra* note 8.

private bedrooms.<sup>105</sup> Placing transgender students in dorms will likely require much more discussion between the school and the transgender student and family to ensure the student is placed in a comfortable and safe environment, as well as maintaining the safety and security of all students.

Who will the student room with? Will a roommate be the same gender as the transgender student identifies with or the same biological gender? Will the student have his or her own room to maintain confidentiality? Do current facilities provide the necessary accommodations to fit your transgender policies?

### Conflict Response

Recently, transgender students in schools and the policies affecting them have become media stories creating publicity for the student as well as the school.<sup>106</sup> The cases highlighted above each had a large amount of media coverage which included articles in magazines, newspapers, and online with pictures and names attached. The transgender student, his or her family, the school, or any other involved parties may not want that type of publicity. Schools should seek to have a policy that addresses conflicts and concerns adequately and timely.

What media strategy or policy do you now have in place? Does it need to be modified to address transgender students? How will you handle other parental concerns or the concerns of the transgender student and family?

### Dress Code

The dress of transgendered students should conform to the dress code of the gender the transgender student identifies with. Whether your school has a particular dress code and uniform or merely requests student dress appropriately, transgender students should be held to the same standard as the other students whose gender he or she identifies with. Wearing clothing that does not conform to the dress code can be reason for discipline, but a student expressing his or her gender identity through clothing should not, by itself, be something the student is disciplined for.

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<sup>105</sup> Brett-Genny Janiczek Beemyn, *Ways that U.S. Colleges and Universities Meet the Day-to-Day Needs of Transgender Students*, TRANSGENDER LAW & POLICY INSTITUTE (n.d.), <http://www.transgenderlaw.org/college/guidelines.htm>.

<sup>106</sup> Frosch, *supra* note 2.

Do you have a dress code in writing? Does it allow for students dressing in the clothes of the gender they identify with? Do you need to change the definition of a disciplinable dress code violation?

## Transition

Each situation involving a transgender student is unique and likely requires a specific look at the student's overall needs, as well as the legal ramifications of the situation. Further complicating the process of creating policies or procedures for a school is the situation when a student who chooses to transition from one gender to the other after already being enrolled in school. A student's decision to transition can cause a school's current policies or procedures to be further highlighted or scrutinized by the school community. If a third-grade student leaves for the winter break as a boy and returns requesting that "he" now be referred to as "she" and requesting use of the female facilities, not only will the other students in the school likely be aware of the situation and question it, the school could be at a heightened risk of discrimination, harassment, or bullying claims. As the cases highlighted above show us, parents can often be the source of conflict in similar situations. Creating an action plan that fully covers how to address parental concerns and complaints should be included with the policies and procedures of the school. Sharing this information with the parents of the transgender student, as well as the student if age-appropriate, will help ensure that the family understands the steps and messages that the school will be providing and provide the family with a place to turn if something does happen.

Apart from just the school's choices on how to respond to a child in transition, is the decision of when to respond to the different circumstances of the child. Will the school acquiesce to the wishes of the student with just a request? Will the school require a new birth certificate showing the changed sex of the child? What if the child has not received any type of counseling or professional diagnosis of gender identity disorder? Schools must decide at what point to grant the wishes of a child in transition, and should take the other students into account when making these choices. These decisions should be made before the issue presents itself to the school so that the school is not drafting policies on the spur of the moment.

## Education and Training

As the statistics show, not all school faculty and staff are accommodating or tolerant of transgender students. Each school should take necessary steps to educate all employees on the issues surrounding transgender students and demand acceptance from all faculty and staff. Several organizations such as Gender Spectrum offer training ranging from tips to daylong training sessions.<sup>107</sup> Training faculty and staff should focus on understanding gender identity, how to address the different needs of transgender students, and getting informed on the laws or regulations affecting the school.<sup>108</sup> Depending on the school and the current training that already takes place at the school, adding gender identity to the agenda is an easy way to incorporate additional training.

Educating the children at school is also an important part of creating a safe and comfortable place for all students. Educating the students should focus on having respect for all people regardless of race, sex, gender identity, disabilities, etc.<sup>109</sup> The nature of the training would vary depending on the age of the students, but can be done in a manner that the school determines fulfills its needs the best. Likewise, educating the larger school community by inviting parents to a training or sending pamphlets or brochures home can increase knowledge of the issues surrounding transgender students.<sup>110</sup>

### School Climate Surveys

School climate refers to the quality and character of school life and can include safety, relationships, teaching and learning, and the overall environment.<sup>111</sup> A school climate survey can help determine whether students feel safe, how they view the learning environment, and whether there are underlying problems in the school community. It can also address areas in need of improvement.<sup>112</sup> The statistics provided in the National School Climate survey came out of a very large climate survey and reveal that all students might not be receiving the same type of experience at school. It is important for schools to remember their responsibility is to every student, including those that might be transgender or gender non-conforming. A school climate survey can help to identify areas of student concern in many different areas including bullying,

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<sup>107</sup> *Gender Training for Schools*, GENDER SPECTRUM, <https://www.genderspectrum.org/education/school-training-program> (last visited Feb. 14, 2014).

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *School Climate*, NATIONAL SCHOOL CLIMATE CENTER, <http://www.schoolclimate.org/climate/> (last visited Feb. 14, 2014).

<sup>112</sup> *Id.*

safety concerns, inclusion, or anything the school chooses to include in the survey. Often many school administrators do not see the need or importance of assessing their school's climate, only to find that, following such a survey, there were underlying issues that the faculty and staff were not aware of or that students did not feel comfortable coming forward to discuss. Assessing the school climate can be an effective way to learn of and understand students' areas of concern.

### Student/Family Support

Support for transgender students can take on many forms. Available options for support can include access to mental health professionals at school, allowing students to openly express themselves, and possibly forming a student support group if the school finds there is a need or want among students for such a group. These groups are often established as gay-straight alliance groups who work to establish a safe and inclusive school community for all students.<sup>113</sup>

Additionally, the families of transgender students might also benefit from having the support of the school community. Various organizations provide support for families with transgender children such as Trans-Youth Family Allies, but parents likely have a greater personal connection to their school community than outside organizations. Potential support can take many forms such as having access to the members of the school faculty or staff responsible for the policies on transgender students, or increasing the education among other parents about the issues facing transgender students. Each school should determine the best approach for supporting transgender students and their families.

## Conclusion

Working with transgender students and understanding the issues they face is a new phenomenon for schools. If your school has not dealt with this issue as yet, be prepared because it is coming. Increasingly transgender students are having the courage and support to express their true gender identity. Schools must be prepared to provide for the needs of the transgender student as it does all other students. The guidelines in this article are meant to give schools a starting point. That starting point is for schools to take a proactive approach so that the best responses and support of the transgender student can be provided when situations actually

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<sup>113</sup> Wikipedia, *Gay-Straight Alliance*, [http://en.wikipedia.org/wiki/Gay%E2%80%93straight\\_alliance](http://en.wikipedia.org/wiki/Gay%E2%80%93straight_alliance) (as of Feb. 6, 2014).

arise. Promoting student safety and their overall well-being is the primary concern of all schools. Doing the right thing is the foundation upon which independent schools operate. Following the guidelines set forth in this article will help schools to fulfill those goals. Overall, all children have the right to a welcoming, safe, and supportive school environment. By taking the steps now to understand the rights and needs of transgender students, schools can help to ensure that transgender students are also afforded that right.

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## Recommended Resources

### ▶ ACLU, American Civil Liberties Union

- An organization working to protect the rights and liberties of Americans.  
<https://www.aclu.org/>
- *Know Your Rights: A Guide For Trans and Gender Nonconforming Students*. A guide for students on their rights while in school. Available at  
<https://www.aclu.org/lgbt-rights/know-your-rights-guide-trans-and-gender-nonconforming-students>
- *Know Your Rights: Transgender People & the Law*. Available at:  
<https://www.aclu.org/lgbt-rights/know-your-rights-transgender-people-and-law>

### ▶ American Psychological Association

- *Just the Facts About Sexual Orientation and Youth. A Primer for Principals, Educators, and School Personnel*. Written to provide school personnel with information to help understand sexual orientation among students. Available at  
<https://www.apa.org/pi/lgbt/resources/just-the-facts.aspx>

### ▶ Gender Spectrum

- Provides education, training, and support to help create a gender sensitive and inclusive environment for all children and teens.  
<https://www.genderspectrum.org/>

**▶ GLAD, LGBT Legal Advocates**

- *Transgender Legal Issues: New England, January 2014*

**▶ GLAAD, Gay & Lesbian Alliance Against Defamation**

An internationally recognized organization whose mission is promoting understanding, increasing acceptance, and advancing equality for lesbian, gay, straight, and transgender individuals. <https://www.glaad.org/>

**▶ GLSEN, Gay, Lesbian & Straight Education Network**

- *Harsh Realities: The Experience of Transgender Youth in our Nation's Schools.* A publication from GLSEN providing an in-depth account of the experiences of transgender students. Available online at <http://glsen.org/learn/research/national/report-harsh-realities>.
- *Model District Policy on Transgender and Gender Nonconforming Students.* A model policy for school districts dealing with transgender students. Available at <http://transequality.org/Resources/Model%20District%20Trans%20and%20GNC%20Policy%20FINAL.pdf>.
- *Ready Set Respect! GLSEN's Elementary School Toolkit.* A guide for creating and delivering inclusive, diversity-focused lessons. Available at <http://glsen.org/readysetrepect>
- *Safe Space Kit: A Guide to Supporting Lesbian, Gay, Bisexual and Transgender Students in Your School,* Copyright 2013.

**▶ Human Rights Campaign Foundation**

- *Transgender Americans: A Handbook for Understanding.* A publication highlighting some of the issues and concerns faced by transgender individuals in America. Available online at <https://www.hrc.org/files/assets/resources/hrcTGguide.pdf>.

- *Supporting and Caring for Our Gender Expansive Youth – Lessons From the Human Rights Campaign’s Youth Survey*, available electronically at [www.hrc.org/youth-gender](http://www.hrc.org/youth-gender) or [www.genderspectrum.org/youth](http://www.genderspectrum.org/youth). – [One of this author’s favorites.\*\*\* Includes practical and concise overview of how parents, youth serving professionals, and organizations such as schools can create a more gender-inclusive environment for youth.]

#### ▶ NACUA

- *Gender Identity and Expression Issues at Colleges and Universities*, NACUA Notes, Vol. 3, No. 3, June 2, 2005
- *Transgender Issues on Campus*, NACUA Notes, Vol. 11, No. 4, December 21, 2012.

#### ▶ National School Climate Center

- An organization that helps schools integrate social and emotional learning with academic instruction with the goal to promote positive and sustained school climate: a safe, supportive environment that nurtures social and emotional, ethical, and academic skills. <http://www.schoolclimate.org/index.php>

#### ▶ NCAA 2011 Transgender Handbook

- A publication outlining the NCAA policies and procedures regarding transgender student athletes. Available online at:  
[http://www.ncaa.org/sites/default/files/Transgender\\_Handbook\\_2011\\_Final.pdf](http://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf).

#### ▶ *The Transgender Child: A Handbook for Families and Professionals* by Stephanie Brill and Rachel Pepper with Foreword by Dr. Norman P. Spack, MD, Published by Cleis Press, Inc., Copyright 2008

#### ▶ *Gender born, gender made: Raising Healthy Gender-Nonconforming Children* by Diane Ehrensaft, PhD with Foreword by Edgardo Menvielle, MD, MSHS, Published by The Experiment, LLC, Copyright 2011

#### ▶ *Helping Your Transgender Teen: A Guide for Parents* by Irwin Krieger, Published

by Genderwise Press, New Haven, Copyright 2011

- ▶ ***When John Identifies: Managing Transgender Issues*** (of employees) by Jeff Burns, Insights magazine, Fall 2012, pages 6-11.
  
- ▶ ***Advancements in State and Federal Law Regarding Transgender Employees – A Compliance Guide for Employers and Employment Law Attorneys***, a joint publication of the National Center for Lesbian Rights and the Transgender Law Center (undated).

### Particularly Good State DOE Guidelines

(but NOTE that some of these guidelines may not apply in the independent school environment)

- ▶ *Guidelines for Connecticut Schools to Comply with Gender Identity and Expression Non-Discrimination Laws*, Connecticut Safe School Coalition
  
- ▶ *Guidance for Massachusetts Public Schools Creating a Safe and Supportive School Environment*, Massachusetts Department of Elementary and Secondary Education. See also, the Massachusetts State Law Library online summary of “Massachusetts Law About Gender Identity or Expression” which also includes a great listing of selected cases and other transgender Web resources; [www.lawlib.state.ma.us/subject/about/transgender.html](http://www.lawlib.state.ma.us/subject/about/transgender.html)
  
- ▶ *Transgender and Gender Variant Students – Ensuring Equity and Nondiscrimination*, Los Angeles Unified School District Reference Guide, September 9, 2011, Number REF-1557.1

## Addendum: GLADD “Tips for Allies” of Transgender People

The following is reprinted with the permission of GLAAD (Gay and Lesbian Alliance Against Discrimination)<sup>114</sup>

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The following are tips that can be used as you move toward becoming a better ally of transgender people. Of course, this list is not exhaustive and cannot include all the "right" things to do or say - because often there is no one "right" answer to every situation you might encounter.

When you become an ally of transgender people, your actions will help change the culture, making society a better, safer place for transgender people - and for non-transgender people who violate gender expectations.

### **You can't tell if someone is transgender just by looking.**

Transgender people don't all look a certain way or come from the same background, and many may not appear "visibly trans." It's not possible to look around a room and "see" if there are any transgender people. (It would be like a straight person looking around the room to "see" if there are any gay people.) You should assume that there may be transgender people at any gathering.

### **Don't make assumptions about a transgender person's sexual orientation.**

Gender identity is different than sexual orientation. Sexual orientation is about who we're attracted to. Gender identity is about our own personal sense of being male or female (or someone outside that binary.) Transgender people can be gay, lesbian, bisexual or straight.

### **If you don't know what pronouns to use, ask.**

Be polite and respectful when you ask a person which pronoun they prefer. Then use that pronoun and encourage others to do so. If you accidentally use the wrong pronoun, apologize quickly and sincerely, then move on. The bigger deal you make out of the situation, the more uncomfortable it is for everyone.

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<sup>114</sup> GLAAD is a lesbian gay, bisexual, and transgender (LGBT) media advocacy organization founded in 1985. These Tips for Allies can be found at <http://www.glaad.org/transgender/allies>.

**Understand the differences between "coming out" as lesbian, bisexual, or gay and "coming out" as transgender.**

"Coming out" to other people as lesbian, gay, or bisexual is typically seen as revealing a "truth" that allows others to know your authentic self. The LGB community places great importance and value on the idea of being "out" in order to be happy and whole. When a transgender person has transitioned and is living as their authentic gender - that **is** their "truth." The world is now seeing them as their true selves. Unfortunately, sometimes when others discover a person is transgender they no longer see the person as a "real" man or woman - and it can feel disempowering for a transgender person to have that experience. Some people (like Janet Mock) may choose to publicly discuss their lives in an effort to raise awareness and make cultural change. But please don't assume that it's necessary for a transgender person to be "out" to everyone in order to feel happy and whole.

**Be careful about confidentiality, disclosure, and "outing."**

Some transgender people feel comfortable disclosing their transgender status to others, and some do not. Knowing a transgender person's status is personal information and it is up to them to share it. Do not casually share this information, or "gossip" about a person you know or think is transgender. Not only is this an invasion of privacy, it also can have negative consequences in a world that is very intolerant of gender difference - transgender people can lose jobs, housing, friends, or even their lives upon revelation of their transgender status.

**Avoid backhanded compliments or "helpful" tips.**

While you may intend to be supportive, comments like the following can be hurtful or even insulting:

"I would have never known you were transgender. You look so pretty."

"You look just like a real woman."

"She's so gorgeous, I would have never guessed she was transgender."

"He's so hot, I'd date him even though he's transgender."

"You're so brave."

"You'd pass so much better if you wore less/more make-up, had a better wig, etc."

"Have you considered a voice coach?"

**Be patient with a person who is questioning or exploring their gender identity.**

A person who is questioning or exploring their gender identity may take some time to find out what identity and/or gender expression is best for them. They might, for example, choose a new name or pronoun, and then decide at a later time to change the name or pronoun again. Do your best to be respectful and use the name and/or pronoun requested.

**Respect the terminology a transgender person uses to describe their identity.**

The transgender community uses many different terms to describe their experiences. Respect the term (transgender, transsexual, genderqueer, cross-dresser, etc.) a person uses to describe themselves. If a person is not sure of which identity label fits them best, give them the time and space to figure it out for themselves. Don't tell them which term you think they should use. You wouldn't like your identity to be defined by others, so please allow others to define themselves.

**Understand there is no "right" or "wrong" way to transition - and that it is different for every person.**

Some transgender people access medical care like hormones and surgery as part of their transition. Some transgender people want their authentic gender identity to be recognized without hormones or surgery. Some transgender people cannot access medical care, hormones, and/or surgery due to lack of financial resources. A transgender identity is not dependent on medical procedures. Just accept that if someone tells you they are transgender - they are.

**Don't ask a transgender person what their "real name" is.**

For some transgender people, being associated with their birth name is a tremendous source of anxiety, or it is simply a part of their life they wish to leave behind. Respect the name a transgender person is currently using. If you already know someone's prior name don't share it without the person's explicit permission.

**Don't ask about a transgender person's genitals or surgical status.**

It wouldn't be appropriate to ask a non-transgender person about the appearance or status of their genitalia, so it isn't appropriate to ask a transgender person that question either. Likewise, don't ask if a transgender person has had "the surgery" or if they are "pre-op" or "post-op." If a transgender person wants to talk to you about such matters, let them bring it up.

**Don't ask a transgender person how they have sex.**

Similar to the questions above about genitalia and surgery - it wouldn't be appropriate to ask a non-transgender person about how they have sex, so the same courtesy should be extended to transgender people.

### **Challenge anti-transgender remarks or jokes in public spaces - including LGB spaces.**

You may hear anti-transgender comments from anti-LGBT activists - but you may also hear them from LGB people. Someone may think because they're gay it's ok for them to use certain words or tell jokes about transgender people. It's important to confront the former and educate the latter.

### **Support gender neutral public restrooms.**

Some transgender and gender non-conforming people may not match the little signs on the restroom door. Encourage schools, businesses and agencies to have single user, unisex and/or gender neutral bathroom options. Make it clear in your organization that transgender and gender non-conforming people are welcome to use whichever restroom they feel comfortable using.

### **Make your organization truly trans-inclusive.**

"LGBT" is now a commonplace term that joins lesbian, bisexual, gay, and transgender under the same acronym. If an organization or group lists "transgender" as part of its name or mission statement, it needs to truly understand the needs of the transgender community and involve transgender people in all aspects of the group's work.

### **At meetings and events, set a transgender-inclusive tone.**

At a meeting where not everyone is known, consider asking people to introduce themselves with their name and preferred pronouns - for example, "Hi, I'm Nick and I prefer he and him." This sends the message that you are not making assumptions about anyone's gender, and that people are free to self-identify. As the leader, start with yourself and use a serious tone that will hopefully discourage others from dismissing the activity with a joke. Also, in a group setting, identify people by articles of clothing instead of using gendered language - for example, the "person in the blue shirt," instead of the "woman in the front." Similarly, "Sir" and "Madam" are best avoided. If bathrooms in the meeting space are not already gender neutral, ask if it's possible to put gender neutral signs so that transgender people feel more welcome.

**Listen to transgender people.**

The best way to be an ally is to listen with an open mind to transgender people when they talk about their lives. Talk to transgender people in your community. Check out books, films, YouTube channels, and transgender blogs to find out more about transgender lives.

**Know your own limits as an ally.**

When speaking with a transgender person who may have sought you out for support or guidance, don't be afraid to admit when you don't know something. Volunteer to work with the person to find appropriate resources. It is better to admit you don't know something than to make assumptions or say something that may be incorrect or hurtful.

(Adapted from MIT's "Action Tips for Allies of Trans People.")

## About the Author

**Linda Johnson, Esquire**, is a director with McLane, Graf, Raulerson & Middleton Professional Association which has offices in New Hampshire and Massachusetts. She has over 28 years of experience litigating cases in state and federal agencies and courts, and in representing the interests of management and schools in all aspects of labor and employment law. In addition to serving as the firm's lead labor and employment lawyer, Linda served as chair of the firm's Employment Law and Education Law Groups for over 15 years, and as co-chair of the firm's Litigation Department. She is currently the co-chair of the firm's Education Law Group and focuses her



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Linda was selected an Outstanding Business Woman of New Hampshire by N.H. Business Review, awarded the Philip Holman Gender Equality Award, a recipient of the Jon Meyer Civil Rights Award and the Marilla Ricker woman lawyer of the year award. She is a past New Hampshire School Administrators Champion for Children award recipient, and was the first women officer of the New Hampshire Bar Association when she became its treasurer in 1988. Linda currently serves as the Secretary of the Board of Trustees of Rivier College where she chairs its Enrollment Committee and Global Engagement Committee, and serves on the Finance and Trusteeship Committees. She is also a member of Rivier College's Institutional Research Review Board. She is an active member of the New Hampshire Nonpublic School Advisory Council. She previously served as a Commissioner for the New Hampshire Commission on the Status of Women where she was chair of its Gender Equity in Education Task Force. In 2008, she was selected as the firm's Client Service Employee of the Year.

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