



Illinois State Board of Education

Non-Regulatory Guidance

SUPPORTING TRANSGENDER, NONBINARY AND GENDER NONCONFORMING STUDENTS

March 1, 2020

This document is intended to provide non-regulatory guidance on the subject matter listed above. For questions, please contact the person(s) identified in the document.

Dr. Carmen I. Ayala, State Superintendent of Education

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Introduction

On June 30, 2019, Governor JB Pritzker issued Executive Order 2019-11, entitled Strengthening Our Commitment to Affirming and Inclusive Schools. The Executive Order established the Affirming and Inclusive Schools Task Force (“Task Force”) in the Office of the Governor to identify strategies and best practices for ensuring welcoming, safe, supportive, and inclusive school environments for transgender, nonbinary, and gender nonconforming students and deliver a report to the Office of the Governor.

On January 10, 2020, the Task Force delivered a report to the Governor detailing the legal protections for students in Illinois, recommended procedures, and best practices for K-12 schools to support transgender, nonbinary and gender nonconforming students. This non-regulatory guidance document incorporates many of the recommendations from that report in an effort to provide support to students and technical assistance to school districts.

Questions relating to the rights of LGBTQ+ youth in schools or this non-regulatory guidance may be posed to supportallstudents@isbe.net.

A note regarding this document. The student protections, recommendations and obligations of school districts noted throughout this document should be widely accessible to students, parents and families. A district should make its policies and procedures publicly available on its website and include appropriate references in the student handbook. Appropriate support systems will have no impact on student outcomes if information is not readily and easily available.

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A. Definitions

An important component of providing appropriate supports and services to all students is ensuring that teachers, administrators and school systems operate with a common set of definitions and language. To that end, the following definitions provide context for purposes of this non-regulatory guidance.

Affirming. Acknowledging and supporting the identity of an individual.

Affirmed Gender/Affirmed Name. The name and gender with which a person identifies.

Ally. A person who is not LGBTQ+ but affirms and shows support for LGBTQ+ people and promotes equality.

Cisgender/Cis. Term used to describe people whose gender identity corresponds solely with their sex assigned at birth.

Gender Diversity. The wide range of gender identities, gender roles, and/or gender expressions that exist.

Gender Expression. An individual's characteristics and behaviors such as appearance, dress, grooming, mannerisms, voice or speech patterns, activities, and social interactions that are perceived as masculine, feminine, both, or neither.

Gender Identity. A person's internal, deeply held sense or psychological knowledge of their own gender that can include being female, male, another gender, nonbinary, gender nonconforming, or no gender, and is unrelated to the person's sex assigned at birth. Gender identity is an innate part of a person's identity, and the responsibility for determining an individual's gender identity rests with the individual. Unlike gender expression, gender identity is not visible to others.

Gender Nonconforming or Gender Expansive. Gender expression or identity that falls outside of traditional, societal, or stereotyped expectations based on the sex assigned at birth. Gender expansive individuals may identify as male, female, some combination of both, or neither.

Gender Pronouns. The set of words used to refer to someone without using their name. Common examples include, but are not limited to, "she/her/hers," "he/him/his," "they/them/theirs," and "ze/zir/zirs."

Gender Support Coordinators. District staff authorized to coordinate supports for individual transgender, nonbinary, and gender nonconforming students.

Gender Support Plan. A document that may be used to create a shared understanding about the way in which a student's gender identity will be accounted for and supported at school.

GSA. A GSA is a student-run organization that unites LGBTQ+ and allied youth to build community and organize around issues impacting them in their schools and communities. GSA is an abbreviation of either a Gender-Sexuality Alliance or Gay-Straight Alliance.

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Intersex. A general term used for the many ways in which a person can be born with chromosomes, reproductive anatomy, and/or genitalia that do not fit the typical binary expectations of female or male.

LGBTQ+. A commonly used acronym referring to the Lesbian, Gay, Bisexual, Transgender, and Queer community. The plus acknowledges that there are additional identities within the community. Other iterations include LGBTQQIA (adding Questioning, Intersex, Asexual/Aromantic).

Misgendering. When a person intentionally or accidentally uses the incorrect name or pronouns to refer to a person. Intentional and/or persistent misgendering is a form of bullying and harassment.

Nonbinary. A term used to describe people whose gender identity is not exclusively male or female, including those who identify as a gender other than male or female, as more than one gender, or as no gender.

Outing. The act of disclosing information about another person's gender identity or sexual orientation without that person's knowledge and/or consent. Outing by school officials can violate that student's privacy rights and puts students at risk of harm.

Questioning. Being unsure of or exploring one's gender identity and/or sexual orientation.

Sex Assigned at Birth. A label a person is given at birth, often based on a medical professional's interpretation of the newborn's physical characteristics. Common examples may be "male" or "female." This binary assignment does not reflect the natural diversity of bodies or experiences. This is typically the sex reflected on one's original birth certificate.

Sexual Orientation. The term for someone's romantic, emotional, physical, and/or sexual attraction to the same or different gender(s). Sexual orientation is distinct from gender identity. Common terms used to describe sexual orientation include, but are not limited to, heterosexual, lesbian, gay, bisexual, and pansexual.

Transgender/Trans. Individuals with a gender identity different than their sex assigned at birth. Transgender can be used as an umbrella term that encompasses diversity of gender identities and expressions. Being transgender is not dependent on appearance, body parts, or medical procedures.

Transition. The process whereby people may change their gender expression, bodies, and/or identity documents to match their gender identity. Transition can be social (changing gender expression, using facilities, using a different name/pronouns), medical (hormones and/or surgeries), and/or legal (changing name/gender marker on identity documents), and is different for every individual. It is common for gender transition to be an ongoing process and is unique to each person.

B. Discrimination, Harassment and Bullying

It is clear under both state and federal law that transgender, nonbinary, and gender nonconforming students must be supported in an environment free from discrimination, harassment and bullying.

B-1. What state laws protect the rights of transgender, nonbinary, and gender nonconforming students to be free of discrimination, harassment, and bullying in schools?

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The Illinois Human Rights Act (“IHRA”) makes it a civil rights violation for schools to “[d]eny or refuse to another the full and equal enjoyment of the facilities, goods, and services” on the basis of gender identity or other protected status. 775 ILCS 5/1-102(A) and 1-103(O-1). The Illinois Human Rights Commission has repeatedly ruled that the IHRA protects the rights of people who are transgender in both employment and public accommodations, including schools.

Furthermore, Illinois law prohibits bullying, including bullying “on the basis of . . . gender-related identity or expression.” 105 ILCS 5/27-23.7(a). Every school district must have and publish online a policy to prevent and address bullying that includes a contact person to report bullying, procedures for a prompt investigation (usually within 10 school days with fair procedures), and appropriate support for all students involved. *Id.* The IHRA too requires schools to protect students from harassment. The “severe or pervasive harassment” of a student violates the IHRA when the school “fails to take corrective action to stop the severe or pervasive harassment.” 775 ILCS 5/5-102.1.

B-2. What federal laws protect the rights of transgender, nonbinary, and gender nonconforming students to be free of discrimination, harassment, and bullying in schools?

Similarly, under federal law, discrimination against transgender, nonbinary, and gender nonconforming students violates Title IX of the Education Amendments of 1972 of the Civil Rights Act, 20 U.S.C. § 1681, and the United States Constitution. Title IX requires that “no person . . . shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination” in schools that receive federal funding (which includes all public schools and some private schools). 20 U.S.C. § 1681(a). The Seventh Circuit Court of Appeals, the federal appellate court with jurisdiction over Illinois, has unambiguously ruled that discrimination on the basis of gender identity is “[b]y definition” sex discrimination prohibited under Title IX. *Whitaker By Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1048 (7th Cir. 2017). A school district policy that refuses to treat a transgender student in a manner consistent with the student’s gender identity “punishes that individual for his or her gender non-conformance, which in turn violates Title IX.” *Id.* at 1049.

B-3. What are the best practices for ensuring that transgender, nonbinary, and gender nonconforming students are supported in an environment free from discrimination, harassment, and bullying?

Provide ongoing training to all staff members. One of the most common challenges that students, teachers, staff, administrators, and school board members experience when creating affirming environments for transgender, nonbinary, and gender nonconforming students is having effective ways to address harmful and/or discriminatory language and actions, especially in the moment. Regular training is an essential part of preventing discrimination and harassment in a school environment and helps ensure the effective and informed implementation of inclusion practices.

Create a non-punitive environment that focuses on prevention. Districts should take a preventive approach to enforcement of anti-bullying policies by focusing on education and positive behavioral interventions and supports rather than exclusionary discipline.

Ensure accountability for inclusive practices. When an employee fails to meet the expectations of the district’s policy and procedures, the district should hold the employee accountable and

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subject the employee to appropriate disciplinary action in a manner that is both effective and prompt. Intentional or persistent refusal to respect a student's gender identity after notification of the student's affirmed name and pronouns violates the harassment and non-discrimination policy and/or procedures required of every district.

Provide easily accessible information and supports. Districts should have "Know Your Rights" information easily accessible to all students. Districts should consider posting such information in common areas of its schools, such as bathrooms and hallways.

Be clear about the complaint procedure. All stakeholders, especially students, need to be aware of the avenues of support available to them if they have experienced bullying, discrimination, or harassment. Students who are subjected to mistreatment often do not know where to seek help. Districts should ensure that the name and contact information of the appropriate staff are readily accessible.

Support LGBTQ+-affirming student groups. Districts should identify faculty sponsors willing to work to begin and support GSAs in all elementary, middle, and high schools.

C. Gender Support Model

Intentional and structured processes are critical to providing needed supports to transgender, nonbinary, and gender nonconforming students. To this end, districts may consider adopting a Gender Support Model to coordinate these supports.

C-1. What is a Gender Support Model?

A Gender Support Model is a framework by which staff and school systems may thoughtfully and intentionally provide support to transgender, nonbinary, and gender nonconforming students according to each student's needs.

C-2. What are the components of a Gender Support Model?

In order to provide the appropriate support to students, districts should designate Gender Support Coordinators who are properly trained in providing gender-affirming support for transgender, nonbinary, and gender nonconforming students. The Gender Support Coordinator can serve as the point person for the student and the student's parent(s)/guardians(s) to ensure appropriate support is provided. The Gender Support Coordinator can assist with drafting a Gender Support Plan. If desired by the student, the Gender Support Plan can be the guiding document to address a variety of issues, including use of facilities, student records, and confidentiality. Drafting a Gender Support Plan provides an opportunity for the Gender Support Coordinator and student to discuss significant issues and make a plan for informing the appropriate district staff regarding the student's preferences.

C-3. What are the best practices for creating and implementing a Gender Support Model?

Provide tailored support to ensure equal access to educational programs and activities. Each student has a unique process for transitioning and schools should have a flexible system to accommodate each individual student's needs.

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Recognize other risk factors. Teachers and other district staff should be aware that transgender, nonbinary, and gender nonconforming students may face an increased risk of abuse, homelessness, suicide, and other safety concerns inside and outside of school.

Be mindful of how students' chronological and developmental age, as well as family supports, may affect the process. For preschool and elementary school-aged children, the level of parental involvement may look different than for middle school and high school-aged students. However, supporting a student's health, well-being, and safety is always paramount. When a transgender, nonbinary, or gender nonconforming student does not have a supportive home environment, regardless of their age, the Gender Support Coordinator can work with the student to identify what course of action will prioritize their safety.

If requested, school districts should provide support to siblings in the school district. If requested by the transgender, nonbinary, or gender nonconforming student, the Gender Support Plan or Gender Support Coordinator can address appropriate steps to support the student's siblings who attend school in the same district.

Facilitate continuity of support for students who transfer or graduate. If requested, the Gender Support Plan shall document the Gender Support Coordinator's role in communicating with the new school about gender-specific accommodations upon transfer or graduation.

D. Confidentiality

It is critical when providing a safe and healthy learning environment for transgender, nonbinary, and gender nonconforming students to ensure student confidentiality where appropriate and where warranted, based on the individual needs of the student.

D-1. What state and federal laws serve to protect the confidentiality of student records?

The Illinois School Student Records Act ("ISSRA") and federal Family Educational Rights and Privacy Act ("FERPA") serve to protect student privacy and the confidentiality of student records, which includes a student's gender identity and whether the student is transgender, nonbinary, or gender nonconforming. The "student records" protected under ISSRA include a student's gender. 23 IAC 375.10. Student information and records must be kept confidential and not disclosed without permission of the student's parent(s)/guardian(s), except to employees as needed for their work with a student, and in certain other listed circumstances permitted by law (such as to law enforcement or to comply with a court order).

Disclosure of private information related to a student's sex or gender can also violate FERPA and sex or gender identity discrimination laws such as the IHRA and Title IX. Further, students have a Constitutional right to privacy and to share or withhold information about their sexual orientation and gender identity. E.g. *Love v. Johnson*, 146 F. Supp. 3d 848 (E.D. Mich. 2015); *Powell v. Schriver*, 175 F.3d 107, 111 (2d Cir. 1999); *Wolfe v. Schaefer*, 619 F.3d 782, 785 (7th Cir. 2010) (citing *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977) (recognizing constitutional rights to highly personal information, including medical and sexual information)). ISSRA and FERPA contain exceptions to the privacy requirement for "directory information," such as student names, grade level, or participation in sports teams. 23 IAC 375.80; 20 U.S.C. § 1232g(b). Schools

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can generally disclose directory information unless parent(s)/guardian(s) opt out. Directory information does not include a student's gender or transgender, nonbinary, or gender nonconforming identity, which should not be disclosed without consent or educational need.

D-2. Are there specific laws protecting mental health records of students?

Yes. Illinois law further provides strong protections for a student's mental health records, such as those maintained by school social workers, nurses, or psychologists. Under the Illinois Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110/1 et seq., mental health records cannot be disclosed without the specific written consent of the parent(s)/guardian(s) and of the student, if the student is age 12 or older. 740 ILCS 110/4-5. The law requires written consent in a specific form to disclose those records, even to parent(s) or guardian(s).

D-3. What are the best practices for ensuring the confidentiality of students' transgender, nonbinary, or gender nonconforming identity?

Set limits on disclosure of a student's gender identity. District staff should only discuss a student's transgender, nonbinary, or gender nonconforming identity with other staff if it is necessary to support the student's social, emotional, or academic success. Districts should ensure all staff are trained and aware of the district's procedures on confidentiality. Information gathered about a student's transgender, nonbinary, or gender nonconforming identity should be kept secure and confidential, and not be released or disclosed outside of district staff without the student's explicit consent. It is essential to keep in mind that disclosure or misuse of a student's confidential information may establish a hostile environment, potentially subjecting them to bullying and harassment by peers, discrimination by district staff, and/or family rejection.

Understand and respect the level of privacy desired by a student. It is essential to understand an individual's self-determined desired level of privacy, which may change over time. If a student is uncertain about their desired level of privacy, districts should support the student in making an informed choice. Many students prefer privacy and do not want to be defined by their gender identity.

Take a student-centered approach. District employees should be aware that many transgender, nonbinary, and gender nonconforming students experience family rejection. School officials should work with students, and whoever else is appropriate, to develop a plan regarding the confidentiality of the student's identity.

Be forthcoming with students about formal and informal ways information flows within the school ecosystem. While district staff should never out a child to their family, students, teachers, or other staff, it is also true that a school cannot control how information will travel once it is shared by the student. For example, if a student requests to use their affirmed name and pronouns in one class at school, the other students in that class may share that information with peers, family members, and/or other district staff.

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E. Names, Pronouns and School Records

Districts should be cognizant of, be prepared to address, and work to minimize the barriers faced by transgender, nonbinary, and gender nonconforming students when using their affirmed name and pronouns at school.

E-1. Does a student have the legal right to be addressed by their affirmed name and pronouns?

Yes. Students have the right to be addressed at school by their affirmed name and pronouns and to update their school records to reflect their identity. Schools may not require a legal name change or change of a gender marker on a birth certificate before the school addresses a student by their affirmed name and pronouns or before updating most school records to properly reflect the student's identity.

E-2. What rights do students and parents have to access school records?

Students and parents have a right to access and review school student records. 105 ILCS 10/5(a). In this context, "school student records" means "any writing or other recorded information concerning a student and by which a student may be individually identified, maintained by a school or at its direction or by an employee of a school, regardless of how or where the information is stored," except for the records of an employee maintained only for their use and not "related or disclosed to any person." 105 ILCS 10/2(d). ISSRA, however, does not require the disclosure of: (i) "information which is communicated by a student or parent in confidence to school personnel," (ii) records of an employee maintained only for their use and not "related or disclosed to any person," or (iii) "communications otherwise protected by law," which may include some records of a school social worker or psychologist. 105 ILCS 10/2(d) and 5(f). Under both ISSRA and FERPA, parents have a right to challenge the "accuracy, relevance or propriety" of a student record. 105 ILCS 10/7; 34 C.F.R. § 99.20-22. Schools are required to have a process in place for parents to challenge and seek correction of school records, including a right to a hearing.

E-3. What are the best practices for ensuring that students are addressed by their affirmed name and pronouns at school?

Records should be adjusted to reflect a student's affirmed name and pronouns. When updating a student's school records, district staff should be cognizant of the many school information systems (e.g., state/local testing platforms, electronic databases, school website, class rosters, attendance systems, transcripts, school reporting programs, substitute teacher rosters, school IDs, yearbooks, honor roll lists, school issued email addresses and technology logins, and club rosters) present in the school system and work diligently to ensure accuracy of information across information systems. Schools should not place cumbersome and/or undue barriers that discourage, prolong, or prohibit the process of ensuring a student's school records accurately reflect a student's affirmed name and gender identity. As parent(s)/guardian(s) may have a legal right to inspect their student's school records, the Gender Support Coordinator should ensure that changes to a student's school records are a part of the support process for students.

Provide all students with opportunities to indicate how they wish to be addressed. Schools should survey all students on an annual basis to determine how they wish to identify themselves

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during school-related functions and how they wish to be addressed in communications with their parent(s)/guardian(s), including on all documents sent to their parent(s)/guardian(s). In addition, students should be allowed to update this information upon request.

Remove gender marker from school records where possible. Districts should only include a student's gender marker on school records where required by law. If, by law, school administrators are required to record a student's name or gender as it appears on the student's birth certificate, district staff shall record this information in a separate, confidential file.

Contract with Student Information System companies that have inclusive options for affirmed name and gender. Prior to signing contracts, districts should inquire about how the Student Information System company captures, reports, and performs other functions that include or affect a student's affirmed name and gender identity. Districts should also request changes to their current systems to meet student needs.

F. Use of Facilities

Both state and federal law have clearly defined that all students must be able to fully and equally access facilities in alignment with their gender identity

F-1. May a school require that a transgender, nonbinary, or gender nonconforming student use the restroom or locker room that corresponds with the student's sex assigned at birth?

No. Students must be allowed to use the facilities that correspond with their gender identity. Schools cannot impose on transgender, nonbinary, and gender nonconforming students conditions on the use of facilities that are not required of other students.

F-2. What legal provisions apply to the use of school facilities by transgender, nonbinary, and gender nonconforming students?

The IHRA expressly guarantees "the full and equal enjoyment of . . . facilities" which means that transgender, nonbinary, and gender nonconforming students have the right to use a school's physical facilities consistent with their gender identity. 775 ILCS 5/1-102(A); 1-103(O1). Under state law, a school must provide students "full and equal" use of all school facilities; it is not enough to provide students mere "access". Federal law likewise protects a student's right to use school facilities that correspond with the student's gender identity. School policies that deny students use of restrooms, locker rooms, changing rooms, or other facilities that correspond with their gender identity violate Title IX and the Equal Protection Clause. *See, e.g., J.A.W. v. Evansville Vanderburgh Sch. Corp.*, 396 F. Supp. 3d 833 (S.D. Ind. 2019) (denial of restroom use violates Title IX and the Constitution); *Whitaker*, at 1049 (school required to allow transgender boy to use male restrooms); *Doe by & through Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 526-32 (3d Cir. 2018) (affirming district court's denial of plaintiffs' motion for preliminary injunction, stating "There is simply nothing inappropriate about transgender students using the restrooms or locker rooms that correspond to their gender identity."). These protections apply to students of all genders, including nonbinary and gender nonconforming students.

F-3. What if some students or parents are uncomfortable with transgender, nonbinary, and gender nonconforming students using school facilities that correspond with their gender identity?

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Under state and federal law, the discomfort or privacy concerns of students, teachers, or parents are not valid reasons to deny or limit the equal use of facilities by transgender, nonbinary, and gender nonconforming students. Rather, the interest of any student seeking more privacy should be addressed by providing that student a more private option upon their request. “The prejudices of others are part of what the [Human Rights Act] was meant to prevent.” *P.S. and Komarek Sch. Dist. 94*, ALS No. 16-0003 (Ill. Hum Rts. Comm’n March 15, 2018 and February 4, 2019). “[T]here is no right that insulates a student from coming in contact with others who are different than them or a Bathroom Privacy Act, unless the behavior violates a school policy or is criminal.” *Id.* The presence of a transgender student in a locker room simply does not “implicate the constitutional privacy rights of others with whom such facilities are shared.” *Students & Parents for Privacy v. United States Dep’t of Educ.*, 16-CV-4945, 2017 WL 6629520, at *5 (N.D. Ill. Dec. 29, 2017). If school districts are found to have violated the IHRA or Title IX, they will be subjected to significant monetary liability, including damages, attorneys’ fees, and costs.

F-4. What are the best practices for ensuring all students have access to school facilities that correspond with their gender identity?

Facilities should be safe and accessible. Facilities include, but are not limited to, locker rooms, restrooms, showering facilities, costume rooms/backstage areas, nurse’s offices, and athletic training rooms. Facilities also include any communal area where a student may be required to undress, such as a gym used for a scoliosis screening or a weigh-in for a wrestling match. Districts that designate all-gender and/or secure-access restrooms should ensure that these facilities are safe and accessible, and not located in a place that will cause interference with a student’s academics or other school-related activities. Gender-neutral restrooms are sometimes located in inconvenient locations, resulting in lost instructional time for transgender students. Any alternative arrangement should be provided in a way that protects the student’s privacy and is consistent with the student’s Gender Support Plan, if one exists.

Allow additional time to use facilities, if necessary. If using an alternative facility would cause a student to be late, the student should be allotted additional time to use the facilities and not be punished for tardiness.

Provide options for all students. If any student desires more privacy when using a facility, that student should be allowed to use the appropriate facilities.

Increase single-occupancy facilities. Districts are encouraged to incorporate single-occupancy facilities and to increase privacy for all facilities when considering new construction or renovation.

G. Dress Codes

While districts are encouraged to adopt gender-neutral dress codes, any policies that are based on gender differences must permit students to dress in a manner that corresponds with their gender identity and expression.

G-1. May a district enforce dress codes based on gender stereotypes? For example, can a school enforce a policy by which only people assigned female at birth are allowed to where dresses?

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No. Under the IHRA, dress codes cannot be applied in a discriminatory way. The First Amendment also protects students' rights to express their gender identity through their appearance. Likewise, schools cannot prevent students from wearing clothing that expresses written messages or otherwise conveys one's gender identity or support for the LGBT community.

G-2. What are the best practices with respect to dress codes?

Students must be allowed to wear gender-affirming clothing. A student whose gender expression is different from societal expectations should not be considered disruptive.

Adopt a gender-neutral dress code. Districts should reframe dress codes to describe what it considers appropriate clothing without assigning clothing options to particular genders. For example, districts should consider language such as the following: "Certain body parts must be covered for all students: Clothing must be worn so that genitals, buttocks, and nipples are covered with opaque material." Dress code booklets should not contain pictures of students in certain clothing - if pictures must be used, only display the garment itself.

Consistently apply dress code regulations. Students should not be disciplined for wearing clothing or makeup that is appropriate under the dress code but that does not conform to gender-based stereotypes. For example, if dresses or pants are appropriate attire, teachers and other school officials cannot determine which students are permitted to wear dresses or pants. In addition, districts should consistently apply dress codes regardless of body shape or type.

Do not impose inappropriate discipline. Districts should not discipline transgender, nonbinary, and gender nonconforming students for wearing gender-affirming clothing.

Extend gender-neutral dress code to special events. Gender-neutral dress code guidelines should apply to regular school days as well as any special events, such as graduation ceremonies, game days, concerts, and dances. For example, schools may require formal attire for all students at a ceremony, but should not specify that girls must wear dresses and boys must wear ties. If a school wishes to maintain a previously gender-specific tradition, such as graduation gown colors or spirit day teams, administrators should consider dividing students using another marker, such as last name (e.g., last names from A-M wear blue and last names from N-Z wear gold).

Ensure athletic uniforms are appropriate and modified if requested. All student athletes should be able to wear uniforms that are appropriate for their sport. For example, swimmers should be allowed to modify their swim uniform, provided it does not provide any competitive advantage. Similar accommodations should be made for equipment, such as cups, bras, or other undergarment safety requirements.

H. Sports, Clubs, and Events

Transgender, nonbinary, and gender nonconforming students often face barriers to participation in school activities and athletics and districts should work to maximize each student's ability to participate in any desired activities and athletics.

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H-1. Must districts allow transgender, nonbinary, and gender nonconforming students to participate in school-sponsored events, clubs and athletics consistent with the student's gender identity?

Yes. The IHRA requires schools to allow students who are transgender, nonbinary, and gender nonconforming to participate in school activities, physical education, and sports teams consistent with their gender identity. Physical education and school sports teams are covered by the public accommodations provisions of the IHRA, as they are both a “place of education” and “place of exercise or recreation.” 775 ILCS 5-101 (11), (13).

If a school allows any student clubs, students have the right to form LGBTQ+-affirming clubs, such as GSAs, on the same terms as any other student group. *Colin ex rel. Colin v. Orange Unified Sch. Dist.*, 83 F. Supp. 2d 1135 (C.D. Cal. 2000) (holding that students had the rights to form GSAs, meet at school, use the school's public address system, and be featured in the school yearbook like other student clubs). Under the federal Equal Access Act, secondary schools that allow meetings of other non-curricular student clubs (clubs that do not directly relate to school classes) are also prohibited from discriminating against any student group based on its viewpoint, including GSAs. 20 U.S.C. § 4071. All student clubs must be treated the same, regardless of purpose. Thus, for example, GSAs may not be singled out for parental permission requirements before students can join the club.

H-2. What are the best practices for ensuring that transgender, nonbinary, and gender nonconforming students are able to fully participate in school-sponsored events, athletics and clubs?

Students must be able to participate in athletic activities that align with their gender identity. Districts must allow transgender, nonbinary, and gender nonconforming students to compete on athletic teams and participate in interscholastic activities consistent with their gender identity. Districts should support students and families with any paperwork or reporting that must be completed for regulatory or legal purposes.

Review and reframe gender-based activities. Districts should evaluate all gender-based activities, rules, policies, traditions, and practices—including classroom activities, school ceremonies, athletics, dances, proms, school photos—and eliminate or reframe them to be gender-neutral. For example, replacing “prom king and queen” with “prom royalty” or providing school awards to any set of two students instead of “best male/female.” If certain gender-specific activities do continue, students shall be permitted to participate consistent with their gender identity. For example, allowing students to self-select into a “girls in STEM” program.

Provide training to coaches and volunteers. Athletic coaches and event staff can have a particularly hard time removing gendered language from their activities. Coaches and athletic teams should receive training to help with the culture adjustment. The training should include how to ensure things such as inspirational speeches, motivational phrases, locker-room talk, pep rallies, and team chants are inclusive and gender neutral. Examples of phrases that should be eliminated include “man-up” or “don't be a sissy.”

Communicate with outside entities. If students are competing at another school, going on a field trip, or engaging with an outside speaker, districts should ensure staff are communicating with

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hosts about the school's procedures. Staff should ensure the host districts and event spaces allow students to use facilities consistent with their gender identity.

Support LGBTQ+-affirming student groups. Districts should identify faculty sponsors willing to work to begin and support GSAs in all elementary, middle, and high schools.

I. Overnight School Trips

Overnight school trips with classmates and school staff can present unique barriers to full access to educational programs if schools are not vigilant in attending to the needs of transgender, non-binary and gender non-conforming students.

I-1. What state and/or federal provisions protect the rights of transgender, nonbinary, and gender nonconforming students with respect to overnight school trips?

The same state and federal laws that require schools to respect a student's gender identity with respect to using facilities and participating in activities also apply to transgender, nonbinary, and gender nonconforming students' room arrangements and facility use during overnight trips. To deny a student the accommodations afforded to other students – consistent with their gender identity – would be discrimination prohibited by Title IX and the IHRA.

The law protects not only the use of physical facilities, but also equal and full access to all school programs and activities. The IHRA prohibits denying anyone the "full and equal enjoyment" of "services" based on a person's gender identity (or expression or other protected traits). 775 ILCS 5/5-102(A). "The Illinois Human Rights Act is remedial legislation that [has been and] must be construed liberally to effectuate its purpose." *See Sommerville v. Hobby Lobby Stores*, ALS. No. 13-0060C (Ill. Hum. Rts. Comm'n May 15, 2015.) The terms "facilities" and "services" are identified separately and demonstrate the intent to prohibit not only discrimination in enjoyment of the physical school grounds, but enjoyment of all programs and activities. Likewise, under federal law, students cannot be excluded from or discriminated against in school programs and activities such as trips on the basis of their gender identity. *See e.g., Logan*, 2008 WL 4411518 (dress code and clothes at prom); *see also, Fricke v. Lynch*, 491 F. Supp. 381, 385 (D.R.I. 1980) (gay student's choice of male prom date protected by the Constitution); *Gay Students Org. of Univ. of New Hampshire v. Bonner*, 509 F.2d 652 (1st Cir. 1974) (gay students' social events are protected).

I-2. How do privacy concerns of other students relate to a transgender, nonbinary, or gender nonconforming student's right to full and equal access to overnight school trips?

As with school facilities, any student seeking more privacy may be provided that privacy. But any claimed privacy concern of another student is not a reason to limit use by a transgender, nonbinary, or gender nonconforming student. Similarly, confidentiality laws and requirements continue to apply to students in the context of overnight trips. A trip is not a basis to disclose or require disclosure of a student's transgender, nonbinary, or gender nonconforming identity.

I-3. What are the best practices for ensuring that transgender, nonbinary, and gender nonconforming students are able to participate freely in overnight school trips?

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Ask the student in advance of the trip. In planning for overnight trips, ask the student what type of arrangements will make the student feel safe, supported, and included.

Maintain privacy. Schools must set clear expectations about respecting one another's privacy and boundaries.

School policies for facility use should carryover to overnight trips and should allow for privacy. The district should inquire whether there are any single stall or other private shower facilities available if showering facilities are communal while on the trip.

Do not send notifications or permission slips. Do not send notifications or permission slips to parents and/or students regarding a student's transgender, nonbinary, or gender nonconforming identity.

J. Curriculum and Teaching

Adopting a gender- and LGBTQ+-inclusive curriculum is essential to fostering a safe and supportive learning environment. An inclusive curriculum benefits all students by promoting diversity, acceptance, and respect. Districts should promote inclusive curriculum and instruction across subject areas.

J-1. Are schools required to teach about the contributions of LGBTQ+ people in the history curriculum?

Yes. Effective July 1, 2020, the Illinois School Code will require the teaching of history to include a study of and the role and contributions of lesbian, gay, bisexual, and transgender people in the history of this country and this State.

J-2. Are there requirements with respect to purchasing textbooks to ensure inclusion of content that is inclusive of the LGBTQ+ community?

If appropriations are made to fund the textbook block grant program under Section 2-3.155 of the School Code, textbooks purchased with those funds must non-discriminatory as to any of the characteristics under the Illinois Human Rights Act. Textbooks authorized to be purchased under this Section must include the roles and contributions of all people protected under the Illinois Human Rights Act. Please note that as of the date of this publication, the textbook block grant program is not currently funded.

J-3. What are the best practices with respect to ensuring inclusive curriculum and teaching?

Do not divide physical education classes by gender. Physical education classes should not be separated by gender. If two groups are necessary, consider separating into competitive and recreational groups. Districts should allow students to participate in physical education classes in the way that makes them feel safe and included.

Regularly review curriculum to ensure inclusivity. Using a gender-affirming approach in the classroom requires examination of the existing curriculum and teaching to identify where gendered practices show up and where there is room to be more gender inclusive. Inclusive curriculum should be incorporated into lessons such as scenarios, word problems, and classroom examples. Historical figures and events that recognize different identities should be

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highlighted. GLSEN, Gender Spectrum, Welcoming Schools, and Teaching Tolerance have examples of curriculum and lesson plans that address gender diversity. Schools should also have procedures in place to address challenges to books or curricula.

Eliminate the use of gendered language. All district staff should receive training on how to use non-gendered classroom practices. For example, district staff should call students “students” or “scholars” instead of “boys and girls.” This can make a notable difference to transgender, nonbinary, and gender nonconforming students who may feel alienated by the gender binary.

Teachers should set affirming and inclusive expectations at the beginning of a class and throughout the year. Educators should take time to create class agreements/rules and discuss what each guideline means, identifying what will happen if/when a boundary is transgressed, and asking all students to come to a consensus and agree to the guidelines. This sets the tone of a culture of mutual respect and collective responsibility for upholding the norms.

Demonstrate the district’s commitment to inclusivity in communal spaces. Ensure the school’s common areas show images of diverse family structures and people of different races, gender expressions, ethnicities, and abilities. For example, consider displaying signs that say, “All Are Welcome Here” or “Celebrate Diversity.”

Never teach “appropriate” gender behavior. Classes and behavior lessons should never teach or promote gender-specific rules or behavior. When staff do need to comment and model appropriate classroom behavior, they should use gender-neutral phrases. For example, “Hitting isn’t safe, it can really hurt people, instead of “boys don’t hit girls.”

Have a robust health education program. The district’s health and sex education curriculum shall be inclusive of diverse gender identities, gender expressions, and sexual orientations. Healthy romantic relationships should be taught no matter the gender identity or sexual orientation of students.

K. Training

As noted elsewhere in this guidance, supporting transgender, nonbinary, and gender nonconforming students requires effective school policies, programs and administrative procedures. However, progress cannot be made until and unless staff participate in effective training programs that address the unique needs of transgender, non-binary, and gender non-conforming students.

K-1. What are the best practices for preparing and implementing effective staff training?

Provide comprehensive, ongoing training to all staff members. Regular training is an essential part of promoting an affirming school environment and the effective and informed implementation of the district’s policies and procedures. Training should be comprehensive and address issues such as the impact of intersecting identities and oppressions on transgender, nonbinary, and gender nonconforming students.

School health professionals should be trained. School health professionals should be educated about the medications commonly taken by transgender, nonbinary, and gender nonconforming

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students. Additionally, school health professionals should be trained on gender dysphoria and related issues to be able to provide medically accurate information to students.

Allow for hands-on practice. District staff are often the first points of intervention and models of behavior for students. Districts should ensure staff are able to practice how to respond when they hear students say things such as, “That’s gay!” or “You act like a girl!” or call a student derogatory terms. Staff should be provided with resources to become comfortable having conversations about gender diversity.

Be honest about uncertainties and mistakes. Children and youth are aware when adults are uncomfortable with a topic. When mistakes are inevitably made, it is important to explain that staff members are continuing to learn and apologize for the error.

Include family gender diversity in training. Ensure trainings also address gender diversity in family settings and diverse family structures.

Conduct interactive training. The training should be interactive to ensure educators feel empowered to protect students’ rights, enhance their curriculum to be inclusive, and proactively understand steps they can take in their classrooms. Encourage and support educators to engage in dialogue and ask questions.

Consult with organizations focused on supporting transgender, nonbinary, and gender nonconforming students, when possible. Expert partners can support the training to be medically accurate, evidence-based, and reflect current best practices.

Require training. The training should be mandatory and appropriate disciplinary action should be taken if an employee fails to attend.

L. Parent/Guardian Involvement

L-1. What legal provisions apply to parent or guardian involvement when providing support for transgender, nonbinary, and gender nonconforming students?

The rights of students under the IHRA and Title IX apply to schools regardless of parental involvement or consent. Schools must not discriminate on the basis of gender identity or sex, must provide equal access to school consistent with a student’s gender identity, and must address bullying. Schools are responsible for the care and safety of students while they are at school, similar to the obligations of parent(s)/guardian(s). 105 ILCS 5/24-24. In many instances, schools are not required to seek parental consent to support transgender, nonbinary, and gender nonconforming students, especially when the safety of the student is a concern. For example, just as a school would not typically seek parent/guardian permission to use a child’s nickname at school, affirmative permission from a parent/guardian is not necessary to use a student’s affirmed name.

In contrast, involvement of a parent or guardian is required for a legal name change in court, some actions under the Individuals with Disabilities Education Act (“IDEA”) and Section 504 of

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the Rehabilitation Act (“Section 504”) related to disability supports, and certain legal enforcement actions. In addition, both parent(s)/guardian(s) and students have specific rights to access school student records under ISSRA, 105 ILCS 10/4-7.

L-2. What are the best practices for parent and guardian engagement when providing support to transgender, nonbinary, and gender nonconforming students?

Engage parents and guardians as appropriate. In an effort to provide wrap-around support services to transgender, nonbinary, and gender nonconforming students, it is important to incorporate parent(s)/guardian(s) as appropriate/available and provide a clear awareness of resource options.

Keep resources updated on an easily accessible website. The district should make its policies and procedures publicly available on its website and include appropriate references in the student handbook. The district’s website should provide students and parent(s)/guardian(s) with information about making a request to meet with a Gender Support Coordinator and social worker(s) regarding supports. The district’s website may provide information about gender transition and related resources.

Provide resources and referrals. Districts should develop and provide easily accessible information that includes local resources for affirming medical, psychological, and legal services for transgender, nonbinary, and gender nonconforming students.

Auxiliary groups should adopt inclusive policies and language. Districts should ensure any auxiliary groups, including but not limited to parent-teacher associations, booster clubs, and club sports organizations, have inclusive policies and language in their organizing documents.

Adjust school language to be inclusive towards diverse families. Districts should ensure forms are inclusive of different family structures. For example, forms requiring signatures should indicate “Parent/Guardian” rather than “Mother/Father.” Invitations should indicate “Families are welcome” rather than “We invite your mom, dad, sisters, or brothers.”

M. Support for District Staff

Districts should take care to ensure that the needs and rights of transgender, nonbinary, and gender nonconforming staff members are also addressed.

M-1. What legal protections are available to transgender, nonbinary, and gender nonconforming staff members?

The laws that protect students generally provide similar protections for transgender, nonbinary, and gender nonconforming employees as well. Discrimination and harassment of employees on the basis of sex, sexual orientation, or gender identity or expression is prohibited under the IHRA, Title VII, Title IX, and the United States Constitution. *See Sommerville v. Hobby Lobby Stores*, ALS No. 13-0060C (Ill. Hum. Rts. Comm’n May 15, 2015 and Feb. 2, 2016) (IHRA); *Hively v. Ivy Tech Cmty. Coll. of Indiana*, 853 F.3d 339 (7th Cir. 2017) (Title VII); *N. Haven Bd. of Ed. v. Bell*, 456 U.S. 512 (1982) (Title IX); *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011) (Equal Protection Clause). Certain laws that are specific to students do not apply to employees, such as ISSRA,

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FERPA, and IDEA. Many employees have a variety of further legal rights or protections under state or federal law, or applicable collective bargaining agreements.

M-2. What are the best practices with respect to addressing the needs of transgender, nonbinary, and gender nonconforming staff members?

Support and affirm district staff. School districts should affirm the gender identity of all employees and support their right to transition. Additionally, districts should provide an affirming environment for all parents, guardians, family members, and visitors in the building.

Coordinate with transitioning employees. Employees who transition on the job should expect a workplace that is supportive and affirming. Human Resources or the employee's supervisor or principal should work with each transitioning employee individually to help ensure the employee receives the necessary support at work.