

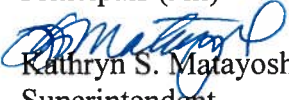


STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

ACTION REQUIRED

July 26, 2016

TO: Principals (All)
FROM: 
Kathryn S. Matayoshi
Superintendent
SUBJECT: **Guidance on Supports for Transgender Students**

The State of Hawaii, Department of Education (“Department”) strives to create a learning environment conducive to the overall development of the social-emotional health and well-being of all students.

The Department adheres to both federal and state non-discrimination laws, including Title IX of the Educational Amendments of 1972, a federal law which prohibits discrimination based on sex in schools receiving federal funds. Recently the United States Department of Justice (“DOJ”) and the United States Department of Education, Office of Civil Rights (“US DOE OCR”) issued joint guidance addressing education supports for transgender students. The DOJ and US DOE OCR made clear that Title IX’s prohibition of discrimination based on sex includes discrimination based on a student’s gender identity. Further, Board of Education Policy #305.10 prohibits discrimination based on sex, and specifically includes discrimination based on a student’s gender identity and expression as being a prohibited practice.

The Department recognizes the importance of validating students’ gender identity and expression and understands that at times, school is one of the few safe and supportive spaces a student may openly express their gender identity. In order to better support all of our students, the Department has developed an *Interim Guidance on Supports for Transgender Students* (“Guidance”). The Guidance delineates how schools are to address frequently asked questions when providing supports for transgender students. (FAQ listing will be forthcoming.) Common issues covered in the Guidance include topics such as, use of preferred names and pronouns, use of sex-segregated facilities, such as restrooms and locker rooms, and dress code.

Starting with the 2016-2017 school year, schools should use this Guidance to support the needs of transgender students. As we move forward with implementation of the Guidance for the

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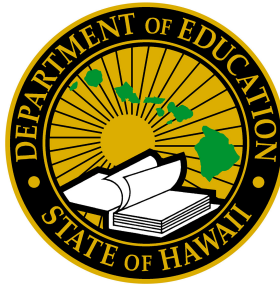
coming school year, should you have any questions about the Guidance or its application, please contact Title IX Specialist Nicole Isa-Iijima at (808) 586-3322 or by lotus notes.

We appreciate your patience as we work through the implementation of the Guidance. Thank you for your continued support of our students.

KS:BS:lu

Attachments

c: Stephen Schatz, Deputy Superintendent
Assistant Superintendents
Complex Area Superintendents
Civil Rights Compliance Office



SUBJECT: Guidance on Supports for Transgender Students

This guidance provides assistance regarding common issues of concern that need to be addressed to provide appropriate supports for transgender students and the school community. These guidelines are designed to provide basic direction for schools. They will not cover every situation that arises. The intent is to provide immediate guidance for schools to create a safe and nurturing learning environment for all students and to provide school officials with awareness of best practices to address situations as they arise.

Transgender students' needs can be highly individualized depending upon the circumstances of the student. Each student's needs should be assessed on a case-by-case basis, which can be accomplished by meeting with the student and, if appropriate, with the student's parents or guardians. School staff should let the student take the lead in determining and expressing their own gender identity and should be mindful of the student's right to privacy and confidentiality with respect to their gender identity and expression.

Definitions for Key Terms

"Assigned sex at birth" means the sex designation, usually "male" or "female," assigned to a person when the person is born.

"Gender" means a set of social, psychological, and emotional traits, influenced by a society's expectations that classify an individual as feminine, masculine, or other.

"Gender expression" means the manner in which a person represents or expresses gender to others, often through behavior, clothing, hairstyles, activities, voice, or mannerisms.

"Gender identity" means a person's internal, deeply-felt sense of being male, female, or other, whether or not that gender-related identity is different from the person's physiology or assigned sex at birth. **Everyone has a gender identity.**

"Gender nonconforming" means displaying a gender or gender expression that differs from those typically associated with one's assigned sex at birth. A person's gender expression may differ from stereotypical expectations about how females and males are

“supposed to” look or act. **Gender nonconforming is not synonymous with transgender; not all gender nonconforming students identify as transgender.**

“**Sex**” means the chromosomal, hormonal, and anatomical characteristics that are used to classify an individual as male or female.

“**Transgender**” means a person whose gender identity differs from their assigned sex at birth. “**Transgender**” is not the same as “**gay**”.

“**Transition**” means the process by which a transgender person starts living as the gender the person identifies as and often includes a change in style of dress, selection of a new name, a request that people use the correct pronoun, and possibly hormone therapy and surgery.

Background

Recently, more students have felt comfortable expressing their transgender identity and requesting support in school. In addition, more and more parents have been asking schools to recognize and accommodate the needs of their transgender children. For many students, schools are seen as safe spaces for authentic expression. Consequently, it is important to determine what is most appropriate for our students, both those who identify as transgender and those who do not.

While transgender student issues have moved to the forefront of the educational landscape, and many jurisdictions, including Hawai`i, have implemented guidance to support transgender students, it is important to remember these students still face many obstacles. The Gay, Lesbian, Straight Education Network (“GLSEN”) conducts a biennial national school climate survey focusing on the educational experiences of gay, lesbian, bisexual, and transgender students. GLSEN’s 2013 National School Climate Survey found that LGBT students who experienced LGBT related discrimination in school were three times more likely to have missed school in the past month, had lower GPAs than their peers, and had lower self-esteem, and higher levels of depression than their peers.¹ Examples of discrimination specific to transgender students included, but were not limited to, being prevented from using preferred names and pronouns, and being required to use the restroom/locker room of their assigned sex at birth.²

Schools play a vital role in the development of students’ well-being, and it is important that we continue to work collaboratively with all students and their families.

¹ Kosciw, J. G. Greytak, E. A., Palmer, N. A., & Bosen, M. J. (2014). *The 2013 National School Climate Survey: The experiences of lesbian, gay, bisexual and transgender youth in our nation’s schools*. New York: GLSEN, at 41.

² *Id.* at 37-40

Federal and State Laws, and Board of Education Policies

Legal principles regarding supports and accommodations for transgender students are still unsettled. Hawai`i, consistent with federal law, prohibits discrimination, including against individuals on the basis of gender identity and expression. We will continue to track current legal developments and will revise the Department's guidance as appropriate.

Federal and state laws that address discrimination on the basis of sex, gender identity, and/or gender expression include:

- **Title IX of the Education Amendments Act of 1972** which prohibits sex-based discrimination and harassment, under any education program or activity receiving federal financial assistance. This includes discrimination based on exhibiting what is perceived as a stereotypical characteristic for an individual's sex or failure to conform to stereotypical notions of masculinity and femininity.
- **Title IV of the Civil Rights Act of 1964** which prohibits sex-based discrimination and harassment in public schools and colleges. This includes discrimination based on a lack of conformity with traditional gender stereotypes.

Under Title IX and Title IV, all students, including transgender students and students who do not conform to sex stereotypes, are protected from sex-based discrimination.

- **State law (§§368-1, 489-2, and 489-3, Hawai`i Revised Statutes)** which protects individuals from discrimination based on gender identity or expression in public accommodations, employment, housing, and access to services receiving state financial assistance.
- **Title 8, Chapter 19 of the Hawai`i Administrative Rules** which includes a prohibition against making verbal or non-verbal expressions that cause others to feel uncomfortable, pressured, threatened, or in danger because of reasons that include gender identity and expression.

In addition, the Hawai`i Department of Education's mission is to develop the academic achievement, character, and social-emotional well-being of every child. The State needs to support all students in the development of their identities. Several Board of Education policies support this mission, including:

- **Policy E-3, Na Hopena A'o:** "The DOE works together as a system that includes everyone in the broader community to develop competencies that strengthen a sense of belonging, responsibility, excellence, aloha, total well-being and Hawaii."

- **Policy 101.1, Student Code of Conduct:** “Students are expected to be honest, behave with dignity and treat others with respect and courtesy. Behavior of the individual should not interfere with the rights of others. This includes the use of appropriate language, actions and attire. Students are expected not to harass others through any means.”
- **Policy 101.6, Comprehensive Student Support System:** “The BOE recognizes the importance of providing effective instruction in a safe, positive, caring and supportive learning environment...The DOE shall provide a comprehensive student support system framework to support the implementation, with fidelity of [...] appropriate student support through an array of services.”
- **Policy 106.5, Focus on Students:** “The focus on the educational program for the public schools of Hawaii shall focus on the growth and development of each student.”
- **Policy 305.10, Anti-Harassment, Anti-Bullying, and Anti-Discrimination Against Students by Employees:** “The DOE strictly prohibits any form of harassment and/or bullying based on the following: gender identity and expression, socio economic status, physical appearance and characteristics and sexual orientation.” “A student shall not be excluded from participation in, be denied the benefits of or otherwise be subjected to harassment, bullying and discrimination under any program, services or activity of the DOE.”

Federal and state laws and BOE policies that address the privacy rights of students include:

- **The Family Educational Rights and Privacy Act (FERPA)** protects the privacy of student education records. Under the FERPA, schools must have prior written consent before releasing information from a student’s education record to others aside from a parent/legal guardian.
- **Title 8, Chapter 6 of the Hawai`i Administrative Rules** governs the confidentiality of personal records, including those of students.
- **Title 8, Chapter 34 of the Hawai`i Administrative Rules** governs the protection of the educational rights and privacy of students and parents.
- **BOE Policy 500.21, Student Information and Confidential Records:** “Information relating to individual students or former students in the public schools shall not be divulged or released by the Department of Education (Department) personnel, except as authorized by the individual student, parent, or guardian, permitted by the Department, or specified by law. Reports designated as “confidential” contain information of an intimate and personal nature, and shall be safeguarded and respected in accordance with professional

ethics. Such reports shall not be placed in files of general accessibility. [...] All public schools shall maintain individual files of permanent student records as required by the Department or by law.”

Guidance

Schools should work toward creating a learning environment that values and respects all students and supports the development of the whole child. Guidance for common needs and situations that may arise are described below.

Determination of a Student's Gender Identity

Schools should accept a student's sincerely held gender identity. A student does not need a medical or mental health diagnosis or treatment threshold to have his or her gender identity recognized and respected.

A transgender student who is ready to socially transition, regardless of whether the student is undergoing medical transition, may initiate a process to change how the student is addressed (preferred name, preferred pronoun), their attire, and access to preferred activities and facilities.

Every student's situation is different, so this process should begin with a meeting between the student and an administrator, counselor to discuss the type of supports the student is requesting. During this initial meeting, the counselor or administrator should also try to discover the extent to which the student's parents are aware of the student's gender identity. An initial meeting may or may not include the student's parents, depending on individual circumstances and how the meeting was initiated. There may be situations where a student has not yet talked to their parents about their transgender status, but still makes a request for supports. These instances may be more common at the middle and high school levels, than at the elementary school level.

Schools should customize supports to optimize each student's integration, and the supports must be documented. Both the student and the school should sign the document describing agreed-upon supports. Schools are encouraged to use the attached Student Support Plan for Gender Identity (Attachment A) as documentation of the established understanding between all parties about supports that have been agreed upon.

Once a plan is established, the counselor or administrator should then follow up with the appropriate school personnel (as appropriate to the agreed-upon supports) to inform them of the student's asserted gender identity and agreed-upon supports. As a student's identity develops, their appropriate supports may change. The student or their parent/guardian may initiate a meeting with a counselor or school administrator to change the support plan, particularly if requested supports related to sex-segregated facilities will be affected by the change. A counselor or administrator should revisit the

plan as needed, with the student (and parent, if involved) for continued appropriateness. Supports for transgender students should be applied consistently.

EXAMPLE ONE: A student who appears to be male is consistently seen wearing clothing that is traditionally considered female, such as skirts and dresses. The student regularly uses facilities designated for males and has never requested to do otherwise. The student continues to use the student's legal name, which is a traditionally male name. In this instance, it may not be necessary to do anything. This student appears to be gender nonconforming and may or may not identify as transgender. If the student is experiencing bullying or harassment, a counselor or other appropriate school official should intervene with supports to address the bullying or harassment.

EXAMPLE TWO: A student and the student's parents request a meeting with the principal. The student has documentation from a medical professional regarding the student's gender identity. This instance is much more straightforward. Again, this meeting, or a subsequent meeting, can be used to establish a Student Support Plan for Gender Identity for the transgender student. The counselor or school administrator should then follow up with the appropriate school personnel to inform them of the student's gender identity and the agreed upon supports.

EXAMPLE THREE: A student who appears female approaches a teacher and gives a male name and requests to be referred to using male pronouns. The teacher should agree to use the student's preferred name and pronouns and inform the student that, upon request, the school will work with the student regarding supports and accommodations.

Access to Sex-Segregated Facilities

In cases where a student desires increased privacy or feels unsafe, schools should provide the student with reasonable access to alternative accommodations. This includes restrooms and locker rooms.

Restroom Accessibility

Schools may maintain separate restroom facilities for male and female students. Students should have access to restrooms that correspond to their sincerely held gender identity.

When a transgender student's support includes access to a restroom that corresponds with their sincerely held gender identity, there may need to be accommodations made for other students. In this case, if any student, whether transgender or not, desires increased privacy, or feels uncomfortable, schools should make every effort to provide the student with reasonable access to an alternative restroom (e.g., single-stall restroom or the health office restroom). A transgender student should determine which restroom to use. A transgender student should not be compelled to use an alternative

restroom. Schools may take steps to designate single stall “gender-neutral” restrooms on their campus.

EXAMPLE ONE: A transgender male (female to male) student wants to use the boys’ restrooms on campus. He should be allowed to use the boys’ restroom since this is consistent with his sincerely held gender identity.

EXAMPLE TWO: A non-transgender female student is uncomfortable because a transgender female (male to female) has been using the girls’ restroom. The non-transgender female student should be allowed to use an alternative restroom.

EXAMPLE THREE: A transgender female (male to female) is uncomfortable using the girls’ restroom, but does not want to use the boys’ restroom since she feels unsafe in that environment. The student should be allowed to use an alternative restroom as in the example above.

EXAMPLE FOUR: A student who appears to be male is seen walking into the girl’s restroom. When approached by school personnel, the student indicates that their sincerely held gender identity is female. The student should be allowed to use the restroom of the gender with which the student identifies. Inform the student that, upon request, the school will work with the student regarding supports and accommodations.

Locker Room Accessibility

Schools may maintain separate locker room facilities for male and female students. Students should have access to the locker room facility that corresponds to their sincerely held gender identity.

When a transgender student’s support includes access to a locker room that corresponds to their sincerely held gender identity, there may need to be accommodations made for them or other students. If any student, whether transgender or not, desires increased privacy, regardless of the underlying reason, schools should provide access to a reasonable alternative, such as:

- (1) Assignment of a student locker in close proximity to the coaches’ office or a supportive peer group;
- (2) Use of a private area within the public area of the locker room facility;
- (3) Use of a nearby private area; or
- (4) A separate changing schedule.

EXAMPLE ONE: A transgender male (female to male) wants to change in the boys’ locker room. As long as the student feels safe, he should be allowed to change in the boys’ locker room.

EXAMPLE TWO: A transgender male (female to male) is uncomfortable changing in the boy’s locker room, but does not want to change in the girls’ locker room because he identifies as male and feels that it would be inappropriate. The school should attempt to

accommodate the student using one of the alternatives listed in the Guidance or another similar alternative.

EXAMPLE THREE: A transgender female (male to female) has chosen to change in the girls' locker room. Several non-transgender female students are uncomfortable with this situation. The non-transgender female students should be provided one of the alternatives listed in this Guidance or other, similar alternatives.

Overnight Trips and Housing (Boarding Schools)

Schools must allow transgender students to access housing accommodations that are consistent with the student's sincerely held gender identity. Schools cannot require a transgender student to stay in single-occupancy accommodations or to disclose personal information when not required of other students. A school is, however, not prohibited from honoring a student's voluntary request for single-occupancy accommodations, if the student so chooses.

Preferred Names and Pronouns

Transgender students have the right to be addressed by a name and pronouns that correspond to their sincerely held gender identities. If requested by the students, staff should address them by the name and pronouns that correspond to each of their sincerely held gender identities. Transgender students are not required to obtain a legal name or gender change or to change their *official* records. This does not prohibit inadvertent slips or honest mistakes, but does apply to intentional or persistent refusal to respect a student's gender identity, which should be considered an act of discrimination.

Teachers and other school staff should be informed of the student's preferred name on student rosters and of the preferred pronouns to use when addressing the student. When the DOE's student information system (e.g., SIS) accommodates a "preferred name," the student's preferred name should be noted. Teachers and other school staff should take care to ensure that a transgender student's legal name, if different from the student's preferred name, is kept confidential.

EXAMPLE: A student approaches a teacher and gives a female name and requests to be referred to using female pronouns, even though the student's assigned sex at birth is listed as male and legal name is traditionally male. The teacher should agree to use the student's preferred name and pronouns and then assist the student to set up a meeting with a counselor or administrator. During this initial meeting, the counselor or administrator should also try to discover to what extent the student's parents are aware of the student's gender identity. A Student Support Plan for Gender Identity should be established at a follow up meeting. The counselor or administrator should then follow

up with the teacher and other appropriate school personnel to inform them of the agreed upon supports.

Records, Privacy, and Confidentiality

At this time, schools are required to use a student's legal name and assigned sex at birth on standardized tests and official reports. School staff should be mindful that a transgender student's gender identity and preferred name may not conform with the official records and protect the student's privacy by avoiding inadvertent disclosure of the student's legal name and assigned sex at birth, whenever possible.

Information about transgender student's legal identity, transgender gender identity, and assigned sex at birth should be treated as confidential information. Disclosing such information to other students, their parents, or other third parties may violate privacy laws, such as FERPA. Do not disclose information that may reveal a transgender student's status to others, unless legally required to do so, or unless the student has authorized such disclosure. To the extent that the record or directory information provided about the student is not a legal record or the school is not legally required to use a student's legal name or sex, the school should use the name, pronouns, and gender marker requested by the student.

EXAMPLE ONE: A transgender male (female to male) has a female legal name and a male preferred name. On the first day of class, the teacher puts all of the students' names on cards on their desks. The student approaches the teacher to explain that he would like his preferred name on the desk. The teacher should make a new card with the student's preferred name. The teacher should further assist the student by setting up a meeting with a counselor or administrator. During this initial meeting, the counselor or administrator should also try to discover to what extent the student's parents are aware of the student's gender identity. A Student Support Plan for Gender Identity should be established at a follow up meeting. The counselor or administrator should then follow up with the teacher and other appropriate school personnel to inform them of the agreed upon supports.

EXAMPLE TWO: In order to distribute standardized test booklets, a teacher reads off the legal name of each student, as printed on the test booklets and the transgender student has already asserted the student's preferred name and pronouns to the teacher. Since the teacher knows that the student goes by a different name, the teacher should call the student by the student's preferred name and keep the student's legal name confidential, regardless of whether a Student Support Plan for Gender Identity has been established.

EXAMPLES OF UNOFFICIAL RECORDS: Class lists, student identification cards, yearbooks, club rosters and documents, student work, and graduation programs.

Physical Education

Transgender students should not be denied the opportunity to participate in physical education. Students should be allowed to participate in gender-segregated recreational gym class activities and sports in accordance with their sincerely held gender identity.

EXAMPLE ONE: A transgender female (male to female) wants to dance the girl's part during a PE ballroom section. The student should be allowed to dance the girl's part.

EXAMPLE TWO: During a PE unit on soccer, the teacher divides the class by gender for individual games. A non-transgender female wants to play on one of the boy's teams. The student should be allowed to play on the boy's team.

Competitive Athletics

The Department is in discussion regarding this issue. For any questions, please contact Nicole Isa-Iijima, Title IX Specialist at (808) 784-6325 or lotus notes.

Dress Code

All students should be permitted to wear the clothing of their choice, regardless of whether it conforms to traditional gender stereotypes, provided that such clothing does not violate the school's dress code. Dress codes should be gender neutral. Students may dress in accordance with their gender identity and gender expression. School personnel should not enforce a school's dress code more strictly against transgender and gender nonconforming students. This applies to dress at school as well as at a school's co- and extra-curricular activities.

EXAMPLE ONE: A student who appears to be male arrives to school in a dress. Unless the dress violates the school's dress code, the student should not be required to change.

EXAMPLE TWO: A student who appears to be male is accepted onto the cheerleading team and wants to wear the girl's cheerleading uniform. Regardless of whether the student is transgender or not, the student should be allowed to wear the uniform of his choice. This does not necessarily mean that the student should also have access to the girls' restrooms or locker rooms. A student who is gender nonconforming may not be transgender. A meeting with the student to better understand the student's gender identity would be a good next step.

EXAMPLE THREE: A student who appears to be female is seen by school staff to be wearing baggy jeans that expose the student's undergarments. Since this may be in violation of the dress code, regardless of gender, the student may be subject to consequences for violating the dress code.

EXAMPLE FOUR: A student who appears to be male comes to school in a tank top. The school dress code considers tank tops inappropriate for boys, but acceptable for girls as long as the straps are thick enough. The straps on the student's tank top would not be considered inappropriate if a student who appeared to be female was wearing it. In this instance, the student should be allowed to wear the tank top and the school should amend its dress code toward gender neutrality.

Other Gender-Based Activities

Students should be permitted to participate in any gender-based activity and conform to any rule, policy, or practice consistent with their sincerely held gender identity.

EXAMPLE ONE: A transgender female (male to female) student wants to run for prom queen. The student should be allowed to run for prom queen and should not be compelled to run for prom king because of the student's assigned sex at birth.

EXAMPLE TWO: Students have organized a class performance for all Juniors during a pep rally. The performance has different groups performing different roles based on gender. Transgender students should be allowed to participate with the gender group with which they identify, *e.g.*, a transgender female (male to female) should be allowed to be with the girls' group, while a transgender male (female to male) should be allowed to participate in the boys' group.

EXAMPLE THREE: A transgender female (male to female) wants to audition for Women's Ensemble, an elite choral group on campus. The advisor/teacher should permit the student to audition and should not evaluate the student more or less critically than any other female student.

EXAMPLE FOUR: A transgender female (male to female) requests to wear the color of the graduation attire associated with the female student population. The student should be allowed to wear the graduation attire associated with females.

School Community

Starting with the 2016-17 school year, schools should do the following:

1. Send out an annual notice to all students, including their parents/guardians, informing them of the rights of transgender students to request supports. The notice should also include language directing any student with privacy concerns to contact the school. This annual notice will serve as notice to (a) transgender students and their families of their rights and how to initiate such supports; and (b) non-transgender students and their families that such supports will be in place for transgender students.

The annual notice should be sent at the beginning of each school year. Waiting to send out the notice only when a transgender student initiates a request for support will have the effect of inadvertently identifying such student, resulting in possible privacy violations for the transgender student.

See Attachment B for sample language for the annual notice.

2. Include the following statement in their handbooks to inform the school community:

Transgender students should talk with their counselor if they have questions or concerns about supports for their own gender identity, including name, pronouns, gender expression, use of facilities, or participation in sex-segregated activities.

As schools begin to develop and employ supports for transgender students, there will be a period of adjustment for faculty, staff, students, and parents. Schools should make counselors and administrators available to discuss any concerns that a student may have and should work as a school community toward education and raising awareness of the reasons for these guidelines while protecting the privacy and confidentiality of each individual transgender student.

If you have questions, require additional information, or identify situations that require additional case-by-case consideration, please contact Beth Schimmelfennig, Acting Director of the Civil Rights Compliance Office or Nicole Isa-Iijima, Title IX Specialist at (808) 784-6325.

Resources

Gay, Lesbian, Straight Education Network (GLSEN), <http://www.glsen.org>

Gender Spectrum, <https://www.genderspectrum.org>

US Department of Education, Office of Civil Rights,
http://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html

US Department of Education, Office of Civil Rights, October 26, 2010 “Dear Colleague Letter” <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html>

State of Hawaii Board of Education Policy #305.10 (fka Board of Education Policy #4211) <http://www.hawaiiboe.net/policies/4200series/Pages/4211.aspx>