

# Strengthening Inclusion in Illinois Schools

**Report of the Affirming and Inclusive  
Schools Task Force to Governor JB Pritzker**

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January 2020



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# LETTER FROM TASK FORCE CO-CHAIRS

It has been an honor for us to co-chair the Affirming and Inclusive Schools Task Force. This report is a product of both the Task Force members' lived experiences and research that demonstrates the importance of welcoming, supporting, and affirming transgender, nonbinary, and gender nonconforming students at school. As detailed further in the report, research shows that these students are more likely to be victimized and experience the harmful effects of bullying, discrimination, and harassment.

Governor JB Pritzker established this Task Force to improve the learning environment for transgender, nonbinary, and gender nonconforming students across Illinois. We believe that state-level leadership is essential to achieving progress at the local level. It is our hope that the Illinois State Board of Education and education stakeholders, including school board members, educators, parents, students, and community leaders, will utilize this report to improve the health, well-being, and learning of students at all grade levels.

We would like to express our appreciation for the tremendous contributions of the Task Force members, each of whom is listed below. Their dedication and commitment to the production of this report was inspiring, particularly from the youth who understand better than anyone else how school policies impact students on a daily basis.

It is our hope that this report furthers a statewide effort to continuously improve the school experience of transgender, nonbinary, and gender nonconforming students. We also encourage every school district in Illinois to strengthen its policies, procedures, and practices relating to support for these students.

## **Members of the Affirming and Inclusive Schools Task Force:**

- **Emily Jade Aguilar** - Recent high school graduate
- **Nicki Bazer** - Attorney, Franczek P.C.
- **Amy Biancheri** - Teacher, Batavia High School
- **Keith Brown** - Principal, Illini Bluffs High School
- **Marcus Campbell** - Assistant Superintendent/Principal, Evanston Township High School
- **Ginger Colamussi** - Prevention and Wellness Coordinator, Oak Park and River Forest High School
- **Brian Coleman** - Counseling Department Chair, Jones College Prep
- **Myles Brady Davis** - Director of Communications and Press Secretary, Equality Illinois
- **Meghan Duffy** - Principal, Audubon Elementary School
- **Nat Duran** - Youth Engagement Manager, Illinois Safe Schools Alliance, a program of the Public Health Institute of Metropolitan Chicago
- **Jordon Eason** - Recent high school graduate

- **Jennifer Gill** - Superintendent, Springfield Public Schools
- **Jamie Gliksberg** - Senior Attorney, Lambda Legal
- **Benton Goff** - Recent high school graduate
- **Tre Graham** - Current high school student
- **Ghirlandi Guidetti** - Staff Attorney, ACLU of Illinois
- **AJ Jennings** - Teacher, University of Chicago Laboratory Schools
- **Jennifer Leininger** - Associate Director of Community Programs and Initiatives, Ann & Robert H. Lurie Children's Hospital of Chicago
- **Betsey Madden** - Chief Legal Counsel and Ethics Officer, Illinois Department of Human Rights
- **E Marshall** - Sexual Health Project Manager, Office of Student Health and Wellness, Chicago Public Schools
- **Veronica Noland** - School Board Member, Elgin School District U-46
- **Channyn Parker** - Manager of Strategic Partnerships and External Relations, Howard Brown Health Center
- **Charlie Wysong** - Attorney, Hughes Socol Piers Resnick & Dym, Ltd.
- **Mika Yamamoto** - Parent
- **Jordee Yanez** - Graduate Student, School of Social Work, Illinois State University

Thank you,



Darren Reisberg  
Chair, Illinois State Board of Education



Jax Wokas  
Student, Public High School

# EXECUTIVE SUMMARY

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.

The guidance contained within this report is meant to address the needs of transgender, nonbinary, and gender nonconforming students from kindergarten through twelfth grade. The report contains the following three sections:

This report should also inform the practice and procedures of early learning programs and post-secondary institutions.

**Background Research and Findings** - This section provides an overview of existing research and literature regarding the effects of discrimination, harassment, and inclusivity on transgender, nonbinary, and gender nonconforming students and highlights areas where additional research is recommended. This section includes research supporting positive outcomes for inclusivity and relationship-building in schools and confirms the negative outcomes associated with the lack of a healthy and inclusive learning environment.

**Building an Affirming School: Legal Protections, District Policy and Procedures, and Best Practices** - This section outlines the legal protections for students, recommended district policy and procedures, and best practices with respect to several key issues affecting transgender, nonbinary, and gender nonconforming students in school.<sup>1</sup> The district procedures included in this report provide school districts with an essential framework to ensure that students are safe, included, and supported in schools. The best practices for each issue expand upon the corresponding procedural framework and provide schools with necessary implementation tools.

**Recommendations** - This section includes the Task Force’s recommendations for further action by the State.

The appendix provides additional resources related to topics discussed throughout this report, including information on additional legal protections, a Know Your Rights handout, and a sample Gender Support Plan.

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<sup>1</sup> Although this report refers to “districts,” the legal protections, procedures, and best practices are applicable to all non-sectarian schools.

# BACKGROUND RESEARCH AND FINDINGS

The Task Force surveyed existing research and literature regarding the effects of discrimination, harassment, and inclusivity on transgender, nonbinary, and gender nonconforming students. There is extensive research confirming the negative outcomes associated with the lack of a healthy and inclusive learning environment. In contrast, many members of the Task Force have experienced firsthand the significant positive impact that affirming and inclusive school policies and procedures have on transgender, nonbinary, and gender nonconforming students. In addition, research supports positive outcomes for inclusivity and relationship-building in schools for students, including research specific to the effects of a safe, supportive, and inclusive environment on transgender, nonbinary, and gender nonconforming students specifically.

## A. Existing Research and Literature

There is extensive research and literature documenting the risks for transgender, nonbinary, and gender nonconforming students, and the negative outcomes associated with an unsafe and unwelcoming school. Consistent with this data, the [American Psychological Association's Resolution on Gender and Sexual Orientation Diversity in Children and Adolescents in Schools](#) acknowledges that “many transgender and gender diverse children and adolescents experience elevated rates of depression, anxiety, self-harm, and other health risk behaviors.”<sup>i</sup> Some of the key research supporting this conclusion is described below.

[Youth Risk Behavior Survey](#). In 2017, 10 states and 9 large urban school districts<sup>2</sup> piloted a study through the Youth Risk Behavior Survey to assess the relationship between transgender identity and violence victimization, substance use, suicide risk, and sexual risk behaviors. Data from over 131,000 students found that transgender students are at disproportionately higher risk than their cisgender peers for all measured risk areas - transgender students are 67% more likely to be bullied at school, 280% more likely to attempt suicide, and approximately 700% more likely to report significant substance use of cocaine, heroin, methamphetamines, ecstasy, and opioids than their cisgender peers.<sup>ii</sup>

[Affirmed Name and Mental Health Study](#). Researchers examined data from 129 transgender and gender nonconforming youth from three U.S. cities in 2018 to assess whether use of an affirmed name in different contexts was associated with mental health outcomes. They found that use of an affirmed name was associated with lower levels of depression, suicidal ideation, and suicidal behavior, particularly when used across

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<sup>2</sup> States included Colorado, Delaware, Hawaii, Maine, Maryland, Massachusetts, Michigan, Rhode Island, Vermont, and Wisconsin. School districts included Boston, Broward County, Cleveland, Detroit, District of Columbia, Los Angeles, New York City, San Diego, and San Francisco.

contexts, such as home, school, work, and with friends. Additionally, researchers found that an increase in affirmed name use in school predicted a 29% decrease in suicidal ideation and a 56% decrease in suicidal behavior. These results indicate that having even one supportive adult who uses a student's affirmed name can have significant positive impacts on the mental health outcomes of that student.<sup>iii</sup>

**The Trevor Project 2019 National Survey.** In 2019, The Trevor Project, a national organization that provides crisis intervention and suicide prevention services for LGBTQ+ youth, released a report on its inaugural National Survey on LGBTQ Youth Mental Health. The survey gathered data from over 34,000 respondents in all 50 states. Of youth surveyed who identified as transgender and nonbinary, 54% considered suicide and 29% attempted suicide, compared to 31% and 14%, respectively, of their cisgender LGBTQ+ peers. The survey also found that LGBTQ+ youth who report having at least one accepting adult in their lives were 40% less likely to report a suicide attempt in the past year, demonstrating the need for school environments to be welcoming and inclusive. In addition, 78% of transgender and nonbinary youth reported being the subject of discrimination due to their gender identity and 58% reported being discouraged from using the restroom that corresponds with their gender identity. Youth reported that they were less likely to disclose their gender identity than their sexual orientation.<sup>iv</sup>

78% of transgender and nonbinary youth report being subject to discrimination due to their gender identity.

**GLSEN National School Climate Survey.** Since 1999, GLSEN, a national network of students, educators, parents, and community leaders working to create LGBTQ-inclusive schools, has surveyed the experience of LGBTQ+ students in the school environment. The 2017 National School Climate Survey examined the experience of over 23,000 students between the ages of 13 and 21 across all 50 states. The survey found that 83.7% of transgender and 69.9% of gender nonconforming students were bullied at school because of their gender identity. Only 10.6% of LGBTQ+ students reported that their school or district had official policies or guidelines to support transgender or gender nonconforming students. Students in schools with a comprehensive anti-bullying policy were 23% less likely to hear negative remarks about gender expression, 53% less likely to be prevented from using their affirmed name or pronouns, 55% less likely to be required to use the bathrooms of their sex assigned at birth, and 68% less likely to be prevented from wearing clothes thought to be "inappropriate" for their gender. These results demonstrate the great importance of implementing strong school policies to keep students healthy and safe.

The report also highlighted the work that still needs to be done. Even in schools with affirming policies, more than 50% of students reported hearing negative remarks about gender expression in their schools, 23% of students were still prevented from using their affirmed name or pronouns in school, and transgender students were 25% more likely to experience school discipline than their cisgender peers. The survey also found that LGBTQ+ students with a Gay-Straight Alliance or Gender-Sexuality Alliance (GSA) in

their school (compared to those without a GSA) were 23% less likely to feel unsafe in school, were 31% less likely to miss school, experienced fewer incidents of victimization, had an increased number of supportive school staff, and had a greater sense of belonging in the school community. GLSEN found similar positive outcomes for LGBTQ+ youth who attend schools with curriculum inclusive of LGBTQ+ issues, with students reporting a 38% decrease in victimization because of their gender expression when attending schools with inclusive curriculum.<sup>v</sup>

[National Center for Transgender Equality 2016 U.S. Transgender Survey](#). The National Center for Transgender Equality, a national organization that advocates to change policies and society to increase understanding and acceptance of transgender people, conducted a survey of over 27,000 transgender individuals to examine the experiences of transgender people in the U.S. High levels of mistreatment, harassment, and violence in every aspect of life, including education, were reported, with more than three-quarters of respondents experiencing some form of mistreatment during their school years. The survey illuminates how a hostile school climate can negatively impact a person's life trajectory from education and employment to long-term achievement and well-being. For example, the survey found that respondents who experienced discrimination in school were 81% more likely to have experienced homelessness, 41% more likely to have attempted suicide, and 55% more likely to have worked in the underground economy, such as sex work or drug sales, than respondents who did not face negative school experiences.<sup>vi</sup>

Transgender students who experience a hostile school climate are 41% more likely to attempt suicide.

[The National Center on Safe Supportive Learning Environments](#). The National Center on Safe Supportive Learning Environments, a training and technical assistance center funded by the U.S. Department of Education, has recognized a body of research that shows that positive school climate is tied to high or improving educational outcomes, including attendance rates, test scores, promotion rates, and graduation rates. For example, one study showed that schools that demonstrated supports in multiple areas related to inclusive school climates were 10 times as likely to show significant gains in reading and mathematics as schools with only one or two strengths.<sup>vii</sup>

Many organizations have further concluded that safe and supportive schools have positive outcomes on all students and have issued **statements affirming transgender, nonbinary, and gender nonconforming students**, including the following:

[American Academy of Pediatrics](#)

“The AAP recommends taking a ‘gender-affirming,’ nonjudgmental approach that helps children feel safe in a society that too often marginalizes or stigmatizes those seen as different. The gender-affirming model strengthens family resiliency and takes the emphasis off heightened concerns over gender while allowing children the freedom to focus on academics, relationship-building and other typical developmental tasks.”<sup>viii</sup>

### [American Federation of Teachers](#)

“The American Federation of Teachers insist that schools support the right of all students to safe, inclusive and welcoming learning environments, free of bullying and harassment, including transgender and gender non-conforming students, and celebrate the diversity of all students. The AFT insist that school districts develop and enforce anti-bullying and anti-harassment policies, including protections for transgender and gender-nonconforming students and staff to ensure their safety and recognition of their rights.”<sup>ix</sup>

### [American School Counselor Association](#)

“School counselors recognize all students have the right to be treated equally and fairly with dignity and respect as unique individuals, free from discrimination, harassment and bullying based on their real or perceived gender identity and gender expression. School counselors work to safeguard the well-being of transgender and gender-nonconforming youth.”<sup>x</sup>

### [National Association of School Psychologists](#)

“The National Association of School Psychologists (NASP) supports efforts to ensure that schools are safe and inclusive learning environments for all students, family members, and school staff, including those who are transgender or gender diverse. NASP respects a person’s right to express gender identity, and the right to modify gender expression when necessary for individual well-being. In addition, NASP supports all students’ right to explore and question their gender identity. NASP is committed to a policy of nondiscrimination and the promotion of equal opportunity, fairness, justice, and respect for all persons.

NASP acknowledges that neither having a transgender identity nor being perceived as gender diverse is a disorder, and that efforts to change a person’s gender identity are ineffective, harmful, and discriminatory. NASP works to ensure that settings in which school psychologists work are safe and welcoming and provide equal opportunity to all persons regardless of actual or perceived characteristics, including gender, gender identity, gender expression, sexual orientation, and any other personal identity or distinguishing characteristics.”<sup>xi</sup>

### [National Education Association](#)

“NEA believes that a great public school is a fundamental right of every child - free from intimidation and harassment, and safe for all students, including those who identify as gay, lesbian, bisexual, and transgender. There is only one real issue for educators: We are responsible for our students' safety and education. We must ensure that everyone is given the opportunity to achieve and thrive.”<sup>xii</sup>

In addition, the following organizations have issued affirming statements:

- [American College of Nurse-Midwives](#)
- [American Psychological Association](#)
- [Ann & Robert H. Lurie Children’s Hospital of Chicago](#)
- [Association of Title IX Administrators](#)
- [Canadian Psychological Association](#)
- [National Association of Pediatric Nurse Practitioners](#)
- [National Association of School Nurses](#)
- [National Council of Teachers of English](#)
- [Pediatric Endocrinology Nursing Society](#)

## B. Recommended Future Research

In surveying the existing research, the Task Force noted opportunities for additional research to further document the impact of supportive district policies and examine best practices for implementation and school change.

The Task Force recommends additional formal research regarding the positive outcomes associated with safe, supportive, and inclusive schools for transgender, nonbinary, and gender nonconforming students. An affirming environment is just as powerful as a hostile one, and when young people are supported, they thrive. To the same degree that an excluding space is harmful, an inclusive space can lift young people up. In addition, the Task Force recommends additional research on the impact of LGBTQ+ inclusive curricula on all students.

The Task Force identified an urgent need for additional research focused on intersectionality. Transgender, nonbinary, and gender nonconforming youth of color experience disproportionate discrimination, harassment, and discipline, yet there is very little acknowledgement of those disparities in the current research.

Finally, the Task Force encourages the adult allies of transgender, nonbinary, and gender nonconforming students to use what the research demonstrates to improve the lives of these youth.

*Research demonstrates the great importance of implementing strong school policies to keep all students, regardless of their gender identity, healthy and safe.*

# BUILDING AN AFFIRMING SCHOOL: LEGAL PROTECTIONS, DISTRICT POLICY AND PROCEDURES, AND BEST PRACTICES

Providing all students with a welcoming, safe, supportive, and affirming school environment is critical for ensuring students are fully engaged and able to succeed. It is incumbent upon districts to provide such an environment for transgender, nonbinary, and gender nonconforming students.

Districts can strengthen their affirmation of transgender, nonbinary, and gender nonconforming students by revising their school board policies, adopting administrative procedures, and improving actual practices within their schools. The Task Force has structured this report to include both recommended changes to school board policies as well as detailed administrative procedures that can be adopted by the district's administration.

The Task Force has identified critical provisions that should be addressed by districts, including such topics as confidentiality, use of facilities, and curriculum and teaching. The guidance provided below includes an overview of the relevant legal protections, recommended district administrative procedures, and information on best practices to ensure that transgender, nonbinary, and gender nonconforming students have equal access to educational opportunities as required by law and are provided a supportive and affirming school environment.

## A. Definitions

The terms below are used throughout this report, as defined in this section. District procedures addressing support for transgender, nonbinary, and gender nonconforming students should also define these terms.

**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.

It is important to recognize that language is always changing and definitions of these and other terms should be regularly reviewed and updated.

**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.

**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.

**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. District Policy

The Task Force recommends that districts amend their school board policies (or add them, if necessary) to strengthen protections for transgender, nonbinary, and gender nonconforming students. Districts typically have policies that require access to equal educational and extracurricular opportunities regardless of protected characteristics such as race and sex and policies that prohibit harassment and bullying of a student on the basis of protected

characteristics. Such policies should be amended to expressly cover gender, gender identity, and gender expression.

Accordingly, in addition to adopting detailed procedures, the Task Force recommends that districts amend their policies as follows:

- **Equal Educational Opportunities**

- ✓ Add “gender or gender identity, whether or not traditionally associated with the person’s sex assigned at birth” and “gender expression” as protected bases for equal educational and extracurricular opportunities.
- ✓ Add in the following language to the policy on Sex Equity: “Students shall be treated and supported in a manner consistent with their gender identity. This shall include but not be limited to, use of facilities, including restrooms and locker rooms, that correspond to the student’s gender identity.”
- ✓ Add an Administrative Implementation section, which states that: “The Superintendent shall adopt appropriate procedures to effectuate this policy, including but not limited to the policy that the district shall treat and support all students in a manner consistent with their gender identity. These procedures shall be provided to all of the district’s staff and made available on the district’s website.”

- **Harassment of Students Prohibited**

- ✓ Add “gender or gender identity, whether or not traditionally associated with the person’s sex assigned at birth” and “gender expression” as protected bases for the prohibition of bullying, intimidation, and harassment.

## C. Discrimination, Harassment, and Bullying

### LEGAL PROTECTIONS

State and federal law broadly prohibit discrimination against transgender, nonbinary, and gender nonconforming students. 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). As described in this report, 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.

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 (7<sup>th</sup> 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.

In addition, the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution bars governments from denying “any person . . . the equal protection of the laws.” U.S. Const. amend. XIV. § 1. This prohibits treating people differently (unequally) on the basis of sex without a compelling reason. *See United States v. Virginia*, 518 U.S. 515, 533 (1996). Laws that prohibit sex discrimination prohibit discrimination against transgender, nonbinary, and gender nonconforming students in at least three distinct ways. *See Norsworthy v. Beard*, 87 F. Supp. 3d 1104, 1119 (N.D. Cal. 2015).

First, it is pure sex discrimination because gender identity or transgender, nonbinary, or gender nonconforming identity is, by definition, a sex-related characteristic. *Whitaker*, 858 F.3d at 1051 (policy barring transgender students from sex-specific restrooms was facially discriminatory because it “[could not] be stated without referencing sex”).

Second, discrimination based on gender transition is discrimination based on sex. *Schroer v. Billington*, 577 F. Supp. 2d 293, 306 (D.D.C. 2008) (just like firing an employee for converting religions “would be a clear case of discrimination ‘because of religion,’” the same principle applies to gender transition).

Third, it is discrimination based on sex stereotypes because the person’s gender identity and expression does not match society’s stereotypes associated with the person’s sex assigned at birth. *See, e.g., Schwenk v. Hartford*, 204 F.3d 1187, 1201-1202 (9<sup>th</sup> Cir. 2000) (transgender people are protected under the term “sex” because the discrimination is grounded in the fact that a transgender person’s “inward identity [does] not meet social definitions of masculinity [or femininity]” associated their sex assigned at birth); *Whitaker*, 858 F.3d at 1047; *Grimm v. Gloucester Cty. Sch. Bd.*, 302 F. Supp. 3d 730, 745 (E.D. Va. 2018) (“discrimination on the basis of transgender status constitutes gender stereotyping because by definition, transgender persons do not conform to gender stereotypes”) (internal quotation marks omitted); *M.A.B. v. Bd. of Educ. of Talbot Cty.*, 286 F. Supp. 3d 704, 715 (D. Md. 2018). “All gender-based classifications . . . warrant heightened scrutiny,” *Virginia*, 518 U.S. at 555 (internal quotation marks omitted), as does discrimination based on transgender identity, *see, e.g., Grimm*, 302 F. Supp. 3d, at 747.

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.

Schools must protect all students from bullying and harassment or face significant potential repercussions under federal law as well. *Henkle v. Gregory*, 150 F. Supp. 2d 1067 (D. Nev. 2001) (liability for school that failed to protect gay student from harassment and physical assaults); *Nabozny v. Podlesny*, 92 F.3d 446 (7th Cir. 1996) (school violated the U.S. Constitution by not stopping antigay abuse and discrimination leading to a \$1 million settlement). Moreover, a student does not need to be “out” or even LGBTQ+ to be protected under the law. By guaranteeing “equal protection of the laws” to all people, the Constitution also protects students who are perceived to be LGBTQ+, as well as students who associate with LGBTQ+ people. All students have a right to be free from bullying and harassment and schools must take action to stop harassment when they become aware of it.

## **DISTRICT PROCEDURE**

It is the goal of this district to create a learning environment in all schools where students can thrive and are protected from bullying, discrimination, and harassment.

Federal and state law prohibit bullying on the basis of actual or perceived sexual orientation, gender identity, or gender expression, and/or association with a person or group with one of the aforementioned actual or perceived characteristics.

No student shall be denied equal access to education on the basis of their gender identity or gender expression. Students may not be excluded from participation in, be denied the benefits of, or be subjected to harassment or other forms of discrimination on the basis of gender identity or gender expression in any program or activity. In addition, students shall be treated and supported in a manner consistent with their gender identity.

Allegations involving violations of this procedure shall be reported to \_\_\_\_\_ at \_\_\_\_\_ (phone number) or \_\_\_\_\_ (email) in a manner consistent with all applicable board policies.

## BEST PRACTICES

- **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 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 should be considered a violation of district policy and/or procedures.
- **Provide easily accessible information and supports.** Districts should have "Know Your Rights" information (such as Appendix A) 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.

### D. 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. If desired by the student, the Gender Support Coordinator can assist with drafting a Gender Support Plan, which can be the guiding document to address a variety of issues, including use of facilities, student records, and confidentiality.<sup>3</sup> 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 wishes.

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<sup>3</sup> A sample Gender Support Plan is attached as Appendix C. It is reprinted with permission from [Gender Spectrum](#).

## DISTRICT PROCEDURE

District staff shall designate Gender Support Coordinators in each of the district's school building(s) to coordinate support for transgender, nonbinary, and gender nonconforming students. If possible, Gender Support Coordinators should be social workers or counselors. Any student, regardless of how they identify, may request to meet with a Gender Support Coordinator to receive support from the school. In addition to the training provided to all staff, Gender Support Coordinators shall receive supplemental training on an annual basis.

If requested, the Gender Support Coordinator shall convene a meeting within ten (10) business days of a request by a student and/or their parent(s)/guardian(s). The meeting shall occur sooner in the case of exigent circumstances. Generally, both the parent(s)/guardian(s) and the student will be included in discussions with the Gender Support Coordinator. In the event that a student expresses concerns about disclosure to a parent(s)/guardian(s), the Gender Support Coordinator shall work closely with the student to assess the potential risk of harm.

At the meeting, the Gender Support Coordinator shall discuss the option of developing or revising a Gender Support Plan, which can serve as a guiding document that a student can request to support their academic, social, and emotional success. The Plan would identify the supports that will be provided and address the expressed wishes of the student and/or parent(s)/guardian(s), regarding the following:

- use of restrooms and other gender-segregated facilities;
- use of the student's affirmed name and pronouns;
- disclosure of the student's gender identity;
- confidentiality of gender transition in student records and information systems;
- staff training; and
- other supports, as necessary.

The Gender Support Plan, if there is one, will be included in the student's temporary file. The Plan shall only be accessible to district staff if it is necessary to support the student's social, emotional, and academic success, or as otherwise required by law. The Gender Support Coordinator shall review the Plan with the student on an annual basis, or sooner if necessary.

Gender Support Coordinators and Gender Support Plans can be used to support and facilitate a student's transition at school. The district does not require a student to meet with a Gender Support Coordinator or have a Gender Support Plan. A Gender Support Plan is optional and should only be completed with the agreement and participation of the student.

Under no circumstances may Gender Support Coordinators or Gender Support Plans be used to hinder or delay a student's transition at school.

## BEST PRACTICES

- **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.
- **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.

## E. Confidentiality

### LEGAL PROTECTIONS

State and federal law 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. Districts are required to keep student records and information confidential under the Illinois School Student Records Act (“ISSRA”), 105 ILCS 10/4-7, and the federal Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g(a)(5)(A).<sup>4</sup> 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

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<sup>4</sup> ISSRA applies to public schools, but generally not private schools. 105 ILCS 10/2(b).

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 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.

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).

## DISTRICT PROCEDURE

All students have a right to privacy. This includes the right to keep their transgender, nonbinary, or gender nonconforming identity private at school. Information about a student's transgender, nonbinary, and gender nonconforming identity, birth name, or sex assigned at birth constitutes confidential medical and student record information. District staff shall not disclose this information without the student's consent or unless legally required to do so. Disclosing this information violates state and federal privacy laws.

Communication with parents: Before contacting the parent(s)/guardian(s) of a student who is transgender, nonbinary, or gender nonconforming, district staff will ask the student what name and pronouns they would like district staff to use in communications with their parent(s)/guardian(s), including on all documents sent to their parent(s)/guardian(s).

Communication with district staff and students: Transgender, nonbinary, and gender nonconforming students have the right to openly discuss and express their gender identity at school and at school activities and to decide when, with whom, and how to share private information. The fact that a student chooses to use their affirmed name or pronouns, to

transition at school, or to disclose their transgender, nonbinary, or gender nonconforming identity to district staff or other students does not authorize district staff to disclose a student's personal information. District staff should only discuss a student's transgender, nonbinary, or gender nonconforming identity with another employee if it is necessary to support the student's social, emotional, and academic success.

Legal requirements: In the rare instance that a district is legally required to disclose a student's transgender, nonbinary, or gender nonconforming identity, the district should provide the student an opportunity to make that disclosure themselves, where practicable. This shall include providing the student with any support services the student will need to make the disclosure in a safe and supportive environment.

## BEST PRACTICES

- **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.

## F. Names, Pronouns, and School Records

### LEGAL PROTECTIONS

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. This right is rooted in the rights to confidentiality and privacy and in the IHRA's prohibition on "severe or pervasive harassment" of a student. *See* 775 ILCS 5/5-102.2. Federal law likewise requires schools to ensure that students are referred to by their affirmed names and pronouns, and school records must reflect the same. *Cf. Ray v. Himes*, No. 2:18-cv-272, ECF No. 47 at 28-33 (S.D. Ohio September 12, 2019). It is a violation of a student's right to privacy if a school fails to use affirmed names and pronouns because the school would effectively out the student as transgender, nonbinary, or gender nonconforming each time an incorrect name or pronoun is used or disclosed. *See Arroyo Gonzalez v. Rossello Nevares*, 305 F. Supp. 3d 327, 333 (D.P.R. 2018) (government must issue transgender people accurate identity documents to protect their constitutional right to privacy). No law authorizes schools to 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.

Students and parents also 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.

### DISTRICT PROCEDURE

District staff shall use the student's affirmed name and pronouns, which are the name and pronouns that correspond to a student's gender identity. A student is not required to obtain a legal name or gender marker change and/or submit medical or psychological documentation

as a prerequisite to being addressed by the student's affirmed name and pronouns. Consent from parent(s)/guardian(s) is not required to address a student by the student's affirmed name and pronouns.

With parent(s)/guardian(s) consent, or for students who are 18 years old or older, students may change their name and/or gender marker in the district's electronic database so that it corresponds to their gender identity. Students are not required to obtain a legal name or gender marker change and/or submit medical or psychological documentation to affect these changes.

Students under 18 years old should be aware that their parent(s)/guardian(s) have the right to review their student's official school records. Therefore, if parent(s)/guardian(s) request access to see their student's official school records, they will have access to any changes made to a student's affirmed name and pronouns.

If a student has previously been known by a different name and/or pronouns, the Gender Support Coordinator will discuss with the student how they want district staff to be notified of the student's affirmed name and pronouns. To ensure consistency among district staff, every effort will be made to immediately notify all district staff with whom the student may interact (if agreed to by the student), including updating information provided to substitute staff. District staff will also be notified of what name and pronouns the student wants district staff to use in communications with their parent(s)/guardian(s), including on all documents sent to their parent(s)/guardian(s).

The intentional refusal and/or persistent failure by district staff or students to respect a student's gender identity (i.e., intentionally referring to a student by a name and/or pronouns that do not correspond to the student's gender identity or repeatedly continuing to do so after being asked not to) is a violation of these procedures.

If the district changes the student's name and/or gender marker pursuant to a request, the Superintendent or designee shall be the only person in the district to have access to the student's birth certificate, which is required by the Illinois Missing Children Records Act.

## BEST PRACTICES

- **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, 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 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.

## G. Use of Facilities

### LEGAL PROTECTIONS

The right of all students to full and equal use of all school facilities that correspond with the student's gender identity is well established in Illinois under federal and state law.

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(O-1). 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." *Maday v. Township High Sch. Dist. 211*, No. 17-CH-15791 (Cook County Circuit Court, Ill. September 12, 2019). In other words, schools cannot impose on transgender, nonbinary, and gender nonconforming students conditions on the use of facilities that are not required of other students. For example, a school was found to have violated the IHRA when it denied a transgender boy the use of the boys' communal restrooms and instead offered him use of separate restroom facilities. *P.S. and Komarek Sch. Dist. 94*, ALS No. 16-0003 (Ill. Hum Rts. Comm'n March 15, 2018 and February 4, 2019). In addition, requiring a transgender male student to "use a privacy curtain to change clothes while using the boys' locker room" was found to violate the IHRA's guarantee of "full and equal enjoyment" of facilities. *In the Matter of the Request for Review: C.Y. (Minor) by Tracy & Michael Yates (Parents)*, ALS No. 17-0067 (Ill. Hum. Rts. Comm'n July 15, 2019) (remanding claim of denial of equal access to facilities based on gender-related identity to the Illinois Department of Human Rights for a substantial evidence finding).

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.

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).<sup>5</sup> “[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.

## DISTRICT PROCEDURE

Transgender, nonbinary, and gender nonconforming students shall be allowed use of restrooms, locker rooms, and changing facilities that correspond with their gender identity in the same manner that cisgender students are allowed use. Schools may maintain separate restrooms, locker rooms, or changing facilities for male and female students, provided they allow all students equal use of facilities that are consistent with their gender identity. Transgender, nonbinary, and gender nonconforming students should determine which facilities are consistent with their gender identity and enable them to feel affirmed, safe, and supported.

<sup>5</sup> This case also examined the IHRA exception for “Facilities Distinctly Private” which pertains to facilities such as “restrooms, shower rooms, bath houses health clubs and other similar facilities.” 775 ILCS 5/5-103(B). The language permits schools to maintain facilities separated by sex, but as the Commission concluded, this language does not change the requirement that each student is guaranteed full and equal use of the restroom and locker room that corresponds with their gender identity.

Schools shall make the requested restrooms, locker rooms, and changing facilities available immediately upon consultation with the student. Under no circumstances shall a student be required to use an all-gender or secure-access restroom, a nurse's restroom, a privacy partition or curtain, and/or an all-gender locker room because they are transgender, nonbinary, or gender nonconforming.

Regardless of gender identity, any student who has a need or desire for increased privacy, regardless of the underlying reason, should be provided with reasonable alternative arrangements when requested by the student. This may include the use of a privacy partition or curtain, provision to use a nearby all-gender or secure-access restroom, and/or a nurse's restroom. Any alternative arrangement shall be provided in a way that protects the student's privacy and is consistent with the student's Gender Support Plan, if one exists.

Schools shall designate any existing facilities that are designed to be used by only one person at a time as accessible to all students, regardless of gender.

## BEST PRACTICES

- **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. 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.

## H. Dress Codes

### LEGAL PROTECTIONS

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. *See Doe ex rel. Doe v. Yunits*, No. 001060A, 2000 WL 33162199, at \*3 (Mass. Super. Oct. 11, 2000) (discussing transgender girl's right to freedom of expression when school prohibited her from

wearing clothing and otherwise expressing herself consistent with her gender identity); *see also, Logan v. Gary Cmty. Sch. Corp.*, No. CIV.A. 207-VC-431JVB, 2008 WL 4411518, at \*4 (N.D. Ind. Sep. 25, 2008) (choice of dress for prom is protected gendered self-expression); *Zalewska v. Cty. of Sullivan*, New York, 316 F.3d 314, 320 (2d Cir. 2003); *Couch v. Wayne Local Sch. Dist.*, No. 1:12-cv-00265-MRB (S.D. Ohio May 21, 2012) (schools cannot prevent students from wearing clothing that expresses written messages or otherwise conveys one's gender identity or support for the LGBT community).

## DISTRICT PROCEDURE

All students shall be permitted to wear gender-affirming clothing to school and shall not be restricted in their clothing or appearance on the basis of gender. Transgender, nonbinary, and gender nonconforming students have the right to dress in a manner consistent with their gender identity or expression. This shall apply on regular school days as well as any special events, including graduation ceremonies and dances. District staff shall not enforce the dress code more strictly against transgender, nonbinary, and gender nonconforming students than other students.

## BEST PRACTICES

- **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.

## I. Sports, Clubs, and Events

### LEGAL PROTECTIONS

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.

Students also have First Amendment rights to speak freely and to associate for expressive purposes, which includes the right to form GSAs at school. Also, under the Equal Access Act, First Amendment, Equal Protection Clause, and other state and federal non-discrimination laws, all bulletin boards, public address systems, or other privileges extended to clubs must also be equally granted to GSAs and other LGBTQ+-affirming clubs.

### DISTRICT PROCEDURE

Transgender, nonbinary, and gender nonconforming students shall be provided the same opportunities to participate in extracurricular activities as all other students. Participation in competitive Illinois High School Association (IHSA) and Illinois Elementary School Association

(IESA) athletic activities and contact sports will be resolved in accordance with these Association rules, which are available on their respective websites.<sup>6</sup>

## BEST PRACTICES

- **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 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.

<sup>6</sup> The Illinois High School Association (“IHSA”) policy provides that transgender youth should be allowed to participate fully in athletics and activities. The IHSA policy also discusses the importance of affirming athletes’ gender identity by using the correct name and pronouns, and by allowing the use of the locker room and restroom that matches the athlete’s gender identity. The IHSA policy is clear that any discussions and documents pertaining to an athlete’s transgender identity are strictly confidential. Illinois High School Association. (2019). *Policy and School Recommendations for Transgender Participation*. Retrieved from: [https://www.ihsa.org/documents/equity/Equity-Transgender\\_Policy\\_Revised.pdf](https://www.ihsa.org/documents/equity/Equity-Transgender_Policy_Revised.pdf). The Illinois Elementary School Association has a similar policy. Illinois Elementary School Association. (2019). *Policy and School Recommendations for Transgender Participation*. Retrieved from: <https://www.iesa.org/documents/handbook/IESA-Handbook.pdf>.

## J. Overnight School Trips

### LEGAL PROTECTIONS

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).

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.

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.

### DISTRICT PROCEDURE

In no case shall a transgender, nonbinary, or gender nonconforming student be denied the right to participate in an overnight school trip because the student is transgender, nonbinary, or gender nonconforming. Students shall be permitted to participate in overnight trips in accordance with their gender identity, with other students who share their gender identity, or in a manner that makes them feel safe, affirmed, and included. The specific accommodations should be assessed on a case-by-case basis and in a manner consistent with the student’s Gender Support Plan, if one exists.

The Gender Support Coordinator will work with the student to determine the accommodations that will be provided, including hotel and room-sharing arrangements, based on the particular circumstances of the trip. The Gender Support Coordinator will ensure that the student knows the accommodations for overnight school trips prior to their departure for the trip. Overnight accommodations shall be arranged and provided in a manner that respects the student's desired level of confidentiality. Schools shall not notify chaperones or parents of other students about the housing arrangements for a transgender, nonbinary, or gender nonconforming student.

## BEST PRACTICES

- **Ask the student.** In planning for overnight trips, ask the student what type of arrangements will make the student feel safe, supported, and included.
- **Communicate with students beforehand and 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.

## K. Curriculum and Teaching

### LEGAL PROTECTIONS

The Illinois School Code requires that public schools incorporate into their history curriculum a study of the roles and contributions of LGBT people in the history of the United States and Illinois. 105 ILCS 5/27-21. In addition, schools must use textbooks that include the roles and contributions of all people protected under the IHRA. 105 ILCS 5/2-3.155(c).

### DISTRICT PROCEDURE

All district staff shall use a gender-affirming approach in both their curriculum and teaching. This approach includes affirming students' gender identities, being flexible during gender transition processes, and being conscious of not using gendered-language.

As a general matter, district staff are discouraged from separating students by gender and should evaluate all practices that divide students on the basis of gender. Staff should avoid gender segregation when possible (e.g., lining up by "boys and girls," physical education, sexual health education). If gender segregation does occur, transgender, nonbinary, and gender nonconforming students shall be allowed to participate in accordance with their gender identity, or in a manner that makes them feel safe, affirmed, and included.

District staff shall create and implement inclusive lessons so that all students see themselves reflected in the curriculum. District staff are encouraged to develop age-appropriate lessons for students about gender diversity and acceptance whether or not they are aware of transgender, nonbinary, or gender nonconforming students in their classes. However, an individual student's gender transition or personal gender history should never be the subject of a class lesson unless specifically requested by the student.

Health and sex education shall be inclusive of diverse gender identities, gender expressions, and sexual orientations. School libraries shall include accurate and up-to-date information on gender identity and diversity, as well as gender-affirming children's books, young adult fiction, fiction, non-fiction, and multimedia.

## BEST PRACTICES

- **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 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 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, “five-year-olds don’t hit their friends” 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.

## L. Training

### DISTRICT PROCEDURE

The district shall conduct regular training for all staff members, including Gender Support Coordinators, on their responsibilities under applicable laws and this procedure.

At the beginning of the school year following the adoption of this procedure, all district staff shall be comprehensively trained on this procedure and on gender-affirming approaches to education. District staff shall have subsequent in-depth, in-person annual training on supporting transgender, nonbinary, and gender nonconforming students. The Gender Support Coordinator(s) shall receive additional training and support.

Within ninety (90) days of their start date, all new employees who are hired by the district shall be trained on this procedure and on gender-affirming approaches to education. All substitute teachers and other temporary staff shall also be trained on this procedure at the beginning of their first contract following the adoption of this procedure.

The district shall maintain evidence that all required staff members have taken the training, including sign-in sheets.

The content of all such trainings shall be medically accurate, evidence-based, and reflect current best practices. The content of such professional development shall include, but not be limited to:

1. Terms, concepts, and current developmental understandings of gender identity, gender expression, and gender diversity in children and adolescents;
2. Developmentally appropriate strategies for communication with students and parents or guardians about issues related to gender identity and gender expression that protect student privacy;
3. Developmentally appropriate strategies for preventing and intervening in bullying and harassment incidents, including cyberbullying;
4. Classroom-management practices, curriculum, and resources that educators can integrate into their classrooms to help foster a more gender-inclusive environment for all students; and
5. Federal, state, district and school policies regarding bullying, harassment, discrimination, and suicide prevention and responsibilities of staff.

## BEST PRACTICES

- **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 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.

## M. Parent/Guardian Involvement

### LEGAL PROTECTIONS

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 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.

## BEST PRACTICES

- **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."

## N. Support for District Staff

### LEGAL PROTECTIONS

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

## BEST PRACTICES

- **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.

The recommendations contained in this report provide the framework for districts to affirm transgender, nonbinary, and gender nonconforming students. However, it is incumbent on districts to continually reevaluate their policies, procedures, and practices to ensure that they are meeting the needs of those students and staying flexible as best practices evolve.

A student's experience in school from kindergarten through twelfth grade provides the foundation for their educational experience. It is crucial to each student's success that this foundation is welcoming, affirming, and inclusive of all students.

# RECOMMENDATIONS

In addition to the requests to the Illinois State Board of Education (“ISBE”) that are set forth in Executive Order 2019-11, the Task Force recommends the following issues be addressed by the State:

- **ISBE should consider providing guidance on the procedures for updating names and gender markers.** Specifically, ISBE should consider providing:
  - a procedure for changing a name and gender marker in student records that recognizes that a legal name change is not a prerequisite;
  - a procedure for updating a name and gender marker in data and information submitted to the State;
  - a mechanism for offering a nonbinary gender marker option for submitting data and information to the State;
  - guidance for using an affirmed name on standardized testing;
  - guidance that under ISSRA, the name and gender marker recorded in a student’s permanent record should include both affirmed name and gender, as well as legal name and gender, except that the legal name and gender shall not be disclosed except as required by law, 23 IAC 375.10; and
  - guidance that under ISSRA, directory information should include only a student’s affirmed name, 23 IAC 375.80.
  
- **The Illinois Department of Human Rights (“IDHR”) should consider issuing guidance to districts regarding how to comply with the IHRA.** The guidance should include the IHRA’s requirements with respect to:
  - the rights of transgender, nonbinary, and gender nonconforming individuals;
  - students’ participation in sports and other activities;
  - protecting students from bullying or harassment; and
  - respecting students’ affirmed names and pronouns, including by updating student records.
  
- **The State should consider:**
  - exploring how teacher preparation programs can address issues relating to supporting transgender, nonbinary, and gender nonconforming students;
  - working with stakeholders to evaluate the State’s comprehensive sexual education curriculum for kindergarten through 12th grade; and
  - promoting greater inclusion with regard to school-based activities, including but not limited to engaging with IESA and IHSA to review their policies on inclusion of transgender, nonbinary, and gender nonconforming students.

## ENDNOTES

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- <sup>xi</sup> National Association of School Psychologists. (2014). *NASP Position Statement: Safe Schools for Transgender and Gender Diverse Students*. Retrieved from: [https://www.nasponline.org/assets/Documents/Research%20and%20Policy/Position%20Statements/Transgender\\_PositionStatement.pdf](https://www.nasponline.org/assets/Documents/Research%20and%20Policy/Position%20Statements/Transgender_PositionStatement.pdf)
- <sup>xii</sup> National Education Association. *Safe Schools for Everyone: Gay, Lesbian, Bisexual, and Transgender Students*. Retrieved from: <http://www.nea.org/tools/30420.htm>

## APPENDIX A: KNOW YOUR RIGHTS HANDOUT

**In Illinois, schools must affirm and protect students who are transgender, nonbinary, and gender nonconforming.**

In Illinois, transgender, nonbinary, and gender nonconforming students have many rights and protections under state and federal law, including the Illinois Human Rights Act (“IHRA”), Title IX, and the Illinois and United States Constitutions. These rights include:

1. The right to protection from discrimination on the basis of gender identity, transgender, nonbinary, or gender nonconforming identity, or gender expression, including from harassment or bullying by students or adults. Consistent or intentional failure to use a student’s affirmed name or pronouns is harassment.
2. The right to full and equal use, access, and participation in all school facilities, programs, and activities consistent with the student’s gender identity. The discomfort of another student or adult is not a lawful reason to limit use of facilities.
3. The right to use names and gender pronouns consistent with the student’s gender identity in school and in school records. A legal name or gender-marker change on a birth certificate is not required.
4. The right to dress consistent with the student’s gender identity.
5. The right to confidentiality of transgender, nonbinary, and gender nonconforming identity and any related private information. Schools should not disclose any information about a student’s gender identity without the student’s permission unless required by law. Medical and mental health information—which are not required for protection under the law—should also be kept confidential and not disclosed without permission or need.

**These rights protect students of all gender identities and expressions in all school settings.**

**The law requires schools to affirm and protect students regardless of parental involvement.**

# APPENDIX B: ADDITIONAL LEGAL PROTECTIONS

## *Selected Local, State, and Federal Laws and Legal Resources*

### A. Illinois Human Rights Act (“IHRA”)

775 ILCS 5/1-101 *et seq.*

Full text:

[www.ilga.gov/legislation/ilcs/ilcs5.asp?ActID=2266&ChapterID=64](http://www.ilga.gov/legislation/ilcs/ilcs5.asp?ActID=2266&ChapterID=64)

Regulations:

[www2.illinois.gov/dhr/FilingCharge/legal/Pages/Rules\\_and\\_Regulations.aspx](http://www2.illinois.gov/dhr/FilingCharge/legal/Pages/Rules_and_Regulations.aspx)

Illinois Sexual Harassment and Discrimination Helpline:

[www2.illinois.gov/sites/sexualharassment/Pages/default.aspx](http://www2.illinois.gov/sites/sexualharassment/Pages/default.aspx)

### B. Title IX of the Education Amendments of 1972 of the Civil Rights Act (“Title IX”)

20 U.S.C. § 1681 *et seq.*

Full text:

[www.justice.gov/crt/title-ix-education-amendments-1972](http://www.justice.gov/crt/title-ix-education-amendments-1972)

U.S. Dept. of Education Regulations: [www.govinfo.gov/content/pkg/CFR-2012-title34-vol1/pdf/CFR-2012-title34-vol1-part106.pdf](http://www.govinfo.gov/content/pkg/CFR-2012-title34-vol1/pdf/CFR-2012-title34-vol1-part106.pdf)

Information from the U.S. Dept. of Education:

[www2.ed.gov/about/offices/list/ocr/docs/tix\\_dis.html](http://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html)

Information from the U.S. Dept. of Justice: [www.justice.gov/crt/overview-title-ix-education-amendments-1972-20-usc-1681-et-seq](http://www.justice.gov/crt/overview-title-ix-education-amendments-1972-20-usc-1681-et-seq)

### C. Illinois School Student Records Act (“ISSRA”)

105 ILCS 10/1 *et seq.*

Full Text:

[www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1006&ChapterID=17](http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1006&ChapterID=17)

Regulations:

<https://www.isbe.net/Documents/375ark.pdf>

### D. Illinois Mental Health and Developmental Disabilities Confidentiality Act

740 ILCS 110/1 *et seq.*

Full Text:

[www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2043&ChapterID=57](http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2043&ChapterID=57)

### E. Family Educational Rights and Privacy Act (“FERPA”)

20 U.S.C. § 1232g

Full Text: [www.govinfo.gov/content/pkg/USCODE-2011-title20/pdf/USCODE-2011-title20-chap31-subchapIII-part4-sec1232g.pdf](http://www.govinfo.gov/content/pkg/USCODE-2011-title20/pdf/USCODE-2011-title20-chap31-subchapIII-part4-sec1232g.pdf)

Regulations: 34 C.F.R. §§ 99.00 *et seq.*, [www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=34:1.1.1.1.33](http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=34:1.1.1.1.33)

Information from the U.S. Dept. of Education:  
<https://studentprivacy.ed.gov/legal-basics>

#### F. Individuals with Disabilities Education Act (“IDEA”)

20 U.S.C. 1400 *et seq.*

Information from the Illinois State Dept. of Education:

<https://www.isbe.net/Pages/Special-Education-Programs.aspx>

Information from the U.S. Dept. of Education:

<https://sites.ed.gov/idea/>

#### G. Americans with Disabilities Act (“ADA”)

42 U.S.C. § 12101 *et seq.*

Full Text: <https://www.govinfo.gov/content/pkg/USCODE-2009-title42/html/USCODE-2009-title42-chap126.htm>

#### H. Section 504 of the Rehabilitation Act of 1973 (“Section 504”)

29 U.S.C. § 794

Information from the U.S. Dept. of Education:

[www2.ed.gov/policy/rights/guid/ocr/disability.html](http://www2.ed.gov/policy/rights/guid/ocr/disability.html)

#### *Local ordinances and laws protect students against discrimination.*

Depending on where students live, they may also have rights and protections under local laws. Students and schools should check their local city or county laws to see what protections may exist. For example:

- **City of Chicago** - The Chicago Human Rights Ordinance and the Chicago Fair Housing Ordinance prohibit discrimination based on gender identity with respect to housing, employment, and public accommodations, which includes educational facilities. Chicago Municipal Code §§ 2-160-020(f), 2-160-070.
- **Cook County** - The Cook County Human Rights Ordinance prohibits people in Cook County (including employers, landlords, property managers, real estate agents, store and restaurant owners, bankers, lenders and Cook County government officials and employees) from unlawfully discriminating against or harassing other people on the basis of that person’s gender identity. Cook County Code of Ordinances §§ 42-31, 42-37. The Cook County Commission has jurisdiction over schools as places of public accommodation.
- **City of Decatur** - Chapter 28 of the City Code prohibits unfair employment practices, unfair housing practices, and unequal practices by public places of accommodations (includes restaurants, hotels, bathrooms, and any public conveyance of land). Decatur City Code ch. 28, §§ 9-1 (A), 9-2 (A). Under the

ordinance, it is unlawful to discriminate against another person because of “having or being perceived as having a self-image or identity not traditionally associated with one’s biological maleness or femaleness.” *Id.* §§ 2-1, 2-5 (N).

- **City of Evanston** - In Evanston, no person shall be denied equal protection of the laws, nor shall any person be denied enjoyment of his or her civil or political rights or be unlawfully discriminated against because of gender identity. Evanston Code of Ordinances § 1-21-2. These rights include use of public accommodations, including educational facilities. *Id.* §§ 1-21-5, 1-21-8.
- **City of Peoria** - Chapter 17 of the Peoria ordinance prohibits discrimination in housing, employment, and public accommodations (includes inns, restaurants, bathrooms, and public conveyance of land) based on “having, or being perceived as having, a self image or identity not traditionally associated with one’s biological maleness or femaleness.” Peoria Code of Ordinances §§ 17-142, 17-143(3).

### Additional Legal Protections Under Disability Rights Laws

Several laws protect students with disabilities, including the IHRA, the ADA, IDEA, and Section 504. These disability rights laws cover persons with mental and physical disabilities broadly, including gender dysphoria for some. When applicable, these laws may provide additional protections and options for student support.

- **IHRA.** The IHRA prohibits discriminatory practices in places of public accommodation because of an individual’s disability. 775 ILCS 5/1-102(A). The definition of disability under the IHRA can encompass gender dysphoria. *P.S. and Komarek Sch. Dist. 94*, ALS No. 16-0003 (Ill. Hum Rts. Comm’n March 15, 2018 and February 4, 2019). The IHRA not only prohibits disability discrimination, but also requires schools to reasonably accommodate a student’s disability. *Id.*
- **ADA.** The ADA also prohibits discrimination on the basis of disability by government entities and places of public accommodation. Some courts have recognized that gender dysphoria may be the basis for ADA protections. *Blatt v. Cabela’s Retail, Inc.*, No. 5:14-CV-04822, 2017 WL 2178123, at \*4 (E.D. Pa. May 18, 2017); *see also Iglesias v. True*, 403 F. Supp. 3d 680, 687 (S.D. Ill. 2019) (recognizing that an ADA claim based on gender dysphoria might be permitted).
- **IDEA / 504.** Students with disabilities are also protected by the IDEA and Section 504. The IDEA protects students with one of thirteen enumerated disabilities. 20 U.S.C. § 1401(3)(A). The categories “other health impairment” and “emotional disturbance” often cover students with anxiety, depression, or other mental health needs when they impact the student’s learning. No particular diagnosis is required to qualify for protection under the IDEA, so long as the condition impacts a student’s learning. The IDEA is flexible and requires schools to assess a student’s needs, develop an individualized plan to address the student’s needs, and take reasonable measures to address the student’s disability. 20 U.S.C. § 1414. A student protected by the IDEA also has a number of legal rights and protections. 20 U.S.C. § 1415; Illinois State Board of Education, Special Education Parents Rights, [www.isbe.net/Pages/Special-Education-Parent-Rights.aspx](http://www.isbe.net/Pages/Special-Education-Parent-Rights.aspx).

Section 504 protects any student with a disability, defined as a mental or physical impairment that substantially limits one or more major life activities. 29 U.S.C. § 705(20)(A). The definition of disability follows the ADA definition. Schools frequently develop Section 504 plans that put in writing the reasonable accommodations the school will provide to address a student's needs related to a disability.

Transgender, nonbinary, and gender nonconforming students—like all students—are protected by disability-rights laws to the extent they have a condition that falls within the scope of these laws.

### Options for Filing Complaints

**A. Illinois Department of Human Rights (IHRA violations)**

[www2.illinois.gov/dhr/FilingCharge/Pages/default.aspx](http://www2.illinois.gov/dhr/FilingCharge/Pages/default.aspx)

**B. Your School District (at least ISSRA, Title IX, and bullying complaints)**

Under Title IX, ISSRA, and the Illinois bullying law, each school district must have a complaint process. Check your school district's website or contact your school district for more information and procedures.

**C. Regional Office of Education (ISSRA)**

Directory of Contact Information: [www.isbe.net/Documents/roedirectory.pdf](http://www.isbe.net/Documents/roedirectory.pdf)

**D. U.S. Department of Education, Office of Civil Rights (Title IX, Section 504)**

[www2.ed.gov/about/offices/list/ocr/complaints-how.html](http://www2.ed.gov/about/offices/list/ocr/complaints-how.html)

**E. Family Policy Office of the U.S. Department of Education (FERPA)**

<https://studentprivacy.ed.gov/file-a-complaint>

**F. Lawsuits**

In many situations it is possible for a student (through a parent) to file a lawsuit to enforce legal protections in state or federal court. The logistics and process vary by law and by court.

# APPENDIX C: SAMPLE GENDER SUPPORT PLAN



- Confidential -

## Gender Support Plan

The purpose of this document is to create shared understandings of how the student's authentic gender will be accounted for and supported at school. School staff, caregivers (if appropriate) and the student should work together to develop the document. Ideally, each will spend time completing the sections and then come together to review them and confirm shared agreements. Use the action planning section at the end of the document to track items requiring any follow-up. Please note that there is a separate document to plan for a student formally communicating a change in their gender status at school.

School/District _____	Today's Date _____
Name Student Uses: _____	Pronouns Student Uses: _____
Name on Birth Certificate: _____	Sex Assigned at Birth _____
Date of Birth _____	Student's Grade Level _____
Sibling(s)/Grade(s) _____ / _____ / _____	
Parent(s), Guardian(s), or Caregiver(s) /relation to student	
_____ / _____ / _____	
_____ / _____ / _____	
Meeting participants: _____	

### PARENT/GUARDIAN INVOLVEMENT

Guardian(s) aware of student's gender status? Yes/No Support Level:  
(none) 0 1 2 3 4 5 6 7 8 9 10 (High)

If support level is low what considerations must be accounted for in implementing this plan?

\_\_\_\_\_

\_\_\_\_\_

### PRIVACY: CONFIDENTIALITY AND DISCLOSURE

How public or private will information about this student's gender be (check all that apply)?

\_\_\_ District staff will be aware (Superintendent, Student Support Services, District Psychologist, etc.)  
Specify the adult staff members:

\_\_\_ Site level leadership/administration will know (Principal, head of school, counselor, etc.)  
Specify the adult staff members:

\_\_\_ Teachers and/or other school staff will know  
Specify the adult staff members:

\_\_\_ Student will not be openly "out," but some students are aware of the student's gender  
Specify the students:

\_\_\_ Student is open with others (adults and peers) about gender

\_\_\_ Other - describe: \_\_\_\_\_

If the student has asserted a degree of privacy, what steps will be taken if that privacy is compromised, or is believed to have been compromised? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

How will a teacher/staff member respond to any questions about the student's gender from:

Other students? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Staff members? \_\_\_\_\_

\_\_\_\_\_

Parents/community? \_\_\_\_\_

\_\_\_\_\_

### STUDENT SAFETY

Who will be the student's "go to adults" on campus? \_\_\_\_\_

If these people aren't available, what should student do? \_\_\_\_\_

What, if any, will be the process for periodically checking in with the student and/or family?

What are expectations in the event the student is feeling unsafe and how will student signal their need for help:

During class \_\_\_\_\_

On the yard \_\_\_\_\_

In the halls \_\_\_\_\_

Other \_\_\_\_\_

What should the student's parents do if they are concerned about how others are treating their child at school?

Other safety concerns/questions: \_\_\_\_\_

\_\_\_\_\_

### PRIVACY: NAMES, PRONOUNS AND STUDENT RECORDS

Name to be used when referring to the student \_\_\_\_\_ Pronouns \_\_\_\_\_

Name/gender marker as listed on the student's identity documents \_\_\_\_\_

Name/gender marker entered into the Student Information System \_\_\_\_\_

If needed, is there a process/form for changing the student's name/gender marker in the SIS?

How is it accessed/used? \_\_\_\_\_

\_\_\_\_\_

Name/gender marker entered into the student's Health Record \_\_\_\_\_

If needed, is there a process/form for changing the student's name/gender marker in the Health Record? \_\_\_\_\_

If not, how will confidentiality be kept? \_\_\_\_\_

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Who will be the point person at school for ensuring these adjustments to the student's records are made and communicated as needed?

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If the student's name cannot be modified in the above systems, how will the student's privacy be accounted for and maintained in the following situations or contexts:

Reporting data to the state/other entities \_\_\_\_\_

During registration \_\_\_\_\_

Completing enrollment \_\_\_\_\_

Student cumulative file \_\_\_\_\_

IEPs/Other Services \_\_\_\_\_

Seating charts/Taking attendance \_\_\_\_\_

With substitute teachers \_\_\_\_\_

Teacher grade book(s) \_\_\_\_\_

Standardized tests \_\_\_\_\_

School photos \_\_\_\_\_

Student ID/library cards \_\_\_\_\_

Lunch lines/Free Lunch Card \_\_\_\_\_

Yearbook \_\_\_\_\_

Assignment of IT accounts/email address \_\_\_\_\_

Distribution of texts or other school supplies \_\_\_\_\_

After-school programs \_\_\_\_\_

Official school-home communication \_\_\_\_\_

Unofficial school-home communication (PTA/other) \_\_\_\_\_

Outside district personnel or providers \_\_\_\_\_

Summons to office \_\_\_\_\_

PA announcements \_\_\_\_\_

Posted lists \_\_\_\_\_

How will instances be handled in which the incorrect name or pronoun are used by staff members? \_\_\_\_\_

By students? \_\_\_\_\_

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If the student's guardians are not aware and/or supportive of the student's gender status, how will school-home communications be handled, including when individual staff members need to contact guardians?

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What are some other ways the school needs to anticipate the student's privacy being compromised? How will these be handled?

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### USE OF FACILITIES

Student will use the following bathroom(s) on campus \_\_\_\_\_

Student will change clothes in the following place(s) \_\_\_\_\_

If student/parent have questions/concerns about facilities, who should they contact?

What are the expectations regarding the use of facilities for any class trips? \_\_\_\_\_

What are the expectations regarding rooming for any overnight trips? \_\_\_\_\_

Are there any questions or concerns about the student's access to facilities? \_\_\_\_\_

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### EXTRA CURRICULAR ACTIVITIES

In what extra-curricular programs or activities will the student be participating (sports, theater, clubs, etc.)?

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What steps will be necessary for supporting the student in these spaces? \_\_\_\_\_

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Does the student participate in an after-school program? \_\_\_\_\_

What steps will be necessary for supporting the student in these spaces? \_\_\_\_\_

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Are there any other questions or concerns about extra-curricular activities?

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### OTHER CONSIDERATIONS

Does the student have any sibling(s) at school? \_\_\_\_\_ Factors to be considered regarding sibling's needs?

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Does the school have a dress code? \_\_\_\_\_ How will this be handled? \_\_\_\_\_




How will this plan be monitored over time? \_\_\_\_\_

\_\_\_\_\_

What will be the process should the student, family, or school wish to revisit any aspects of the plan (or seek additions to the plan)? \_\_\_\_\_

\_\_\_\_\_

Date/Time of next meeting or check-in \_\_\_\_\_

Location \_\_\_\_\_

