



## Focus On: Public Schools and Transgender Students

As visibility and awareness of the transgender population increase, school administrators are focused on providing a safe and equal learning opportunity for transgender students.

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According to the National Center for Transgender Equality, transgender is defined as "a term for people whose gender identity, expression or behavior is different from those typically associated with their assigned sex at birth." Gender non-conforming is used as a term for "individuals whose gender expression is different from societal expectations related to gender."

The American Psychological Association notes that for many children, "gender identification begins at around two years old. The prevalence of children who present as gender diverse or identify as transgender is unknown. Clinical studies estimate that 5 to 12% of girls and 2 to 6% of boys exhibit cross-gender behavior. Although there is no way to predict the constancy of cross-gender identification through adolescence and adulthood, it is more likely to persist for those individuals who first demonstrated gender dysphoria as toddlers." According to the US National Library of Medicine, "gender dysphoria is a condition in which there is a conflict between a person's physical gender and the gender he or she identifies with."

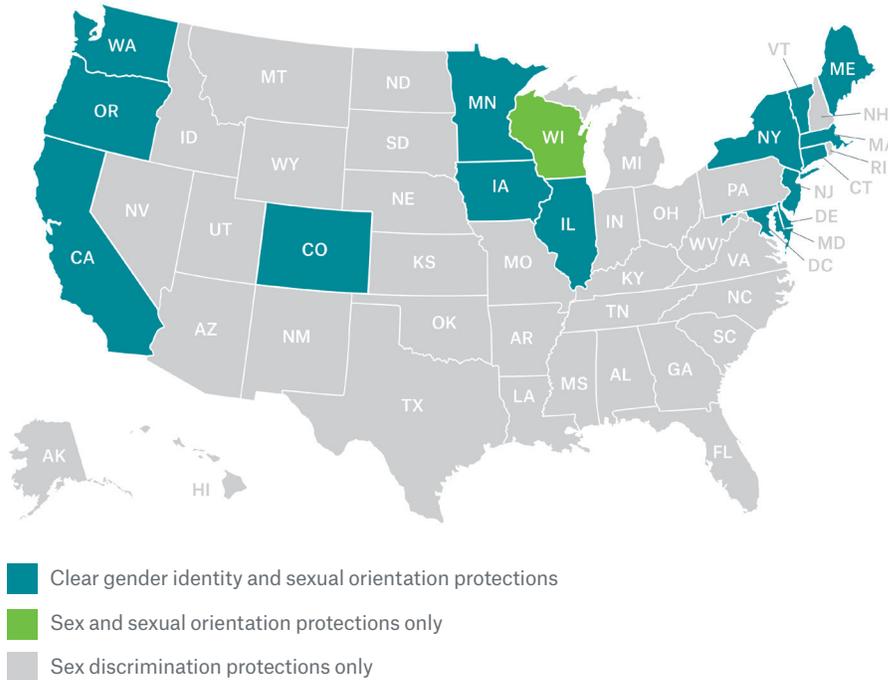
### Transgender school population

According to the All Students Count Coalition, it is difficult to quantify the number of transgender youth in the US and to assess what risk behaviors they are experiencing since there are no national youth surveys that include a transgender question. The All Students Count Coalition is working with the Center for Disease Control and Prevention (CDC) to include an appropriate question regarding transgender youth in the National Youth Risk Behavior Survey in the near future. Although transgender students are a small percentage of the population, advocates note an increasing acceptance of gender identity issues have encouraged many children to "come out" earlier than they might have just a few years ago.

### School climate

According to the 2013 National School Climate Survey (the most recent report available), schools nationwide are hostile environments for a significant number of transgender students. In a survey of 7,898 students between the ages of 13 and 21, 75.1% of transgender students felt unsafe at school because of their gender expression.

## Safe schools non-discrimination laws



Source: National Center for Transgender Equality  
11/30/15

When reviewing experiences of harassment and assault based on gender expression, transgender students had the most negative experiences in school – 73.6% reported verbal harassment, 32.5% physical harassment and 16.2% physical assault.

The report further identified 42.2% of transgender students had been prevented from using their preferred name and 59.2% had been required to use the bathroom or locker room of their anatomical sex. Since the report's release in 2013, some schools have made additional efforts to address the needs of transgender students and a new report is scheduled to be released in the fall of 2016.

### Legal environment

There are several laws that provide protection for transgender and gender non-conforming students:

#### Federal law

The Constitution protects a student's right of free speech and freedom of expression. These protections extend to non-verbal expression.

Title IX prohibits sex discrimination in schools. Specifically, it prohibits "treating one person differently than another....or subjecting any person to separate or different rules on the basis of sex." Title IX applies to all schools (K-12 and post-secondary) that accept federal funds. This law has been interpreted by the US Department of Education to cover transgender students.

The Equal Access Act requires all school affiliated student organizations, such as the Gay-Straight Alliance or Pride Alliance to be treated equally. This act prevents schools from banning certain types of groups or discriminating against such groups in any way.

#### State laws

As of January 30, 2015, 16 states have clear gender identity and sexual orientation protections in place. In other states, students must rely on federal Title IX law.

#### School district policies

Many school districts have implemented policies prohibiting discrimination based on gender identity or expression of sexual orientation. For example, in November 2015, the Dexter School Board in Missouri adopted a policy addressing neutral restroom, locker room and showering facilities, pronoun/name identification, and proper apparel. In December 2015, the Princeton School Board in New Jersey adopted a similar policy that included barring teachers from revealing a student's gender identity, acknowledging the right of students to determine their own gender, and allowing students to use bathrooms and locker rooms that correspond to

their gender identities. Many schools that have created policies for transgender students have been met with opposition from parents, students, and political groups who claim issues regarding transgender bathroom and locker room use threaten the privacy rights of other students.

In an effort to guide schools in accommodating transgender students, The National Center for Transgender Equality issued a revised "Model district policy on transgender and gender non-conforming students" in September 2015. This policy addresses aspects of providing a safe and welcoming learning environment for students regardless of their sexual orientation including:

- Determining gender identity
- Adhering to safe school laws
- Protecting a student's privacy
- Providing access to gender segregated activities and facilities
- Implementing dress codes
- Supporting students' transitions
- Handling media/community communication

## Transgender student athletes

As high schools and state associations continue to provide opportunities for all students to participate in athletics, the inclusion of transgender students on high school athletic teams is an issue facing many administrators.

A large number of state high school athletic associations have adopted policies regarding transgender student-athletes and guidelines governing their participation in school athletics programs. The 2010 Report "On the team: Equal opportunity for transgender student athletes," references best practices for athletic administrators, coaches, student athletes, and parents of student athletes. Below is a map of state athletic associations that have implemented high school policies for transgender student athletes as of January 2016.

## Liability issues

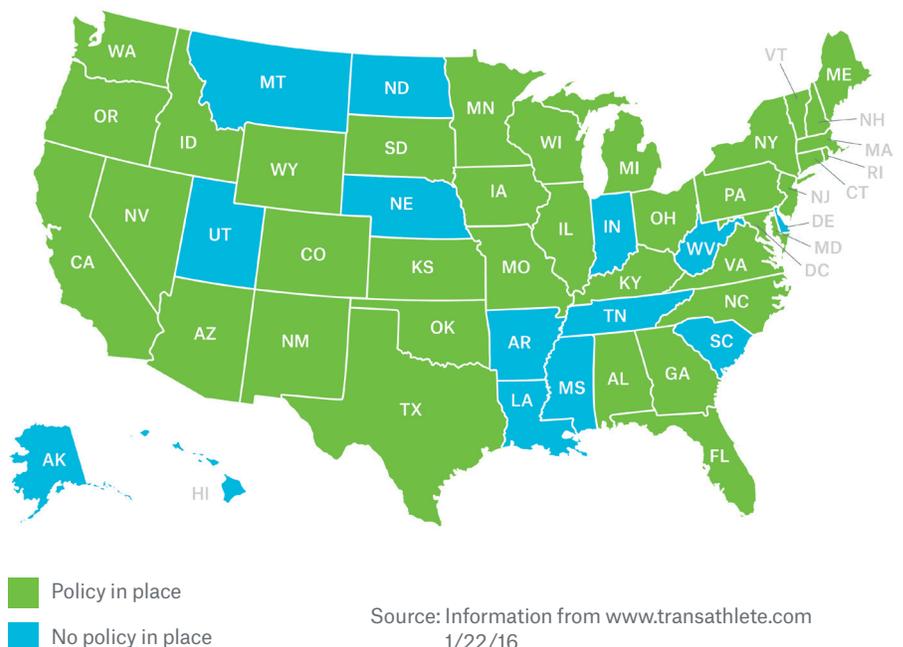
The legal environment regarding transgender issues is emergent and

complex. Several cases are pending before federal and state courts as plaintiffs are beginning to petition the courts to rule on transgender rights. Most notably, as of February 2016, a case on transgender students' rights in schools is pending in the 4th US Circuit Court of Appeals in Virginia. A decision on the case, Gavin Grimm (G.G.) v. the Gloucester County School Board, is not expected until mid-2016.

Policy coverage that might be impacted by transgender litigation against school personnel include:

- General Liability - physical bodily injury and/or mental anguish, mental injury
- Personal Injury - defamation of character, violation of privacy rights
- Wrongful Acts - tortious error, act or omission

## High school policies for transgender student athletes



## Exposure Checklist

- What are the non-discrimination laws regarding transgender students in the state?
- What is the state Department of Education's regulations or model policy regarding transgender students? Does the school adhere to these regulations or model policy?
- Has the school district developed its own policy to accommodate transgender students?
- Does the school's policy address key measures such as: bullying/harassment/discrimination, privacy/confidentiality, names/pronouns and school records, access to gender segregated activities and facilities, dress code, student transitions, training and professional development, media and community communication?
- Has the school district trained all staff members as to their responsibilities under applicable laws and their school policy regarding transgender students? Is this training documented?
- Has the school developed ways for students to anonymously or confidentially report situations involving bullying, cyberbullying, sexting and other forms of harassment? Does the school's anti-bullying policy specifically include both sexual orientation and gender identity/expression?
- Has the school developed transgender inclusion policies for their athletic programs?