Transgender and Gender Queer Students

**Any questions you have about handling transgender and/or genderqueer issues should be raised with your legal counsel**. This is a rapidly evolving area of law and public policy.

The federal law known as [Title IX](https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html) prohibits discrimination on the basis of sex. The U.S. Department of Justice takes the position that its plain text includes prohibiting discrimination on the basis of gender identity. Colorado’s state-level nondiscrimination laws expressly include sexual orientation and gender—interpreted to include transgender status—as protected categories. As a result, students have a right to be treated according to their gender identity, even where it diverges from biological sex/gender. Failing to honor that right can be unlawful discrimination.

CSI offers a [resource page](https://resources.csi.state.co.us/title-ix/) on Title IX discrimination.

1. *How should we respond to name and pronoun change requests from students?*

Not respecting students’ preferred names or pronouns can constitute unlawful discrimination.

Schools should develop a process for responding to student requests and, when applicable, should establish a plan with the student (and parent if involved in the process) for addressing the student’s desires. For general communication, schools are encouraged to use the name and gender preferred by the student. For Record Integration Tracking System (RITS) data reporting, CDE “recommends that LEAs honor the wishes of the student’s own self-identification in terms of gender of record.” Additionally, while the “RITS system relies heavily on legal documentation for recording official student names […] student information systems can be designed to have places for legally-given and preferred names.” View [additional considerations regarding data reporting](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.cde.state.co.us%2Fdatapipeline%2Fritsdocumentationguidance2020&data=04%7C01%7CJoe.Peters%40coag.gov%7Cb7d0cad6e04c42cbc62208da180bcda1%7C811650beeaf1453ea4b43e7953f7056b%7C0%7C0%7C637848736857751963%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=Ji%2Fz3MnS5WosplTP%2BnmSAOnXn6s0EeWYcKnsmdnRwUY%3D&reserved=0).

It would be important to discuss with the student the procedures of changing their name/pronouns and who can see these changes, and to help problem-solve any hiccups in technology or other legislation issues such as state testing. For example, a discussion using accessible language could sound something like this:

“On our student messaging system and in our day-to-day communication, we will call you by the name you’ve chosen. There are some times when we won’t be able to make changes like during high stakes testing, like the SAT or ACT. The College Testing Board cares more about cheating on tests than it does about honoring your name change, just like the department of education cares more about fraud when it sees names that don’t match. We’ll do our best to make sure all staff have access to the right name, and sometimes people make mistakes, or sometimes we might have new staff, or substitutes that access the wrong data. We’ll do everything we can to make it right and help us know if something happens so we can fix it.”

1. *What happens when the student uses one set of pronouns or name and the parents want to use another set of pronouns or name?*

This is a complicated subject because students have the right to ask to use their name and pronouns and parents have the rights over school records. FERPA law states that parents continue to have rights over student records. This is an important conversation to have with students who want to change their name and/or pronouns and do not want their parents to know.

An example of what this discussion could like could be:

“It’s very important to us that we use the name you have chosen, and we’ll do everything we can to help you feel celebrated here at school. Until you graduate, your parents still control your records here at school, and they might insist that your records not be changed. We’ll have as many conversations as we need to help both you and your parents feel comfortable with you attending school here.”

1. *What kind of bathrooms can students use?*

Student can use the bathroom that matches their gender identity. Schools cannot force students to use single-user bathrooms or to use bathrooms that do not match their gender identity. It is best practice to make inclusive restrooms available to all students.

1. *Are we allowed to have student affinity groups such as GSAs (Gay/Straight Alliance) or Queer One clubs?*

Yes. Students who are interested in any LGBTQ+ club have the right to form and be recognized as any other student group if the school allows extracurricular clubs.

1. *Do we need parental permission for students to join affinity groups?*

Only if the school requires all students that are participating in any extracurricular club to have parental permission to participate.

1. *Can teachers refuse to use a student’s chosen name & pronouns?*

Please discuss this with your lawyer. The courts are still working through the scope of free-speech and free-exercise accommodations available to teachers with conscience-based objections to using students’ preferred names and pronouns.

**Please note that the school has ethical as well as legal obligations**. Every national school-based mental health organization has an explicit position statement on supporting and affirming transgender and genderqueer students. This is important to consider when there are conflicts between teachers, parents, and students, as well as when deciding on the training, background, advocacy, and ethical imperatives for your school-based mental health clinicians. There is simply no room for a school-based mental health clinician to advocate against the well-being of their students.

Here are some additional questions to reflect on your practices as a school:

1. Do we have systems in place to notify staff of name/gender changes/preferences?
2. How can we include transgender youth when there are gendered activities?
3. What is our dress code policy and how will it affect transgender students?
4. What are our nondiscrimination and anti-bullying policies? Are sexual orientation, gender identity, and gender expression included in protections?
5. What is our school plan if a transgender student experiences bullying or discrimination?

Resources & References

[Know Your Rights: A [Legal] Guide for Transgender and Gender Nonconforming Students](https://www.glsen.org/sites/default/files/2020-04/070616-tgncstudentkyr_brochure.pdf) (GLSEN)

[Model School Policy Statement for Genderqueer Students](https://transequality.org/sites/default/files/GLSEN%20Trans%20Model%20Policy%202016.pdf) (Transequality)

[Affinity Groups in Schools](https://www.presidiohill.org/sites/default/files/Presidio%20Post/January%202018/Affinity%20Group%20FAQs%202018.pdf) (Eastern Educational Resource Collaborative)

[US Department of Education Policy Letter on Transgender Students-Fact Sheet](https://transequality.org/sites/default/files/ED-DCL-Fact-Sheet.pdf) (Transequality)

[Record Integration Tracking System Guidance](https://www.cde.state.co.us/datapipeline/ritsdocumentationguidance2020) (Colorado Department of Education)

[Federal Case Law on Transgender People & Discrimination](https://transequality.org/federal-case-law-on-transgender-people-and-discrimination) (Transequality)

[American School Counselors Association Position Statement on Transgender Youth](https://schoolcounselor.org/Standards-Positions/Position-Statements/ASCA-Position-Statements/The-School-Counselor-and-Transgender-Gender-noncon) (ASCA)

[School Social Work Association of America Resolution Statement](https://www.sswaa.org/advocacy-resolutionstatements) (SSWAA)

[National Association of School Psychologists Position Statements & Policies](https://www.nasponline.org/resources-and-publications/resources-and-podcasts/diversity-and-social-justice/lgbtq-youth/transgender-youth) (NASP)

[Guidance for Educators Working with Transgender and Gender Nonconforming Students](https://one-colorado.org/wp-content/uploads/2017/06/TransResourceGuide_2016.pdf) (One Colorado)