





**TO:** P-12 Education Committee

**FROM:** Cosimo Tangorra, Jr. 

**SUBJECT:** Transgender and Gender Nonconforming Students  
Guidance Document

**DATE:** April 6, 2015

**AUTHORIZATION(S):** 

## SUMMARY

### Issue for Discussion

Should the Board direct Department staff to release a Transgender and Gender Nonconforming Students Statewide Guidance Document?

### Proposed Handling

This item will come before the Regents P-12 Education Committee for discussion at the April 2015 meeting.

### Background Information

#### *Interest in the development of a New York State Policy*

In the fall of 2014, a group of advocates reached out to the Commissioner to request a meeting to discuss the importance of developing a statewide policy to better protect and support transgender and gender nonconforming students. The Deputy Commissioner for the Office of P-12 Education invited the group to meet with Department staff, which led to the development of the draft guidance document (see Attachment A). The following organizations assisted with the development of this draft: New York Civil Liberties Union; Empire Justice Center; Empire State Pride Agenda; Gay, Lesbian & Straight Education Network; Lambda Legal; New York Legal Assistance Group; Advocates For Children of New York; National Center for Lesbian Rights; Urban

Justice Center; Hetrick Martin Institute; Cornell Law School LGBT Community Clinic; and Day One.

New York State will not be the first state to address the complexities surrounding transgender and gender nonconforming youth in schools. In fact, several states have already enacted statutes and/or issued policy guidance related to this issue. For instance, California State Law specifically prohibits transgender and gender nonconforming discrimination. Connecticut, Massachusetts and Washington have discrimination laws that are inclusive of gender identity and expression, and have developed school guidance supporting transgender and gender nonconforming students. The State of Vermont's discrimination law is inclusive of gender identity and sexual orientation.

### *Transgender and Gender Nonconforming Youth Overview*

For some students, the most simple and fundamental parts of their identity—their clothing, their speech, even their names—expose them to hostility and exclusion. People who do not conform to gender-based norms often experience persistent discrimination and harassment.

Transgender youth are assigned a sex at birth that does not match their internalized sense of their gender-related identity. They have a clear and persistent identity of the opposite gender. Gender nonconforming youth do not meet the stereotypically expected norms associated with their assigned sex at birth. Gender nonconforming individuals identify as male, female, some combination of both, or neither.

Most often the person best situated to determine a student's gender identity is the individual student. In instances of very young students not yet able to advocate for themselves, this responsibility rests with parents or guardians. Gender identity is an innate, largely inflexible characteristic of each individual's personality that is generally established by age four. The age at which individuals come to understand and express their gender identity may vary based on individual and familial social development.<sup>1</sup>

Nationally and in New York State, transgender and gender nonconforming students are targeted with physical violence and experience a hostile school environment at a higher rate than their lesbian, gay, and bisexual peers.<sup>2</sup> The New York State Transgender and Gender Nonconforming Students Guidance Document will help ensure that a safe and supportive school environment is available for all students. It is intended to be a tool for school administrators for the creation of an inclusive culture

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<sup>1</sup> See Gerald P. Mallon, "Practice with Transgendered Children," in *Social Services with Transgendered Youth*, 49, 55-58 (Gerald P. Mallon ed., 1999). See also Stephanie Brill & Rachel Pepper, "Developmental Stages and the Transgender Child," in *The Transgender Child*, 61-64.

<sup>2</sup> GLSEN (Gay, Lesbian, Straight Education Network), *School Climate in New York (State Snapshot)*, 2 (2013), available at <http://glsen.org/learn/research/local/state-snapshots> (finding the majority of New York K-12 students surveyed reported being verbally harassed based on their gender identity/expression and/or sexual orientation).

where transgender and gender nonconforming students are empowered to learn and to succeed.

Attachment A is the draft New York State Transgender and Gender Nonconforming Students Guidance Document prepared by the Department with assistance from the field. It is intended to be used by school boards and administrators in the development of school procedures and district policies related to transgender and gender nonconforming students. The Guidance Document includes relevant state and federal law and definitions related to transgender and gender nonconforming students.

### **Next Steps**

The Board will review and discuss the draft New York State Transgender and Gender Nonconforming Students Guidance Document at the April 2015 meeting. Feedback from the Board will be incorporated into a final guidance document, which the Department will release with the permission of the Board.

## Attachment A

# **New York State Education Department: Guidance to School Districts for Creating a Safe and Supportive School Environment For Transgender and Gender Nonconforming Students**

### **Introduction**

The New York State Education Department (NYSED) is committed to providing all public school students, including transgender and gender nonconforming (“GNC”) students, with an environment free from discrimination and harassment, to fostering civility in public schools, and to ensuring that every student has equal access to educational programs and activities. The Dignity for All Students Act (“DASA”) illustrates the State’s commitment to ensuring that all students are educated in a safe and supportive school environment.<sup>3</sup>

New York State Education Law § 3201-a prohibits discrimination based on sex with respect to admission into or inclusion in courses of instruction and athletic teams in public schools.<sup>4</sup> Furthermore, the State’s Dignity for All Students Act (DASA) specifically provides that “no student shall be subjected to harassment or bullying by employees or students on school property or at a school function; nor shall any student be subjected to discrimination based on a person’s actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (including gender identity or expression), or sex by school employees or students on school property or at a school function.”<sup>5</sup> DASA includes gender as a protected category and defines gender as “a person’s actual or perceived sex and includes a person’s gender identity or expression.”<sup>6</sup>

The purpose of this guidance is to assist school districts to continue fostering an educational environment for all students that is safe and free from discrimination—regardless of sex, gender identity, or expression—and to facilitate compliance with local, state and federal laws concerning bullying, harassment, discrimination, and student privacy. All students need a safe and supportive school environment to progress academically and developmentally. Administrators, faculty, staff, and students each play an important part in creating and sustaining that environment. This guidance document is intended as a resource guide to help school and district administrators continue to take proactive steps to create a culture in which transgender and GNC students feel safe, supported, and fully included, and to meet each school’s obligation to provide all students with an environment free from harassment, bullying and discrimination.

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<sup>3</sup> N.Y. EDUC. LAW ART 2.

<sup>4</sup> N.Y. EDUC. LAW § 3201-a. Some states have adopted legislation providing explicit protections for transgender students in public schools. *See e.g.* CAL. EDUC. CODE § 221.5, MASS. GEN. L. CH. 76, § 5. *See also* NEW YORK CITY, N.Y. ADMIN. CODE §§ 8-101 TO 8-1103, BINGHAMTON, N.Y. CODE PT. I, §§ 45, 45-A.

<sup>5</sup> N.Y. EDUC. LAW § 11(7); 8 NYCRR § 100.2[1][2].

<sup>6</sup> N.Y. EDUC. LAW § 11(6). For an extensive resource on the implementation of DASA please see the New York State Education Department (NYSED), *The Dignity Act, A Resource and Promising Practices Guide for School Administrators & Faculty* available at <http://www.p12.nysed.gov/dignityact/resourceguide.html>

This guidance is intended to be complimentary to the existing comprehensive resources made available by NYSED relating to the implementation of DASA.<sup>7</sup>

In order to make this document as helpful as possible, illustrative examples that highlight frequently-asked questions appear throughout in italics. These scenarios and remedies are based on real-life examples from students and schools, and are not meant to be exhaustive of all potential scenarios or remedies appropriate for each school community.

## **Definitions**

Understanding the common terminology associated with gender identity is important to providing a safe and supportive school environment for students. The following terms appear in this document and we present the following definitions used by research, advocacy and governmental organizations are defined to assist in understanding the guidance presented. Although these are the most commonly used terms, students may prefer other terms to describe their gender identity, appearance, or behavior. Terminology and language describing transgender and GNC individuals can differ based on region, language, race or ethnicity, age, culture, and many other factors. Generally speaking, we recommend that school staff and educators inquire which terms students prefer; a good general guideline is to employ those terms which the students use to describe themselves.

*Assigned Sex at Birth:* the sex designation, usually “male” or “female,” assigned to a person when they are born.<sup>8</sup>

*Gender expression:* the manner in which a person represents or expresses gender to others, often through behavior, clothing, hairstyles, activities, voice, or mannerisms.<sup>9</sup>

*Gender identity:* a person’s gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person’s physiology or assigned sex at birth.<sup>10</sup>

*Gender nonconforming (GNC):* a term used to describe people whose gender expression differs from stereotypic expectations. The terms “gender variant” or “gender atypical” are also used. Gender nonconforming individuals may identify as male, female, some combination of both, or neither.<sup>11</sup>

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<sup>7</sup> N.Y. EDUC. LAW ART. 2.

<sup>8</sup> See GLAAD Media Reference Guide – Transgender Issues, *available at* <http://www.glaad.org/reference/transgender>, Trans Student Educational Resources (TSER) – Definitions, *available at* <http://transstudent.org/definitions>; *see also* Resolution Agreement Between Arcadia Unified Sch. Dist., the U.S. Dept. of Educ., and the U.S. Dept. of Justice, OCR Case No. 09-12-1020, DOJ Case No. 169-12C-70 (July 24, 2013).

<sup>9</sup> GLSEN Model District Policy on Transgender and Gender Nonconforming Students, *available at* [http://www.glsen.org/sites/default/files/Trans\\_ModelPolicy\\_2014.pdf](http://www.glsen.org/sites/default/files/Trans_ModelPolicy_2014.pdf); Massachusetts Dep’t of Educ. Guidance, *available at* <http://www.doe.mass.edu/ssce/GenderIdentity.pdf>.

<sup>10</sup> Mass. Gen. Laws ch. 4, § 7; Massachusetts Dep’t of Educ. Guidance.

<sup>11</sup> Massachusetts Dep’t of Educ. Guidance; *see also* GLSEN Model District Policy on Transgender and Gender Nonconforming Students (“A term for people whose gender expression differs from stereotypical expectations...”).

*Sexual Orientation:* a person’s emotional and sexual attraction to other people based on the gender of the other person. Sexual orientation is not the same as gender identity. Not all transgender youth identify as gay, lesbian or bisexual, and not all gay, lesbian and bisexual youth display gender-nonconforming characteristics.<sup>12</sup>

*Transgender:* an adjective describing a person whose sex assigned at birth does not correspond to their gender identity.<sup>13</sup>

*Transition:* the process in which a person goes from living and identifying as one gender to living and identifying as another.<sup>14</sup>

#### Understanding School Climate and Transgender Students

Research indicates that transgender and GNC students are targeted with physical violence and experience a hostile school environment at an even higher rate than their Lesbian, Gay, and Bisexual peers, both nationally and in New York.<sup>15</sup> In one 2011 national survey, 75.4% of transgender students reported having been verbally harassed in the previous year, 32.1% physically harassed, and 16.8% physically assaulted.<sup>16</sup> These high rates of bullying correspond to adverse health and educational consequences. A different national survey, also conducted in 2011, found that 51% of respondents who were harassed or bullied in school reported attempting suicide, compared to 1.6% of the general population.<sup>17</sup> Students also suffered harassment so severe that it led almost one-sixth (15%) to leave a school in K-12 settings or in higher education.<sup>18</sup> Moreover, LGBTQ students who are bullied and harassed are more likely to miss days of school, feel excluded from the school community, and have lower academic achievement and stunted educational aspirations.<sup>19</sup>

Both DASA, including its implementing regulations and guidance, and this guidance document reflect the reality that transgender and GNC students are enrolled in New York public schools. These students, because of the possibility of misunderstanding and lack of knowledge about their lives, may be at a higher risk for peer ostracism, victimization, and bullying. Educators play an

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<sup>12</sup> California School Board Association, *Policy Brief: Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students*, 1 (2014), available at <http://www.csba.org/~media/E68E16A652D34EADA2BFD9668B1C8F.ashx>.

<sup>13</sup> See GLSEN Model District Policy on Transgender and Gender Nonconforming Students; Massachusetts Dep’t of Educ. Guidance; Trans Student Educational Resources – Definitions; GLAAD Media Reference Guide – Transgender Issues.

<sup>14</sup> GLSEN Model District Policy on Transgender and Gender Nonconforming Students.

<sup>15</sup> GLSEN (Gay, Lesbian, Straight Education Network), *School Climate in New York (State Snapshot)*, 2 (2013), available at <http://glsen.org/learn/research/local/state-snapshots> (finding the majority of New York K-12 students surveyed reported being verbally harassed based on their gender identity/expression and/or sexual orientation).

<sup>16</sup> GLSEN, *2011 National School Climate Survey*, available at <http://glsen.org/sites/default/files/2011%20National%20School%20Climate%20Survey%20Full%20Report.pdf> [hereinafter “National School Climate Survey”].

<sup>17</sup> Jaime M. Grant, et al., National Center for Transgender Equality and National Gay and Lesbian Task Force, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, 3, 45 (2011), [http://www.thetaskforce.org/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf)

<sup>18</sup> *Id.* at 3.

<sup>19</sup> *National School Climate Survey*, *supra* note 7, at xv, 4, 21, 25-26, 40-41, 58, 61, 64-65, 122.

essential role in advocating for the well-being of students and creating a supportive school culture.

### **Understanding Gender Identity**

Transgender youth are those whose assigned birth sex does not match their internalized sense of their gender (their “gender-related identity”), and GNC youth are those whose gender-related identity does not meet the stereotypically expected norms associated with their assigned sex at birth.<sup>20</sup> A transgender boy, for example, is a youth who was assigned the sex of female at birth but has a clear and persistent identity as male.<sup>21</sup> A transgender girl is a youth who was assigned the sex of male at birth but has a clear and persistent identity as female.<sup>22</sup> GNC youth range in the ways in which they identify as male, female, some combination of both, or neither.<sup>23</sup>

In many cases, the person best situated to determine a student’s gender identity is the individual student or, in the case of very young students not yet able to advocate for themselves, the student’s parent or guardian.<sup>24</sup> One’s gender identity is an innate, largely inflexible characteristic of each individual’s personality that is generally established by age four, although the age at which individuals come to understand and express their gender identity may vary based on each person’s social and familial development.<sup>25</sup>

Schools should work closely with the student and family in devising an appropriate plan regarding the confidentiality of the student’s transgender status that works for both the student and the school. Privacy considerations may also vary with the age of the student. In some cases, transgender students may feel more supported and safe if other students are aware that they are transgender. In these cases, school staff should work closely with the student, families, and other staff members on a plan to inform and educate the student’s peers. It may also be appropriate to engage with external resources to assist with educational efforts. However, in other cases, transgender students do not want their parents to know about their transgender status. These situations must be addressed on a case-by-case basis and will require schools to balance the goal of supporting the student with the requirement that parents be kept informed about their children.

#### **EXAMPLE:**

*The parents of a pre-school-age child who was assigned “female” at birth noted throughout the child’s early years that their child identified as a boy. For as long as the parents could remember, the child preferred to play with boys rather than girls, wanted a short haircut, rejected wearing any clothing that the child identified as “something a girl would wear,” and ignored anyone who called him by his stereotypically feminine name.*

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<sup>20</sup> See GLSEN Model District Policy on Transgender and Gender Nonconforming Students; Massachusetts Dep’t of Educ. Guidance; Trans Student Educational Resources – Definitions; GLAAD Media Reference Guide – Transgender Issues.

<sup>21</sup> See *id.*

<sup>22</sup> See *id.*

<sup>23</sup> See *id.*

<sup>24</sup> When used in this document, the term “parent” refers to parent as well as legal guardian.

<sup>25</sup> See Gerald P. Mallon, “Practice with Transgendered Children,” in *Social Services with Transgendered Youth*, 49, 55-58 (Gerald P. Mallon ed., 1999). See also Stephanie Brill & Rachel Pepper, “Developmental Stages and the Transgender Child,” in *The Transgender Child*, 61-64.

*When it was time for the child to enter kindergarten, the child said to his parents, “You have to tell them when I go to kindergarten that I’m a boy.”*

It is recommended that schools accept a student’s assertion of his/her/their own gender identity. In most situations, determining a student’s gender identity is simple. A student who says she is a girl and wishes to be regarded that way throughout the school day should be respected and treated like a girl. So too with a student who says he is a boy and wishes to be regarded that way throughout the school day. Such a student should be respected and treated like a boy.

Many transgender people experience discrimination and some experience violence due to their status. Some environments may feel safe and inclusive, and others less so, challenging a person’s ability to live consistently with one gender identity in all aspects of life. For example, it is possible that a student assigned “male” at birth, with a female gender identity, who lives as a girl, does not express her female gender identity all the time.

**EXAMPLE:**

*In one case, a student agreed to present as a boy when visiting relatives until the student’s parents could explain the student’s transgender identity to them. The fact that the student did not exclusively assert her female identity did not alter the fact that she had a female gender identity.*

A student’s asserted gender identity may be confirmed by a statement from the student; or it may be confirmed through a letter from an adult familiar with the student’s situation, such as a parent, health care provider, school staff member familiar with the student (a teacher, guidance counselor, or school psychologist, among others), or other family members or friends. A letter from a social worker, doctor, nurse practitioner, or other health care provider stating that a student is being provided medical care or treatment relating to her/his/their gender identity is another form of confirmation of an asserted gender identity. Similarly, a letter from a clergy member, coach, family friend, or relative stating that the student has asked to be treated consistent with her/his/their asserted gender identity, or photographs at public events or family gatherings are other potential forms of confirmation. Letters speaking to the student’s gender identity, however, should not be the exclusive form upon which the school or student should rely. Instead, these examples are intended to be illustrative rather than comprehensive and exhaustive and demonstrate how a school district can provide flexibility.

Transgender and GNC students form a diverse community, and they may differ in how they present, including differences in factors like their comfort level with being known as transgender or GNC, their transition status, their age, and their gender expression.

**EXAMPLE:**

*In one middle school, a student assigned “male” at birth explained to her guidance counselor that she was a transgender girl who expressed her female gender identity only at home. The stress associated with having to hide her female gender identity at school was having a negative impact on her mental health, as well as on her academic performance. The student and her parents asked if it would be okay if she expressed her female gender identity at school. The guidance counselor responded favorably to the*



*request. The fact that the student presented no documentation to support her gender identity was not a concern since the school had no reason to believe the request was based on anything other than a sincerely held belief that she had a female gender identity.*

## **Gender Transition**

Many, though not all, transgender youth undergo the experience of gender transition. The term “gender transition” describes the experience by which a person goes from living and identifying as one gender to living and identifying as another.<sup>26</sup> For most youth, and for all young children, the experience of gender transition involves no medical intervention.<sup>27</sup> Rather, most transgender youth will undergo gender transition through a process commonly referred to as “social transition,” whereby they begin to live and identify as the gender consistent with their gender-related identity.<sup>28</sup> Some transgender youth who are close to reaching puberty, or after commencing puberty, may complement social transition with medical intervention that may include hormone suppressants, cross-gender hormone therapy, and, for a small number of young people, a range of gender-confirming surgeries.<sup>29</sup> An individual’s decision about whether and how to undergo gender transition is personal and it will depend on the unique circumstances of each student. There is no threshold medical or mental health diagnosis or treatment requirement that any student must meet in order to have his/her/their gender identity recognized and respected by a school.<sup>30</sup>

Some transgender and GNC students have not talked to their families about their gender identity for reasons including safety concerns or a lack of acceptance.<sup>31</sup> School personnel should speak with the student first before discussing a student’s gender nonconformity or transgender status with the student’s parent or guardian. For the same reasons, school personnel should discuss with the student how the school should refer to the student, e.g., appropriate pronoun use, in written communication to the student’s parent or guardian.<sup>32</sup>

## **Common Areas of Concern Relating to Transgender Students**

### **1: Names and Pronouns**

The matter of determining which name and pronoun to use in referring to a transgender student may be one of the first that schools face in their efforts to create an environment in which that

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<sup>26</sup> GLSEN Model District Policy on Transgender and Gender Nonconforming Students.

<sup>27</sup> GLSEN Model District Policy on Transgender and Gender Nonconforming Students, at 2 (*Medical Considerations and Identity Documents*).

<sup>28</sup> See, e.g., World Professional Association for Transgender Health (WPATH), Standards of Care 7, at 17 (“Social Transition in Early Childhood”), available at [http://www.wpath.org/uploaded\\_files/140/files/Standards%20of%20Care,%20V7%20Full%20Book.pdf](http://www.wpath.org/uploaded_files/140/files/Standards%20of%20Care,%20V7%20Full%20Book.pdf).

<sup>29</sup> See *id.* at 18-21 (“Physical Interventions for Adolescents”).

<sup>30</sup> See *id.*; see also GLSEN Model District Policy on Transgender and Gender Nonconforming Students, at 2 (*Medical Considerations and Identity Documents*).

<sup>31</sup> Jaime M. Grant, et al., National Center for Transgender Equality and National Gay and Lesbian Task Force, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (2011), at 88 (53% of transgender people surveyed had experienced family rejection, and 19% experienced domestic violence by a family member because they were transgender), [http://www.thetaskforce.org/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf).

<sup>32</sup> See *id.*

student feels safe and supported. Transgender students often choose to change the name assigned to them at birth to a name that is associated with their gender identity. As with most other issues involved with creating a safe and supportive environment for transgender students, the best course may be to engage the student, and in the case of a younger student, the parent, with respect to name and pronoun use, and agree on a plan to initiate that name and pronoun use within the school. The plan also could include when and how this is communicated to students and their parents.

In general, New York law recognizes common law name changes<sup>33</sup> and provides that an adult may adopt a name that is different from the name that appears on his/her/their birth certificate provided the change of name is done for an honest reason, with no fraudulent intent.<sup>34</sup> However, if an individual wishes to formalize a name change on official documents, the change must be made by petitioning the court.<sup>35</sup> While a name change for an adult is generally granted, absent fraudulent intent, in the case of a minor seeking to change his/her name, the court will only consent upon a determination by the court that change is in the best interest of the child.<sup>36</sup>

With respect to a transgender student's birth name versus a chosen name, if the student has been previously known at school or in school records by his or her birth name, the school district may consider directing school personnel to use the student's chosen name. While it is recommended that schools are respectful of a student's expressed choice in name and pronoun usage on a day to day basis, local school district policies govern the creation and maintenance of official school records. In addition to names and pronouns, schools may face challenges relating to records that identify a student's gender. Therefore, districts should consider changes to official school records in consultation with the school district's attorney.

**EXAMPLE:**

*In one situation where a transgender girl was entering high school, she and her parent asked the principal to inform her teachers that even though her school records indicate that her name is John, she goes by the name Jane and uses female pronouns. With permission from Jane, the school principal sent the following memorandum to the student's classroom teachers: "The student John Smith wishes to be referred to by the name Jane Smith, a name that is consistent with the student's female gender identity. Please be certain to use the student's preferred name in all contexts, as well as the feminine pronouns. It is my expectation that students will similarly refer to the student by her chosen name and preferred pronouns. Your role modeling will help make a smooth transition for all concerned. Continued, repeated, and intentional misuse of names and pronouns may erode the educational environment for Jane. If you need any assistance to*

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<sup>33</sup> *In re E.P.L.* 891 N.Y.S.2d 619 (2009) ("An adult does not need permission of the court to change one's name.") See also *Application of Halligan*, 361 N.Y.S.2d 458, 460 (4th Dep't 1974) ("[A]n individual possesses a broad right to assume a new name at common law and in most instances denial of the application will accomplish little except delay the change and add to the confusion of records until a new name is established by usage").

<sup>34</sup> *Id.*

<sup>35</sup> N.Y. CIVIL RIGHTS LAW § 60 et. seq.

<sup>36</sup> *Matter of Conde*, 196 Misc.2d 785 (2000) ("Although an adult has the right to liberally change his or her name, where a minor is involved, courts stand *in loco parentis* to the minor. The court is obligated to protect the minor's best interest.").

*make sure that Jane Smith experiences a safe, nondiscriminatory classroom atmosphere, please contact me.”*

## **2: Privacy, Confidentiality, and Student Records**

New York State Education Law § 2-d prohibits the unauthorized release of a student’s personally identifiable information, including but not limited to the student’s name, indirect identifiers, and other information that alone or in combination is linked or linkable to a specific student that would allow a reasonable person in the school community to identify the student.<sup>37</sup> The Family Educational Rights and Privacy Act (FERPA)<sup>38</sup> also protects the privacy of student educational records and places restrictions on the release of students’ personally identifiable information. For specific inquiries regarding what constitutes the unauthorized release of a student’s personally identifiable information, school districts should consult their attorneys. For more information on student privacy, in general, see NYSED’s Parents’ Bill of Rights for Data Privacy and Security at <http://www.p12.nysed.gov/docs/parents-bill-of-rights.pdf>.

## **3: Gender-Based Activities, Rules, Policies, and Practices**

Gender-based policies, rules, and practices can have the effect of marginalizing, stigmatizing, and excluding students, whether they are transgender or GNC or not. For these reasons, school districts should consult with their attorneys to review such policies, rules and practices.

School districts, as well as students and their families, may find the use of restrooms, changing facilities, and participation in extracurricular activities to be among the more challenging issues in this area. As emphasized in other sections of this guidance, these issues should be resolved through dialogue with students and parents and through school and district leadership in creating a safe and supportive learning environment for all students.

It is recommended that the principal, student and, parent address the student’s access to restrooms, locker rooms, changing facilities, and participation in extra-curricular activities. Each situation should be reviewed and addressed based on the particular circumstances of the student, the school, and the school’s facilities. Examples of ways in which such access may be addressed include, but are not limited to providing the student with access to a single “unisex” restroom or the nurse’s or other staff restroom.

### **EXAMPLE:**

*One school that previously had blue graduation gowns for boys and white ones for girls switched to blue gowns for all graduates. The school also changed its gender-based dress code for the National Honor Society ceremony, which had required girls to wear dresses.*

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<sup>37</sup> N.Y. EDUC. LAW § 2-d.

<sup>38</sup> 34 C.F.R. Part 99

**EXAMPLE:**

*In one classroom, a teacher regularly directed the boys and girls line up separately to leave the classroom to go to lunch, the gymnasium, restrooms, or recess. The teacher changed this practice in favor of a non-gendered alternative, such as having students line up in the order of their birthdays, or alphabetically by name, or in the order in which they are sitting.*<sup>39</sup>

**Resources, Education and Training for School Districts and Communities**

The New York State Education Department continues to be committed to providing all public school students with an environment free from discrimination and harassment, to fostering civility in public schools, and to ensuring that every student has equal access to educational programs and activities. Schools should refer to existing New York State Education Department Guidance for expanded resources for fostering an inclusive school community.<sup>40</sup>

As with other efforts to promote a positive school culture, it is recommended that student leaders and school personnel, particularly school administrators, become familiar with applicable law, regulations, guidance, and related resources, and that they communicate and model respect for the gender identity of all students. We also encourage schools to continue to have an open dialogue with their school community when working together to foster an inclusive school environment.

This guidance cannot anticipate every situation in which questions may arise relating to transgender and gender non-conforming students. Therefore, the specific needs of each transgender or GNC student should be assessed and addressed on a case-by-case basis. NYSED will continue to provide assistance, support and resources as we work together to create a safe and supportive school environment for all students. For further information or questions about the content of this guidance, please contact the Student Support Services Office at (518) 486-6090.

For additional information and resources regarding transgender students in schools please see below for a small sample of available government and advocacy resources:

New York State Education Department:

The Dignity for All Students Act (DASA) seeks to provide the State’s public elementary and secondary school students with a safe and supportive environment free from discrimination, intimidation, taunting, harassment, and bullying on school property, a school bus and/or at a school function.

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<sup>39</sup> For additional resources for educators *see* Human Rights Campaign Foundation: Welcoming Schools, *Gender and Children: A Place to Begin for Educators*, (2013), available at <http://hrc-assets.s3-website-us-east-1.amazonaws.com/welcoming-schools/documents/Welcoming-Schools-Gender-Children-Place-to-Begin1.pdf>.

<sup>40</sup> For an extensive resource on the implementation of DASA and information on creating an inclusive school community and fostering sensitivity to the school experience of lesbian, gay, bisexual, transgender, queer and questioning (LGBTQ) students, please see the New York State Education Department (NYSED), *The Dignity Act, A Resource and Promising Practices Guide for School Administrators & Faculty, Creating an Inclusive School Community: Sensitivity to the Experience of Specific Student Populations: LGBTQ Children*, Section II (Mar. 11, 2014), available at <http://www.p12.nysed.gov/dignityact/rgsection2.html> (defining LGBTQ as “individuals who self-identify as either lesbian, gay, bisexual, transgender, or questioning”).

<http://www.p12.nysed.gov/dignityact/>

New York City Department of Education:

Pursuant to the New York City Human Rights Law, the New York City Department of Education has issued guidance regarding transgender students within the jurisdiction of NYC DOE. While it does not apply statewide, it can be used as a reference as to what one New York district in has adopted regarding accommodations for transgender students.

<http://schools.nyc.gov/RulesPolicies/TransgenderStudentGuidelines/default.htm>  
Examples of Guidance and Related Materials from State's With Specific Transgender Student Non-Discrimination Statutes:

Washington:

Prohibiting Discrimination in Washington Public Schools

<http://www.k12.wa.us/Equity/pubdocs/ProhibitingDiscriminationInPublicSchools.pdf>

Connecticut:

[http://www.sde.ct.gov/sde/lib/sde/pdf/equity/title\\_ix/guidelines\\_for\\_schools\\_on\\_gender\\_identity\\_and\\_expression2012oct4.pdf](http://www.sde.ct.gov/sde/lib/sde/pdf/equity/title_ix/guidelines_for_schools_on_gender_identity_and_expression2012oct4.pdf)

Massachusetts:

The Massachusetts Department of Elementary and Secondary Education,

<http://www.doe.mass.edu/ssce/GenderIdentity.pdf>

CA: Arcadia USD, OCR, and DOJ Resolution Agreement: July, 2013

[http://www.nclrights.org/wp-content/uploads/2013/09/Arcadia\\_Resolution\\_agreement\\_07.24.2013.pdf](http://www.nclrights.org/wp-content/uploads/2013/09/Arcadia_Resolution_agreement_07.24.2013.pdf)

CA: Notification Letter to Arcadia USD from OCR/DOJ:

<http://www.justice.gov/crt/about/edu/documents/arcadialetter.pdf>