

Transgender Students in Iowa Schools: FAQs on the Law

On May 13, 2016, the United States Departments of Education and Justice released a joint guidance document clarifying their interpretation of federal law on gender identity discrimination, including information on access to facilities, privacy rights, education records, and sex-segregated athletics. The guidance stated, “All students, including transgender students and students who do not conform to sex stereotypes, are protected from sex-based discrimination under Title IX.”¹ This guidance created a lot of media attention nationally and has prompted discussion among students, families, teachers, administrators, school boards, and community members who seek to understand what this guidance means for individual students, schools, and communities.

IASB has received a number of questions about legal requirements for serving transgender students and all students in schools. IASB encourages school boards to use this *Special Report* as a resource to help inform conversations and support the work of the board as the board seeks to provide a safe environment for all students. This *Special Report* is not intended to provide answers to every question that may emerge on this topic, nor is it intended to provide one size fits all answers to what are complex social and legal issues. As school board members and administrators know, the needs and situations of individual students vary tremendously. Instead, this *Special Report* seeks to assemble in one document, information on Iowa and federal law regarding transgender students.

Background on Federal and State Law

While there are a number of federal and state laws that have implications for transgender and gender nonconforming students, four laws are prominent in this discussion and will be referenced throughout this *Special Report*.

- (1) **Title IX of the Educational Amendments of 1972 (“Title IX”):** Title IX is a federal law. This law and its implementing regulations prohibit discrimination based on sex in educational programs and activities operated by recipients of federal funds, which includes school districts.² According to the joint guidance issued by the Departments of Education and Justice on May 13, 2016, this prohibition against discrimination based on sex includes discrimination based on a student’s gender identity, including discrimination based on a student’s transgender status.³ According to the joint guidance, a school must respect and treat students consistent with their gender identity.

¹ Letter from Catherine E. Lhamon, U.S. Dep’t of Educ. Ass’t Sec’y for Civil Rights and Vanita Gupta, U.S. Dep’t of Justice Principal Deputy Ass’t Attorney General for Civil Rights to Colleagues (May 13, 2016), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>.

² 20 U.S.C. § 1681 (2014).

³ Letter from Catherine E. Lhamon, U.S. Dep’t of Educ. Ass’t Sec’y for Civil Rights and Vanita Gupta, U.S. Dep’t of Justice Principal Deputy Ass’t Attorney General for Civil Rights to Colleagues (May 13, 2016), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>.

- (2) **Family Educational Rights and Privacy Act (FERPA):** FERPA is a federal law that protects the privacy of student education records.⁴ This law applies to all schools that receive funds under the United States Department of Education’s applicable programs.⁵ According to the joint guidance issued by the Departments of Education and Justice on May 13, 2016, nonconsensual disclosure of personally identifiable information, such as a student’s sexual orientation, or sex assigned at birth, may violate FERPA.⁶
- (3) **Iowa Civil Rights Act:** The Iowa Civil Rights Act provides protection against varying forms of discrimination, including gender identity, which has been a protected class under the Iowa Civil Rights Act since 2007. This state law provides, “It is unfair or discriminatory practice for any educational institution to discriminate on the basis of race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability in any program or activity.”⁷
- (4) **Iowa Safe Schools Law:** The Iowa Safe Schools Law requires schools to establish policies prohibiting bullying and harassment against students based on actual or perceived traits or characteristics, including sex, sexual orientation, and gender identity, among other traits.⁸

State and federal laws require that Iowa schools refrain from and protect students from discrimination based on their sex, sexual orientation, and gender identity. This includes transgender status. Students who sincerely and consistently identify as male or female must be treated at school consistent with that identification, regardless of their sex assigned at birth. Any different treatment will be treated as sex discrimination under federal law and gender identity discrimination under state law.

All students, including transgender students, should be protected from bullying or harassment by others based on sex, sexual orientation, or gender identity. All students’ privacy and dignity should be respected at school and school activities. Any student who wishes to have additional privacy or security when using school facilities or when involved in school activities should be accommodated to the maximum extent possible.

Terminology

There are a number of terms that help in understanding this *Special Report* and conversations regarding transgender students. However, it is important to recognize that terminology may vary or change over time and specific terms should reflect individual needs and not be used when they are inappropriate to specific situations.

Cisgender:

Individuals whose gender identity is the same as their sex assigned at birth.

Gender Expression:

⁴ 20 U.S.C. § 1232g (2014); 34 C.F.R. § 99 (2016).

⁵ *Id.*

⁶ Letter from Catherine E. Lhamon, U.S. Dep’t of Educ. Ass’t Sec’y for Civil Rights and Vanita Gupta, U.S. Dep’t of Justice Principal Deputy Ass’t Attorney General for Civil Rights to Colleagues (May 13, 2016), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>.

⁷ IOWA CODE § 216.9 (2016).

⁸ IOWA CODE § 280.28 (2016).

The manner in which an individual expresses gender to others, which may include clothing, hairstyle, or activities.

Gender Identity:

An individual's own sense of gender. A person's gender identity may be different from or the same as the person's sex assigned at birth.⁹

Gender Nonconforming:

Persons with behaviors, appearances, or identities that are incongruent to those culturally assigned to their birth sex.¹⁰

Sex Assigned at Birth:

The sex designation recorded on an infant's birth certificate should such a record be provided at birth.¹¹

Transgender:

Those individuals whose gender identity is different from the sex they were assigned at birth.¹²

Transgender female:

An individual who identifies as female but was assigned the sex of male at birth.¹³

Transgender male:

An individual who identifies as male but was assigned the sex of female at birth.¹⁴

Transition:

The process by which a transgender individual begins to no longer live according one gender and instead lives according to the gender with which they identify. Transition may include social transition (e.g., dress, outward appearance, names) and/or medical transition (e.g., surgeries, hormone therapy).

Frequently Asked Questions & Answers

Q: What policies does an Iowa school district need to have regarding transgender students?

A: All Iowa school districts must currently have a nondiscrimination policy. This policy, in accordance with the Iowa Civil Rights Act¹⁵ and state accreditation standards¹⁶ must prohibit

⁹ Letter from Catherine E. Lhamon, U.S. Dep't of Educ. Ass't Sec'y for Civil Rights and Vanita Gupta, U.S. Dep't of Justice Principal Deputy Ass't Attorney General for Civil Rights to Colleagues (May 13, 2016), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>; See also, IOWA CODE § 216.2 (defining "Gender Identity" as "a gender-related identity of a person, regardless of the person's assigned sex at birth").

¹⁰ Am. Psychological Ass'n, *Answers to Your Questions About Transgender People, Gender Identity, and Gender Expression* (2011), available at <http://www.apa.org/topics/lgbt/transgender.aspx>.

¹¹ Letter from Catherine E. Lhamon, U.S. Dep't of Educ. Ass't Sec'y for Civil Rights and Vanita Gupta, U.S. Dep't of Justice Principal Deputy Ass't Attorney General for Civil Rights to Colleagues (May 13, 2016), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ IOWA CODE § 216.9 (2016).

¹⁶ IOWA ADMIN. CODE r. 281-12.1

discrimination based on a number of protected classes, including gender identity. All school districts also must currently have an anti-bullying and anti-harassment policy. This policy, in accordance with the Iowa Safe Schools Law,¹⁷ prohibits mistreatment of students based on a number of protected classes, including gender identity.

School districts do not necessarily need a separate policy prohibiting discrimination based on gender identity, nor do they need a separate policy that addresses many of the issues in this *Special Report* (e.g., facility use, pronoun preference). However, nothing prohibits a board from adopting such a policy, if the board believes adopting policy is in the best interests of the local school district. Iowa board members may hear about districts in other states adopting or refusing to adopt transgender policies. Iowa board members should beware that many of these policies may be emerging from states that have different laws or states that do not have laws protecting gender identity.

Q: How should school boards respond to community concerns about district policies and procedures for accommodating transgender students?

A: School leaders must ensure compliance with the law, while also working with community members who have questions or concerns about what is in the best interests of their students. If questions emerge in your community, IASB encourages engagement and conversation. School leaders should share their policies on nondiscrimination and also listen to stakeholder concerns. All parties should seek to identify practical ways to reflect community concerns and values, while ensuring equal access to education in a safe environment. Communities can often find their own solutions that honor and respect the concerns of students and families, such as increasing access to individual-user facilities open to any student, which may allow all students greater privacy.

Additionally, it is important to be mindful of the privacy rights of individual students when responding to questions or concerns. FERPA and other privacy laws limit the ways in which school boards may respond to community questions regarding individual students and specific situations. No individual student's sexual orientation or gender identity should be disclosed to third persons by school officials without consent and approval of the student and student's family.

Q: How should we notify employees about school district expectations for cisgender and transgender students?

A: As with all nondiscrimination policies and information, it is imperative that employees know the school district policies and expectations. This can occur through notifications in staff and student/family handbooks or through training opportunities. Take a proactive approach to addressing concerns. This supports a school's goal of creating an inclusive educational environment where all students are respected and kept safe, regardless of their gender identity or transgender status, while reducing exposure to legal liability.¹⁸

¹⁷ IOWA CODE § 280.28 (2016).

¹⁸ National School Boards Association, *2016 Transgender Students in Schools*, available at https://cdn-files.nsba.org/s3fs-public/reports/10711-4559-Transgender_Guide_V3_Final.pdf?homSpe0l5cqEQ9P66Rov2zwjrQGRixPa.

Q: What process should the school district use if students believe they have been discriminated against based on their gender identity?

A: The school district should use the process outlined in school board policy for either (1) addressing complaints of discrimination or (2) addressing complaints of bullying and harassment, or (3) both. It is important to recognize that some discriminatory treatment or other conduct that falls under a school's anti-bullying/anti-harassment policy also may trigger responsibilities under one or more of the federal and state antidiscrimination laws.¹⁹

Q: What name or pronoun should school district staff use to refer to a transgender student?

A: As with all students, staff should use the name preferred by the student and family. With a transgender student, staff should also use the personal pronoun (e.g. he or she) preferred by the student and family. The student is not required to have his or her name legally changed for the student to request use of a preferred name. The student's preferred name should be used on class rosters, for class activities, and/or other similar activities. However, a student's legal name must be indicated on the student's official records.²⁰

Q: How should a school district address transgender student use of restrooms and locker rooms?

A: School districts should work with students and families on a case-by-case basis to help resolve issues that respect the privacy and dignity of all students. State and federal laws allow schools to provide separate restroom and locker room facilities on the basis of sex, but state and federal agencies have directed that local school districts must allow transgender students access to the facilities that are consistent with their gender identity.²¹ A school may not require any student, including a transgender student, to use facilities inconsistent with the student's gender identity, nor may the district require transgender students to use individual user facilities when other students are not required to do so.²² A school may, however, make individual-user options available to all students who voluntarily seek additional privacy or security.²³ Remember, a student cannot be forced to use a bathroom or locker room designated by sex for which the individual does not identify.²⁴

¹⁹ Letter from Russlyn Ali, U.S. Dep't of Educ. Ass't Sec'y for Civil Rights to Colleagues (Oct. 26., 2010), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.

²⁰ Iowa Department of Education, *Equality for Transgender Students*, available at <https://www.educateiowa.gov/resources/laws-and-regulations/legal-lessons/equality-transgender-students-february-2015-school>.

²¹ Letter from Catherine E. Lhamon, U.S. Dep't of Educ. Ass't Sec'y for Civil Rights and Vanita Gupta, U.S. Dep't of Justice Principal Deputy Ass't Attorney General for Civil Rights to Colleagues (May 13, 2016), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>; Iowa Department of Education, *Equality for Transgender Students*, <https://www.educateiowa.gov/resources/laws-and-regulations/legal-lessons/equality-transgender-students-february-2015-school>.

²² *Id.*

²³ *Id.*

²⁴ Iowa Department of Education, *Equality for Transgender Students*, available at <https://www.educateiowa.gov/resources/laws-and-regulations/legal-lessons/equality-transgender-students-february-2015-school>.

Q: Who can the school district notify about a transgender student requesting use of a preferred name or requesting to use the bathroom or locker room with which the student identifies?

A: Generally, FERPA allows public disclosure of certain basic “directory information” about a student, unless a parent opts out of such disclosures. Directory information includes students’ names, addresses, telephone numbers, photographs, and email addresses, among other things. Otherwise, FERPA prohibits disclosure of other personally identifiable information, such as a student’s grades or attendance, or a student’s religion, race, ethnic origin, disability, or sex assigned at birth,²⁵ unless the student or family has consented (or such information is shared with school officials who have a legitimate education interest).²⁶ Whether a student or family decides to share this information with other students, families, or school personnel is a determination to be made by the student and the student’s family. A student has a right to keep private his or her status as a transgendered student.²⁷

Q: How should the school district address complaints or objections to transgender students using the bathroom or locker room with which they identify?

A: In general, schools have the authority to maintain separate restroom and locker room facilities based on sex. All students, however, must be allowed to use the facilities that correspond to their present gender identity. School officials should work with students and families on a case-by-case basis to respect the privacy and dignity of all students. However, school districts may not ban a transgender student from using facilities that correspond to their gender identity. Instead, school districts could consider making additional individual-user options available to any student who voluntarily seeks additional privacy, or school districts could consider adding additional privacy measures to common facilities such as curtains in locker rooms or changing areas. As new school facilities are built or existing facilities are remodeled, school districts should consider additional privacy features and additional single occupancy facilities in the planning process.

Q: Can a transgender student participate in athletics?

A: Yes. All students should be afforded opportunities to participate in athletics and extracurricular activities. In general, state and federal laws allow schools to operate sex segregated athletic teams. However, school districts should consult the Iowa High School Athletic Association’s (“IHSAA”) *Guidelines for Inclusion and Respectful Treatment of Transgender Student-Athletes* and/or the Iowa Girls High School Athletic Union’s (“IGHSAU”) *Suggestions for Inclusion and Respectful Treatment of Transgender Student-Athletes* for additional information specific to transgender students’ participation in athletics.

²⁵ Letter from Catherine E. Lhamon, U.S. Dep’t of Educ. Ass’t Sec’y for Civil Rights and Vanita Gupta, U.S. Dep’t of Justice Principal Deputy Ass’t Attorney General for Civil Rights to Colleagues (May 13, 2016), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>.

²⁶ 34 CFR § 99.31(a)(1).

²⁷ Iowa Department of Education, *Equality for Transgender Students*, available at <https://www.educateiowa.gov/resources/laws-and-regulations/legal-lessons/equality-transgender-students-february-2015-school>.

Conclusion

As school board members know, the needs of individual students vary tremendously and concerns regarding how to best meet the needs of all students can create varying opinions among individuals who are committed to ensuring successful experiences for all students in the school environment. Even though there may be deeply rooted concerns, it is important to remember at the center of these concerns are real students and families. The goal—and challenge—for public school leaders remains clear: to provide a safe, enriching learning environment for all students.

Related Resources

Iowa Civil Rights Commission, *Protected Classes*, available at <https://icrc.iowa.gov/your-rights/protected-classes>.

Iowa Civil Rights Commission, *Sexual Orientation, Gender Identity, and Iowa's Safe Schools Law*, available at <http://publications.iowa.gov/13716/1/SOGIEdu.pdf>.

Iowa Department of Education, *Equality for Transgender Students*, available at <https://www.educateiowa.gov/resources/laws-and-regulations/legal-lessons/equality-transgender-students-february-2015-school>.

Iowa Girls High School Athletic Union, *Transgender Statement*, available at <http://ighsau.org/2014/08/22/transgender-statement/>.

Iowa High School Athletic Association, *Guidelines for Inclusion and Respectful Treatment of Transgender Student-Athletes*, in IAHSAA Handbook 13-14, http://www.iahsaa.org/wp-content/uploads/2013/02/2015_16_Handbook_Final.pdf.

Letter from Catherine E. Lhamon, U.S. Dep't of Educ. Ass't Sec'y for Civil Rights and Vanita Gupta, U.S. Dep't of Justice Principal Deputy Ass't Attorney General for Civil Rights to Colleagues (May 13, 2016), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>.

National School Boards Association, *2016 Transgender Students in Schools*, available at https://cdn-files.nsba.org/s3fs-public/reports/10711-4559-Transgender_Guide_V3_Final.pdf?homSpe0l5cqEQ9P66Rov2zwjrQGRixPa.

U.S. Department of Education, Office of Elementary and Secondary Education, Office of Safe and Healthy Students, *Examples of Policies and Emerging Practices for Supporting Transgender Students* (May 2016), available at <http://www2.ed.gov/about/offices/list/oese/oshs/emergingpractices.pdf>.

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