

***Creating a Safe, Supportive, and Affirming School Environment for Transgender and Gender Expansive Students: 2023 Legal Update and Best Practices***

**Frequently Asked Questions  
June 2023**

**[Creating a Safe, Supportive, and Affirming School Environment for Transgender and Gender Expansive Students: 2023 Legal Update and Best Practices](#)**

**Additional Resources:**

[The Dignity for All Students Act](#)

**Introduction**

All students need a safe and supportive school environment to progress academically and developmentally. Administrators, faculty, staff, and students play an important part in creating and sustaining a healthy, and respectful environment.

To assist public schools in fostering an environment for all students that is free from discrimination regardless of sex, gender identity, or expression, the New York State Education Department (NYSED) developed *Creating a Safe, Supportive, and Affirming School Environment for Transgender and Gender Expansive Students: 2023 Legal Update and Best Practices*. The update will facilitate compliance with state and federal laws concerning bullying, harassment, discrimination, and student privacy, and complements existing NYSED resources relating to the implementation of the Dignity for All Students Act (the “Dignity Act”).

The framework is a resource designed to help public school administrators continue to take proactive steps to create a culture in which Transgender, Gender Expansive (TGE), nonbinary, and intersex students feel safe, supported, and included.

Affirming and supportive educators, schools, families, friends, and communities are shown to increase academic success, feelings of belonging, and reduce negative mental health outcomes.

By adopting these strategies, all students will benefit from the safer, more equitable school environment created.

## **Additional Information and Frequently Asked Questions**

### **Q: Why provide the update this year?**

**A:** The update reflects changes to state and federal laws enacted since the release of the last guidance (July 2015). It includes the most recent data on the experiences of Transgender and Gender Expansive students, as well as current best practices and resources designed to support safe, supportive, and affirming school environments.

### **Q: Is this update legally binding?**

**A:** The update outlines school districts' legal responsibilities to increase the safety, and well-being of TGE students in their schools, and provides best practices that protect everyone from discrimination. It will be up to local school leaders to confer with their legal counsel to ensure they meet the needs of and support all their students.

This is a resource designed to help public school administrators, teachers, student-centered support personnel, school staff, students, parents/guardians, and the community continue to take proactive steps to create a culture in which transgender, gender expansive, and nonbinary students feel safe, supported, and included.

### **Q: What do you most want parents to know about this update?**

**A:** Parent/guardian support and involvement is a priority for all students including transgender and gender expansive students.

The [2023 National Survey on LGBTQ Youth Mental Health](#) reports that youth who felt high social support from their family are more likely to succeed and reported attempting suicide at less than half the rate of those who felt low or moderate social support.

Parents and students can and should ask for support through their districts.

### **Q: What are the main points school district staff should know about this update?**

**A:** School districts should be aware of, and understand their legal responsibilities to increase the safety, and wellbeing of transgender, and gender expansive students in their schools.

Schools now have the tools they need to create a safe, supportive, affirming environment for transgender, gender expansive, and all students.

### **Q: What are the main points students should know about this update?**

**A:** Transgender, and gender expansive students' voices have been heard. NYSED spoke to transgender, and gender expansive students across NYS and have incorporated their voices into the update.

Transgender, and gender expansive student recognition, respect, affirmation, belonging, and safety matter in school.

Transgender and gender expansive students can, and should request support from their schools, and school districts. They can become empowered and get involved as change agents for the betterment of school environments for all students.

**Q: Who was involved in developing the update?**

**A:** The Department engaged school social workers, psychologists and nurses, transgender youth services personnel, experts in NYS and federal education law, transgender health and wellness service providers, parents and parents of transgender youth, and transgender individuals in an advisory group. Members played an integral part in developing the update.

Additionally, feedback was received from the NYS Attorney General’s office, New York School Counselors Association, and the NYS Association of School Psychologists and the Trevor Project, among others. The response has been overwhelmingly positive.

**Q: What does the update cover?**

**A:** The update includes information about:

New York State Human Rights Law as amended by the Gender Expression Non-Discrimination Act (GENDA)

The Gender Recognition Act

New York State Education Law Section 3201-a

The Dignity for All Students Act

Title IX of the Education Amendments Act of 1972

The New York State Human Rights Law was amended through the Gender Expression Non-Discrimination Act (GENDA). GENDA added gender identity or expression as a protected class in all jurisdictions including educational institutions.

The Gender Recognition Act (GRA) became law in 2021 and gave New Yorkers the ability to select male, female, or X gender markers on official documents, such as a driver’s license.

In addition to legal changes, the update includes the most recent data on the experiences of transgender and gender expansive students as well as a revised and expanded resource section which includes a section dedicated to professional development for school administrators, teachers, and school staff.

Finally, the update includes lived experiences of transgender and gender expansive students in NYS schools and clarification on student privacy, the Family Education Rights and Privacy Act (FERPA), and student records.

**Q: Does the update address the use of bathrooms/athletics/changing rooms?**

**A:** Yes. All students desire privacy and safety when using school facilities such as changing rooms and restrooms. TGE students are entitled under Title IX and the NYS Human Rights Law to use the restroom that aligns with their gender identity. Denying the use of restrooms or other facilities because of a person’s gender identity is a violation of NYS Human Rights Law and is unlawful discrimination.

Schools have successfully offered alternative accommodations, such as a single “all gender” restroom or private changing space. These spaces may be made available to students who request them but should never be forced upon students or presented as the only option.

If a student requests to use an all-gender space, arrangements should be provided in a non-stigmatizing manner that protects student privacy and is not marginalizing or disruptive for the student. GENDA prohibits schools from asking a TGE person to use a single-stall restroom because of someone else’s concerns or condition the use of facilities—such as restrooms, locker rooms, or residential facilities— upon students’ provision of medical or other specific documentation.

Schools should make available gender affirming facilities including designating all single-stall restrooms gender neutral in accordance with [Education Law Section 409-M](#) and should offer multiple facility options for TGE students to use throughout the school day that are convenient to reduce disruption to their academics and social emotional well-being.

**Q: Are districts required to withhold information about a TGE student’s identity from their parents/guardians?**

**A:** Parent/guardian support and involvement should be a priority for schools and school districts. Research shows that when transgender and gender expansive students are supported at home, they are more likely to succeed at school and have lower rates of suicidal ideation.

However, only the student knows whether it is safe to share their identity with caregivers. Schools should be mindful that some transgender and gender expansive students do not want or cannot have their parents/guardians know about their transgender status. The paramount consideration in those situations is protecting the health and safety of the student, assuring that the student’s gender identity is affirmed, and that their privacy and confidentiality are safely maintained. These situations should be addressed on a case-by-case basis, accounting for the student’s age and maturity. Prematurely disclosing a student’s gender identity can have severe consequences for the student.

**Q: How does affirming a student’s identity affect academic performance?**

**A:** Academic performance, including grades and test scores, are impacted by a student’s well-being, belonging, and whether they feel accepted for who they are. [Research](#) shows that creating a safe and supportive school environment for transgender and gender expansive students, where they feel accepted and supported by their school and their peers, increases academic success, feelings of belonging, and reduces negative mental health outcomes such as suicide ideation.

**Q: Why is an equitable, gender-affirming school culture important?**

**A:** Schools are not only places of learning, but also “miniature societies,” the climate of which directly affects how well students learn and how well they interact with their peers. Since school is where students spend the majority of their time, their experiences in school have a critical impact on their overall health and well-being. Although teachers

and administrators work hard to make their classrooms welcoming places where every student feels recognized and included, quite often TGE students continue to face hostility and physical violence while at school.

Studies have shown that LGBTQ youth experience much higher rates of depression, anxiety, alcohol and drug use, and lower self-esteem as compared to their non-LGBTQ peers. In addition, LGBTQ students who experienced victimization due to their sexual orientation and gender expression achieved lower grade point averages than their peers, were nearly three times as likely to have missed school in the past month and reported a decreased sense of school belonging.

The New York State Education Department (NYSED) is committed to providing all public-school students, including transgender and gender expansive (TGE) students, with an environment free from discrimination and harassment, fostering civility and ensuring that every student has equal access to educational programs and activities.

This update will assist public schools in 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 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 play an important part in creating and sustaining a healthy and respectful environment.

This update is a resource designed to help public school administrators continue to take proactive steps to create a culture in which TGE, nonbinary, and intersex students feel safe, supported, and included. This, in turn, will ensure that each school meets its obligation to provide all students with an environment free from harassment, bullying and discrimination. This update complements existing NYSED resources relating to the implementation of the Dignity for All Students Act (the “Dignity Act”).

**Q: Do transgender and gender expansive students have an “unfair advantage” in athletics?**

**A:** Physical education is a required component of K-12 education and an important part of many students’ school lives. The New York State Learning Standards are universal. Standards are not segregated by gender.

New York State Education Law §3201-a prohibits discrimination based on sex, including gender identity and expression, with respect to inclusion in physical education classes and athletics. Teachers should provide inclusive opportunities for all students and phase out the practice of separating physical education classes or activities by gender, as it marginalizes transgender and gender expansive students and marks them as “others.”

**Q: What if a student is uncomfortable being around a nonbinary or transgender student during an overnight trip?**

**A:** Students must be permitted to participate in all school activities (for example, day and overnight field trips) in accordance with their gender identity asserted at school. Requests for arrangements to address privacy concerns should be made on a case-by-

case basis. Any arrangements should be provided in a non-stigmatizing manner that protects student privacy and is not marginalizing or disruptive for the student.

**Q: Should schools include discussions/lessons that address gender identity?**

**A:** NYSED's [Culturally Responsive-Sustaining Education Framework](#) (CR-S) helps educators create student-centered learning environments that affirm racial, linguistic, and cultural identities; prepare students for rigor and independent learning; develop students' abilities to connect across lines of difference; elevate historically marginalized voices; and empower students as agents of social change. The core principles of CR-S include creating a welcoming and affirming environment, fostering high expectations and rigorous instruction, identifying inclusive curriculum and assessment, and engaging in ongoing professional learning and support.

Schools utilizing CR-S and Social Emotional Learning can provide a foundation for a welcoming, and affirming learning environment where all students, including TGE students, see authentic and positive representation of their lived experiences reflected in the school curriculum and culture.

[Education Law §801-A](#) requires that students receive instruction in civility, citizenship, and character education that includes instruction in the principles of honesty, personal responsibility, respect for others, observance of laws and rules, courtesy, dignity, and other traits which will enhance the quality of student experiences in and contributions to the community. Respect and dignity for others includes awareness and sensitivity to harassment, bullying, discrimination, and civility in the relations of people of different races, weights, national origins, ethnic groups, religions, religious practices mental or physical abilities, sexual orientations, genders, and sexes. The law places an emphasis on discouraging acts of harassment, bullying, and discrimination.

To satisfy these requirements, schools will want to consider adding inclusive curricula; for example, teaching about and reading books by authors of diverse identities and including a multicultural representation of images, decorations, and artwork around their classrooms. If offered, sexual health curriculum should be inclusive of all identities. There are opportunities and avenues for diverse identities to be included in every academic discipline.

**Q: Are school staff required to refer to a student by the identity, name, and pronouns they request?**

**A:** Yes. All students and staff should be addressed by the name and gender pronouns they have expressed. Intentionally referring to a student, verbally or in writing, by a pronoun inconsistent with the student's gender identity or by a name other than the student's affirmed name is a NYS Human Rights Law and Dignity Act violation and is unacceptable.

**Q: What if a parent calls the school and asks if their child is using a different name/pronouns/gender identity in school?**

**A:** The student is in charge of their gender transition and the school's role is to provide

support. If a student has formally requested to transition at school, the school administrator, or another trusted adult, preferably trained in supporting LGBTQ and Gender Expansive students, can meet with the student and determine the steps the student is comfortable taking. This includes asking with whom the student is comfortable discussing their transition. Some TGE students have not talked to their families about their gender identity because of safety concerns or lack of acceptance and may begin their transition at school without parent/guardian knowledge.

Only the student knows whether it is safe to share their identity with caregivers. Schools should be mindful that some TGE students do not want or cannot have their parents/guardians know about their transgender status. The paramount consideration in those situations is protecting the health and safety of the student, assuring that the student's gender identity is affirmed, and that their privacy and confidentiality are safely maintained. These situations should be addressed on a case-by-case basis, accounting for the student's age and maturity. Prematurely disclosing a student's gender identity can have severe consequences for the student.

**Q: If the student informs the school that they want to be referred to by their affirmed name/gender, but the parent disagrees, how should the district respond? Should the district comply with the student's request or change a student's name back to their birth name?**

**A:** The school should honor the student's request. New York State Human Rights Law (HRL), amended by the Gender Expression Non-Discrimination Act (GENDA), expressly prohibits discrimination by educational institutions against students and applicants based on their actual or perceived sex and gender identity or expression and the Dignity for All Students Act (The Dignity Act) provides that no student be subjected to discrimination based on a person's actual or perceived gender or sex by school employees.

However, schools should clearly and unambiguously advise the student that their parents/guardians may become aware of the use of an affirmed name in school and on school records, through school communication, or if their parent/guardian seeks to review the student's education records. Schools can utilize a Gender Support Plan to help systematically address various aspects of a TGE student's experiences at school. It can also be used to help schools create a shared understanding among students, school staff, and parents/guardians (only with student permission), about the ways in which the student's authentic gender will be recognized and supported at school. By advising the student of these potential issues, the student can make an informed decision regarding the implications of changing school records to reflect their affirmed name and gender identity, and if it is a concern, schools can plan appropriately for the student's safety. With the student's consent, this may also provide an opportunity for a trusted trained school professional to facilitate a conversation between the student, and their parent/guardian regarding the student's affirmed name, and gender identity.

Schools may want to reach out to organizations such as the [Trevor Project](#) or the [Family Acceptance Project](#) for assistance in bridging communication between students

and their parents/guardians. These agencies also provide educational resources for school staff. The most important consideration in these situations is the health and safety of the student.

Currently neither federal nor State law provides a clear rule for school districts to follow as to whether a school should change a minor student's permanent educational records upon request by the TGE student. Public schools should, therefore, consult with their legal counsel regarding their obligations and what policy the school district should adopt as to whether parental consent is necessary to change the limited records deemed to be permanent records (e.g., student transcripts).