STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF WRIGHT | TENTH JUDICIAL DISTRICT

Case Type: Discrimination

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**Helene Woods on behalf of herself and her minor son, M.W.,**

Plaintiffs,

vs.

**Buffalo-Hanover-Montrose School District (Independent School District 877)**

Defendant.

Court File No.: _____

Judge: _____

**COMPLAINT AND DEMAND FOR JURY TRIAL**

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Plaintiff Helene Woods (she/her) through her attorneys, Jess Braverman (she/her) and Christy L. Hall (she/her), of Gender Justice, 200 University Ave West, Suite 200, St. Paul, Minnesota 55103, and Katherine S. Barrett Wiik (she/her) and Amy S. Conners (she/her), of Best & Flanagan LLP, 60 South 6th Street Suite 2700, Minneapolis, Minnesota 55402, for her Complaint against Defendant Buffalo-Hanover-Montrose School District ("School District" or "Defendant"), on behalf of herself and her minor son, M.W. (he/him) states and alleges as follows:

## INTRODUCTION

M.W. is a transgender boy who attended the Buffalo Community Middle School ("BCMS") in Buffalo, Minnesota from 2015-2017. At the start of the incidents underlying the complaint, M.W. was in sixth grade. After informing the school that he is transgender, M.W. was assigned a single stall bathroom in the nurse's office and instructed by his school

to use only that specific restroom. Because it was located in the nurse's office, the single-stall bathroom was difficult to access, and he often did not have enough time between classes to use it.

In December of 2015, M.W. was hospitalized for depression. It became clear to Ms. Woods and M.W. that the isolation of using a separate bathroom in the nurse's office, and being treated differently from other boys, was a significant source of ongoing stress for M.W. When M.W. returned to school and asked to use the boys' bathroom, his request was denied.

In the 2016-2017 school year, M.W. had gym class, but was not allowed to use the locker rooms to change for gym class. He was instead forced to use a separate bathroom that had to be unlocked by staff. He did not have a gym locker, and unlike his peers, M.W. had to carry his gym clothes back and forth between his school locker and this gym bathroom. Given that the school refused to allow M.W. to use a locker room, unlike all other students, M.W. also did not have access to a shower. Ultimately, the school pulled him from gym class entirely.

In the same school year, an additional bathroom that was formerly the teacher's bathroom was opened for student use. M.W. was the only student required to use this bathroom. This bathroom was often locked in between classes when M.W. would try to use it. M.W. was not allowed to use the boys' bathroom. As a result, M.W. occasionally used the girls' bathroom out of necessity. To avoid drawing attention to himself, he would wait until the bathroom was empty and run in to quickly use the facilities. When he raised this dilemma with school officials, he was told that he could not use either the girls' bathroom or the boys'

bathroom. Ms. Woods eventually pulled M.W. out of BCMS, and paid tuition for private school out-of-pocket, which was a hardship for the family.

Ms. Woods brings this lawsuit on behalf of herself and her minor son, M.W., to remedy School District's unlawful discrimination in education on the basis of sex and sexual orientation (which includes gender identity), in violation of the Minnesota Human Rights Act.

## PARTIES

1. Helene Woods is the mother of M.W. Ms. Woods and M.W. are residents and citizens of the state of Minnesota, Wright County.

2. M.W. is a transgender boy who attended BCMS in the 2015-2017 school years. M.W. told his mother and school officials that he is transgender early in the 2015 school year when he was eleven years old. M.W. is now sixteen years old and is in high school. He enjoys art and hopes to become a cartoon animator.

3. Defendant is a school district in Wright County, Minnesota. Defendant's main office is located at 214 1st Ave NE, Buffalo, MN 55313. The School District houses 10 schools, including BCMS, serving roughly 5,700 students.[1]

4. Helene Woods brings this lawsuit on behalf of herself and her minor son, M.W., to remedy illegal sex and sexual orientation discrimination by the School District through denying M.W. access to school facilities based on his sex and gender identity in violation of the Minnesota Human Rights Act ("MHRA"), Minn. Stat. §§ 363A.01, et seq., as

[1] http://www.bhmschools.org (last visited Nov. 19, 2019).

well as the right to equal protection and the right to education, in violation of the Minnesota Constitution. Minn. Const. art. 1 § 2; Minn. Const. art. XIII § 1.

## JURISDICTION AND VENUE

5. At all relevant times, M.W. was a student at BCMS, an "Educational Institution," as defined by Minn. Stat. § 363A.03, subd. 14.

6. BCMS is part of the Buffalo-Hanover-Montrose School District, also known as Independent School District 877, and the school is located in Buffalo, Minnesota. Both BCMS and the School District are located in Wright County.

7. The District Court in the County of Wright, State of Minnesota, has original jurisdiction over the parties and all Plaintiffs' claims arising under state law pursuant to Minn. Stat. § 363A.33 subd. 6.

8. Venue is proper in this Court pursuant to Minn. Stat. § 363A.33 subd. 6 because the unlawful actions alleged herein occurred in Wright County.

## FACTUAL ALLEGATIONS

### Transgender Youth in Minnesota

9. Individuals are generally assigned a sex – "male" or "female" – at birth. This is typically based on external genitalia, and not the multitude of other factors that bear on one's sex such as hormones, internal reproductive organs, chromosomes, secondary sexual characteristics that develop during puberty, brain anatomy, and gender identity.

10. A person's "gender identity" is their innate sense and deeply held understanding of their own gender, regardless of the sex assigned to them at birth. Everyone has a gender identity.

11. "Gender expression" is a person's external appearance, characteristics, or behaviors stereotypically associated, in our culture, with a specific sex.

12. M.W. is a transgender boy. "Transgender" is an umbrella term for someone whose gender identity does not conform with the sex they were assigned by others at birth.

13. A "cisgender" person has a gender identity that does conform to the sex to which they were assigned at birth.

14. According to the most recent scientific research, children as young as three already have a strong sense of their gender identity, regardless of whether they are transgender or cisgender.[2]

15. A recent study of adolescents in Minnesota revealed that nearly three percent[3] of Minnesota high school students identify as either transgender or gender non-conforming.[4] This means that in a school district of 5700 students, as many as 171 students may identify as transgender or gender non-conforming.

16. One third of transgender youth in Minnesota schools, such as M.W., experience bullying about gender, a rate of seven times more than their cisgender peers.[5]

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[2] National Center on Parent, Family, and Community Engagement, *Healthy Gender Development and young Children: A Guide for Early Childhood Programs and Professionals*, 8, https://depts.washington.edu/dbpeds/healthy-gender-development.pdf (last visited Nov. 19, 2019).

[3] Marla E. Eisenberg, et al., Risk and Protective Factors in the Lives of Transgender/Gender Nonconforming Adolescents, 61 J. Adolescent Health 521 (2017).

[4] "Gender non-conforming" means that one's gender identity and/or expression does not conform to stereotypical views on how men or women present themselves in society.

[5] https://www.pediatrics.umn.edu/sites/pediatrics.umn.edu/files/tgnc_quick_fact_sheet.pdf (last visited Nov. 19, 2019).

17. This targeted bullying has severe consequences for transgender and gender non-conforming children and their families.

18. Two thirds of all Minnesota transgender children have had thoughts of suicide, and are five times more likely to attempt it than their cisgender peers.[6] More than half (55.4%) attempted suicide at least once within the previous two years, according to the 2016 Minnesota Student Survey from the Minnesota Department of Education.[7]

19. A recent study published in the Journal of the American Academy of Pediatrics found that transgender teenagers have high rates of mental health issues such as depression, anxiety, and self-harm. Such mental health issues are, in part, attributable to the discrimination, stigma, and social rejection experienced by transgender children.[8] A copy of this article is attached as Exhibit 1 to this Complaint.

20. However, recent scientific studies suggest that this risk is reversed when transgender children are allowed to socially transition and live in a way that is consistent with their gender identity, with support from their parents, schools, and peers.[9]

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[6] *Id.*

[7] Results of the 2016 Minnesota Student Survey, Minn. Dep't of Health, http://mn.gov/gov-stat/pdf/2017_FACTSHEET_transgender_bullying_statistics.pdf (last visited Nov. 19, 2019).

[8] Jason Rafferty et al., Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents, 142 Am. Acad. Pediatrics 1,3 (2018)(Attached hereto as Exhibit 1 to this Complaint).

[9] Kristina R. Olson et al., Mental Health of Transgender Children Who Are Supported in Their Identities, 137 Pediatrics 1 (2016); Brief for the World Professional Association for Transgender Health (WPATH), Pediatric Endocrine Society, Et Al., G.G. v. Gloucester County School Board, 822 F.3d 709 (4th Cir. 2016), https://acluva.org/sites/default/files/field_documents/gg-wpathfourthcircuitamicusbrief.pdf (last visited Nov. 19, 2019).

21. Gender affirmation does not always require a medical intervention such as hormones or surgery. Many young people socially transition by using the name and pronouns they prefer. They may also wish to present their appearance and otherwise express their gender in ways typically associated with their gender identity. For example: A transgender boy may want to use a traditionally male name, be referred to as "he" or "him," and wear clothing and engage in activities traditionally associated with boys.

22. When transgender children are allowed to socially transition before puberty, and are supported in their gender identity, research shows that these children have essentially the same levels of depression and only marginally higher rates of anxiety than their cisgender siblings and other children their age.[10]

23. Many transgender people whose gender identity is not affirmed suffer the debilitating distress of gender dysphoria. Gender dysphoria occurs when there is clinical distress caused by the incongruence between their gender identity and the sex assigned to them at birth. Gender dysphoria is a serious medical condition recognized by the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (5th ed. 2013).

24. Being transgender is not, in itself, a mental disorder, and "implies no impairment in judgment, stability, reliability, or general social or vocational capabilities."[11]

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[10] Kristina R. Olson et al., Mental Health of Transgender Children Who Are Supported in Their Identities, 137 Pediatrics 1 (2016).

[11] Am. Psychiatric Ass'n, Position Statement on Discrimination Against Transgender & Gender Variant Individuals (2012), https://www.psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-2018-Discrimination-Against-Transgender-and-Gender-Diverse-Individuals.pdf (last visited Nov. 19, 2019).

25. Gender dysphoria can lead to serious medical problems, including clinically significant psychological distress, dysfunction, debilitating depression, and self-harm.

26. The widely accepted standards of care for treating gender dysphoria are published by the World Professional Association for Transgender health ("WPATH").[12]

27. Efforts to treat gender dysphoria by forcing transgender people to live in alignment with the sex assigned at birth, rather than in alignment with their gender identity, causes substantial psychological pain, to the point where such treatment is now considered medically unethical and has been rebuked by the Federal Substance Abuse and Mental Health Services Administration.

28. The medical consensus for treatment of gender dysphoria is for transgender people to socially transition and live in a manner that is consistent with their gender identity. This medical consensus is embraced by major medical and health organizations in the United States, including the American Medical Association, the American Academy of Pediatrics, the American Psychiatric Association, the American Psychological Association, and the National Endocrine Society.

**Bathrooms and Locker Rooms for Transgender Students**

29. While many cisgender people can access bathrooms and locker rooms without issue, this is often not the case for transgender people.

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[12] WPATH *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*, (7th ed., 2012) wpath.org/media/cms/Documents/SOC%20v7/Standards%20of%20Care_V7%20Full%20Book_English.pdf (last visited Nov. 19, 2019).

30. When excluded from sex-separated bathrooms and changing facilities, transgender people often avoid using the bathroom facilities entirely, either because the separate facilities are too stigmatizing or too difficult to access. They suffer from infections and other negative health consequences as a result of avoiding bathroom use.

31. In a 2017 study regarding access to school restrooms by Minnesota transgender youth, transgender youth reported that forcing them to use enhanced-privacy facilities against their wishes was traumatizing and negatively impacted their education and social experiences.[13]

a. Students without access to a restroom consistent with their gender identity would avoid drinking or eating so that they did not have to use the bathroom, or they would "hold it in" for hours.

b. Students with access to a bathroom consistent with their gender identity reported less anxiety, better hygiene, and improvement in self-esteem and confidence.

c. Students reported feeling ostracized or "othered" by being forced to use a transgender specific bathroom and noted benefits to self-esteem when they were able to use the restroom matching their gender identity.

d. One study participant noted that not having access to facilities consistent with gender identity discouraged transgender students from participating in sports.

[13] Conner Suddick with M. Sheridan Embser-Herbert, *"I Just Want to Pee": Minnesota Schools' Restroom Policies and the Impact on Transgender Students*, Diversity Initiatives Research Project, Hamline University (August 2017).

32. Recently, Judge Walker Jasper in Anoka County District Court ruled on a motion to dismiss in a case where a transgender male student was separated from the other students and forced to use a segregated "enhanced privacy" locker room. The court held that the student did state a claim for discrimination because the definition of "discriminate" "includes segregate or separate" and "it is unfair discriminatory practice for a school to discriminate against a transgender student in any manner that prevents the transgender student from utilizing the full benefits offered, or services provided, by the School District."[14]

33. Additionally, in a case similar to this one, the Colorado Division of Civil Rights noted its opinion that assigning transgender students to a segregated restroom against their wishes is not a solution. It creates an exclusionary environment, forcing transgender students to disengage from their group of friends. It deprives transgender students of opportunities to bond with classmates and forces transgender students to explain to friends why they are not permitted to use the same restroom or locker room as everyone else.[15]

34. The National Association of School Psychologists, the National Association of Secondary School Principals, the National Association of Elementary Principals, and the American School Counselor Association have all called upon schools to allow transgender students to use sex-separated bathrooms and changing facilities consistent with their gender identity.

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[14] *N.H. & Lucero, Comm'r of Minn. Dept. of Human Rights v. Anoka-Hennepin School District No. 11*, 02-CV-19-922 (Minn. Dist. Ct. August 5, 2019).
[15] Determination, Charge No. P20130034X, Colorado Dep't of Regulatory Agencies (June 18, 2013), https://archive.org/details/716966-pdf-of-coy-mathisruling (last visited Nov. 19, 2019).

35. Following passage of the Safe and Supportive Schools Act ("Safe Schools Act") in 2014, the Minnesota Department of Education established the School Safety Technical Assistance Council ("Safe School Council").

36. In September 2017, The Minnesota Department of Education's Safe School Counsel published *A Toolkit for Ensuring Safe and Supportive Schools for Transgender and Gender Nonconforming Students*, which states: "[t]ransgender and gender nonconforming students should be afforded the opportunity to use the restroom of their choice" and single-stall bathrooms should be optional but available for any student who wishes to have privacy. (emphasis added).[16] A copy of this toolkit is attached as Exhibit 2 to this Complaint.

37. The Minnesota State High School League permits transgender students to compete in athletics in a manner consistent with their gender identity.

38. Treating transgender boys as boys and transgender girls as girls is the only way to ensure that they can equally participate in school, work, and society at large.

**Buffalo-Montrose-Hanover School District**

39. The Buffalo-Montrose-Hanover School District (Independent School District Number 877) operates six elementary schools, one middle school, and three high schools in Wright County, Minnesota.

40. Buffalo Community Middle School ("BCMS") is one of the schools operated by Defendant School District.

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[16] Minn. Dep't of Edu., *A Toolkit for Ensuring Safe and Supportive Schools for Transgender and Gender Nonconforming Students*, 10 (Sept. 25, 2017) https://education.mn.gov/mdeprod/idcplg?IdcService=GET_FILE&dDocName=MDE072543&RevisionSelectionMethod=latestReleased&Rendition=primary (last visited Nov. 19, 2019)(Attached hereto as Exhibit 2 to the Complaint).

41. M.W. attended BCMS during the 2015-2016 and 2016-2017 academic years.

42. Upon information and belief, during the dates at issue, Defendant School District did not have a formal policy regarding the use of gendered facilities for transgender students.

**The 2015-2016 Academic Year**

43. Helene Woods enrolled M.W. in BCMS for the 2015-2016 school year. At that time M.W. was in sixth grade.

44. Ms. Woods specifically chose BCMS for M.W. because the other local middle school, Monticello, had a reputation for bullying problems. M.W.'s older sister attended BCMS, and Ms. Woods believed it would be a better environment for M.W.

45. Prior to BCMS, M.W. attended a local elementary school. He consistently received good grades, and had few absences or disciplinary issues.

46. M.W. transitioned socially around September 2015 just after the start of his first school year with BCMS. In connection to his transition, he adopted a name that aligned with his gender identity. He also adopted he/him pronouns that aligned with his gender.

47. In October 2015, M.W. requested that his teachers refer to him by the name M.W. and use the pronouns he and him. The school's guidance counselor, Penny Thalacker, emailed Ms. Woods to confirm that her son should be referred to using his name, M.W., as well as he/him pronouns.

48. In response to this email, Ms. Woods wrote back and confirmed that the school staff should use the name and pronouns adopted by M.W.

49. The school counselor replied, "[w]e don't have a gender-neutral bathroom, but we can figure something out to make that work."

50. Following this exchange, BCMS Principal Matt Lubben decided that M.W. should use a single-occupancy restroom. The single-occupancy restroom at BCMS is located inside of the nurse's office, away from classrooms and other restrooms.

51. Due to its location, the nurse's office was difficult to access, and M.W. often did not have time to access the bathroom between classes. M.W., only eleven at the time, was embarrassed to single himself out as the lone student who was required to use a special bathroom any time he needed to use the facilities.

52. In December 2015, M.W. expressed suicidal ideations, began cutting himself, and expressed strong feelings of self-hate. Ms. Woods became increasingly concerned and brought M.W. to the hospital. M.W. was admitted to the hospital for in-patient mental health treatment. He did not return to school until mid-February 2016.

53. While M.W. was out of school, he attended regular mental health related treatment. It became clear to Ms. Woods, M.W. and M.W.'s providers that being denied the use of the boys' facilities, and being singled out and forced to use a single stall bathroom away from other students, was a significant source of stress and anxiety for M.W.

54. Upon his return to BCMS, M.W. requested permission to use both the boys' restrooms and boys' locker rooms. For M.W., being singled out and forced to use a separate bathroom than the rest of his peers was stigmatizing and caused him tremendous anxiety. He was most comfortable using the restroom and locker room facilities that matched his

gender identity, alongside his male peers. M.W. did not have safety concerns with using the boys' restrooms or locker rooms at his school.

55. Principal Lubben and Ms. Thalacker verbally denied M.W.'s request to use the boys' facilities, claiming that allowing M.W. to do so would be unsafe for him, a conclusion that was not shared by M.W., his mother, and his treatment providers. The school did not provide M.W. with any details elaborating on their reasoning. M.W. understood that he would receive detention if he used the boys' bathrooms.

56. Though M.W. was not interested in using the girls' facilities, M.W. was also told that he could not use the girls' facilities. As a result, M.W. was still segregated from the rest of the students and required to use the single-occupancy restroom in the nurse's office that was difficult to access.

57. In March 2016, Ms. Woods emailed the school's guidance counselor to ask whether M.W. could play on the boys' basketball team during the 2016 school year.

58. That same day, the assistant principal at BCMS, who also serves as the activities director, responded to Ms. Woods's email and said he "would love to sit down with [Ms. Woods] and work out a plan that works for [M.W.]."

59. The assistant principal then suggested that they meet closer to the start of the season.

60. Over the summer, Ms. Woods and M.W. were optimistic that the school would permit M.W. to use boys' facilities the following school year.

**The 2016-2017 Academic Year**

61. On picture day, which was one day before the start of the 2016 school year, Ms. Woods met with the assistant principal and again requested that her son be allowed to use the boys' restrooms and locker rooms. The School District denied this request.

62. Around September or October, 2016, Ms. Woods attended a meeting with the superintendent of the School District and BCMS's principal and assistant principal. Defendant called the Minnesota Department of Education's School Safety Technical Assistance Center ("SSTAC") asking for advice about what locker room and restroom M.W. should use.

63. During this conversation, Ms. Woods heard the SSTAC representative clearly indicate that the school district *should allow* M.W. to use the boys' facilities, and that to deny him use of the boys' bathroom was discrimination.

64. Around this time, Ms. Woods also provided letters to the school from M.W.'s mental health providers.

65. One of the providers noted that M.W. "shared that a great deal of his feelings of shame and not feeling good enough are linked to him not being viewed and treated as a boy which would include using the boys' bathroom."

66. This same provider noted that if the school led the way by accepting M.W. in his transition and validating his gender identity by allowing him to use the boys' facilities, this would teach other students to accept him as well.

67. The second provider submitted a similar letter, explaining that the "most protective factor for transgender adolescent like [M.W.] (i.e. the factor that can best prevent

outcomes like depression, substance abuse and suicide) is a supportive environment…[w]hile your decision to have [M.W.] use a gender-neutral restroom may appear to you to be supportive, to [M.W.] it represents a rejection of who he is."

68. Despite the supporting letters from his mental health providers, and instruction from the SSTAC representative, Defendant School District continued to prohibit M.W. from using the boys' facilities. Defendant continued to isolate and separate M.W. from his classmates.

69. During this school year, the school provided M.W. with one additional bathroom which was a single stall bathroom that had formerly been limited to use by teachers. When M.W. tried to use this bathroom during class it would often be locked. When M.W. tried to use the bathroom in between classes, the door was often blocked by teachers serving as hall monitors. M.W., who was 12 years old at this time and often did not personally know the teachers acting as hall monitors, felt uncomfortable asking them to move so he could use the bathroom. He felt ashamed by having to explain why he was using this bathroom, and by being singled out as the only student who used this bathroom, and he did not feel comfortable explaining himself every time he needed the facilities.

70. School officials had told M.W. on a number of occasions that he could not use the boys' bathroom. He occasionally and reluctantly used the girls' restroom out of necessity. Using the girls' restroom caused M.W. distress and made him uncomfortable. He would wait until it was empty, and then quickly run in, use the bathroom, and run back out.

71. M.W. informed school officials of his bathroom dilemma, and his occasional use of the girls' bathroom during a meeting that took place that fall. During this meeting,

M.W. recalls school officials reiterating that he would receive detention for using the boys' bathroom and also that he was not allowed to use the girls' bathroom.

72. At this point, M.W. was not allowed to use the boys' or girls' bathrooms. The bathroom in the nurse's office was too far from his classes to access between classes, and required him to single himself out any time he wanted to use it. The teacher's bathroom was usually locked during class time. He also could not use this bathroom between classes without drawing attention to himself and explaining to teachers, in front of other students, why he was required to use that bathroom. As a result, M.W. would often not use the bathroom at all for the entire school day. He would wait until school was over and then either use a bathroom at a nearby store or wait until he got home.

73. M.W. was enrolled in physical education during the fall of 2016. He was not permitted to use the boys' or girls' locker room for gym.

74. For gym class, M.W. was forced to use a bathroom that had to be unlocked for him at the start of each class. The bathroom did not have a gym locker or shower, and, unlike the rest of the students, M.W. had to gather his belongings from his hallway locker and carry them to the bathroom. He then had to carry all his belongings back to his hallway locker at the end of class. M.W. continued to request to use the boys' locker room.

75. After singling out M.W. and denying him the use of a locker room, BCMS ultimately removed M.W. from his physical education class entirely. After removing him from his gym class, the School District did not offer him any alternative form physical education. In lieu of physical education, M.W. was forced to take an Academic Study Skills course akin to a study hall.

76. Physical activity is important for both the physical and mental health of young people.[17] Exercise can reduce symptoms of anxiety and depression.[18] Opportunities for physical education at school, such as gym class, have also been shown to improve academic achievement of participants.[19]

77. During this time, M.W.'s grades worsened; he started skipping school and stopped doing his homework.

78. Around November 2, 2016, M.W. again went to the hospital due to suicidal ideations and self-harm. A large source of his depression and anxiety related to how he was treated by school administration. He recalls telling one counselor at the hospital that he was scared that no one would ever see him as a boy.

**Minnesota Department of Human Rights Charge**

79. On approximately October 31, 2016, in response to Defendant's treatment of her son, Ms. Woods filed a Charge of Discrimination ("Charge") with the Minnesota Department of Human Rights ("MDHR").

80. Defendant was sent a copy of the Charge on November 16, 2016.

81. By November 16, 2016, Defendant's School Board still had not made a district-wide decision regarding the use of gendered facilities by transgender students.

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[17] https://www.cdc.gov/healthyschools/physicalactivity/facts.htm (last visited Nov. 19, 2019).
[18] *Id.*
[19] https://www.cdc.gov/healthyschools/physicalactivity/physical-education.htm (last visited Nov. 19, 2019);
https://www.health.state.mn.us/news/pressrel/2017/activeschool120617.html (last visited Nov. 19, 2019).

82. On or around December 7, 2016, a few weeks after receiving the discrimination charge, Defendant's superintendent informed Ms. Woods that her son could start using the boys' restrooms, effective immediately.

83. In addition, the superintendent indicated that M.W. could use the boys' locker rooms "as soon as the District is able to obtain privacy screens and make appropriate modifications to the locker room." The correspondence indicated that M.W. should continue to use the segregated facilities until the modifications were complete.

84. The written notice did not explain why Defendant had changed its position, nor why the decision was made so long after Ms. Woods's initial request. It also did not mention why Defendant waited so long to obtain privacy screens and make modifications to the existing locker rooms.

85. In addition, the superintendent advised Ms. Woods "not to broadcast the District's decision."

86. Around December 2016 the school filed an Answer to the MDHR charge. On December 19, 2016, the School District Superintendent, Scott Thielman, signed a document indicating that he reviewed the School District's Answer to the charge and verified that the answer accurately represented the District's position in the matter. In their verified answer, Defendants purposely misgendered M.W., referring to him using "female pronouns" in order to, in their words, "avoid unnecessary confusion." Defendants did not specify why misgendering M.W. and using different pronouns than what is on the charge, would be less confusing for the MDHR, the agency that is charged with making human rights determinations on claims of transgender discrimination. The School District also referred to

M.W.in their papers as "Madolyn," a name that has never been associated with M.W., rather than the name he adopted at the time of his transition.

87. Defendant did not acquire a bid to modify the boys' and girls' locker rooms until the end of January 2017. This occurred more than seven weeks after the superintendent's correspondence indicated that M.W. could begin using the boys' locker rooms only after the modifications were made, and almost a year after the initial request.

88. On February 15, 2017, M.W. was again hospitalized after Ms. Woods noticed that his mental health had significantly deteriorated.

89. On February 24, 2017, fearing for her son's safety and wellbeing, Ms. Woods withdrew her son from BCMS.

90. Ms. Woods enrolled M.W. in a private school. The commute and tuition cost were a burden on the family, but Ms. Woods was extremely concerned about the mental health implications for M.W., should he continue to attend BCMS.

91. Around October 2018 the MDHR issued its finding in response to Ms. Woods's Charge. The result of MDHR's investigation found that there was "PROBABLE CAUSE to find that the respondent [School District] discriminated against the charging party [Woods], in violation of Minn. Stat. § 363A.13, subd. 1."

**COUNT I**
**Hostile Educational Environment**
**Minnesota Human Rights Act**

Plaintiffs reallege the above allegations of this Complaint and alleges as follows:

92. It is an unfair discriminatory practice to discriminate in any manner in the full utilization of or benefit from any educational institution because of sex and sexual

orientation. A hostile educational environment that negatively impacts a student's ability to attend school, learn, and make use of the school facilities, is an unfair discriminatory practice.

93. BCMS did not have any policy in place to support transgender students. Rather than supporting M.W. and ensuring he could fully participate in school, the school singled out M.W. and failed to provide him any meaningful access to bathrooms or locker rooms. At only 11 years old, M.W expressed suicidal ideations. He suffered repeated hospitalizations for depression and self-harm. He missed substantial days of school. The school was advised by the Department of Education and M.W.'s mental health providers that they were taking a harmful and discriminatory approach. M.W. ultimately stopped using bathrooms for entire school days because his bathroom options were both inaccessible and deeply stigmatizing. His absences increased and his grades dropped. Despite the clear signs of harm, and the advice by both the DOE and mental health providers to allow M.W. to use the boys' facilities, the school continued to fail M.W. and Ms. Woods.

94. M.W. was singled out and discriminated against because he is transgender. No cisgender students were denied boys' and girls' bathrooms, denied access to any locker room, or involuntarily pulled out of gym for reasons unrelated to physical health or other disability.

95. The hostile school environment was so severe, pervasive, and persistent, that M.W.'s grades and attendance suffered and his mental health severely suffered. Ms. Woods ultimately withdrew M.W. from BCMS after repeated hospitalizations for suicidal ideations and self-harm.

96. As a result of Defendant's discriminatory conduct, M.W. and Ms. Woods suffered ongoing emotional harm as described in this complaint, as well as education and treatment related costs.

**COUNT II**
**Gender Identity Discrimination in Education**
**Minnesota Human Rights Act**

Plaintiffs reallege the above allegations of this Complaint and alleges as follows:

97. M.W. is a transgender boy, who is protected from discrimination in education based on his gender identity, gender expression, and transgender status. Minn. Stat. § 363A.03 subd. 44.

98. Defendant discriminated against M.W. by segregating him from other students and denying him the restrooms and locker rooms that aligned with his gender identity in violation of the MHRA, Minn. Stat. § 363A.013. Unlike any cisgender student, M.W. was denied use of any boys' or girls' facilities.

99. Unlike other boys, M.W. was denied the use of the boys' facilities. The bathrooms M.W. was required to use were inaccessible and deeply stigmatizing. M.W. was also denied a locker room, and, rather than addressing this issue, the school opted instead to removed him from gym class. M.W. suffered repeated hospitalizations, and both his grades and attendance dropped. Ms. Woods ultimately removed him from BCMS for his own well-being and paid out of pocket to send M.W. to private school.

100. As a result of Defendant's discriminatory conduct, Ms. Woods and M.W. suffered from and continue to suffer from disrupted education, emotional distress, mental

anguish, humiliation, embarrassment, economic damages, has incurred attorney's fees, costs, and expenses, and have suffered other serious damages.

**COUNT III**
**Sex Discrimination in Education**
**Minnesota Human Rights Act**

Plaintiffs reallege the above allegations of this Complaint and alleges as follows:

101. M.W. is a transgender boy, who is protected from discrimination in Education based on sex. Minn. Stat. § 363A.13. M.W. was singled out and denied the use of bathroom and locker room facilities because the sex M.W. was assigned at birth did not match his gender identity.

102. Unlike any cisgender student, M.W. was denied use of any boys' or girls' facilities. The bathrooms offered to M.W. were inaccessible and deeply stigmatizing. M.W. was also denied a locker room, and, rather than addressing this issue, the school opted instead to removed him from gym class. M.W.'s mistreatment was so severe that he suffered repeated hospitalizations, and both his grades and attendance dropped. Ms. Woods ultimately removed him from BCMS for his own well-being and paid out of pocket to send M.W. to private school.

103. As a result of Defendant's discriminatory conduct, Ms. Woods and her son suffered from and continue to suffer from disrupted education, emotional distress, mental anguish, humiliation, embarrassment, economic damages, has incurred attorney's fees, costs, and expenses, and have suffered other serious damages.

**COUNT IV**
**Reprisal**
**Minnesota Human Rights Act**

Plaintiffs reallege the above allegations of this Complaint and alleges as follows:

104. M.W. and Ms. Woods repeatedly asked that M.W. be permitted to use the boys' facilities at school, and their requests were consistently denied. As a result, M.W. suffered from depression, anxiety, and suicidal ideations. M.W. was repeatedly hospitalized. M.W.'s mental health providers, as well a Department of Education representative, asked the school to permit M.W. to use the boys' facilities. Ms. Woods, likewise, repeatedly asked the school to permit M.W. to use the boys' facilities.

105. The School District nevertheless prohibited M.W. from using the boys' bathroom. He was also prohibited from using the girls' bathroom. He eventually had to resort to not using a bathroom for entire school days, and waiting until school was over to finally use the bathroom either at home or a nearby store.

106. The School District also denied M.W. a locker room. He was instead singled out and given a bathroom without a locker or shower that had to be unlocked in order for him to use for gym class.

107. Rather than provide M.W. with access the boys' locker room, the school pulled him from gym class removing his access to physical education, and forced him to attend study hall.

108. The School District's prohibition on M.W. using the facilities appropriate for his gender identity, their removal of him from gym class, and their refusal to find a workable bathroom option for M.W. were not only deeply stigmatizing, but were the school's response

to his opposition to being unlawfully singled out discriminatory treatment, and these actions amount to reprisal under the Minnesota Human Rights Act. Minn. Stat. § 363A.15.

109. As a result of Defendant's discriminatory conduct, Ms. Woods and her son suffered from and continue to suffer from disrupted education, emotional distress, mental anguish, humiliation, embarrassment, economic damages, has incurred attorney's fees, costs, and expenses, and has suffered other serious damages.

**COUNT V**
**Equal Protection-**
**Minnesota Constitution, Art. I, § 2**

Plaintiffs reallege the above allegations of this Complaint and alleges as follows:

110. M.W. was segregated and isolated from other students, and treated differently than other students because of his gender identity and transgender status.

111. Defendant, acting under color of state law, denied M.W. access to the restrooms and locker rooms that aligned with his gender identity. M.W. was differently than other boys in that he was singled out and denied use of boys' bathrooms and the boys' locker room because he is transgender.

112. M.W. was also denied the use of any bathrooms and locker rooms used by other students because he is transgender.

113. Cisgender students were not deprived of the use of facilities, denied the rights to use bathrooms that aligned with their gender identity, or deprived of the use of student bathrooms and locker rooms.

114. The school district denied M.W. the Equal Protections afforded by the Minnesota Constitution.

**COUNT VI**
**Right to Education -**
**Minnesota Constitution, Art. XIII, § 1**

Plaintiffs reallege the above allegations of this Complaint and alleges as follows:

115. M.W. also has a fundamental right to education which is protected by Article XIII § 1 of the Minnesota Constitution. As a result of Defendants' discriminatory actions, M.W.'s education was disrupted, his mental health suffered, he missed substantial days of school, he was not provided the option of a physical education class, and he was ultimately forced to transfer schools.

116. The school district denied M.W. and Ms. Woods the right to an adequate education under the Minnesota Constitution.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray that the Court grant the following relief:

A. That the practices of Defendant complained of herein be adjudged, decreed and declared to be in violation of the rights secured to Plaintiffs by the Minnesota Human Rights Act, Minn. Stat. § 363A.01 *et. seq.* and the Minnesota Constitution.

B. That a permanent injunction be issued requiring that Defendant adopt practices in conformity with the requirements of the Minnesota Human Rights Act, Minn. Stat. § 363A.01 *et. seq.* and the Minnesota Constitution;

C. That a permanent prohibitory injunction be issued prohibiting Defendant from engaging in the practices complained of herein. That the Court order Defendant to pay a civil penalty to the State of Minnesota pursuant to Minn. Stat. § 363A.29.

D. That Plaintiffs be awarded compensatory damages in an amount to be determined at

trial and treble damages pursuant to Minn. Stat. § 363A.33 and 363A.29;

E. That Plaintiffs be awarded punitive damages pursuant to Minn. Stat. § 363A.29 in an amount to be established at trial;

F. That the Court issue an order enjoining Defendant and its officers, agents, and employees from subjecting Plaintiffs to differential treatment and from any retaliation against Plaintiffs for prior actions, or for bringing this action;

G. That the Court retain jurisdiction until the Court is satisfied that the Defendant has remedied the practices complained of herein and are determined to be in full compliance with the law;

H. That the Court award Plaintiffs their reasonable attorneys' fees, costs and disbursements pursuant to state law.

I. That Plaintiffs be awarded pre- and post-judgment interest on any monetary damages awarded, pursuant to Minn. Stat. § 549.09 (2013).

J. Pursuant to Minn. R. Civ. P. 8.01, notice is provided that reasonable damages may be greater than $50,000.

K. That the Court grant such other and further relief as it deems fair and equitable.

**PLAINTIFFS DEMAND TRIAL BY JURY ON ALL COUNTS.**

Dated: November 21, 2019

**GENDER JUSTICE**

*/s/ Jess Braverman*
Jess Braverman, MN No. 397332
Christy L. Hall, MN No. 392627
200 University Ave West, Suite 200
St. Paul, MN 55103
Tel. 651-789-2090
Fax 651-789-2093
jess.braverman@genderjustice.us
christy.hall@genderjustice.us

**BEST & FLANAGAN LLP**

*/s/ Katherine S. Barrett Wiik*
Amy S. Conners, MN No. 387375
Katherine S. Barrett Wiik, MN No. 351155
60 South Sixth Street
Suite 2700
Minneapolis, MN 55402
Tel. 612-339-7121
Fax 612-339-5897
aconners@bestlaw.com
kbarrettwiik@bestlaw.com

*ATTORNEYS FOR PLAINTIFFS*

## ACKNOWLEDGEMENT

The undersigned acknowledges that pursuant to Minn. Stat. § 549.211, subd. 2, that costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party or parties in this litigation if the Court should find that the undersigned acted in bad faith, asserted an unfounded position solely to delay the ordinary course of the proceedings or to harass, or committed a fraud upon the Court.

Dated: November 21, 2019 *s/ Katherine S. Barrett Wiik*

# Exhibit 1

POLICY STATEMENT Organizational Principles to Guide and Define the Child Health Care System and/or Improve the Health of all Children

American Academy of Pediatrics

DEDICATED TO THE HEALTH OF ALL CHILDREN™

# Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents

Jason Rafferty, MD, MPH, EdM, FAAP, COMMITTEE ON PSYCHOSOCIAL ASPECTS OF CHILD AND FAMILY HEALTH, COMMITTEE ON ADOLESCENCE, SECTION ON LESBIAN, GAY, BISEXUAL, AND TRANSGENDER HEALTH AND WELLNESS

As a traditionally underserved population that faces numerous health disparities, youth who identify as transgender and gender diverse (TGD) and their families are increasingly presenting to pediatric providers for education, care, and referrals. The need for more formal training, standardized treatment, and research on safety and medical outcomes often leaves providers feeling ill equipped to support and care for patients that identify as TGD and families. In this policy statement, we review relevant concepts and challenges and provide suggestions for pediatric providers that are focused on promoting the health and positive development of youth that identify as TGD while eliminating discrimination and stigma.

## INTRODUCTION

In its dedication to the health of all children, the American Academy of Pediatrics (AAP) strives to improve health care access and eliminate disparities for children and teenagers who identify as lesbian, gay, bisexual, transgender, or questioning (LGBTQ) of their sexual or gender identity.[1,2] Despite some advances in public awareness and legal protections, youth who identify as LGBTQ continue to face disparities that stem from multiple sources, including inequitable laws and policies, societal discrimination, and a lack of access to quality health care, including mental health care. Such challenges are often more intense for youth who do not conform to social expectations and norms regarding gender. Pediatric providers are increasingly encountering such youth and their families, who seek medical advice and interventions, yet they may lack the formal training to care for youth that identify as transgender and gender diverse (TGD) and their families.[3]

This policy statement is focused specifically on children and youth that identify as TGD rather than the larger LGBTQ population, providing brief, relevant background on the basis of current available research

abstract

FREE

*Department of Pediatrics, Hasbro Children's Hospital, Providence, Rhode Island; Thundermist Health Centers, Providence, Rhode Island; and Department of Child Psychiatry, Emma Pendleton Bradley Hospital, East Providence, Rhode Island*

*Dr Rafferty conceptualized the statement, drafted the initial manuscript, reviewed and revised the manuscript, approved the final manuscript as submitted, and agrees to be accountable for all aspects of the work.*



**To cite:** Rafferty J, AAP COMMITTEE ON PSYCHOSOCIAL ASPECTS OF CHILD AND FAMILY HEALTH, AAP COMMITTEE ON ADOLESCENCE, AAP SECTION ON LESBIAN, GAY, BISEXUAL, AND TRANSGENDER HEALTH AND WELLNESS. Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents. *Pediatrics*. 2018;142(4):e20182162

**TABLE 1** Relevant Terms and Definitions Related to Gender Care

| Term | Definition |
|---|---|
| Sex | An assignment that is made at birth, usually male or female, typically on the basis of external genital anatomy but sometimes on the basis of internal gonads, chromosomes, or hormone levels |
| Gender identity | A person's deep internal sense of being female, male, a combination of both, somewhere in between, or neither, resulting from a multifaceted interaction of biological traits, environmental factors, self-understanding, and cultural expectations |
| Gender expression | The external way a person expresses their gender, such as with clothing, hair, mannerisms, activities, or social roles |
| Gender perception | The way others interpret a person's gender expression |
| Gender diverse | A term that is used to describe people with gender behaviors, appearances, or identities that are incongruent with those culturally assigned to their birth sex; gender-diverse individuals may refer to themselves with many different terms, such as transgender, nonbinary, genderqueer,[7] gender fluid, gender creative, gender independent, or noncisgender. "Gender diverse" is used to acknowledge and include the vast diversity of gender identities that exists. It replaces the former term, "gender nonconforming," which has a negative and exclusionary connotation. |
| Transgender | A subset of gender-diverse youth whose gender identity does not match their assigned sex and generally remains persistent, consistent, and insistent over time; the term "transgender" also encompasses many other labels individuals may use to refer to themselves. |
| Cisgender | A term that is used to describe a person who identifies and expresses a gender that is consistent with the culturally defined norms of the sex they were assigned at birth |
| Agender | A term that is used to describe a person who does not identify as having a particular gender |
| Affirmed gender | When a person's true gender identity, or concern about their gender identity, is communicated to and validated from others as authentic |
| MTF; affirmed female; trans female | Terms that are used to describe individuals who were assigned male sex at birth but who have a gender identity and/or expression that is asserted to be more feminine |
| FTM; affirmed male; trans male | Terms that are used to describe individuals who were assigned female sex at birth but who have a gender identity and/or expression that is asserted to be more masculine |
| Gender dysphoria | A clinical symptom that is characterized by a sense of alienation to some or all of the physical characteristics or social roles of one's assigned gender; also, gender dysphoria is the psychiatric diagnosis in the *DSM-5*, which has focus on the distress that stems from the incongruence between one's expressed or experienced (affirmed) gender and the gender assigned at birth. |
| Gender identity disorder | A psychiatric diagnosis defined previously in the *DSM-IV* (changed to "gender dysphoria" in the *DSM-5*); the primary criteria include a strong, persistent cross-sex identification and significant distress and social impairment. This diagnosis is no longer appropriate for use and may lead to stigma, but the term may be found in older research. |
| Sexual orientation | A person's sexual identity in relation to the gender(s) to which they are attracted; sexual orientation and gender identity develop separately. |

This list is not intended to be all inclusive. The pronouns "they" and "their" are used intentionally to be inclusive rather than the binary pronouns "he" and "she" and "his" and "her." Adapted from Bonifacio HJ, Rosenthal SM. Gender variance and dysphoria in children and adolescents. *Pediatr Clin North Am.* 2015;62(4):1001–1016. Adapted from Vance SR Jr, Ehrensaft D, Rosenthal SM. Psychological and medical care of gender nonconforming youth. *Pediatrics.* 2014;134(6):1184–1192. DSM-5, *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*; DSM-IV, *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition*; FTM, female to male; MTF, male to female.

and expert opinion from clinical and research leaders, which will serve as the basis for recommendations. It is not a comprehensive review of clinical approaches and nuances to pediatric care for children and youth that identify as TGD. Professional understanding of youth that identify as TGD is a rapidly evolving clinical field in which research on appropriate clinical management is limited by insufficient funding.[3,4]

## DEFINITIONS

To clarify recommendations and discussions in this policy statement, some definitions are provided. However, brief descriptions of human behavior or identities may not capture nuance in this evolving field. "Sex," or "natal gender," is a label, generally "male" or "female," that is typically assigned at birth on the basis of genetic and anatomic characteristics, such as genital anatomy, chromosomes, and sex hormone levels. Meanwhile, "gender identity" is one's internal sense of who one is, which results from a multifaceted interaction of biological traits, developmental influences, and environmental conditions. It may be male, female, somewhere in between, a combination of both, or neither (ie, not conforming to a binary conceptualization of gender). Self-recognition of gender identity develops over time, much the same way as a child's physical body does. For some people, gender identity can be fluid, shifting in different contexts. "Gender expression" refers to the wide array of ways people display their gender through clothing, hair styles, mannerisms, or social roles. Exploring different ways of expressing gender is common for children and may challenge social expectations. The way others interpret this expression is referred to as "gender perception" (Table 1).[5,6]

These labels may or may not be congruent. The term "cisgender" is used if someone identifies and expresses a gender that is consistent with the culturally defined norms of the sex that was assigned at birth. "Gender diverse" is an umbrella term to describe an ever-evolving array of labels that people may apply when their gender identity, expression, or even perception does not conform

to the norms and stereotypes others expect of their assigned sex. "Transgender" is usually reserved for a subset of such youth whose gender identity does not match their assigned sex and generally remains persistent, consistent, and insistent over time. These terms are not diagnoses; rather, they are personal and often dynamic ways of describing one's own gender experience.

Gender identity is not synonymous with "sexual orientation," which refers to a person's identity in relation to the gender(s) to which they are sexually and romantically attracted. Gender identity and sexual orientation are distinct but interrelated constructs.[8] Therefore, being transgender does not imply a sexual orientation, and people who identify as transgender still identify as straight, gay, bisexual, etc, on the basis of their attractions. (For more information, *The Gender Book*, found at www.thegenderbook.com, is a resource with illustrations that are used to highlight these core terms and concepts.)

## EPIDEMIOLOGY

In population-based surveys, questions related to gender identity are rarely asked, which makes it difficult to assess the size and characteristics of the population that is TGD. In the 2014 Behavioral Risk Factor Surveillance System of the Centers for Disease Control and Prevention, only 19 states elected to include optional questions on gender identity. Extrapolation from these data suggests that the US prevalence of adults who identify as transgender or "gender nonconforming" is 0.6% (1.4 million), ranging from 0.3% in North Dakota to 0.8% in Hawaii.[9] On the basis of these data, it has been estimated that 0.7% of youth ages 13 to 17 years (~150 000) identify as transgender.[10] This number is much higher than previous estimates, which were extrapolated from individual states or specialty clinics, and is likely an underestimate given the stigma regarding those who openly identify as transgender and the difficulty in defining "transgender" in a way that is inclusive of all gender-diverse identities.[11]

There have been no large-scale prevalence studies among children and adolescents, and there is no evidence that adult statistics reflect young children or adolescents. In the 2014 Behavioral Risk Factor Surveillance System, those 18 to 24 years of age were more likely than older age groups to identify as transgender (0.7%).[9] Children report being aware of gender incongruence at young ages. Children who later identify as TGD report first having recognized their gender as "different" at an average age of 8.5 years; however, they did not disclose such feelings until an average of 10 years later.[12]

## MENTAL HEALTH IMPLICATIONS

Adolescents and adults who identify as transgender have high rates of depression, anxiety, eating disorders, self-harm, and suicide.[13–20] Evidence suggests that an identity of TGD has an increased prevalence among individuals with autism spectrum disorder, but this association is not yet well understood.[21,22] In 1 retrospective cohort study, 56% of youth who identified as transgender reported previous suicidal ideation, and 31% reported a previous suicide attempt, compared with 20% and 11% among matched youth who identified as cisgender, respectively.[13] Some youth who identify as TGD also experience gender dysphoria, which is a specific diagnosis given to those who experience impairment in peer and/or family relationships, school performance, or other aspects of their life as a consequence of the incongruence between their assigned sex and their gender identity.[23]

There is no evidence that risk for mental illness is inherently attributable to one's identity of TGD. Rather, it is believed to be multifactorial, stemming from an internal conflict between one's appearance and identity, limited availability of mental health services, low access to health care providers with expertise in caring for youth who identify as TGD, discrimination, stigma, and social rejection.[24] This was affirmed by the American Psychological Association in 2008[25] (with practice guidelines released in 2015[8]) and the American Psychiatric Association, which made the following statement in 2012:

> *Being transgender or gender variant implies no impairment in judgment, stability, reliability, or general social or vocational capabilities; however, these individuals often experience discrimination due to a lack of civil rights protections for their gender identity or expression.… [Such] discrimination and lack of equal civil rights is damaging to the mental health of transgender and gender variant individuals.*[26]

Youth who identify as TGD often confront stigma and discrimination, which contribute to feelings of rejection and isolation that can adversely affect physical and emotional well-being. For example, many youth believe that they must hide their gender identity and expression to avoid bullying, harassment, or victimization. Youth who identify as TGD experience disproportionately high rates of homelessness, physical violence (at home and in the community), substance abuse, and high-risk sexual behaviors.[5,6,12,27–31] Among the 3 million HIV testing events that were reported in 2015, the highest percentages of new infections were among women who identified as transgender[32] and were also at particular risk for not knowing their HIV status.[30]

## GENDER-AFFIRMATIVE CARE

In a gender-affirmative care model (GACM), pediatric providers offer developmentally appropriate care that is oriented toward understanding and appreciating the youth's gender experience. A strong, nonjudgmental partnership with youth and their families can facilitate exploration of complicated emotions and gender-diverse expressions while allowing questions and concerns to be raised in a supportive environment.[5] In a GACM, the following messages are conveyed:

- transgender identities and diverse gender expressions do not constitute a mental disorder;
- variations in gender identity and expression are normal aspects of human diversity, and binary definitions of gender do not always reflect emerging gender identities;
- gender identity evolves as an interplay of biology, development, socialization, and culture; and
- if a mental health issue exists, it most often stems from stigma and negative experiences rather than being intrinsic to the child.[27,33]

The GACM is best facilitated through the integration of medical, mental health, and social services, including specific resources and supports for parents and families.[24] Providers work together to destigmatize gender variance, promote the child's self-worth, facilitate access to care, educate families, and advocate for safer community spaces where children are free to develop and explore their gender.[5] A specialized gender-affirmative therapist, when available, may be an asset in helping children and their families build skills for dealing with gender-based stigma, address symptoms of anxiety or depression, and reinforce the child's overall resiliency.[34,35] There is a limited but growing body of evidence that suggests that using an integrated affirmative model results in young people having fewer mental health concerns whether they ultimately identify as transgender.[24,36,37]

In contrast, "conversion" or "reparative" treatment models are used to prevent children and adolescents from identifying as transgender or to dissuade them from exhibiting gender-diverse expressions. The Substance Abuse and Mental Health Services Administration has concluded that any therapeutic intervention with the goal of changing a youth's gender expression or identity is inappropriate.[33] Reparative approaches have been proven to be not only unsuccessful[38] but also deleterious and are considered outside the mainstream of traditional medical practice.[29,39–42] The AAP described reparative approaches as "unfair and deceptive."[43] At the time of this writing,* conversion therapy was banned by executive regulation in New York and by legislative statutes in 9 other states as well as the District of Columbia.[44]

Pediatric providers have an essential role in assessing gender concerns and providing evidence-based information to assist youth and families in medical decision-making. Not doing so can prolong or exacerbate gender dysphoria and contribute to abuse and stigmatization.[35] If a pediatric provider does not feel prepared to address gender concerns when they occur, then referral to a pediatric or mental health provider with more expertise is appropriate. There is little research on communication and efficacy with transfers in care for youth who identify as TGD, particularly from pediatric to adult providers.

## DEVELOPMENTAL CONSIDERATIONS

Acknowledging that the capacity for emerging abstract thinking in childhood is important to conceptualize and reflect on identity, gender-affirmation guidelines are being focused on individually tailored interventions on the basis of the physical and cognitive development of youth who identify as TGD.[45] Accordingly, research substantiates that children who are prepubertal and assert an identity of TGD know their gender as clearly and as consistently as their developmentally equivalent peers who identify as cisgender and benefit from the same level of social acceptance.[46] This developmental approach to gender affirmation is in contrast to the outdated approach in which a child's gender-diverse assertions are held as "possibly true" until an arbitrary age (often after pubertal onset) when they can be considered valid, an approach that authors of the literature have termed "watchful waiting." This outdated approach does not serve the child because critical support is withheld. Watchful waiting is based on binary notions of gender in which gender diversity and fluidity is pathologized; in watchful waiting, it is also assumed that notions of gender identity become fixed at a certain age. The approach is also influenced by a group of early studies with validity concerns, methodologic flaws, and limited follow-up on children who identified as TGD and, by adolescence, did not seek further treatment ("desisters").[45,47] More robust and current research suggests that, rather than focusing on who a child will become, valuing them for who they are, even at a young age, fosters secure attachment and resilience, not only for the child but also for the whole family.[5,45,48,49]

* For more information regarding state-specific laws, please contact the AAP Division of State Government Affairs at stgov@ aap.org.

## MEDICAL MANAGEMENT

Pediatric primary care providers are in a unique position to routinely inquire about gender development in children and adolescents as part of recommended well-child visits[50] and to be a reliable source of validation, support, and reassurance. They are often the first provider to be aware that a child may not identify as cisgender or that there may be distress related to a gender-diverse identity. The best way to approach gender with patients is to inquire directly and nonjudgmentally about their experience and feelings before applying any labels.[27,51]

Many medical interventions can be offered to youth who identify as TGD and their families. The decision of whether and when to initiate gender-affirmative treatment is personal and involves careful consideration of risks, benefits, and other factors unique to each patient and family. Many protocols suggest that clinical assessment of youth who identify as TGD is ideally conducted on an ongoing basis in the setting of a collaborative, multidisciplinary approach, which, in addition to the patient and family, may include the pediatric provider, a mental health provider (preferably with expertise in caring for youth who identify as TGD ), social and legal supports, and a pediatric endocrinologist or adolescent-medicine gender specialist, if available.[6,28] There is no prescribed path, sequence, or end point. Providers can make every effort to be aware of the influence of their own biases. The medical options also vary depending on pubertal and developmental progression.

### Clinical Setting

In the past year, 1 in 4 adults who identified as transgender avoided a necessary doctor's visit because of fear of being mistreated.[31] All clinical office staff have a role in affirming a patient's gender identity. Making flyers available or displaying posters related to LGBTQ health issues, including information for children who identify as TGD and families, reveals inclusivity and awareness. Generally, patients who identify as TGD feel most comfortable when they have access to a gender-neutral restroom. Diversity training that encompasses sensitivity when caring for youth who identify as TGD and their families can be helpful in educating clinical and administrative staff. A patient-asserted name and pronouns are used by staff and are ideally reflected in the electronic medical record without creating duplicate charts.[52,53] The US Centers for Medicare and Medicaid Services and the National Coordinator for Health Information Technology require all electronic health record systems certified under the Meaningful Use incentive program to have the capacity to confidentially collect information on gender identity.[54,55] Explaining and maintaining confidentiality procedures promotes openness and trust, particularly with youth who identify as LGBTQ.[1] Maintaining a safe clinical space can provide at least 1 consistent, protective refuge for patients and families, allowing authentic gender expression and exploration that builds resiliency.

### Pubertal Suppression

Gonadotrophin-releasing hormones have been used to delay puberty since the 1980s for central precocious puberty.[56] These reversible treatments can also be used in adolescents who experience gender dysphoria to prevent development of secondary sex characteristics and provide time up until 16 years of age for the individual and the family to explore gender identity, access psychosocial supports, develop coping skills, and further define appropriate treatment goals. If pubertal suppression treatment is suspended, then endogenous puberty will resume.[20,57,58]

Often, pubertal suppression creates an opportunity to reduce distress that may occur with the development of secondary sexual characteristics and allow for gender-affirming care, including mental health support for the adolescent and the family. It reduces the need for later surgery because physical changes that are otherwise irreversible (protrusion of the Adam's apple, male pattern baldness, voice change, breast growth, etc) are prevented. The available data reveal that pubertal suppression in children who identify as TGD generally leads to improved psychological functioning in adolescence and young adulthood.[20,57–59]

Pubertal suppression is not without risks. Delaying puberty beyond one's peers can also be stressful and can lead to lower self-esteem and increased risk taking.[60] Some experts believe that genital underdevelopment may limit some potential reconstructive options.[61] Research on long-term risks, particularly in terms of bone metabolism[62] and fertility,[63] is currently limited and provides varied results.[57,64,65] Families often look to pediatric providers for help in considering whether pubertal suppression is indicated in the context of their child's overall well-being as gender diverse.

### Gender Affirmation

As youth who identify as TGD reflect on and evaluate their gender identity, various interventions may be considered to better align their gender expression with their underlying identity. This process of reflection, acceptance, and, for some, intervention is known as "gender affirmation." It was formerly referred to as "transitioning," but many view the process as an affirmation and acceptance of who they have always been rather than a transition

**TABLE 2** The Process of Gender Affirmation May Include ≥1 of the Following Components

| Component | Definition | General Age Range[a] | Reversibility[a] |
|---|---|---|---|
| Social affirmation | Adopting gender-affirming hairstyles, clothing, name, gender pronouns, and restrooms and other facilities | Any | Reversible |
| Puberty blockers | Gonadotropin-releasing hormone analogues, such as leuprolide and histrelin | During puberty (Tanner stage 2–5)[b] | Reversible[c] |
| Cross-sex hormone therapy | Testosterone (for those who were assigned female at birth and are masculinizing); estrogen plus androgen inhibitor (for those who were assigned male at birth and are feminizing) | Early adolescence onward | Partially reversible (skin texture, muscle mass, and fat deposition); irreversible once developed (testosterone: Adam's apple protrusion, voice changes, and male pattern baldness; estrogen: breast development); unknown reversibility (effect on fertility) |
| Gender-affirming surgeries | "Top" surgery (to create a male-typical chest shape or enhance breasts); "bottom" surgery (surgery on genitals or reproductive organs); facial feminization and other procedures | Typically adults (adolescents on case-by-case basis[d]) | Not reversible |
| Legal affirmation | Changing gender and name recorded on birth certificate, school records, and other documents | Any | Reversible |

[a] Note that the provided age range and reversibility is based on the little data that are currently available.
[b] There is limited benefit to starting gonadotropin-releasing hormone after Tanner stage 5 for pubertal suppression. However, when cross-sex hormones are initiated with a gradually increasing schedule, the initial levels are often not high enough to suppress endogenous sex hormone secretion. Therefore, gonadotropin-releasing hormone may be continued in accordance with the Endocrine Society Guidelines.[68]
[c] The effect of sustained puberty suppression on fertility is unknown. Pubertal suppression can be, and often is indicated to be, followed by cross-sex hormone treatment. However, when cross-sex hormones are initiated without endogenous hormones, then fertility may be decreased.[68]
[d] Eligibility criteria for gender-affirmative surgical interventions among adolescents are not clearly defined between established protocols and practice. When applicable, eligibility is usually determined on a case-by-case basis with the adolescent and the family along with input from medical, mental health, and surgical providers.[68–71]

from 1 gender identity to another. Accordingly, some people who have gone through the process prefer to call themselves "affirmed females, males, etc" (or just "females, males, etc"), rather than using the prefix "trans-." Gender affirmation is also used to acknowledge that some individuals who identify as TGD may feel affirmed in their gender without pursuing medical or surgical interventions.[7,66]

Supportive involvement of parents and family is associated with better mental and physical health outcomes.[67] Gender affirmation among adolescents with gender dysphoria often reduces the emphasis on gender in their lives, allowing them to attend to other developmental tasks, such as academic success, relationship building, and future-oriented planning.[64] Most protocols for gender-affirming interventions incorporate World Professional Association of Transgender Health[35] and Endocrine Society[68] recommendations and include ≥1 of the following elements (Table 2):

1. Social Affirmation: This is a reversible intervention in which children and adolescents express partially or completely in their asserted gender identity by adapting hairstyle, clothing, pronouns, name, etc. Children who identify as transgender and socially affirm and are supported in their asserted gender show no increase in depression and only minimal (clinically insignificant) increases in anxiety compared with age-matched averages.[48] Social affirmation can be complicated given the wide range of social interactions children have (eg, extended families, peers, school, community, etc). There is little guidance on the best approach (eg, all at once, gradual, creating new social networks, or affirming within existing networks, etc). Pediatric providers can best support families by anticipating and discussing such complexity proactively, either in their own practice or through enlisting a qualified mental health provider.

2. Legal Affirmation: Elements of a social affirmation, such as a name and gender marker, become official on legal documents, such as birth certificates, passports, identification cards, school documents, etc. The processes for making these changes depend on state laws and may require specific documentation from pediatric providers.

3. Medical Affirmation: This is the process of using cross-sex hormones to allow adolescents who have initiated puberty to develop secondary sex characteristics of the opposite biological sex. Some changes are partially reversible if hormones are stopped, but others become

irreversible once they are fully developed (Table 2).

4. Surgical Affirmation: Surgical approaches may be used to feminize or masculinize features, such as hair distribution, chest, or genitalia, and may include removal of internal organs, such as ovaries or the uterus (affecting fertility). These changes are irreversible. Although current protocols typically reserve surgical interventions for adults,[35,68] they are occasionally pursued during adolescence on a case-by-case basis, considering the necessity and benefit to the adolescent's overall health and often including multidisciplinary input from medical, mental health, and surgical providers as well as from the adolescent and family.[69–71]

For some youth who identify as TGD whose natal gender is female, menstruation, breakthrough bleeding, and dysmenorrhea can lead to significant distress before or during gender affirmation. The American College of Obstetrics and Gynecology suggests that, although limited data are available to outline management, menstruation can be managed without exogenous estrogens by using a progesterone-only pill, a medroxyprogesterone acetate shot, or a progesterone-containing intrauterine or implantable device.[72] If estrogen can be tolerated, oral contraceptives that contain both progesterone and estrogen are more effective at suppressing menses.[73] The Endocrine Society guidelines also suggest that gonadotrophin-releasing hormones can be used for menstrual suppression before the anticipated initiation of testosterone or in combination with testosterone for breakthrough bleeding (enables phenotypic masculinization at a lower dose than if testosterone is used alone).[68] Masculinizing hormones in natal female patients may lead to a cessation of menses, but unplanned pregnancies have been reported, which emphasizes the need for ongoing contraceptive counseling with youth who identify as TGD.[72]

## HEALTH DISPARITIES

In addition to societal challenges, youth who identify as TGD face several barriers within the health care system, especially regarding access to care. In 2015, a focus group of youth who identified as transgender in Seattle, Washington, revealed 4 problematic areas related to health care:

1. safety issues, including the lack of safe clinical environments and fear of discrimination by providers;
2. poor access to physical health services, including testing for sexually transmitted infections;
3. inadequate resources to address mental health concerns; and
4. lack of continuity with providers.[74]

This study reveals the obstacles many youth who identify as TGD face in accessing essential services, including the limited supply of appropriately trained medical and psychological providers, fertility options, and insurance coverage denials for gender-related treatments.[74]

Insurance denials for services related to the care of patients who identify as TGD are a significant barrier. Although the Office for Civil Rights of the US Department of Health and Human Services explicitly stated in 2012 that the nondiscrimination provision in the Patient Protection and Affordable Care Act includes people who identify as gender diverse,[75,76] insurance claims for gender affirmation, particularly among youth who identify as TGD, are frequently denied.[54,77] In 1 study, it was found that approximately 25% of individuals who identified as transgender were denied insurance coverage because of being transgender.[31] The burden of covering medical expenses that are not covered by insurance can be financially devastating, and even when expenses are covered, families describe high levels of stress in navigating and submitting claims appropriately.[78] In 2012, a large gender center in Boston, Massachusetts, reported that most young patients who identified as transgender and were deemed appropriate candidates for recommended gender care were unable to obtain it because of such denials, which were based on the premise that gender dysphoria was a mental disorder, not a physical one, and that treatment was not medically or surgically necessary.[24] This practice not only contributes to stigma, prolonged gender dysphoria, and poor mental health outcomes,[77] but it may also lead patients to seek nonmedically supervised treatments that are potentially dangerous.[24] Furthermore, insurance denials can reinforce a socioeconomic divide between those who can finance the high costs of uncovered care and those who cannot.[24,77]

The transgender youth group in Seattle likely reflected the larger TGD population when they described how obstacles adversely affect self-esteem and contribute to the perception that they are undervalued by society and the health care system.[74,77] Professional medical associations, including the AAP, are increasingly calling for equity in health care provisions regardless of gender identity or expression.[1,8,23,72] There is a critical need for investments in research on the prevalence, disparities, biological underpinnings, and standards of care relating to gender-diverse populations. Pediatric providers who work with state government and insurance officials can play an essential role in advocating for

stronger nondiscrimination policies and improved coverage.

There is a lack of quality research on the experience of youth of color who identify as transgender. One theory suggests that the intersection of racism, transphobia, and sexism may result in the extreme marginalization that is experienced among many women of color who identify as transgender,[79] including rejection from their family and dropping out of school at younger ages (often in the setting of rigid religious beliefs regarding gender),[80] increased levels of violence and body objectification,[81] 3 times the risk of poverty compared with the general population,[31] and the highest prevalence of HIV compared with other risk groups (estimated as high as 56.3% in 1 meta-analysis).[30] One model suggests that pervasive stigma and oppression can be associated with psychological distress (anxiety, depression, and suicide) and adoption of risk behaviors by such youth to obtain a sense of validation toward their complex identities.[79]

## FAMILY ACCEPTANCE

Research increasingly suggests that familial acceptance or rejection ultimately has little influence on the gender identity of youth; however, it may profoundly affect young people's ability to openly discuss or disclose concerns about their identity. Suppressing such concerns can affect mental health.[82] Families often find it hard to understand and accept their child's gender-diverse traits because of personal beliefs, social pressure, and stigma.[49,83] Legitimate fears may exist for their child's welfare, safety, and acceptance that pediatric providers need to appreciate and address. Families can be encouraged to communicate their concerns and questions. Unacknowledged concerns can contribute to shame and hesitation in regard to offering support and understanding,[84] which is essential for the child's self-esteem, social involvement, and overall health as TGD.[48,85–87] Some caution has been expressed that unquestioning acceptance per se may not best serve questioning youth or their families. Instead, psychological evidence suggests that the most benefit comes when family members and youth are supported and encouraged to engage in reflective perspective taking and validate their own and the other's thoughts and feelings despite divergent views.[49,82]

In this regard, suicide attempt rates among 433 adolescents in Ontario who identified as "trans" were 4% among those with strongly supportive parents and as high as 60% among those whose parents were not supportive.[85] Adolescents who identify as transgender and endorse at least 1 supportive person in their life report significantly less distress than those who only experience rejection. In communities with high levels of support, it was found that nonsupportive families tended to increase their support over time, leading to dramatic improvement in mental health outcomes among their children who identified as transgender.[88]

Pediatric providers can create a safe environment for parents and families to better understand and listen to the needs of their children while receiving reassurance and education.[83] It is often appropriate to assist the child in understanding the parents' concerns as well. Despite expectations by some youth with transgender identity for immediate acceptance after "coming out," family members often proceed through a process of becoming more comfortable and understanding of the youth's gender identity, thoughts, and feelings. One model suggests that the process resembles grieving, wherein the family separates from their expectations for their child to embrace a new reality. This process may proceed through stages of shock, denial, anger, feelings of betrayal, fear, self-discovery, and pride.[89] The amount of time spent in any of these stages and the overall pace varies widely. Many family members also struggle as they are pushed to reflect on their own gender experience and assumptions throughout this process. In some situations, youth who identify as TGD may be at risk for internalizing the difficult emotions that family members may be experiencing. In these cases, individual and group therapy for the family members may be helpful.[49,78]

Family dynamics can be complex, involving disagreement among legal guardians or between guardians and their children, which may affect the ability to obtain consent for any medical management or interventions. Even in states where minors may access care without parental consent for mental health services, contraception, and sexually transmitted infections, parental or guardian consent is required for hormonal and surgical care of patients who identify as TGD.[72,90] Some families may take issue with providers who address gender concerns or offer gender-affirming care. In rare cases, a family may deny access to care that raises concerns about the youth's welfare and safety; in those cases, additional legal or ethical support may be useful to consider. In such rare situations, pediatric providers may want to familiarize themselves with relevant local consent laws and maintain their primary responsibility for the welfare of the child.

## SAFE SCHOOLS AND COMMUNITIES

Youth who identify as TGD are becoming more visible because gender-diverse expression is increasingly admissible in the media, on social media, and in schools and communities. Regardless of whether a youth with a gender-diverse

identity ultimately identifies as transgender, challenges exist in nearly every social context, from lack of understanding to outright rejection, isolation, discrimination, and victimization. In the US Transgender Survey of nearly 28 000 respondents, it was found that among those who were out as or perceived to be TGD between kindergarten and eighth grade, 54% were verbally harassed, 24% were physically assaulted, and 13% were sexually assaulted; 17% left school because of maltreatment.[31] Education and advocacy from the medical community on the importance of safe schools for youth who identify as TGD can have a significant effect.

At the time of this writing,* only 18 states and the District of Columbia had laws that prohibited discrimination based on gender expression when it comes to employment, housing, public accommodations, and insurance benefits. Over 200 US cities have such legislation. In addition to basic protections, many youth who identify as TGD also have to navigate legal obstacles when it comes to legally changing their name and/or gender marker.[54] In addition to advocating and working with policy makers to promote equal protections for youth who identify as TGD, pediatric providers can play an important role by developing a familiarity with local laws and organizations that provide social work and legal assistance to youth who identify as TGD and their families.

School environments play a significant role in the social and emotional development of children. Every child has a right to feel safe and respected at school, but for youth who identify as TGD, this can be challenging. Nearly every aspect of school life may present safety concerns and require negotiations regarding their gender expression, including name/pronoun use, use of bathrooms and locker rooms, sports teams, dances and activities, overnight activities, and even peer groups. Conflicts in any of these areas can quickly escalate beyond the school's control to larger debates among the community and even on a national stage.

The formerly known Gay, Lesbian, and Straight Education Network (GLSEN), an advocacy organization for youth who identify as LGBTQ, conducts an annual national survey to measure LGBTQ well-being in US schools. In 2015, students who identified as LGBTQ reported high rates of being discouraged from participation in extracurricular activities. One in 5 students who identified as LGBTQ reported being hindered from forming or participating in a club to support lesbian, gay, bisexual, or transgender students (eg, a gay straight alliance, now often referred to as a genders and sexualities alliance) despite such clubs at schools being associated with decreased reports of negative remarks about sexual orientation or gender expression, increased feelings of safety and connectedness at school, and lower levels of victimization. In addition, >20% of students who identified as LGBTQ reported being blocked from writing about LGBTQ issues in school yearbooks or school newspapers or being prevented or discouraged by coaches and school staff from participating in sports because of their sexual orientation or gender expression.[91]

One strategy to prevent conflict is to proactively support policies and protections that promote inclusion and safety of all students. However, such policies are far from consistent across districts. In 2015, GLSEN found that 43% of children who identified as LGBTQ reported feeling unsafe at school because of their gender expression, but only 6% reported that their school had official policies to support youth who identified as TGD, and only 11% reported that their school's antibullying policies had specific protections for gender expression.[91] Consequently, more than half of the students who identified as transgender in the study were prevented from using the bathroom, names, or pronouns that aligned with their asserted gender at school. A lack of explicit policies that protected youth who identified as TGD was associated with increased reported victimization, with more than half of students who identified as LGBTQ reporting verbal harassment because of their gender expression. Educators and school administrators play an essential role in advocating for and enforcing such policies. GLSEN found that when students recognized actions to reduce gender-based harassment, both students who identified as transgender and cisgender reported a greater connection to staff and feelings of safety.[91] In another study, schools were open to education regarding gender diversity and were willing to implement policies when they were supported by external agencies, such as medical professionals.[92]

Academic content plays an important role in building a safe school environment as well. The 2015 GLSEN survey revealed that when positive representations of people who identified as LGBTQ were included in the curriculum, students who identified as LGBTQ reported less hostile school environments, less victimization and greater feelings of safety, fewer school absences because of feeling unsafe, greater feelings of connectedness to their school

* For more information regarding state-specific laws, please contact the AAP Division of State Government Affairs at stgov@ aap.org.

community, and an increased interest in high school graduation and postsecondary education.[91] At the time of this writing,* 8 states had laws that explicitly forbade teachers from even discussing LGBTQ issues.[54]

## MEDICAL EDUCATION

One of the most important ways to promote high-quality health care for youth who identify as TGD and their families is increasing the knowledge base and clinical experience of pediatric providers in providing culturally competent care to such populations, as recommended by the recently released guidelines by the Association of American Medical Colleges.[93] This begins with the medical school curriculum in areas such as human development, sexual health, endocrinology, pediatrics, and psychiatry. In a 2009–2010 survey of US medical schools, it was found that the median number of hours dedicated to LGBTQ health was 5, with one-third of US medical schools reporting no LGBTQ curriculum during the clinical years.[94]

During residency training, there is potential for gender diversity to be emphasized in core rotations, especially in pediatrics, psychiatry, family medicine, and obstetrics and gynecology. Awareness could be promoted through the inclusion of topics relevant to caring for children who identify as TGD in the list of core competencies published by the American Board of Pediatrics, certifying examinations, and relevant study materials. Continuing education and maintenance of certification activities can include topics relevant to TGD populations as well.

* For more information regarding state-specific laws, please contact the AAP Division of State Government Affairs at stgov@ aap.org.

## RECOMMENDATIONS

The AAP works toward all children and adolescents, regardless of gender identity or expression, receiving care to promote optimal physical, mental, and social well-being. Any discrimination based on gender identity or expression, real or perceived, is damaging to the socioemotional health of children, families, and society. In particular, the AAP recommends the following:

1. that youth who identify as TGD have access to comprehensive, gender-affirming, and developmentally appropriate health care that is provided in a safe and inclusive clinical space;
2. that family-based therapy and support be available to recognize and respond to the emotional and mental health needs of parents, caregivers, and siblings of youth who identify as TGD;
3. that electronic health records, billing systems, patient-centered notification systems, and clinical research be designed to respect the asserted gender identity of each patient while maintaining confidentiality and avoiding duplicate charts;
4. that insurance plans offer coverage for health care that is specific to the needs of youth who identify as TGD, including coverage for medical, psychological, and, when indicated, surgical gender-affirming interventions;
5. that provider education, including medical school, residency, and continuing education, integrate core competencies on the emotional and physical health needs and best practices for the care of youth who identify as TGD and their families;
6. that pediatricians have a role in advocating for, educating, and developing liaison relationships with school districts and other community organizations to promote acceptance and inclusion of all children without fear of harassment, exclusion, or bullying because of gender expression;
7. that pediatricians have a role in advocating for policies and laws that protect youth who identify as TGD from discrimination and violence;
8. that the health care workforce protects diversity by offering equal employment opportunities and workplace protections, regardless of gender identity or expression; and
9. that the medical field and federal government prioritize research that is dedicated to improving the quality of evidence-based care for youth who identify as TGD.


### LEAD AUTHOR

Jason Richard Rafferty, MD, MPH, EdM, FAAP

### CONTRIBUTOR

Robert Garofalo, MD, FAAP

### COMMITTEE ON PSYCHOSOCIAL ASPECTS OF CHILD AND FAMILY HEALTH, 2017–2018

Michael Yogman, MD, FAAP, Chairperson
Rebecca Baum, MD, FAAP
Thresia B. Gambon, MD, FAAP
Arthur Lavin, MD, FAAP
Gerri Mattson, MD, FAAP
Lawrence Sagin Wissow, MD, MPH, FAAP

### LIAISONS

Sharon Berry, PhD, LP – *Society of Pediatric Psychology*
Ed Christophersen, PhD, FAAP – *Society of Pediatric Psychology*
Norah Johnson, PhD, RN, CPNP-BC – *National Association of Pediatric Nurse Practitioners*
Amy Starin, PhD, LCSW – *National Association of Social Workers*
Abigail Schlesinger, MD – *American Academy of Child and Adolescent Psychiatry*

### STAFF

Karen S. Smith
James Baumberger

### ACKNOWLEDGMENTS

We thank Isaac Albanese, MPA, and Jayeson Watts, LICSW, for their thoughtful reviews and contributions.


### ABBREVIATIONS

AAP: American Academy of Pediatrics
GACM: gender-affirmative care model
GLSEN: Gay, Lesbian, and Straight Education Network
LGBTQ: lesbian, gay, bisexual, transgender, or questioning
TGD: transgender and gender diverse


**DOI:** https://doi.org/10.1542/peds.2018-2162



Address correspondence to Jason Rafferty, MD, MPH, EdM, FAAP. E-mail: Jason_Rafferty@mail.harvard.edu



PEDIATRICS (ISSN Numbers: Print, 0031-4005; Online, 1098-4275).





**FINANCIAL DISCLOSURE:** The author has indicated he has no financial relationships relevant to this article to disclose.

**FUNDING:** No external funding.

**POTENTIAL CONFLICT OF INTEREST:** The author has indicated he has no potential conflicts of interest to disclose.


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**Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents**

Jason Rafferty, COMMITTEE ON PSYCHOSOCIAL ASPECTS OF CHILD AND FAMILY HEALTH, COMMITTEE ON ADOLESCENCE and SECTION ON LESBIAN, GAY, BISEXUAL, AND TRANSGENDER HEALTH AND WELLNESS

*Pediatrics* 2018;142;
DOI: 10.1542/peds.2018-2162 originally published online September 17, 2018;

PEDIATRICS®
OFFICIAL JOURNAL OF THE AMERICAN ACADEMY OF PEDIATRICS

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# Exhibit 2

# A Toolkit for Ensuring Safe and Supportive Schools for Transgender and Gender Nonconforming Students

Revised September 25, 2017

MINNESOTA

DEPARTMENT OF EDUCATION

# A Toolkit for Ensuring Safe and Supportive Schools for Transgender and Gender Nonconforming Students

## Table of Contents



September 25, 2017

# Introduction

Safe, supportive and welcoming schools play a pivotal role in ensuring students are engaged in learning and that nothing hinders their ability to achieve their best in the classroom. The School Safety Technical Assistance Council seeks to help all schools in Minnesota ensure that all students in Minnesota regardless of their color, race, religion, gender or sexual orientation are afforded a safe, supportive and welcoming school environment where they can achieve success.

Ensuring that transgender and gender nonconforming students are safe and supported in school has been an emerging issue throughout the nation and in school districts and charter schools throughout Minnesota. During the last three years, an increasing number of school and school district administrators and staff members as well as students and families have contacted the Minnesota Department of Education and the School Safety Technical Assistance Center (http://education.state.mn.us/MDE/dse/safe/) seeking technical assistance on how to ensure safe, supportive and inclusive environments for all students, including transgender and gender nonconforming students.

In response, the council, which oversees the center, formed a workgroup to develop this toolkit to help school districts and charter schools create school environments where transgender and gender nonconforming students are safe, supported and fully included, and have equal access to the educational opportunities provided to all students as required by federal or state law.

# Defining Transgender and Gender Nonconforming Students

Gender identity, assigned sex and sexual orientation are separate identity characteristics according to the American Psychological Association and National Association of School Psychologists.[1] Any student, including transgender and gender nonconforming students, may be heterosexual, gay, lesbian or bisexual. Gender identity does not correlate with sexual orientation.

Understanding the terminology associated with gender identity is important to providing a safe and supportive school environment for students. The following terms and definitions are included in this toolkit to assist school leaders and staff in understanding the information presented in this resource:

- Gender identity – an individual's innate sense of one's own gender; a deeply held sense of psychological knowledge of one's own gender, regardless of the gender assigned at birth.
- Gender expression – the external appearance, characteristics or behaviors typically associated with a specific gender.
- Gender nonconforming – people whose gender expression differs from stereotypical expectations, such as "feminine" boys, "masculine" girls, and those who are perceived as androgynous or gender nonbinary.
- Sexual orientation – refers to the sex of those to whom one is sexually and romantically attracted. Categories of sexual orientation typically have included attraction to members of one's own sex (gay or

[1] American Psychological Association & National Association of School Psychologists. (2015). Resolution On Gender And Sexual Orientation Diversity In Children And Adolescents In Schools. (http://www.apa.org/about/policy/orientation-diversity.aspx)

lesbian), attraction to members of the other sex (heterosexual) and attraction to members of both sexes (bisexual).

- Transgender – an umbrella term for people whose gender identity, gender expression or behavior does not conform to that typically associated with the sex to which they were assigned at birth.

## Transgender and Gender Nonconforming Students at Risk

School officials play powerful proactive roles in creating safe environments for transgender and gender nonconforming students. In 2015, the National Center for Transgender Equality found that 77 percent of students who identify as transgender or gender nonconforming reported being harassed at some point between kindergarten and grade 12.[2] Specifically, 54 percent of the above individuals were verbally harassed, 24 percent were physically attacked and 13 percent were sexually assaulted during this time because of being transgender. These students faced such severe mistreatment that 17 percent dropped out of school. Additionally, a recent national study of more than 10,000 youth found that 50 percent of gender nonconforming students reported that they did not participate in school activities because they feared being discriminated against, 42 percent were called derogatory names on a consistent basis and 40 percent reported that they were frequently and often excluded from school activities.[3]

In Minnesota, the Minnesota Student Survey data for transgender and gender nonconforming students are consistent with national data. Transgender and gender nonconforming students in the 9th and 11th grades reported elevated levels of bullying and harassment.[4] Additionally, 31 percent of transgender and gender nonconforming students have attempted suicide and 61 percent had seriously considered attempting suicide.

## Drafting School Policies

This toolkit has been compiled to provide information to assist schools in establishing or amending school policies to ensure that all students are provided with a safe and supportive school environment. The information provided within this document to assist schools does not create new legal obligations or requirements under federal or state law.

Several Minnesota schools have already drafted school policies on creating a safe, supportive and welcoming environment for transgender and gender nonconforming students.[5] The council has also located several similar policies across the United States that have been used to support transgender and gender nonconforming

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[2] James, S.E., Herman, J.L., Rankin, S. Keisling, M., Mottet, L., & Anafi, M. (2016). The Report of the 2015 U.S. Transgender Survey. Washington, D.C., National Center for Transgender Equality.

[3] See, Human Rights Campaign Foundation survey "Growing Up LGBT in America." (http://issuu.com/humanrightscampaign/docs/growing-up-lgbt-in-america?e=0)

[4] See, 2016 Minnesota Student Survey (MSS). (http://education.state.mn.us/MDE/dse/health/mss/index.htm)

[5] See, Minneapolis Public Schools Policies Supporting All Genders (http://osfce.mpls.k12.mn.us/policy); Mounds Park Academy Guidelines on Transgender and Gender Diverse Students (https://www.moundsparkacademy.org/news/2015/10/01/guidelines-on-transgender-and-gender-diverse-students/) ; Saint Paul Public Schools Gender Inclusion Policy. (http://www.spps.org/cms/lib010/MN01910242/Centricity/Domain/1254/gender_inclusion_policy_final_v3_17_15.pdf)

students.[6] The majority of the policies identify how staff can support transgender and gender nonconforming students, discuss the obligations of staff to prevent discrimination, bullying and harassment and outline how school officials will coordinate and collaborate with each other and with parents.

## Overview of Federal and State Law

In 2011, the U.S. Department of Education Office for Civil Rights (OCR) stated that school officials, under Title IX, have a duty to investigate gender discrimination and harassment claims concerning actual or perceived sexual orientation as well as failure to conform to traditional societal notions of male and female.[7] In 2014, OCR provided additional guidance to schools investigating claims based on gender identity and failure to conform to societal stereotypes and actual or perceived sexual orientation.[8]

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[6] El Rancho Unified School District, Transgender and Gender-nonconforming students (http://www.erusd.org/pdf/board_policies/5145_3.pdf), New York State Education Department, Guidance to Schools on Creating Safe and Supportive School Environments for Transgender and Gender-Nonconforming Students (http://www.p12.nysed.gov/dignityact/documents/Transg_GNCGuidanceFINAL.pdf), Washington Office of State Superintendent of Public Instruction, Prohibiting Discrimination in Washington Public Schools (2012), Prohibiting Discrimination in Public Schools http://www.k12.wa.us/Equity/pubdocs/ProhibitingDiscriminationInPublicSchools.pdf), Kansas City 33 School District (MO), Prohibition Against Discrimination, Harassment and Retaliation Transgender and Gender Nonconforming Employees and Students (https://simbli.eboardsolutions.com/ePolicy/policy.aspx?PC=AC-AP(1)&Sch=228&S=228&RevNo=1.01&C=A&Z=R), Atherton High School, Jefferson County School District (KY), Policy on School Space (http://schools.jefferson.kyschools.us/high/atherton/PDFs/SBDM Documents/Policy500DraftLosAngelesUnifiedSchoolDistrictRevisedModel.pdf), Los Angeles Unified School District (CA), Transgender Students- Ensuring Equity and Nondiscrimination (http://notebook.lausd.net/pls/ptl/docs/PAGE/CA_LAUSD/FLDR_ORGANIZATIONS/FLDR_GENERAL_COUNSEL/BUL-6224.1 TRANSGENDER POLICY%2C 08-15-14 - ADDED ED CODE 221 5.PDF), Maryland State Department of Education, Providing Safe Spaces for Transgender and Gender Nonconforming Youth: Guidelines for Gender Identity Nondiscrimination, Massachusetts Department of Elementary and Secondary Education (http://marylandpublicschools.org/about/Documents/DSFSS/SSSP/ProvidingSafeSpacesTransgendergenderNonConforming Youth012016.pdf), Guidance for Massachusetts Public Schools Creating a Safe and Supportive School Environment - Nondiscrimination on the Basis of Gender Identity (2014) (http://www.doe.mass.edu/sfs/lgbtq/GenderIdentity.html), Alaska Matanuska-Susitna Borough School District (AK), Transgender Student Guidelines (2015) (https://www.matsuk12.us/site/handlers/filedownload.ashx?moduleinstanceid=10846&dataid=41646&FileName=Title%20IX--Transgender%20Students%20Guidelines.pdf), Oregon Department of Education (http://www.ode.state.or.us/groups/supportstaff/hklb/schoolnurses/transgenderstudentguidance.pdf), Guidance to School Districts: Creating Safe and Supportive School Environments for Transgender and Gender-Nonconforming Students, Wisconsin Shorewood School District (WI), Nondiscrimination Guidelines Related to Students Who Are Transgender and Students Nonconforming to Gender Role Stereotypes (2014) (http://www.shorewood.k12.wi.us/uploaded/Board_Documents/Policies/411_Guidelines_and_Exhibit.pdf?1393865642372), Nevada Washoe County School District (NV), Gender Identity and Gender Non-Conformity - Students, (http://washoecountyschools.net/csi/pdf_files/5161 Reg - Gender Identity v1.pdf)

[7] U.S. Department of Education Office for Civil Rights (OCR) Dear Colleague Letter (April 4, 2011). (https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html)

[8] U.S. Department of Education Office for Civil Rights (OCR) Questions and Answers on Title IX and Sexual Violence (2014). (https://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf)

The Minnesota Human Rights Act (https://www.revisor.mn.gov/statutes/?id=363a) prohibits discrimination and harassment in education based on gender expression, actual or perceived gender identity and actual or perceived sexual orientation.[9] Minnesota law provides that all students have the right to attend school in a safe and supportive environment where they can learn and have equal access to all educational opportunities.[10] Illegal discrimination can occur if a student is expressly denied full utilization of a benefit at school, is indirectly denied full utilization of a benefit at school due to a policy, practice or procedure of the school or if a student is exposed to a hostile environment that interferes with the student's ability to learn or participate in activities at school.

The Safe and Supportive Minnesota Schools Act[11] (https://www.revisor.mn.gov/statutes/?id=363a) prohibits bullying and harassment of all students, including bullying and harassment of students based on gender expression, actual or perceived gender identity and actual or perceived sexual orientation. Under the Safe and Supportive Minnesota Schools Act, public school districts and charter schools are required to adopt a policy that prohibits bullying and harassment of all students, including bullying and harassment based on sex, gender identity, gender expression and sexual orientation.[12] Bullying may also rise to the level of a discriminatory hostile educational environment under Title IX or the Minnesota Human Rights Act.

> Students who believe their rights under one of the above laws may have been violated may contact:
>
> Title IX – the U.S. Department of Education regional office in Chicago (mailto:OCR.Chicago@ed.gov), (312) 730-1560 or by fax at (312) 730-1576.
>
> MDHR – the Minnesota Department of Human Rights, (651) 539-1121, 1-800-657-3704 Toll Free, 1-800-627-3529 MN Relay, or by email at www.mn.gov/mdhr.
>
> To seek assistance related to school bullying, contact the School Safety Technical Assistance Center, 651-582-8364. Find immediate resources to address bullying. (http://education.state.mn.us/MDE/dse/safe/bprev/)

## Working with Parents, Community, School Officials and Board Members

Research shows that communicating and engaging with parents, members of the school community and throughout the school is important to ensure that transgender and gender nonconforming students are safe and supported in school.

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[9] See, Minn. Stat. §363A.03, Subd. 44, Sexual Orientation is defined as "having or being perceived as having an emotional, physical, or sexual attachment to another person without regard to the sex of that person or having or being perceived as having an orientation for such attachment, or having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness. Sexual orientation does not include a physical or sexual attraction to children by an adult."

[10] See, Minn. Stat. §363A.13.

[11] See, Minn. Stat. §121A.031.

[12] See, Minn. Stat. §121A.031, Subd. 6.

## Parents

Families of transgender and gender nonconforming students play a critical role in their child's well-being and success at school. A family's acceptance and support of their child's gender identity is strongly associated with positive mental health and academic achievement.

Schools should collaborate closely with parents to address the individualized needs of transgender or gender nonconforming students. Schools can offer parents educational information and professional resources to help families meet the needs of their transgender or gender nonconforming child. School-based mental health professionals can direct families to additional resources for family support and medical and mental health resources for the child or adolescent.

When students transition, they may need more support. *Students and their families make their own decisions about what the student needs during transition as every student's transition is unique.*

Some students will embark upon a social transition but may or may not undergo medical transition. During a social transition, a student may change their name and/or their pronouns, clothing, hair, use of make-up and overall personal style. Medical transition may include surgical procedures but may be limited to hormone medication. Schools generally play a very limited role in the medical aspects of a student's transition as the medical choice is a private decision that does not need to be shared with the school.

To ensure a safe and supportive transition at school, school leaders and staff should meet with the student and parents to actively discuss transition. The Gender Spectrum's Student Gender Transition Plan (https://www.dropbox.com/s/wgtsogsv1rnthvr/Student_Gender_Transition_Plan_030215.pdf?dl=0) may be a helpful resource for school staff when planning with the student and family. Schools should appreciate that it is helpful to the student to have support before, during and after transition. As there is no standard timeframe or sequence of steps in which a student transitions, schools should remain flexible and responsive to the student and their family during a student's gender transition and be open to the possibility that the needs of the student may evolve during the transition process.

While students often feel excited, happy and relieved to have their gender affirmed at school, transition may also be a time of great stress for them, their family and guardians. Family may fear that the student will be excluded, isolated, harassed or physically harmed at school. Stress may also be compounded for individuals who are members of racially or other historically disenfranchised communities. For instance, a transgender student who is black may experience compounding stress from discrimination based on racial identity and gender identity.

> Language around gender is evolving. In some Native American communities, the term "Two-Spirit" is used for an American Indian person possessing a blend of male and female spirits. The term honors people of native heritage. Two-spirit students traditionally do not seek out medical transition nor use the language of transgender nor gender nonconforming to describe their gender.

The transition experience of one student and family may be very different than that of another student and family. For instance, a student and family may want a very private and slow transition. They may request to move schools or wait until the student enters the next grade level in a new building. In other cases, a student and family may want a very public and immediate transition at their present school, including formal class announcements and/or an optional after school meeting to discuss the transition with families and peers.

Racial, cultural, economic, religious or other factors influence the transition experience the student and family choices and decisions. Transgender and gender nonconforming students and their families are racially and

culturally diverse. During transition, diverse and unique needs may arise. For example, a transgender or gender nonconforming student's family who does not speak English may need a translator or interpreter who understands and knows key terminology to properly support the student and the student's family.

School is often the safest environment for transgender and gender nonconforming students. Some transgender and gender nonconforming students are abused by family members at home. When concerned about a student's well-being and safety at home, it is best practice for school staff such as social workers or counselors to work directly with the student to develop a plan to ensure their safety. If school staff determines the student is not safe, the student support team should follow their protocol for reporting child neglect or harm. Research shows that transgender and gender-nonconforming students are at high risk for self-harm.

## Community, School Officials and Board Members

School leaders can create a safe and supportive environment by engaging a broad and diverse group of stakeholders within the school community. Stakeholders to be considered include school staff members, students, parents, student groups, family groups, racial and cultural groups as well as representatives from churches, businesses and community organizations.

School officials should consider holding small, on-going meetings to specifically listen to the needs of transgender and gender nonconforming students and their families and to gain an understanding of the current environment and needs in the school or district. In addition, holding larger, informational listening sessions with stakeholders early in the process will help build trust and provide schools and school districts with a broader understanding of the concerns and needs of the school community.

Feedback provided during listening sessions will help school leaders better understand the concerns, questions and needs of students and this will inform their work. What school leaders learn during these sessions will not only help them develop the best policies and practices for their school but it will often help them communicate more effectively with all stakeholders and prepare stakeholders for implementation of new policies and practices.

Best practice tips for community engagement:

1. Make the focus of the meetings clear to all who attend. For example, if the meeting focus is on the development of policies and practices to meet the needs of transgender and gender nonconforming students and all students, the focus would not be about the value of or the existence of transgender and gender nonconforming people.

2. Set clear expectations for a respectful, non-discriminatory dialogue. For example, one expectation can be that participants speak and act in a kind and respectful way. When needed, school leaders should offer clarifying statements about non-discrimination. If appropriate, school leaders may also wish to remind people of the school's mission statement or the school's climate improvement work.

3. Allow all stakeholders the opportunity to ask questions or raise concerns, set time limits for speaking and remind participants about individual privacy.

4. Include students and families from across racial, cultural and religious groups in appropriate meetings.

5. School leaders should be prepared to quickly respond to questions raised and concerns expressed. School officials may wish to develop some simple talking points to address questions and concerns raised. For example, *"I know this is new territory for many of us. Sometimes change can be challenging. Perhaps I can share some information with you about gender identity and transgender people?"* Example talking points including the sample below can be found in "Schools in Transition – A Guide for Supporting

Transgender Students in K-12 Schools."[13] (https://www.genderspectrum.org/staging/wp-content/uploads/2015/08/Schools-in-Transition-2015.pdf)

## Names, Pronouns, and Student Records

Schools should not assume a student's name or pronoun. School officials should ask the student and use the requested name and pronouns. Students need not provide schools with legal documents to correct their first name or gender within their student records. When students are referred to by the wrong pronoun by peers or school staff, students may feel intimidated, threatened, harassed or bullied. School staff can ensure a more respectful environment for all students when efforts are made to correct the misuse of pronouns, as well as names, in student records.

Teachers can support inclusion of all students, including transgender and gender-nonconforming students, by embracing simple classroom practices that allow for all students to participate in accordance with their gender identity. Classroom practices that recognize and affirm all students, including transgender and gender-nonconforming students, are varied and can include how the teacher addresses the classroom and how the teacher separates students into groups.

Family Educational Rights and Privacy Act (FERPA) (https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html?src=rn) protects the privacy of students. Schools should note that neither a student's gender nor pronouns are considered public or directory information. Casual use of a student's incorrect pronoun or incorrect name may violate FERPA. FERPA also permits families to elect not to disclose directory information about their student.

1. Because schools have multiple student record systems, schools should inventory all of their student record systems to ensure that they have implemented a systemic process that ensures that the names of students are consistently used as they wish to be identified. Schools should consider adding a customized data field for pronouns in their student record system. Schools should ensure that information for the student is properly recorded within the Minnesota Automated Reporting Student System (MARSS). If you have questions or need assistance with this, contact Minnesota Department of Education staff, (marss@state.mn.us).

2. A school administrator or designee should meet with the student and family to discuss how the student's name and gender will be communicated to peers and the school community. School principals should consider periodically reminding all staff personnel to consistently use the requested name and pronouns of students.

3. Teachers could address students as "students" and "scholars" to be inclusive as opposed to "boys and girls." You can learn more about what schools are doing to make transgender students comfortable in the

[13] Gender Spectrum et al., 2015, Schools in Transition – A Guide for Supporting Transgender Students in K-12 Schools.

(https://www.genderspectrum.org/staging/wp-content/uploads/2015/08/Schools-in-Transition-2015.pdf)

classroom on page 10 of Example Policies and Emerging Practices for Supporting Transgender Students.[14] (http://education.state.mn.us/mdeprod/idcplg?IdcService=GET_FILE&dDocName=MDE070891&RevisionSelectionMethod=latestReleased&Rendition=primary)

# Activities

Schools should not exclude any student from participation in a school-affiliated activity based on a student's gender identity or transgender status. Schools should not treat students differently on the basis of sex, including gender identity, in any school activities or the application of any school rule. Schools must provide the same opportunities to transgender and gender nonconforming students that they provide to all students. Transgender or gender nonconforming students should be able to participate in activities in a manner that is consistent with their gender identity.

## Athletics

Sports provide youth with unique opportunities to improve their physical fitness and develop valuable life skills such as goal setting, perseverance, teamwork and a commitment to fair play. Title IX requires schools provide transgender students with the right to participate in such activities, including athletics, in a manner consistent with their gender identity.[15] The Minnesota State High School League allows participation for all students regardless of their gender identity or expression in an environment free from discrimination with an equal opportunity for participation in athletics and fine arts.

> If a school does not allow a student to participate on the team consistent with their gender identity or gender expression, a student or the student's family can make an appeal to the Minnesota State High School League (MSHSL) (http://www.mshsl.org/mshsl/index.asp). The Eligibility Appeal Procedures for a transgender student is outlined in the 300.00 Bylaws: Administration of Student Eligibility (http://www.mshsl.org/mshsl/Publications/code/handbook/300 Bylaws.pdf?year=2016) section of MSHSL's Official Handbook For questions and assistance regarding eligibility appeal procedures, contact the MSHSL at (763) 560-2262.

## Homecoming, Prom and School Events

School traditions are important to all students, and transgender and gender nonconforming students are no exception. Students should not be prohibited from attending homecoming, prom or other social events because they are transgender or gender nonconforming. Students who are transgender or gender nonconforming should be allowed to socialize, dance, request songs and take photos similar to any other students in the school.

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[14] 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 (http://education.state.mn.us/mdeprod/idcplg?IdcService=GET_FILE&dDocName=MDE070891&RevisionSelectionMethod=latestReleased&Rendition=primary) (May 2016).

[15] See, 34 C.F.R. §106.41(a) which provides "No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis."

Under the Minnesota Human Rights Law, schools must allow transgender and gender-nonconforming students to participate fully in all school activities, including traditions that incorporate gender roles categorized as "male" and "female." For example, one tradition of many schools is to have a male homecoming king and a female homecoming queen. In these situations, the school should allow a student to participate according to their gender identity.

In an effort for inclusivity, schools may wish to consider revisiting existing traditions or establishing new traditions. For example, instead of electing a homecoming king and homecoming queen, some schools have chosen to nominate "prom ambassadors," "homecoming court" or "homecoming royalty." At the University of Minnesota, for example, the titles of homecoming king and queen have been replaced with the title "Homecoming Royalty" and students selected as royalty will now be called "royals."[16]

## Dress Code

Gender nonconforming students and transgender students experience elevated rates of bullying and harassment based on gender identity or how they express their gender, which can include how they dress. In a recent study, 52 percent of transgender and gender nonconforming students report that they were not allowed to dress in a way that fit their gender identity or expression.[17]

While school dress codes need to be inclusive, it is equally important that school staff support transgender and gender nonconforming students and take steps to prevent bullying and harassment of these students during the school day and at school events as well.

All students often use clothing to express many facets of their identity. Clothing choices are informed by ethnicity, culture, religious beliefs and other aspects of identity, including gender identity. Schools routinely take into consideration the religious and cultural expressions of students when establishing dress codes. Schools should similarly take into consideration the expression of gender identity of students.

1. No student should be disciplined for wearing clothing that fails to conform to perceptions of gender based stereotypes.

2. School staff should not pressure or coerce any student into wearing certain attire choices over others that are provided. Here is one example of gender inclusive dress guidelines for a school event: *"All students are expected to wear: a) black pants, a white collared shirt and a solid color tie;* OR *b) a knee-length black dress OR c) a black skirt that is knee length or longer and a white blouse OR c) black dress pants and a white collared shirt or white blouse."*

3. Where students are expected to dress formally, it is best practice to allow students to dress in formal wear that aligns with their gender identity while adhering to a gender inclusive dress code.

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[16] Verges, J. (February 27, 2017). UMN Homecoming will crown gender-neutral 'royals,' not king and queen. Pioneer Press. Retrieved from http://www.twincities.com.

[17] James, S.E., Herman, J.L., Rankin, S. Keisling, M., Mottet, L., & Anafi, M. (2016). The Report of the 2015 U.S. Transgender Survey. Washington, D.C., National Center for Transgender Equality.

## Restrooms, Locker Rooms and Hotel Accommodations

Title IX and the Minnesota Human Rights Act declare that it is an unfair discriminatory to deny any student the full and equal enjoyment of any educational institution such as a public school. Schools ensure full and equal enjoyment of public accommodations for students where they are not stigmatized or segregated from the rest of the general student population when in exercising their right to the public accommodation.

> "A policy that requires an individual to use a bathroom that does not conform to his or her gender identity punishes that individual for his or her gender nonconformance, which in turn violates Title IX." Whitaker v. Kenosha Unified School District, (7th U.S. Circuit Court of Appeals, May 30, 2017).[18]

Within the school setting, school officials and leaders need to ensure that all students have access to restrooms, have access to locker rooms to fully participate in classes, sports and activities and have access to hotel accommodations when travelling with school groups for athletic, educational and/or cultural purposes.

Schools should work with transgender and gender nonconforming students to ensure that they are able to access needed facilities in a manner that is safe, consistent with their gender identity and does not stigmatize them. Privacy objections raised by a student in interacting with a transgender or gender nonconforming student may be addressed by segregating the student raising the objection provided that the action of the school officials does not result in stigmatizing the transgender and gender nonconforming student.

### Restrooms

Transgender and gender nonconforming students should be afforded the opportunity to use the restroom of their choice. Some students may feel uncomfortable with using a restroom with a transgender or gender nonconforming student. Any student who wishes not to share a restroom with a transgender or gender nonconforming student can be provided a private space such as a single-user restroom. Many schools have chosen to make single-stall restrooms available to all students. For example, some schools have re-purposed a staff restroom into a single user restroom for all students to use.

### Locker Rooms

Students use locker rooms during their school day for physical education classes, sports and other activities. Some transgender and gender nonconforming students may prefer a private space while others may wish to use the locker room consistent with their gender identity. Coaches should consider how they can utilize privacy curtains, restrooms and separate changing schedules to provide for privacy for all students.

### Hotel Accommodations

If students are to be separated based on gender when travelling for athletic, educational or cultural activities, school officials should allow a transgender or gender nonconforming student the opportunity to room with peers who match the student's gender identity unless the transgender or gender nonconforming student requests otherwise. At times, any student may have specific needs for privacy and the school can make arrangements based on that student's wishes.

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[18] Ashton Whitaker v. Kenosha Unified School District (http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2017/D05-30/C:16-3522:J:Williams:aut:T:fnOp:N:1971382:S:0) (7th Circuit Court of Appeals May 30, 2017).