



# Accommodating Transgender Students and Staff



# An Emerging Issue:

- ∞ An increasing number of people are openly living with a gender identity different than the one assigned to them at birth
- ∞ There remains some uncertainty about whether and the extent to which gender identity is a protected category under federal civil rights laws
- ∞ As a result, there is continued uncertainty about what a school's obligations are under the law in order to accommodate students who identify with a gender different than their biological assignment

# What we do know about the law ...

## First principles:

- ∞ Title IX of the Educated Amendments Act of 1972 (“Title IX”) prohibits discrimination of basis of sex in the administration of any educational program receiving federal funds. 20 U.S.C §1681.
- ∞ Title VII of the Civil Rights Act of 1964, (“Title VII”) forbids discrimination in employment, including discrimination on the basis of sex. 42 U.S.C.§2000e-2(a)(1).

# What we do know about the law ...

## Extensions:

The United States Department of Education Office for Civil Rights (“OCR”) has provided the following guidance:

- ☞ “Title IX’s sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity.” Questions and Answers on Title IX and Sexual Violence, B-1 and B-2 (Apr. 2014)

# What we know about the law ...

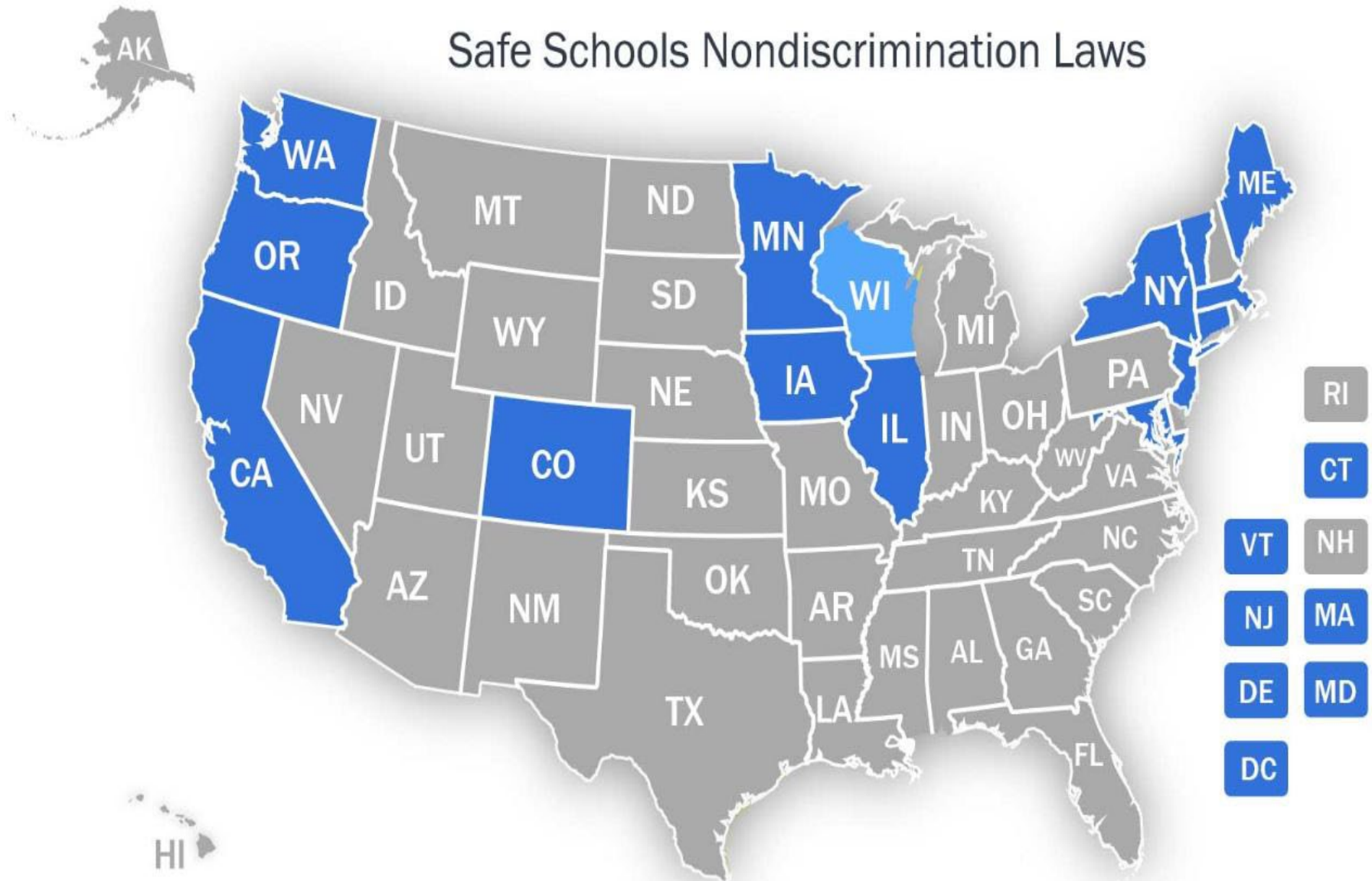
## Extensions (cont.):




- ✎ The U.S. Supreme Court has addressed discrimination on the basis of gender identity under Title IX and or Title VII. It is illegal to terminate an employee solely due to their gender identity and expression.

## Department of Education's Title IX Guidance Letter:

- ✎ Issued December 1, 2014
- ✎ States that “under Title IX, a [school] must generally treat transgender students consistent with their gender identity in all aspects of the planning, implementation, enrollment, operation, and evaluation of single-sex classes.”

# Safe Schools Nondiscrimination Laws



-  Clear gender identity and sexual orientation protections
-  Sex and sexual orientation protections only
-  Sex discrimination protections only



What some states & districts are doing...



# Minnesota State High School League

- ∞ At the end of 2014, approved a policy that allowed transgender students to play on the sports teams consistent with the gender they identify with
- ∞ The policy permits transgender students to apply to a team if they can provide
  - Evidence of their gender identity, and
  - A “written statement from an appropriate health-care professional”



# Shorewood School District (Wisconsin)

- ✎ In March 2014, Shorewood School District became the first Milwaukee area district to implement a policy related to transgender students
- ✎ The policy requires teachers to use a student's preferred name and pronoun
- ✎ Additionally, the policy allows students to use bathrooms and play on sports teams consistent with their gender identity
- ✎ Gender neutral bathrooms are also available



# Best Practices in terms of Accommodations...



# Staff

## Dress and Appearance:

- ∞ Apply dress codes to employees transitioning to a different gender in the same way that they are applied to employees of that gender

## Restrooms:

- ∞ May consider single-use restrooms for all employees as an alternative to gender-specific facilities, but do not require anyone to use those facilities

## Names and Pronouns:

- ∞ Use the preferred name and gender pronoun of the employee

# Students

## Dress and Appearance

## Restrooms

## Names and Pronouns

- ∞ For all three, accommodations generally should be handled as they would be for an employee

## Locker Rooms:

- ∞ If student wants to use locker room corresponding to his or her gender identity consider:
  - Private areas with public area;
  - Separate schedules;
  - Use of a nearby private area

# Student cont.

## Athletic teams:

- ∞ Generally permit students to participate in activities in accordance with the students' gender identity
- ∞ Possible exception where a particular case raises questions about fairness of competition

## Student records and name changes

- ∞ Some students may wish to have their names changed in the school records to reflect the gender they identify with
- ∞ Some districts already have policies in place that allow for this in certain situations
  - E.g., if the student has legally changed his/her name
    - Seattle public schools district (from earlier slide)
  - Be mindful of potential tension between minors and their parents regarding legal name changes

# Practical Options to Consider ...

- 1) Have someone sensitive talk to the people involved and find out what they want
- 2) Tailor accommodations on a case-by-case basis where possible
- 3) Manage the reactions of others
- 4) Recognize that failure to provide accommodations and manage reactions could lead to litigation or an OCR complaint
- 5) Think about the public relations angles and manage communications

# The Work of WPS

## Mission Statement:

- ∞ The work of Wichita Public Schools is to empower all students with the 21<sup>st</sup> century skills and knowledge necessary for success by providing a coherent, rigorous, *safe and nurturing, culturally responsive, and inclusive learning community.*

## Shared Beliefs:

- ∞ Everyone has worth and dignity and is treated with respect
- ∞ We profit from diversity
- ∞ Everyone is entitled to a safe, supportive and nurturing learning environment
- ∞ Belonging is a key to student success
- ∞ Change is inevitable and necessary; our response is intentional

# Proposal

## Amend Policies:

- ∞ BOE Policy 119 Harassment of Pupils
- ∞ BOE Policy 1120 Harassment of Employees
- ∞ Statement of Non-Discrimination
  - To include sexual orientation and gender identity



# Data

- Recent Census data from the Williams Institute reported that 3.5% of the adult population was LGB
- Approximately nine million people in the United States between the ages of 18-45 classified themselves as lesbian, gay, or bi-sexual
- Studies have shown that anywhere from 0.1% to 0.5% of people in the nation identify with being Transgender (Averaging 0.3%)

*Therefore....*

# Our Population

- ∞ There are approximately 59,000 students and staff in WPS. When the data is extrapolated, this means that our numbers are most likely to be somewhere in the following range:
- ∞ WPS has approximately 1,750 students who identify as LGB
- ∞ WPS has approximately 315 staff members who identify as LGB
- ∞ WPS has approximately 177 staff and students who identify as being Transgender

*As a result....*

# Our Population

- ⌘ Our LGBT students and staff are not intentionally protected by our current harassment policies.
- ⌘ USD 259 is charged with recognizing and valuing our diverse population and are committed to fair treatment of all employees and students

# Harsh Realities- Negative Effects

- 8 out of 10 LGBT youth experience harassment at school each year because of who they are
- 6 out of 10 LGBT youth say they feel unsafe at school because of who they are
- 39% of LGBT youth have made suicide plans
- According to the Suicide Prevention Resource Center, between 30 and 40% of LGBT youth, depending on age and sex groups have attempted suicide
- Gay youth are 5 times more likely to skip school
- 50% of LGBT youth reported their parents rejected them for being gay
- 26% of LGBT are forced to leave home because of conflict with their families
- 50% of transgender youth attempt suicide and the Transgender youth suicide completion rate is at 41%
- 15% of transgender and gender nonconforming youth face harassment so severe that they are forced to leave school

# Surveyed

## AP's

- ☞ Want policies put in place guaranteeing consistency & protection for all staff & students regardless of sexual orientation or gender identity
- ☞ Education is needed on sexual orientation and gender identity for students & staff

## Support Staff

- ☞ LGBT students don't feel included in the current discrimination policy
- ☞ Violence and bullying occur on a regular basis
- ☞ Feels Sexual Orientation and Gender Identity should be part of the discrimination policy
- ☞ A clearer message to staff and students that negative judgement, comments and actions toward these students and staff will NOT be tolerated
- ☞ Some administrators are biased against LGBT students and staff

# District Student Leadership

- ⌘ Concerned that LGBT population is being harassed and degraded by peers and staff
- ⌘ A positive high school experience includes acceptance, inclusion, and equality
- ⌘ Believe biggest challenge LGBT students face is acceptance and support