



## Legal Issues Related to Transgender Students

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The legal rights of transgender students are topics of increased public awareness and interest, especially in light of recent federal guidance and related litigation. At the same time, transgender issues are relatively new in public discourse, understanding, and the law. This article addresses some of the more common questions that school districts face in this emerging area.

### **Q. Does a student have a right to be recognized as transgender at school?**

A: Generally, yes. The extent of the student’s right, and the district’s duty, depends on the specific situation. In Texas, there is no state law that explicitly creates a right to be protected based on a transgender status. However, transgender students are entitled to be free from discrimination based on their gender identity and their free speech expression of that gender identity. As such, transgender students should be permitted to wear clothing that aligns with their gender identity. School districts should also use the preferred name and gender of the transgender student unless specifically prohibited by law.

Like all students, transgender students must be protected by schools from bullying and harassment by students or employees.<sup>1</sup> While all students need a safe place to learn, transgender and gender-nonconforming students face a heightened risk of bullying, violence, and discrimination.<sup>2</sup> Bullying of a student because of the student’s nonconformity with gender stereotypes could be considered harassment because of sex in violation of federal nondiscrimination law.<sup>3</sup> A district may need to group the student with other students of the same gender identity during sex-specific activities or in sex-segregated facilities in order to ensure student safety and minimize disruptions to the educational environment. While these issues have yet to be sufficiently resolved under Texas law, the positions and potential risks are clear. Consequently, districts should apply a common sense, case-by-case approach to reach the best resolution in each specific situation.

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<sup>1</sup> U.S. Dep’t of Educ., Office for Civil Rights, and U.S. Dep’t of Justice, Civil Rights Division, [Dear Colleague Letter Withdrawing Previous Guidance on Transgender Students](#) (Feb. 22, 2017).

<sup>2</sup> See Gay, Lesbian, Straight Education Network, [The 2015 School Climate Survey](#) (2016) (finding 57.6 % of LGBTQ students feel unsafe at school and that school-related supports can improve student experiences).

<sup>3</sup> See, e.g., *Carmichael v. Galbraith*, 574 F. App’x 286 (5th Cir. 2014) (holding that parents of middle school male student who committed suicide after allegedly being bullied by male students because of gender-based stereotypes sufficiently stated student-on-student sexual harassment claim under Title IX).

**Q: What are common terms for understanding and discussing transgender issues?**

A: The following terms have been used by the U. S. Department of Education Office for Civil Rights<sup>4</sup> (OCR) or suggested by the National Center for Transgender Equality.<sup>5</sup>

**Assigned sex or sex assigned at birth:** the gender designation listed on one’s original birth certificate.

**Gender identity:** One’s internal sense of gender, which may be different from one’s assigned sex, and which is consistently and uniformly asserted, or for which there is other evidence that the gender identity is sincerely held as part of the person’s core identity.

**Gender expression:** How a person represents or expresses gender identity to others, often through behavior, clothing, hairstyles, voice, mannerisms, or physical characteristics.

**Gender stereotypes:** Stereotypical notions of masculinity and femininity, including expectations of how boys or girls represent or communicate their gender to others, such as through behavior, clothing, hairstyles, activities, voice, mannerisms, or physical characteristics.

**Transgender:** A term for people whose gender identity is different from their assigned sex at birth. Medical treatments or procedures are not a prerequisite for recognition as transgender.

**Transgender female:** Someone who identifies as a female but was assigned the sex of male at birth.

**Transgender male:** Someone who identifies as male but was assigned the sex of female at birth.

**Gender transition:** The process by which a transgender person begins to assert the sex that corresponds to the person’s gender identity instead of the person’s assigned sex at birth.

**Q. Are school districts subject to OCR Title IX enforcement for claims of gender-based discrimination by transgender students?**

A: Yes. Title IX of the Education Amendments of 1972 (Title IX)<sup>6</sup> is a federal civil rights law that prohibits discrimination on the basis of sex in federally funded education programs and activities. OCR is the federal agency with the responsibility for enforcing Title IX.

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<sup>4</sup> See U.S. Dep’t of Educ., Office for Civil Rights, and the U.S. Dep’t of Justice, Civil Rights Division, [Resolution Agreement between the Arcadia Unified School District and the U.S. Dep’t of Educ.](#), OCR Case No. 09-12-1020, at 1-2 (July 24, 2013).

<sup>5</sup> National Center for Transgender Equality, [Transgender Terminology](#) (Jan. 2014).

<sup>6</sup> 20 U.S.C. § 1681.

OCR's written policy guidance on preventing and responding to sexual harassment makes clear that Title IX protects students from gender-based harassment:

[G]ender-based harassment, including that predicated on sex-stereotyping, is covered by Title IX if it is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program. Thus, it can be discrimination on the basis of sex to harass a student on the basis of the victim's failure to conform to stereotyped notions of masculinity and femininity.<sup>7</sup>

In other words, Title IX protects all students, including transgender students, from harassment because of the student's deviation from stereotypical gender norms. It does not matter whether or not a harasser is the same or opposite sex in relation to the transgender student's assigned sex or gender identity. In addition, school districts may be liable under Title IX and other federal laws for employee or student harassment of transgender students when there is knowledge of harassment, followed by deliberate indifference and a failure to act in response.<sup>8</sup> If a complaint is filed alleging discrimination against a transgender student, school officials should work closely with the district's attorney.

**Q: What does TASB policy say about transgender students?**

A: TASB offers a model policy that: (1) prohibits discrimination, harassment, dating violence, and retaliation against students; and (2) outlines remedial steps to report, investigate, and respond to concerns. Since 2005, a version of this policy has been at code FFH(LOCAL) in Texas school districts' policy manuals. The TASB policy prohibits various forms of discrimination, including discrimination on the basis of gender and sex. The policy does not speak directly or solely about the rights of transgendered students. Federal courts have found that discrimination on the basis of gender identity is a form of sex discrimination.<sup>9</sup>

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<sup>7</sup> U.S. Dep't of Educ., Office for Civil Rights, [Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties](#) at v (Jan. 19, 2001).

<sup>8</sup> *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274 (1998) (Title IX actions for damages may be recovered for teacher-student sexual harassment if a school district official who has authority to institute corrective measures has actual notice of, and is deliberately indifferent to, the teacher's misconduct); *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629 (1999) (Title IX action for damages may lie against a school board in cases of student-on-student harassment when there is actual knowledge and deliberate indifference as to severe, pervasive and objectively offensive harassment that deprives the victim of educational opportunities or benefits).

<sup>9</sup> See *Wittmer v. Phillips 66 Co.*, Civil Action No. H-17-2188, 2018 WL 1626366 (S.D. Tex. 2018) (mem.) (finding Title VII protected transgender woman applicant for employment based on appellate court decisions recognizing Title VII protection from discrimination based on gender identity and sexual orientation, citing *Equal Employment Opportunity Comm'n v. R.G. & G.R. Harris Funeral Homes, Inc.* 884 F.3d 560 (6th Cir. 2018) and *Zarda v. Altitude Express, Inc.*, 883 F.3d 100 (2d Cir. 2018) (en banc)). See also *Lopez v. River Oaks Imaging & Diagnostic Group, Inc.*, 542 F. Supp. 2d 653 (S.D. Tex. 2008) (finding transgender applicant for employment presented sufficient evidence of Title VII sex discrimination).

Some districts have contacted TASB Policy or Legal Services to ask about the addition of “sex”—in addition to “gender”—into model policy FFH(LOCAL) at Update 104. This change was not intended to expand the meaning or application of the model nondiscrimination statement. Rather, the addition was made at the suggestion of OCR, in the course of its investigation of a TASB member’s policies and practices, to better match the statutory wording and OCR guidance regarding notices of nondiscrimination. TASB Policy Service and Legal Services added the language to the model policy so that all of our members would have policies that meet OCR’s expectations.

**Q. *What additional guidance should we consider in addressing Title IX compliance?***

A. There are many resources available online:

- The OCR’s [Resources for LGBTQ Students](#) Website includes policy guidance, court filings, and examples of resolution agreements regarding Title IX requirements related to transgender students;
- In addition, the National School Boards Association has developed and updated the [2016 Transgender Students in Schools: Frequently Asked Questions and Answers for Public School Boards and Staff](#), a best practices guide regarding common issues such as how to handle a transgender student’s records, accommodate student privacy, and more.

Districts should review the national guidance in light of state law and local policies. In addition, note that the law in this area is rapidly changing; online resource materials may not be updated to reflect the most recent developments. Due to this uncertainty and the high risk of litigation, districts that are considering policies or procedures regarding transgender students should work with an attorney familiar with both the federal interpretation of Title IX and state law.

**Q. *Do gender nonconforming students have a legal right to wear attire that does not match their assigned sex at birth?***

A: Yes, a legal right exists to the extent that a court is likely to conclude that dressing in accordance with a student’s gender expression is a form of protected expression. Courts have found that wearing gender nonconforming clothing may be protected by the First Amendment as free speech, by the Fourteenth Amendment with regard to equal protection as to gender/sex, and by Title IX as gender non-discrimination.<sup>10</sup> In light of this legal authority, a school district could permit a transgender male student to wear a tuxedo for his yearbook photo consistent with his expressed gender identity. Or, similarly, a district might allow a transgender female student to attend the prom in feminine attire.

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<sup>10</sup> See, e.g., *McMillen v. Itawamba Cnty. Sch. Dist.*, 702 F. Supp. 2d 699, at 704-5 (N.D. Miss. 2010) (finding that a female student demonstrated her likelihood of success on the merits of a First Amendment claim when school denied her permission to wear a tuxedo or other masculine attire to prom).

Gender nonconforming students are still subject to the established student dress code for the student's preferred gender attire. The dress code must be applied equally to all students. For example, if feminine attire at the prom requires dresses with a certain neckline and length, then all students who dress in feminine attire must abide by those requirements, including a transgender female. At the same time, a gender nonconforming student should not be asked to "tone it down" or be required to dress in a different manner than other students in the expressed gender.

***Q. Should a district change school records to reflect a transgender student's preferred name and gender?***

A: Texas Education Code section 25.0021 requires that a student be identified by his or her legal surname, or last name, as that name appears (1) on the student's birth certificate or other document suitable as proof for the student's identity, or (2) in a court order changing the student's name. However, Section 25.0021 does not address students' first names or genders.

In general, a student's legal name is used on permanent records, especially when required by state or federal laws and regulations. For example, Texas school districts are required to complete and maintain permanently the academic achievement record, or "AAR" of high school students (often referred to as a "transcript"), including full legal name and gender.<sup>11</sup> Following guidelines developed by the Texas Commissioner of Education, the AAR must have the complete name from the student's birth certificate or other legal document, without use of nicknames or abbreviations.<sup>12</sup> The student's legal name, the name submitted to Public Education Information Management System (PEIMS) at the Texas Education Agency (TEA), and the name recorded on the AAR must be identical.<sup>13</sup> Any changes in the AAR must be dated, explained and kept as part of the student's permanent file.<sup>14</sup> TEA has informally stated that it will accept the student gender that a district reports through PEIMS, including a report that changes the student's gender following a student and/or parent request to alter the record.

In contrast to permanent school records, however, teachers and other school district employees often informally address students by, and have non-permanent school records that reflect, preferred names or nicknames that are not a student's legal first name. A school district should apply this practice equally with transgender students. For example, the transgender student's preferred first name and gender should be used in speaking with the student and for class rosters, identification badges, awards, and any other similar purpose.

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<sup>11</sup> Tex. Educ. Code § 28.025(e); 19 Tex. Admin. Code § 74.5(b); Tex. Educ. Agency, [Minimum Standards for the Academic Achievement Record](#) (2012).

<sup>12</sup> Tex. Educ. Agency, [Minimum Standards for the Academic Achievement Record](#), Section 1.11.

<sup>13</sup> Tex. Educ. Agency, [Minimum Standards for the Academic Achievement Record](#), Section 1.11.

<sup>14</sup> Tex. Educ. Agency, [Minimum Standards for the Academic Achievement Record](#), Section 1.9.

Parents or students may request that a district change the student’s name and gender in educational records based upon a claim that such records are incorrect, misleading, or a violation of privacy under the Family Educational Rights and Privacy Act (FERPA).<sup>15</sup> In a 1991 letter regarding a former male student who had graduated from a school district and thereafter transitioned to female, the U.S. Department of Education’s Family Policy Compliance Office (FPCO), which implements FERPA, advised that “whether to amend the students’ education records to reflect a name and gender other than that of the students’ [name and gender] during their attendance would be considered a substantive decision of the District” and not a matter of required amendment under FERPA.<sup>16</sup> In assessing a request to change or correct records, a school district should seek specific guidance from FPCO and the district’s legal counsel.<sup>17</sup> The district should also communicate and coordinate with any other agency that has authority related to the record at issue, such as TEA.

### **Note of Caution on Student Privacy**

School districts and their employees should exercise caution in the release of information about a transgender student and seek the guidance of the FPCO or the district’s attorney when in doubt. Depending on the circumstances, FERPA may protect from disclosure information about a transgender student that would be considered non-confidential directory information for another student. For example, a student may transition genders when moving from one school to another. In the process, the transgender student may request to be addressed by a new preferred first name and gender. The student may also want to keep private the previous name and gender that would be part of the student’s educational records. For most students, name and gender are categorized under FERPA regulations and local policy as *directory information* that may be released without parental consent. For the transgender student, however, the former name and gender noted in the previous district’s records would not meet the definition of directory information because its release could be considered harmful or an invasion of privacy. In addition, note that all parents, and students aged 18 and older, have the right to opt out of disclosure of directory information and the district must provide annual notice of this right.<sup>18</sup>

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<sup>15</sup> 20 U.S.C. § 1232g; 34 C.F.R. § 99.7(a)(2)(ii).

<sup>16</sup> U.S. Dep’t of Educ., Family Policy Compliance Office, *Letter from FPCO Director Leroy S. Rooker to Karol Johnson, Superintendent, Great Falls Public Schools* (Nov. 13, 1991).

<sup>17</sup> U.S. Dep’t of Educ., Office for Civil Rights, and the U.S. Dep’t of Justice, Civil Rights Division, [Resolution Agreement between the Arcadia Unified School District and the U.S. Dep’t. of Educ.](#), OCR Case No. 09-12-1020, (July 24, 2013); U.S. Dep’t of Educ., Office for Civil Rights, and the U.S. Dep’t of Justice, Civil Rights Division, [Resolution Agreement Downey Unified School District](#), OCR Case No. 09-12-1095, (Oct. 8, 2014).

<sup>18</sup> 34 C.F.R. §§ 99.3, .37. See TASB Policies FL(LEGAL) and (LOCAL).

**Q. What should a school district do if a transgender student requests to use sex-specific restrooms or locker rooms based on the student's gender identity?**

A: Texas law does not specifically address this question. Title IX regulations have long permitted school districts to segregate male and female students in separate but comparable toilet, shower, and locker room facilities.<sup>19</sup> The legal issue presented by transgender students is how to define “male” or “female” when a student’s expressed gender identity does not match the student’s assigned sex at birth. The Title IX statute and regulations were not designed to answer this question when they were adopted in the 1970s. Due to this uncertainty, the issue of a transgender student’s legal right to access sex-specific facilities based on gender identity is currently being litigated in many states.

**Federal Court Decisions Regarding Access to Single-Sex Facilities**

In 2017, the Seventh Circuit Court of Appeals upheld an injunction allowing a transgender male student in Wisconsin to use the boys’ bathroom.<sup>20</sup> The court held that the student was likely to succeed on the merits of his Title IX claim because the Wisconsin school district’s unwritten policy requiring “an individual to use a bathroom that does not conform with his or her gender identity punishes that individual for his or her gender non-conformance, which in turn violates Title IX.” The court also found that the student’s Equal Protection claim was likely to succeed, because the district had not provided a “genuine and exceedingly persuasive justification” for its sex-based classification.

Similarly, the Third Circuit Court of Appeals recently denied an injunction sought by non-transgender students to block their Pennsylvania school district’s policy of accommodating transgender student requests to use bathrooms and locker rooms based on gender identity.<sup>21</sup> The Seventh Circuit and Third Circuit opinions are not binding on Texas courts, but they would be persuasive authority if a federal court in the Fifth Circuit were to consider these issues.

**OCR Guidance Regarding Access to Sex-Specific Facilities**

In May 2016, a *Dear Colleague Letter* issued by OCR and the U.S. Department of Justice (DOJ) stated: “A school may provide separate facilities on the basis of sex, but must allow transgender students access to such facilities consistent with their gender identity.”<sup>22</sup> The *Dear Colleague Letter* was immediately challenged in a lawsuit brought by the state of Texas

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<sup>19</sup> 34 C.F.R. § 106.33.

<sup>20</sup> *Whitaker v. Kenosha Unified Sch. Dist.*, 858 F.3d 1034 (7th Cir. 2017), cert. filed Aug. 25, 2017.

<sup>21</sup> *See Doe v. Boyertown Area Sch. Dist.*, 890 F.3d 1124 (890 F.3d 1124) (upholding denial of injunction to students claiming that district’s policy allowing transgender students to use bathroom in accordance with gender identity violated non-transgender students’ constitutional right to privacy).

<sup>22</sup> U.S. Dep’t of Educ., Office for Civil Rights, and U.S. Dep’t of Justice, Civil Rights Division, [Dear Colleague Letter on Transgender Students](#) (May 13, 2016) (citing 34 C.F.R. § 106.33, the Title IX regulation permitting recipients of federal funds to provide separate but comparable facilities based on sex).

and other entities. In February 2017, however, OCR and DOJ issued a new joint *Dear Colleague Letter* rescinding the 2016 *Dear Colleague Letter*.<sup>23</sup> Due to this change in policy the plaintiffs in the Texas case voluntarily dismissed their lawsuit. The rescission of the 2016 *Dear Colleague Letter* also raised questions in ongoing litigation regarding transgender student rights.<sup>24</sup>

Since OCR's February 2017 *Dear Colleague Letter*, however, the Third Circuit, Seventh Circuit, and other federal courts have held in favor of transgender students.<sup>25</sup> Many of these cases are ongoing; the issue may eventually be decided by the U.S. Supreme Court.

### **A Case-By-Case Approach to Transgender Students' Use of Sex-Specific Facilities**

No court with jurisdiction in Texas has issued a final decision that clarifies exactly how a district must respond when a transgender student asks to use communal, sex-specific facilities that correspond to the student's gender identity. In the meantime, it remains clear that the transgender student has a right to be free from discrimination based on gender identity, while other students may claim a right to privacy or raise a safety concern about sharing a sex-specific facility with a transgender student. Districts are tasked with finding a reasonable resolution that addresses each situation as best as possible, in light of nondiscrimination principles and practical options.

As an initial step, the school district should communicate with the transgender student and the student's parents to determine the student's preference as to gender-specific facilities. Some school officials who have worked with parents and transgender students have found that the student voluntarily agrees to or prefers a separate unisex restroom, shower and changing area. If available, the district may make individual-user facilities an option for any student seeking greater privacy. Such facilities should be selected with safety, accessibility, and lack of educational disruption in mind.

While separate unisex facilities may work for some transgender students, others may feel that such an arrangement negatively singles them out and isolates them from their peers. Consequently, the transgender student may request to use communal sex-specific facilities that match his or her gender identity. While OCR has rescinded the guidance that formerly

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<sup>23</sup> U.S. Dep't of Educ., Office for Civil Rights, and U.S. Dep't of Justice, Civil Rights Division, [Dear Colleague Letter Withdrawing Previous Guidance on Transgender Students](#) (Feb. 22, 2017).

<sup>24</sup> *G.G. v. Gloucester Cnty. Sch. Bd.*, 822 F.3d 709 (4th Cir. 2016), *vacated and remanded*, 137 S. Ct. 1239 (2017) (mem.).

<sup>25</sup> See *Evancho v. Pine-Richland Sch. Dist.*, 237 F.Supp.3d 267 (W.D. Pa. 2017) (granting transgender students' preliminary injunction against enforcement of school district resolution restricting bathroom use to single user facility or the bathroom of the students' assigned sex); *A.H. v. Minersville Area Sch. Dist.*, 3:17-CV-391, 2017 WL 5632662 (M.D. Pa. Nov. 22, 2017) (mem.) (denying district's motion to dismiss transgender female student's Title IX and Equal Protection claims). See also *Doe v. Boyertown Area Sch. Dist.*, 276 F.Supp.3d 324 (E.D. Pa. Aug. 25, 2017) (denying injunction to students claiming that district's policy allowing transgender students to use bathroom in accordance with gender identity violated non-transgender students' constitutional right to privacy).



*required* a district to allow a transgender student to use the facilities of the student's gender identity, there is no law that *prohibits* a district from granting the transgender student's request to use these facilities. In addition, changes to OCR's policy guidance do not alter the district's underlying obligation to comply with Title IX. If other students or their parents object to the use of a sex-specific facility by a transgender student, a school district may be able to amicably address the competing interests by making individual-user facilities and private areas available for all students.

Should a district's response to this difficult issue be challenged by a party through a legal action, the result is difficult to predict until the law more fully develops. Due to legal uncertainty and potential risk of litigation, a district should promptly consult with legal counsel in order to determine a defensible plan of action, including documentation of the district's efforts to address legitimate safety and privacy concerns while upholding the principles of nondiscrimination. If the transgender student's requests are not granted, then a school district will need to be prepared to demonstrate all the options considered and attempted, and to articulate a reasonable, non-discriminatory rationale for denying any requests.

***Q. What do we do if a transgender student requests to participate in a sport based on gender identity instead of assigned sex on a birth certificate?***

A: Texas statutes and case law do not address how to respond to such a request. It may be appropriate to deny a transgender student's request to compete on the team of the student's gender identity, but only if the denial of the request is based on objective, research-based medical information about the activity and the student in question, rather than general assumptions about gender differences or the potential discomfort of others.

If the student's request pertains to a sport under the jurisdiction of the University Interscholastic League (UIL), the district should consider UIL's position as to the student's eligibility.<sup>26</sup> Effective August 1, 2016, a UIL policy regarding gender specific sports requires Texas public schools to use a student's birth certificate to determine eligibility.<sup>27</sup>

While the Texas UIL rule settles that UIL's position on eligibility is based on assigned sex and not on gender identity, a district's decision to enforce such a position is still subject to legal challenge and review by the OCR and the courts. Therefore, school districts should assess each request individually and determine the best course of action based on a thorough evaluation of all of the issues and potential risks. In its review, a school district should consider the issues of eligibility, gender-based discrimination, safety, and fairness. The district should document the steps it takes, including the following: (1) gathering full information as to the basis for and options related to the request, including seeking the UIL position on eligibility; (2) consulting with educational, sports, and health experts about the potential

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<sup>26</sup> Tex. Educ. Code § 33.081.

<sup>27</sup> The University Interscholastic League, [Proposed Recommendation by UIL Review Advisory Committee to Standing Committee on Policy](#).

impact of the transgender student’s participation; (3) consulting with the district’s attorney regarding how to proceed, including documentation of the district’s non-discriminatory rationale for the chosen course of action; and (3) confidentially informing all of the affected parties as to the process, analysis, and ultimate determination.

**Q. *How should a district handle field trips for transgender students?***

A: Districts must not deny a transgender student an equal opportunity to participate in field trips, or any other curricular or extracurricular activity, in which students are segregated by sex. School officials can reduce the risk of complaints by addressing accommodations for individual transgender students in advance with the goals of maximizing the student’s opportunity to learn and socialize with peers while ensuring safety and privacy interests for all students.<sup>28</sup> When the district agrees on an arrangement for the student’s use of private, unisex, or sex-specific facilities at school, school officials must be prepared to ensure that the student has a safe place to use the restroom when away from campus. For example, when planning an event that will occur off-campus, a district employee may be assigned to call the location in advance to get information about private or alternative bathrooms or locker rooms.

For field trips involving overnight stays, an administrator or counselor may ask the student to identify other students with whom the student feels comfortable sharing a room. In this case, the administrator should seek written consent from the parent of a minor transgender student (or the student, if 18 years old) allowing the district to share information with the other students and their parents.<sup>29</sup>

**Q. *What if a parent does not support a student’s gender transition?***

A: The law does not provide a clear path for educators in this difficult situation, but some principles are clear. Under FERPA, parents have a right of access to their minor students’ education records; this right transfers when the student turns 18.<sup>30</sup> The Texas Education Code also gives parents the right to “full information” about their child’s school activities, except for in child abuse investigations, and employees who encourage or coerce a child to withhold information from the child’s parent may be subject to discipline, including termination.<sup>31</sup> In 2016, the Texas attorney general opined that a district’s guidelines for transgender student accommodations violated the Texas Education Code to the extent that the guidelines could have limited parental access to full information.<sup>32</sup>

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<sup>28</sup> See U.S. Dep’t of Educ., Office for Civil Rights, [Examples of Policies and Emerging Practices for Supporting Transgender Students](#) (2016) (citing policies and regulations for accommodating transgender students on overnight field trips).

<sup>29</sup> 34 C.F.R. §§ 99.31, .5.

<sup>30</sup> 34 C.F.R. § 99.5.

<sup>31</sup> Tex. Educ. Code § 26.008.

<sup>32</sup> Tex. Att’y Gen. Op. No. KP-100 (2016).

In light of these parameters, Texas educators typically work with parents to decide on appropriate accommodations for transgender students. Nonetheless, it is important to keep in mind that transgender students are at particular risk of harm, including self-harm, when a parent disagrees with the student's gender identity. The National Association of School Psychologists has advised that transgender youth who experience low family acceptance of their gender identity are more likely than peers to experience depression, substance abuse, and suicidal thoughts.<sup>33</sup> As such, a student may request that a district employee not tell his or her parent about the student's gender identity. School officials should proceed with caution in this case, in accordance with district policy regarding student counseling, crisis intervention, and child abuse.<sup>34</sup> It may be possible to reach an agreement with the student and parent that satisfies everyone: for example, schools have instructed staff to call a transgender student by the student's preferred name at school but to refer to the student by the name on the birth certificate in all communications with parents. Ultimately, the best advice is to assess each situation as it comes, working closely with the student, parents and district counsel to reach a resolution that protects the learning environment for all.

This document is continually updated, and references to online resources are hyperlinked, at [tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Students/documents/legal issues related to transgender students.pdf](https://tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Students/documents/legal%20issues%20related%20to%20transgender%20students.pdf). For more information on this and other school law topics, visit TASB School Law eSource at [schoollawesource.tasb.org](https://schoollawesource.tasb.org).

*This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations.*

*Updated July 2018*

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<sup>33</sup> See National Assoc. of School Psychologists (NASP), [Position Statement: Safe Schools for Transgender and Gender Diverse Students](#) (May, 2014) (citing NASP Standard 1.2.6, "School psychologists . . . do not share information about the sexual orientation, gender identity, or transgender status of a student . . . without that individual's permission").

<sup>34</sup> See TASB Policies FFB (Crisis Intervention), FFE (Assistance Programs/Counseling), and FFG (Child Abuse and Neglect).