



# The Legal Rights of LGBTQI+ Students in Schools

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October 28, 2022  
1:15 pm - 4:30 pm



# Overview

Key Concepts and Terminology

Laws

Scenarios

Questions

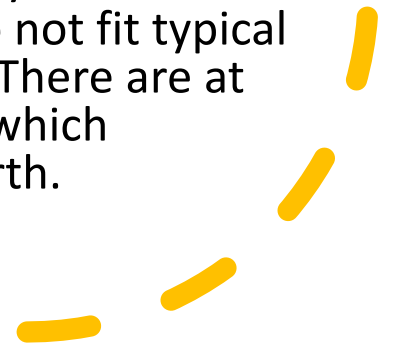


Key  
Concepts  
and  
Terminology

- Sex, sex assigned at birth, Intersex (Disorders of Sex Development)
- Gender Identity
- Sexual Orientation
- Gender Expression

## Sex, Sex Assigned at Birth, Intersex

- Sex is the biological status of male, female, or intersex. Biological sex is the result of a combination of chromosomes, gonads, hormones, internal reproductive anatomy, and external genitalia. Sex is generally assigned at the time a person is born, based on the appearance of external genitalia.
- Male, female, intersex
  - Intersex is a category of congenital conditions in which a person is born with reproductive or sexual anatomy or chromosomal patterns that do not fit typical definitions of male or female. There are at least 60 distinct conditions in which biological sex is not clear at birth.





# Gender Identity

- Gender identity is a person's sense or experience of belonging to a particular gender category as a man or a boy, woman or a girl, or an identity outside of those binary categories. Gender identity is unrelated to the person's sex assigned at birth. Unlike gender expression, gender identity is not visible to others.
  - *Transgender*: an umbrella term for a person whose gender identity or expression is different from that typically associated with the sex they were assigned at birth.
    - Some, but not all, transgender people desire medical changes to their bodies as part of their gender transition process.
  - *Cisgender*: a person for whom gender identity matches the sex they were assigned at birth.
  - *Non-binary*: terms used by some people who experience their gender identity and/or gender expression as falling outside the gender categories of man and woman. They may define their gender as falling somewhere in between man and woman, or they may define it as wholly different from these terms.



Gender identity develops early in life, between ages of 3-6.

# Gender Expression

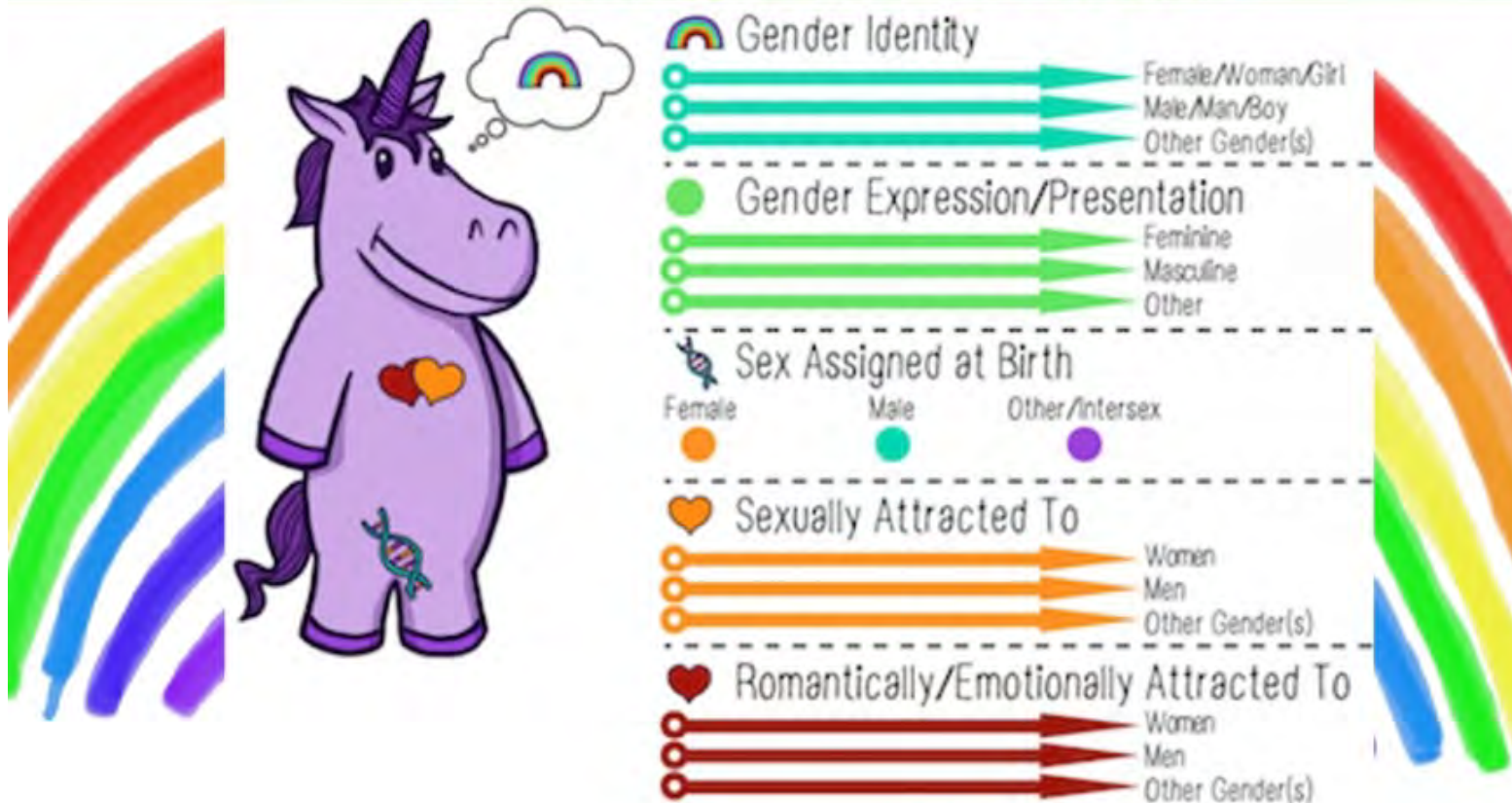
- An individual's characteristics and behaviors such as appearance, dress, grooming, mannerisms, voice or speech patterns, activities, and social interactions that are perceived as masculine, feminine, both, or neither.
  - *Gender Non-Conforming*: describes a person whose gender expression (e.g., clothing, mannerisms) differs from conventional expectations of masculinity and femininity.
    - Not all gender non-conforming people identify as transgender and not all transgender people gender non-conforming.



# Sexual Orientation

- Sexual orientation is a person's physical, sexual, romantic, or intimate attraction to other people.
  - *Gay*: a man who is attracted to some other men
  - *Lesbian*: a woman who is attracted to some other women
  - *Bisexual*: a person who is not exclusively attracted to one gender
  - *Straight*: a person who is attracted to people of the gender

# The Gender Unicorn





# School Bullying of LGBTQI+ Students

Youth Risk Behavior Survey  
GLSEN

- **86% of LGBTQI+ students experienced bullying and harassment during school**
- LGB Students
  - 34% were bullied on school property and 28% were bullied electronically
  - 10% were threatened or injured with a weapon on school property
  - 23% who had dated or went out with someone during the 12 months before the survey had experienced sexual dating violence
  - 18% of had experienced physical dating violence
  - 18% had been forced to have sexual intercourse at some point in their lives.
- Transgender Students
  - 80% had been verbally harassed at school
  - 25% had been physically harassed at school
  - 12% had been physically assaulted
  - 12% had been sexually assaulted
  - ~20% withdrew from school altogether

# Transgender Student Experiences in Schools

GLSEN 2015

- 75% of trans students said they feel unsafe at school
- 59% of transgender students had been required to use a bathroom that did not match the gender they live every day
- 80% of transgender students said they'd avoided bathrooms because they felt unsafe or uncomfortable
- 64% of transgender students avoided gym class because they felt unsafe or uncomfortable
- 50% said they were prevented from using their affirmed names or pronouns

# LGBTQI+ Students Outcomes

Trevor Project 2022

- 73% of LGBTQ+ youth and 75% of transgender youth reported symptoms of anxiety
- 58% of LGBTQ+ youth and 66% of transgender youth reported symptoms of depression
- 42% of LGBTQ+ youth and 52% of transgender youth said they seriously considered suicide in 2021 (Trevor Project)
- 14% LGBTQ+ youth and 20% of transgender youth attempted suicide in 2021

# Sources of Legal Rights and Obligations

# Patchwork of Laws

Federal	State (Illinois)	Local (City/Town, School District)
<b>Laws</b>	<b>Laws</b>	<b>Laws</b>
<p><b><i>U.S. Constitution, ex.</i></b></p> <ul style="list-style-type: none"> <li>• 1A: Freedom of speech, expression, religion, press</li> <li>• 14A: Right to equal protection, privacy</li> </ul>	<p><b><i>Illinois Constitution, ex.</i></b></p> <ul style="list-style-type: none"> <li>• Article X – Education</li> </ul>	<p><b><i>Charters or Codes</i></b></p>
<p><b><i>Federal Statutes, ex.</i></b></p> <ul style="list-style-type: none"> <li>• Equal Access Act</li> <li>• Title IX of Education Amendments to Civil Rights Act</li> </ul>	<p><b><i>Illinois State Statutes, ex.</i></b></p> <ul style="list-style-type: none"> <li>• IL Human Rights Act</li> <li>• IL Prevent School Violence Act LGBT Inclusive Curriculum Law</li> <li>• Comprehensive Personal Health and Safety and Sexual Health Education</li> </ul>	<p><b><i>Local Ordinances, ex.</i></b></p> <ul style="list-style-type: none"> <li>• Non-Discrimination Ordinance</li> </ul> <p><b><i>School Board Policies, ex.</i></b></p> <ul style="list-style-type: none"> <li>• 7:10 Equal Educational Opportunities</li> <li>• 7:20 Harassment of Students Prohibited</li> <li>• 7:180 Prevention of Bullying, Intimidation, and Harassment</li> </ul>

# Patchwork of Adjudicatory Bodies

Federal	State (Illinois)	Local (City/Town, School District)
<b>Courts</b>	<b>State Courts</b>	<b>Local Agencies</b>
<b><i>U.S. Supreme Court</i></b>	<i>Illinois Supreme Court</i>	<i>City Councils; Village Boards</i>
<ul style="list-style-type: none"> <li>• Bostock v. Clayton County</li> </ul>		
<b><i>7<sup>th</sup> Circuit Court of Appeals</i></b> <ul style="list-style-type: none"> <li>• Whitaker</li> <li>• Nabozny</li> </ul>	<i>Illinois Courts of Appeals</i>	<i>School Boards</i>
<b><i>Federal District Courts</i></b> <ul style="list-style-type: none"> <li>• Pendleton Heights GSA (S.D. Indiana)</li> </ul>	<i>Illinois Circuit (Trial) Courts</i>	
<b><i>Federal Commission, ex.</i></b> <ul style="list-style-type: none"> <li>• EEOC</li> <li>• OCR, U.S. Dept. of Ed.</li> </ul>	<b><i>Illinois State Commission, ex.</i></b> <ul style="list-style-type: none"> <li>• IL Human Rights Commission</li> </ul>	

## Going Beyond Standard Board Policies

- Bement #5 – **Sex Equity** - ... Students shall be supported in a manner consistent with their gender identity. This will include, but not be limited to, use of restrooms, locker rooms, and other facilities that correspond with the student's gender identity.
- Argenta-Oreana #1 – **Administrative Procedure**: Accommodating Transgender Students or Gender Non-Conforming Students
- Maroa-Forsyth #2 – **Administrative Procedure**: Accommodating Transgender Students or Gender Non-Conforming Students

# Students' Rights

- Be “out” and also not be “outed”
- Use chosen names and pronouns
- Form GSAs
- Use the restrooms and locker facilities that match their gender identity/expression
- Wear pro-LGBTQ t-shirts
- Bring a same-gender date to prom or other school events



# Schools' Obligations

- *Act in loco parentis* ensure the safety and well-being of students
- Provide equal (and equitable) access to educational opportunities
- Protect students' privacy
- Not reveal students' identities to anyone else (including the students' families) without students' permission
- Protect students from bullying, harassment, and discrimination

## Scenarios

GSA's

Bullying

Names and  
Pronouns

Bathrooms  
and Locker  
Rooms

Confidentiality,  
Privacy and  
Outing

Staff Rights  
and  
Obligations

## Scenario 1: GSAs

My school has a Gay-Straight Alliance and I'm the staff sponsor (I'm a social worker). My principal stated that the GSA cannot publicize its existence on school bulletin boards or on the school's radio station, even though other non-curricular clubs at the school are able to do so. The students in the club are mad and want to take action.

# Gay-Straight Alliances



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If a school permits non-curricular student groups (e.g., chess club, community service clubs, religious clubs), it must also permit students to form Gay-Straight Alliances. *Gay-Straight Alliance of Okeechobee High School v. School Board of Okeechobee County* (S.D. Fla. 2007)); *Straights & Gays for Equality (SAGE) v. Osseo Area School District No. 279* (8th Cir. 2008)

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Schools cannot require Gay-Straight Alliances to change their name to something less “controversial.” *Colin ex rel. Colin v. Orange Unified School District* (C.D. Cal. 2000)

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Schools may not prohibit Gay-Straight Alliances from forming due to the threat of controversy or opposition from others—GSA members are not responsible for disruptions caused by opponents of the GSA or its objectives. *Boyd County High School Gay Straight Alliance v. Board of Education of Boyd County, KY* (E.D. Ky. 2003)

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## Legal Supports:

14A Equal protection

Equal Access Act of 1984

## Scenario 2: Bathrooms and Locker Rooms

I work in a 7<sup>th</sup> and 8<sup>th</sup> grade junior high school that has almost 600 kids. My principals would like to look into having bathrooms and locker rooms for LGBTQ+ students.

# Bathrooms and Locker Rooms

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Schools must permit transgender students to use the restrooms and locker facilities that match their gender identity. *Whitaker By Whitaker v. Kenosha Unified School District No. 1 Board of Education* (7th Cir. 2017); *Maday v. Township High School District 211* (N.D. Ill. 2020); *Students and Parents for Privacy v. U.S. Department of Education, the U.S. Department of Justice, and District 211* (N.D. Ill. 2016); *Township High School District 211* (EEOC 2013); *McCray v. Williamsville-Sherman School District* (Illinois Human Rights Commission 2016)

## **Legal Supports:**

14A Equal Protection

Title IX of the Education Amendments of 1972

IL Human Rights Act

# Bathrooms/Locker Rooms: Accommodating T/GN Students

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Schools cannot require transgender students to undergo specific medical treatments or complete a surgical transition for the school to recognize their gender identity. *Whitaker By Whitaker v. Kenosha Unified School District No. 1 Board of Education* (7th Cir. 2017)

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Districts cannot require a transgender student to use a curtain in the locker room that corresponds to their gender identity. Commission found that district's requirement that a transgender student use a curtain in the locker room. *Lake Park Community District 108* (Illinois Human Rights Commission 2019)

## Legal Supports:

14A Equal Protection

Title IX of the Education Amendments of 1972

IL Human Rights Act

# Bathrooms/Locker Rooms: Discomfort of Others

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High School’s practice of allowing a transgender boy to use the boys’ restrooms and locker rooms does not violate the rights of cisgender students or parents. *Parents for Privacy v. Dallas School District No. 2* (9<sup>th</sup> Circuit 2020)

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“[H]igh school students... have no constitutional right not to share restrooms and locker rooms with transgender students whose sex assigned at birth is different than theirs.” School already had sufficient privacy protections for uncomfortable students and could not single out transgender students for disfavored and unlawful treatment in response to the discomfort of a small group of students. *Doe v. Boyerstown Area School Dist.* (E.D. Pa. 2017)

## Legal Supports:

14A Equal Protection

Title IX of the Education Amendments of 1972

IL Human Rights Act



## Scenario 3: Bullying

I have a meeting with superintendent and district principals tomorrow regarding an ongoing bullying issue in my junior high. We have a group of boys who are wreaking havoc on our LGBT youth. These boys make jokes about changing their names and purposefully go out of their way to call students by dead names and unpreferred pronouns. They are doing it in a way to upset them, over and over. Bullying, right? 90% of the situations I have dealt with in the past two weeks were regarding this same group of boys. They have been talked to by the HS principal.

# Bullying and harassment



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Schools are obligated to protect students who face bullying for their LGBTQI+ status, just as they are obligated to protect students bullied for their race, religion, disability, or other protected categories. *Nabozny v. Podlesny*, (7th Cir. 1996)

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Antigay bullying and harassment constitute sex- and gender-based harassment. *Carmichael v. Galbraith* (5th Cir. 2014)

## Legal Supports:

14A Equal Protection

Title IX of the Education Amendments of 1972

IL Prevent School Violence Act (School Code)

## Scenario 4: Bullying, Names and Pronouns, and Climate

I have a meeting with superintendent and district principals tomorrow regarding an ongoing bullying issue in my junior high. We have a group of boys who are wreaking havoc on our LGBT youth. **Our district does not require teachers to call student by their preferred names and pronouns despite countless efforts made by myself and other staff members to do so. They are sticking to their “policy” that they are not legally “required” to do so. This has pushed into our student body. These boys make jokes about changing their names and purposefully go out of their way to call students by dead names and unpreferred pronouns. They claim is that it is not bullying because of the policy but they are doing it in a way to upset them, over and over. Bullying, right? 90% of the situations I have dealt with in the past two weeks were regarding this same group of boys. They have been talked to by the HS principal.**

# Names and Pronouns in Schools



Students have the right to be addressed at school by their affirmed name and pronouns and to update their school records to reflect their identity. (ISBE Guidance (2020)) (see Guidance document in your resources)

*Bostock v. Clayton Cty., Georgia*, No. 17-1618, 2020 WL 3146686 (U.S. June 15, 2020); *Whitaker v. Kenosha Unified School District*, 858 F.3d 1034 (7th Cir. 2017); *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011); *Powell v Schriver*, 175 F.3d 107 (2d Cir. 1999); *Adams v. Sch. Bd. of St. Johns County*, 318 F.Supp.3d 1293 (M.D. Fla. Jul. 26, 2018); *Grimm v. Gloucester County Sch. Bd.*, 302 F.Supp.3d 730 (2018); *Nguon v. Wolf*, F.Supp.2d 1177 (C.D. Cal. 2007); *Doe v. Madison Metropolitan School Dist.* (Wis. S. Ct. 2022)

**Legal Supports:**

1A

Title IX



## Scenario 5: Names and Pronouns in Information Systems

I have a transgender male student (birth certificate states female and birth name). Things are going well at the junior high school - teachers and peers refer to the student with male pronouns and his preferred name. Both the junior high (and his future high school) are fully accommodating with regard to bathroom use and locker rooms. The school has updated the student's email to reflect his chosen name but not other information systems because they are tied to his birth certificate.

The student will start high school next year and wants to make sure his chosen name and male pronouns appear on all documents. The high school has responded that it cannot use the student's chosen name in some of its systems. The student is anxious about teachers or students seeing his birth name and using that name to address him.

\*Parents believe this is a "phase" but are ok with the preferred name appearing.

**Is there any way around this legally without a legal change of name?**

# Illinois State Board of Education

## Student Demographics

Data Element	Mandatory	Data Type	Code	Value	Description
			15	Native Hawaiian or Other Pacific Islander	A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
			16	White	A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.
<b>Gender</b>	Mandatory	Char(2)	17	Two or More Races	A person having origins in more than one race.
				<b>Gender</b> Male or Female or Non-Binary - For most students, the district should enter the student's name and <b>gender</b> as it appears on the student's birth certificate. However, for students identifying as trans <b>gender</b> , districts may choose to enter the <b>gender</b> with which the student identifies rather than the student's biological <b>gender</b> . If necessary, the district may also enter the first name the student uses if it differs from the birth certificate.	
			01 or F	Female	A woman or a girl.
			02 or M	Male	A man or a boy.
			03 or N	Non-Binary	

## Scenario 6: Accidental Outing

I have a student who identifies as non-binary, but was born female. The student disclosed to me that they want to use they/them pronouns and also wants teachers to use a more gender-neutral name when addressing them. However, mom doesn't know about this and they are not yet comfortable with mom knowing this information yet.

I've asked teachers to be mindful about using the student's legal name when speaking with mom, but we're all human and mess up sometimes. The student knows this is a risk and is willing to take that risk.

Would there be any legal ramifications if the teachers use the preferred name when speaking with mom rather than the student's legal name?

## Scenario 7: Intentional Outing

I just had a meeting with my union rep about LGBTQ students' right and it couldn't have gone worse. I was told that I would be a part of parent meetings essentially outing students. The goal is to come to some understanding with the families on whether they are okay with their students going by preferred names and pronouns. I informed them that this was breaking the law and was told "schools do it."

What is school's obligation to confidentiality when a child discloses LGBTQIA+ identity but does not have support at home. Our middle school has forced meetings with parents and children to discuss what the student has disclosed and expressed as desired support.



# Student Right to Privacy



Schools may not reveal students' LGBTQI+ status to anyone else (including the students' families) without student permission, even if the student is out at school, unless there is a legitimate school-related reason for doing so. *Parents v. Montgomery County Board of Education* (D. Md. 2020); *Wyatt v. Kilgore Independent School District* (E.D. Texas 2011); *Nguon v. Wolf* (C.D. Cal. 2007); *Sterling v. Borough of Minersville* (232 F.3d. 190 (3d Cir. 2000)); *Parent 1 and Parent 2 v. Madison Metropolitan School District* (Wis.S. Ct. 2022)

## Legal Supports:

14A Due Process (Right to Privacy)

FERPA



## Scenario 8: Teachers' Rights and Obligations

We have a few transgender students at my school. I've heard that there are some people who feel that they shouldn't have to use anything other than legal names and pronouns. Some say it violates their religious rights. What happens if they refuse to refer to transgender students using the names and pronouns the students use themselves?

# School Employees' Rights and Obligations



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District policy requiring teachers to refer to transgender students by names and pronouns did not violate teacher's right to religious expression. *Kluge v. Brownsburg Community School District* (S.D. Ind. 2020) (7<sup>th</sup> Circuit)

Also...

Intentional refusal to use someone's correct pronouns is equivalent to harassment and a violation of one's civil rights. (Equal Employment Opportunity Commission (2021))

## Legal Supports:

1A Freedom of Expression, Religion

## Scenario 9: Gender Transition Plans

In my current district, we do not have an established gender support team. The social workers create a gender support plan in the individual buildings, but it is not consistent across the district. We also have a lack of training in the area.

How do social workers respond to a student with a gender support plan (was consistent at first) who is requesting to change their pronouns and name every month or so?

# AP - Accommodating Transgender Students or Gender Non-Conforming Students

The **Superintendent** may establish a gender support **team** that will identify accommodations for a specific student. Those accommodations may be documented in a **gender support plan** or other written document.

This following list of **possible accommodation** considerations is not exhaustive, and each student's request must be managed on a **case-by-case basis**:

1. Gender transition
2. Names and gender pronouns
3. School student records
4. For managing demographic information in the ISBE Student Information System, see [www.isbe.net/Documents/student\\_demographics.pdf](http://www.isbe.net/Documents/student_demographics.pdf).
5. Student privacy and confidentiality

## AP - Accommodating Transgender Students or Gender Non-Conforming Students, continued

6. Access to gender-segregated areas, e.g. locker rooms and restrooms
7. Sports and physical education classes - participation in competitive athletic activities and contact sports is resolved pursuant to IHSA policy #34, Policy and School Recommendations for Transgender Participation at:  
[www.ihsa.org/AbouttheIHSA/ConstitutionBylawsPolicies.aspx](http://www.ihsa.org/AbouttheIHSA/ConstitutionBylawsPolicies.aspx)
8. Dress codes
9. Gender segregation in other activities, e.g., class discussions and field trips (including any overnight school trips)
10. Communication with a new school about gender-specific accommodations upon transfer or graduation



– Confidential –

### Gender Support Plan

The purpose of this document is to create shared understandings of how the student's authentic gender will be accounted for and supported at school. School staff, caregivers (if appropriate) and the student should work together to develop the document. Ideally, each will spend time completing the sections and then come together to review them and confirm shared agreements. Use the action planning section at the end of the document to track items requiring any follow-up. Please note that there is a separate document to plan for a student formally communicating a change in their gender status at school.

School/District _____	Today's Date _____
Name Student Uses: _____	Pronouns Student Uses: _____
Name on Birth Certificate: _____	Sex Assigned at Birth _____
Date of Birth _____	Student's Grade Level _____
Sibling(s)/Grade(s) _____ / _____ / _____	
Parent(s), Guardian(s), or Caregiver(s) /relation to student	
_____ / _____	_____ / _____
_____ / _____	_____ / _____
Meeting participants: _____	

### PARENT/GUARDIAN INVOLVEMENT

<https://www.tfaforms.com/4745264>

(See document in your resources)

## Balancing Act: Student Privacy and Self-Determination, Schools' *in loco parentis* Role, and Parental Rights to Raise Their Children

**Students** have constitutional rights to speech, expression, privacy, and freedom from violence, discrimination and harassment.

- In Illinois, the law mandates that parents/guardians cannot access the mental health records of youth ages 12 and older without the written consent of the youth.

**Parents** have constitutional rights to the care, custody and control of their children.

**Schools** are mandated to keep students safe in school and provide equal/equitable access to school benefits and activities.

- AND, while students are in school – and they are legally mandated to be in school - schools act *in loco parentis*.



# What Schools Can Do

1. Encourage respect for all students by discussing LGBTQI+ people and issues

2. Intervene consistently in bullying, harassment, and violence against all students, including bias-based bullying

3. Create policies supporting LGBTQI+ students and their rights to protection and self determination

4. Identify “safe spaces” where LGBTQI+ youth can receive support from administrators, teachers, or other school staff

5. Encourage GSAs and other student-led clubs that promote a safe, welcoming, and accepting school environment

<https://www.cdc.gov/lgbthealth/youth.htm>

# What Schools Can Do

6. Provide trainings to all school staff on understanding and supporting LGBTQI+ students and all students

7. Develop a common language that everyone can use and share

8. Regular, real-time data collection, dissemination, and action

9. Ensure that health curricula or educational materials that is relevant to LGBTQI+ youth

10. Facilitate access to community providers experienced in providing health services, including social and psychological services to LGBTQI+ youth and families

<https://www.cdc.gov/lgbthealth/youth.htm>

## Contact Information

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Please contact us ANYTIME with  
questions.

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Thank you for your work!

