



Transgender Student Rights

Legal Update

Legal, policy foundation



- Title IX
- 14th Amendment's Equal Protection clause
- Developing legal consensus that transgender discrimination is sex discrimination
- Board Policy ADDA, ADDA-R
- Maine Commission on Human Rights Guidance
- May, 2016 Federal OCR *Dear Colleague* letter

Challenges faced by transgender students

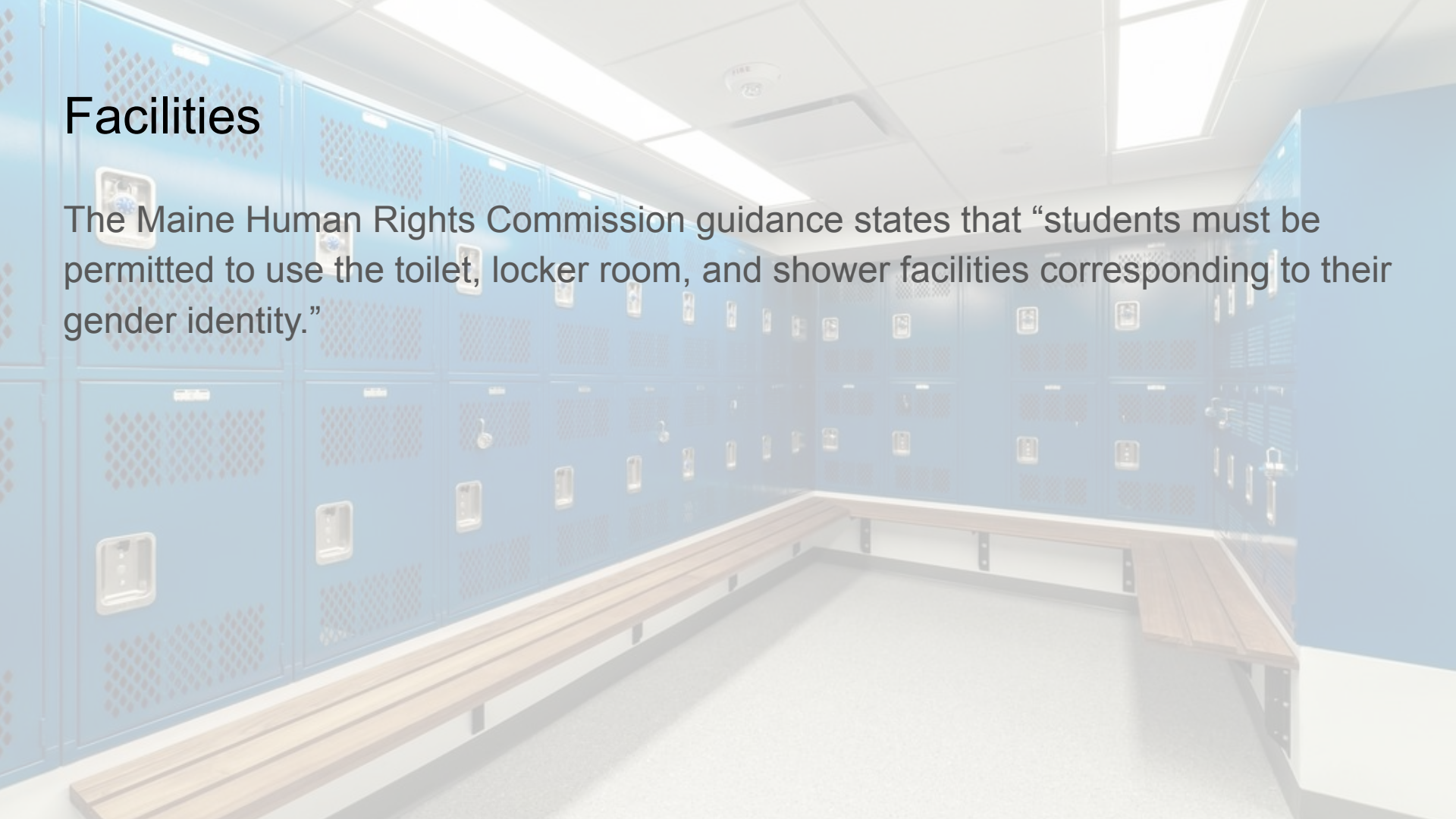
- Many experience extensive stigma and discrimination, and suffer mental health consequences as a result which manifest in, among other things, increased rates of depression and suicide.
- Many are subjected to bullying and harassment from students, staff, family.
- 9 in 10 Maine transgender students report hearing derogatory remarks about their gender identity, with nearly $\frac{1}{3}$ hearing such statements from faculty and staff.
- In the same survey, almost half of all transgender students reported skipping a class at least once in the past month and missing at least one day of school over that same period because they felt unsafe or uncomfortable.
- Nationally, frequently harassed LGBTQ students score half a grade lower than LGBTQ students who are harassed less frequently.

A student asserts gender identity. What's our obligation?

- Age isn't contemplated by the statute, guidance, or districts' policies
- Our obligation is to “accept a student's assertion of their gender identity when”
 - There is consistent and uniform assertion, or
 - Any other evidence that a student's gender identity is sincerely held as part of their core identify.
- If there is a credible basis for believing that a student's gender identity is being asserted for an improper purpose, students should be provided with a written explanation of the basis for such beliefs, and the student and, where appropriate, the students' parents or guardians, should be provided the opportunity to address such beliefs of bad faith.

Facilities

The Maine Human Rights Commission guidance states that “students must be permitted to use the toilet, locker room, and shower facilities corresponding to their gender identity.”



It's all in a name

- "...a student's official record shall bear their legal name, which may be changed only upon proof that the student's legal name has been changed pursuant to a court order."
- "At the written request of a student, however, and consistent with the student's gender identity...use the student's preferred name and pronouns consistent with their gender identity on all other documents."
- "If a student so chooses...employees should be required to address the student by the student's chosen name and use pronouns consistent with the student's gender identity. [We] should also, at the request of any student, instruct [our] students to address the student by the student's chosen name and use pronouns consistent with the student's gender identity."

Dispute

- Student doesn't want to share identity with parent, or, parents and student disagree on front-facing presentation of name and identity:

- Whether sexual orientation, gender identity, or gender expression, “whenever possible [we] should work with the student to ensure that they are comfortable at school and treated as a valuable member of our school community.”

- Guidance does not address a situation where the student may not want the parent(s) to be aware of orientation or gender identity.

Dispute: *So, what do we do?*

- Careful, case by case approach that considers a student's
 - age
 - the importance of parents being aware of matters impacting children
 - potential harm to the student if information was shared prematurely, or at all
 - a “secret” about a student’s identity is hard to keep from a parent
- Elementary: usually want to facilitate a discussion with family and counseling staff.

Dispute: *So, what do we do?* (cont'd)

- Middle/Upper Schools

- a. Inform the student that it's nearly impossible for the District to keep this a secret from family (parents' legal rights under FERPA);
- b. Explain that we would not necessarily volunteer information; we would answer truthfully if asked by a parent, a student safety issue notwithstanding
- c. Work with the student/counselor (or an outside organization such as GLAD) to help the student share information with the parents.

Privacy for non-transgender students

There may be students who object to participating in sex-segregated school programs or being in sex-segregated facilities with transgender students. Privacy interests of such students, as well as all students, can be protected by making the facilities themselves more private or by providing an accommodation to a student who seeks additional privacy, for any reason. **But objecting students cannot justify discrimination against transgender students.**