



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS  
ADMINISTRATIVE COMPLAINT

February 12, 2026

United States Department of Education  
Office for Civil Rights  
Lyndon Baines Johnson Department of Education Building  
400 Maryland Avenue, SW  
Washington, DC 20202-1100

Via Email: OCR@ed.gov

To Whom It May Concern:

This is a federal civil rights complaint pursuant to the U.S. Department of Education's (Department) Office for Civil Rights' (OCR) discrimination complaint resolution procedures.

Defending Education (DE) brings this complaint against the Hawaii Department of Education for discrimination on the basis of sex in programs or activities that receive federal financial assistance in violation of both Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 *et seq.*, and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. In addition, Hawaii's speech policies violate the First Amendment's protections against compelled speech and viewpoint discrimination.

DE brings this complaint as an interested third-party organization with members who are parents and students throughout the country. DE and its members oppose discrimination, including both sex discrimination and speech discrimination, in America's K- 12 schools and institutions of higher education.

Title IX prohibits discrimination based on sex in any education program or activity receiving federal financial assistance. This includes female students' right to sex-segregated intimate spaces.<sup>1</sup> Nevertheless, the Hawaii Board of Education's "Guidance on Supports for Transgender Students" requires Hawaii public schools to allow male students to enter girls' bathrooms.

Hawaii's policies also run afoul of the First Amendment. Students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,"<sup>2</sup> and public schools may not "prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion *or force citizens to confess*

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<sup>1</sup> In *United States v. Virginia*, 518 U.S. 515 (1996), the Supreme Court held that parties who seek to defend sex-based government action must demonstrate an "exceedingly persuasive justification" for that action.

<sup>2</sup> *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 506 (1969).

by word or act their faith therein.”<sup>3</sup>

As a result, schools “generally may not restrict [a student’s] personal speech unless the speech ‘substantially interfere[s] with the work of the school or impinge[s] upon the rights of other students.’”<sup>4</sup> As the Sixth Circuit recently ruled in *Defending Education v. Olentangy School District*, this means that schools may not require students and staff to use pronouns that are disconnected from biological reality. But Hawaii’s State Board of Education mandates exactly that.

## Hawaii’s Gender Identity Policies Violate Title IX

The Hawaii Board of Education’s “Guidance on Supports for Transgender Students” violates Title IX by eliminating female students’ rights to single-sex spaces.<sup>5</sup> The Guidance states that “[s]tudents should have access to restrooms that correspond to their sincerely held gender identity,”<sup>6</sup> and that if this makes other students uncomfortable, they may use single-stall restrooms instead.<sup>7</sup> In other words, the Guidance states that if a male student enters the girls’ bathroom, making female students feel unsafe, then it is the *female* students who must leave and use different bathrooms.<sup>8</sup> The Guidance emphasizes that, unlike the female students using the girls’ bathroom, “[a] transgender student *should not* be compelled to use an alternative restroom.”<sup>9</sup> As a result, the Guidance “turns Title IX on its head” and strips female students of their Title IX rights to single sex intimate spaces.<sup>10</sup>

Considering the above, the Guidance appears to violate Title IX. It also violates various Presidential Executive Orders on policies related to sex discrimination in federally funded programs,<sup>11</sup> and this Department’s stakeholder guidance on Title IX and the prevention of sex discrimination in federally funded programs.<sup>12</sup>

The Education Department’s guidance on Title IX clarifies that covered educational programs and activities include: “[A]ll the operations of a school that receives financial assistance . . . . Title IX applies to all operations of a school, including those that take place in the facilities of the school, on a school bus, or in a class or training program sponsored by the school at another location.”<sup>13</sup>

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<sup>3</sup> *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) (emphasis added).

<sup>4</sup> *Defending Education v. Olentangy Loc. Sch. Dist. Bd. of Educ.*, 158 F.4th 732, 745–46 (6th Cir. 2025) (citing *Tinker*, at 509).

<sup>5</sup> Exhibit D.

<sup>6</sup> Exhibit D, at 6.

<sup>7</sup> *Id.*

<sup>8</sup> Exhibit D, at 7.

<sup>9</sup> Exhibit D, at 6-7 (emphasis added).

<sup>10</sup> *Tennessee v. Cardona*, 737 F.Supp.3d 510, 571 (E.D. Ky 2024).

<sup>11</sup> See Executive Order 14168, “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government” (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/>; Executive Order 14201, “Keeping Men Out of Women’s Sports” (Feb. 5, 2025), <https://www.whitehouse.gov/presidential-actions/2025/02/keeping-men-out-of-womens-sports/>.

<sup>12</sup> Press Release: “U.S. Department of Education to Enforce 2020 Title IX Rule Protecting Women,” U.S. Dep’t of Education (accessed September 15, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-education-enforce-2020-title-ix-rule-protecting-women>.

<sup>13</sup> “Frequently Asked Questions: Sex Discrimination,” U.S. Dep’t of Education (accessed September 16, 2025), <https://www.ed.gov/laws-and-policy/civil-rights-laws/frequently-asked-questions-sex-discrimination>.

Section 1 of the 14th Amendment to the U.S. Constitution asserts: “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” The Supreme Court held in *Craig v. Boren* that to withstand equal protection scrutiny, sex distinctions “must serve important governmental objectives and must be substantially related to achievement of those objectives.”<sup>14</sup>

## Hawaii’s Gender Identity Policies Violate the First Amendment

Hawaii’s gender identity policies don’t just violate federal civil rights statutes; they violate the Constitution as well. Hawaii’s State Department of Education is violating the First Amendment by compelling students to use certain pronouns when the students address their self-described “transgender” peers. In response to an inquiry by Defending Education, Hawaii’s House Education Committee Chair stated that “purposefully misgendering” a student “may be considered a violation of Board of Education Policy #305-10 and/or Board of Education Policy #900-1.”<sup>15</sup> (Exhibit A). Hawaii’s State Department of Education’s Civil Rights Compliance Branch (CRCB) conducts internal investigations of complaints arising from allegations of discrimination or harassment under Policies 305-10 and 900-1.<sup>16</sup>

Policy #305-10 (Exhibit B) prohibits “any form of harassment and/or bullying based on . . . gender identity,”<sup>17</sup> and Policy #900-1 (Exhibit C) prohibits “any form of discrimination, including harassment,” based on a person’s “gender identity.”<sup>18</sup> In other words, Hawaii’s Department of Education equates “misgendering” a student (i.e., using pronouns based on biology and not gender identity) with harassment.

The Board defines “harassment” as “unwelcome conduct based on a protected basis under this chapter, that is sufficiently severe, persistent or pervasive; that limits a student’s ability to participate in or benefit from an educational program or activity, or creates a hostile or abusive educational environment.”<sup>19</sup> Furthermore, the Department’s “Guidance on Supports for Transgender Students” (Exhibit D) states that “intentional or persistent refusal to respect a student’s gender identity . . . should be considered an act of discrimination.”<sup>20</sup>

These pronoun policies are nearly identical to the Olentangy School District pronoun policy that the en banc Sixth Circuit recently held unconstitutional.<sup>21</sup> That policy, said the Sixth Circuit, violated the First Amendment because it discriminated between viewpoints contained in students’ personal expressions.

As the *Olentangy* court reasoned:

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<sup>14</sup> *Craig v. Boren*, 429 U.S. 190, 197 (1976).

<sup>15</sup> Exhibit A at ¶ 10.

<sup>16</sup> *Civil Rights Compliance Branch*, Hawaii State Dep’t of Education, <https://hawaiipublicschools.org/useful-links/policies/nondiscrimination-policy/>.

<sup>17</sup> Hawaii State Bd. of Education Policy 350-10 at 1.

<sup>18</sup> Hawaii State Bd. of Education Policy 900-1 at 1.

<sup>19</sup> Hawaii Administrative Rules, §8-41-2, <https://shorturl.at/kkAdz>.

<sup>20</sup> *Guidance on Supports for Transgender Students*, Hawaii State Dep’t of Education, at 8.

<sup>21</sup> See *Olentangy*, 158 F.4th at 739.

[A] student speaker may not consistently and intentionally use the pronoun “he” to refer to a biological male who identifies as female. But the speaker may use that pronoun to refer to a biological female who identifies as male. **What separates the lawful and unlawful uses of “he”?** The “message” conveyed about the individual’s gender. **The School District permits certain approved messages on this topic**—that individuals can have genders that differ from their sex or at least that our society should refer to individuals using preferred pronouns to be courteous. **And the School District prohibits a disfavored view on the topic**—that individuals can have only one gender determined at birth and that it is perfectly appropriate to refer to others using biological pronouns.<sup>22</sup>

As a result, both Policy 305-10 and Policy 900-1 appear to violate Hawaii students’ First Amendment rights to free expression. Hawaii’s House Education Committee Chair claims that state law compels the Hawaii Department of Education to implement the policies.<sup>23</sup> But states need not follow, and in fact should disregard, state laws whose requirements contravene the United States Constitution. Article VI of the Constitution declares, “this Constitution shall be the supreme law of the land.”<sup>24</sup> Therefore, Hawaii’s State Board of Education cannot rely on state statutes to justify its decision to violate Hawaii students’ First Amendment rights.

Thank you for your prompt assistance with this request for investigation and resolution. Please don’t hesitate to contact me for further information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sarah Parshall Perry', with a stylized flourish at the end.

Sarah Parshall Perry  
Vice President and Legal Fellow  
Defending Education  
Encl. Exhibit A, Exhibit B, Exhibit C, Exhibit D

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<sup>22</sup> *Olentangy*, 158 F.4th at 739, 755 (emphasis added).

<sup>23</sup> Exhibit A, at ¶ 10.

<sup>24</sup> U.S. Const. art. IV, para. 2 (the United States Constitution “shall be the supreme law of the land.”).

# Exhibit A

## Response to Defending Education and School Boards for Academic Excellence Re: Auditing of Hawaii Education Laws

- 1) Are public schools in Hawai‘i permitted or instructed to use race in admissions, programming scholarships, or benefits under state law? This includes internships, mentorships, graduation services, facilities, clubs, or events separated by race.

No. Public schools in Hawai‘i are not permitted nor instructed to use race in admissions, programming, scholarships, benefits, internships, mentorships, graduation services, facilities, clubs, or events.

- 2) Are public schools permitted or instructed to engage in hiring or promotion preferences based on race, sex, color, national origin, or religion?

No. Schools are not permitted nor instructed to engage in hiring or promotion preferences based on a person’s race, sex, color, national origin or religion.

- 3) Do schools prioritize candidates from "underrepresented" groups for hiring or promotion, and bypass qualified candidates who do not belong to those groups?

No. Employment decisions must be based on job-related criteria and merit, not race or other protected characteristics.

- 4) Are schools permitted or instructed to use potentially unlawful proxies for race, sex, or other protected characteristics in admissions, hiring, or programming? This includes selection based on criteria such as narratives on “overcoming obstacles,” or completing “diversity statements,” ensuring “cultural competence,” or requesting any candidate’s “lived experiences?”

No. The Department does not use demographic “proxies” for admission or employment decisions.

- 5) May schools engage in geographical or institutional targeting geared toward unlawful preferencing of one individual over another based on protected characteristics?

No. Schools do not use geographic or institutional criteria that preference individuals based on protected characteristics.

- 6) May schools use mandatory minimums for candidate pools to ensure there are a certain number of applicants from particular races among them?

No. The Department does not impose minimum quotas or thresholds based on race, color, sex, national origin, or religion.

- 7) May a school condition the award of contracts on the basis of characteristics like sex or race?

No. Department contracting must follow state procurement law and be neutral regarding protected classifications.

- 8) Must schools conduct DEI training programs for staff? This includes but is not limited to those that through content or implementation exclude or disadvantage individuals based on protected characteristics or create a hostile environment.

No, schools are not required to conduct DEI training such that it creates a disadvantage for any DOE person nor does such training exclude individuals based on a protected characteristic or create a hostile environment.

- 9) Are public schools permitted or required to open up all educational facilities, private spaces, housing accommodations, overnight accommodations, sports, teams, scholarships, or other offerings to any individual based on gender identity, regardless of that student's underlying biological sex or the privacy and safety concerns of fellow students?

Students are able to participate in educational programs and activities, including access to facilities, according to their gender identity.

- 10) May public schools treat "misgendering" of students or staff as a form of sexual harassment under state anti-discrimination law? Relatedly, may schools demand all attendees use mandatory pronouns and chosen names, even if biologically inaccurate?

Purposefully misgendering a student or employee of the Department may be considered a violation of [Board of Education Policy #305-10](#) and/or [Board of Education Policy #900-1](#). The Department must also adhere to state education and employment laws. [Hawai'i Revised Statutes 368D](#) prohibits discrimination on the "basis of sex, including gender identity or expression [...] or sexual orientation [...]" in any "covered educational program or activity." Per HRS 368D, the Department is considered a "[covered educational program](#)."

HRS 378 prohibits discrimination in employment on the basis of various protected classes, including "gender identity or expression," and sexual orientation.

Per the Department's [Guidance on Supports for Transgender Students](#), one of the supports that may be provided is use of names and pronouns that are aligned with the student's gender identity. If one of the supports is to use the name and pronouns aligned with the student's gender identity, then such support should be implemented.

- 11) Are schools required to use e-verify to verify the identity and legal status of those applying for positions in those schools or school districts?

Currently, the Department does not utilize E-Verify.

- 12) Must schools engage in routine review of employees hired prior to implementation of e-verify? Must they engage in any background review of employees after initial vetting during the entirety of that employee's tenure?

The Department uses the standard Form I-9 to verify the identity and employment eligibility of all

newly hired individuals.

13) How does HIDOE verify educational credentials of applicants and employees?

The Department verifies educational credentials of applicants and employees based on published job classification or statutory requirements. In most cases, applicants and employees must submit copies of academic transcripts, licenses, certifications, and other relevant documentation.

14) May schools retain search firms to conduct recruitment, and if so, what are the minimum requirements of those search firms? May parents of children in those schools review staff employment contracts?

Since recruitment for Department positions is a centralized function, the Department's Office of Talent Management would collaborate with the school and conduct a needs assessment before considering the use of an executive search firm. This process would help determine the most appropriate recruitment tools.

Staff employment contracts are confidential and are subject to privacy and personnel laws.

15) Are schools required to include information about sexual assault or sexual harassment charges, investigations, or convictions brought against any school employee in that individual's employment file? Are schools required to report charges of sexual assault or sexual harassment to the appropriate criminal and civil authorities (such as the Department of Education's Office for Civil Rights, local police, etc.)?

Investigation results must be retained per Department retention schedules.

Staff must report allegations of sexual misconduct, harassment, discrimination, or abuse to the Civil Rights and Compliance Branch, for civil rights concerns and law enforcement/Child Protective Services, when abuse or criminal conduct is alleged.

# Exhibit B

## POLICY 305-10

### **ANTI-HARASSMENT, ANTI-BULLYING, AND ANTI-DISCRIMINATION AGAINST STUDENT(S) BY EMPLOYEES**

The Department of Education strictly prohibits discrimination, including harassment, by any employee against a student based on the following protected classes: race, color, national origin, sex, physical or mental disability, and/or religion. In addition to the above protected bases, the Department of Education strictly prohibits any form of harassment and/or bullying based on the following: gender identity and expression, socio-economic status, physical appearance and characteristic, and sexual orientation.

A student shall not be excluded from participation in, be denied the benefits of, or otherwise be subjected to harassment, bullying, or discrimination under, any program, services, or activity of the Department of Education.

The Department of Education expressly prohibits retaliation against anyone engaging in protected activity. Protected activity is defined as anyone who files a complaint of harassment, bullying, or discrimination; participates in complaint or investigation proceedings dealing with harassment, bullying, or discrimination under this policy; inquires about his or her rights under this policy; or otherwise opposes acts covered under this policy.

The Department of Education shall develop regulations and procedures relating to this policy to include personnel action consequences for anyone who violates this policy.

[Approved: 02/17/2015 (as Board Policy 305.10); amended: 06/21/2016 (renumbered as Board Policy 305-10)]

*Former policy 4211 history: approved: 02/21/2008*



# Exhibit C

## POLICY 900-1

### **DEPARTMENT OF EDUCATION APPLICANT AND EMPLOYEE NON-DISCRIMINATION**

The Department of Education strictly prohibits any form of discrimination, including harassment based on a person's membership in a protected class. Protected classes covered by this policy include race, color, sex (including gender identity or expression), sexual orientation, condition of pregnancy, act of breastfeeding or expressing milk, religion, national origin, ancestry, age, physical or mental disability, genetic information, marital status, arrest and court record (except as permitted by applicable laws), income assignment for child support, national guard absence, uniformed service, veteran status, citizenship status (except as permitted by applicable laws), credit history or credit report (unless directly related to a bona fide occupational qualification), domestic or sexual violence victim status (if the domestic or sexual violence victim provides notice to the victim's employer of such status or the employer has actual knowledge of such status), or any other classification protected under applicable state or federal laws.

The Department of Education expressly prohibits retaliation against anyone because they engaged in protected activity. Protected activity is defined as anyone who files a complaint of discrimination, participates in complaint proceedings dealing with discrimination, inquires about their rights under discrimination laws, or otherwise opposes acts of discrimination.

The Department of Education provides reasonable accommodations to applicants and employees with physical or mental disabilities, including pregnancy-related disabilities, breastfeeding or expressing milk, victims of sexual or domestic abuse, or for bona fide religious purposes, upon request, if needed and to the extent required by law.

The Department of Education shall develop regulations and procedures relating to this policy.

[Approved: 05/19/2015 (as Board Policy 900.1); amended: 06/21/2016 (renumbered as Board Policy 900-1); amended: 08/01/2017]

*Former policy 1110-11 history: approved: 09/01/2005*

# Exhibit D



## SUBJECT: Guidance on Supports for Transgender Students

This guidance provides assistance regarding common issues of concern that need to be addressed to provide appropriate supports for transgender students and the school community. These guidelines are designed to provide basic direction for schools. They will not cover every situation that arises. The intent is to provide immediate guidance for schools to create a safe and nurturing learning environment for all students and to provide school officials with awareness of best practices to address situations as they arise.

Transgender students' needs can be highly individualized depending upon the circumstances of the student. Each student's needs should be assessed on a case-by case basis, which can be accomplished by meeting with the student and, if appropriate, with the student's parents or guardians. School staff should let the student take the lead in determining and expressing their own gender identity and should be mindful of the student's right to privacy and confidentiality with respect to their gender identity and expression.

## Definitions for Key Terms

**"Assigned sex at birth"** means the sex designation, usually "male" or "female," assigned to a person when the person is born.

**"Gender"** means a set of social, psychological, and emotional traits, influenced by a society's expectations that classify an individual as feminine, masculine, or other.

**"Gender expression"** means the manner in which a person represents or expresses gender to others, often through behavior, clothing, hairstyles, activities, voice, or mannerisms.

**"Gender identity"** means a person's internal, deeply-felt sense of being male, female, or other, whether or not that gender-related identity is different from the person's physiology or assigned sex at birth. **Everyone has a gender identity.**

**"Gender nonconforming"** means displaying a gender or gender expression that differs from those typically associated with one's assigned sex at birth. A person's gender expression may differ from stereotypical expectations about how females and males are "supposed to" look or act. **Gender nonconforming is not synonymous with transgender; not all gender nonconforming students identify as transgender.**

**“Sex”** means the chromosomal, hormonal, and anatomical characteristics that are used to classify an individual as male or female.

**“Transgender”** means a person whose gender identity differs from their assigned sex at birth.

**“Transgender” is not the same as “gay”.**

**“Transition”** means the process by which a transgender person starts living as the gender the person identifies as and often includes a change in style of dress, selection of a new name, a request that people use the correct pronoun, and possibly hormone therapy and surgery.

## Background

Recently, more students have felt comfortable expressing their transgender identity and requesting support in school. In addition, more and more parents have been asking schools to recognize and accommodate the needs of their transgender children. For many students, schools are seen as safe spaces for authentic expression. Consequently, it is important to determine what is most appropriate for our students, both those who identify as transgender and those who do not.

While transgender student issues have moved to the forefront of the educational landscape, and many jurisdictions, including Hawai‘i, have implemented guidance to support transgender students, it is important to remember these students still face many obstacles. The Gay, Lesbian, Straight Education Network (“GLSEN”) conducts a biennial national school climate survey focusing on the educational experiences of gay, lesbian, bisexual, and transgender students. GLSEN’s 2013 National School Climate Survey found that LGBT students who experienced LGBT related discrimination in school were three times more likely to have missed school in the past month, had lower GPAs than their peers, and had lower self-esteem, and higher levels of depression than their peers.<sup>[fn 1]</sup><sup>25</sup> Examples of discrimination specific to transgender students included, but were not limited to, being prevented from using preferred names and pronouns, and being required to use the restroom/locker room of their assigned sex at birth.<sup>[fn 2]</sup><sup>26</sup>

Schools play a vital role in the development of students’ well-being, and it is important that we continue to work collaboratively with all students and their families.

## Federal and State Laws, and Board of Education Policies

Legal principles regarding supports and accommodations for transgender students are still unsettled. Hawai‘i, consistent with federal law, prohibits discrimination, including against individuals on the basis of gender identity and expression. We will continue to track current legal developments and will revise the Department’s guidance as appropriate.

Federal and state laws that address discrimination on the basis of sex, gender identity, and/or gender expression include:

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<sup>251</sup>Kosciw, J. G. Greytak, E. A., Palmer, N. A., & Bosen, M. J. (2014). *The 2013 National School Climate Survey: The experiences of lesbian, gay, bisexual and transgender youth in our nation’s schools*. New York: GLSEN, at 41.

<sup>262</sup> *Id.* at 37-40

- **Title IX of the Education Amendments Act of 1972** which prohibits sex-based discrimination and harassment, under any education program or activity receiving federal financial assistance. This includes discrimination based on exhibiting what is perceived as a stereotypical characteristic for an individual's sex or failure to conform to stereotypical notions of masculinity and femininity.
- **Title IV of the Civil Rights Act of 1964** which prohibits sex-based discrimination and harassment in public schools and colleges. This includes discrimination based on a lack of conformity with traditional gender stereotypes.

Under Title IX and Title IV, all students, including transgender students and students who do not conform to sex stereotypes, are protected from sex-based discrimination.

- **State law (§§368-1, 489-2, and 489-3, Hawai'i Revised Statutes)** which protects individuals from discrimination based on gender identity or expression in public accommodations, employment, housing, and access to services receiving state financial assistance.
- **Title 8, Chapter 19 of the Hawai'i Administrative Rules** which includes a prohibition against making verbal or non-verbal expressions that cause others to feel uncomfortable, pressured, threatened, or in danger because of reasons that include gender identity and expression.

In addition, the Hawai'i Department of Education's mission is to develop the academic achievement, character, and social-emotional well-being of every child. The State needs to support all students in the development of their identities. Several Board of Education policies support this mission, including:

- **Policy E-3, Na Hopena A'o:** "The DOE works together as a system that includes everyone in the broader community to develop competencies that strengthen a sense of belonging, responsibility, excellence, aloha, total well being and Hawaii."
- **Policy 101.1, Student Code of Conduct:** "Students are expected to be honest, behave with dignity and treat others with respect and courtesy. Behavior of the individual should not interfere with the rights of others. This includes the use of appropriate language, actions and attire. Students are expected not to harass others through any means."
- **Policy 101.6, Comprehensive Student Support System:** "The BOE recognizes the importance of providing effective instruction in a safe, positive, caring and supportive learning environment...The DOE shall provide a comprehensive student support system framework to support the implementation, with fidelity of [...] appropriate student support through an array of services."
- **Policy 106.5, Focus on Students:** "The focus on the educational program for the public schools of Hawaii shall focus on the growth and development of each student."
- **Policy 305.10, Anti-Harassment, Anti-Bullying, and Anti-Discrimination Against Students by Employees:** "The DOE strictly prohibits any form of harassment and/or bullying based on the following: gender identity and expression, socioeconomic status, physical appearance and

characteristics and sexual orientation.” “A student shall not be excluded from participation in, be denied the benefits of or otherwise be subjected to harassment, bullying and discrimination under any program, services or activity of the DOE.”

Federal and state laws and BOE policies that address the privacy rights of students include:

- **The Family Educational Rights and Privacy Act (FERPA)** protects the privacy of student education records. Under the FERPA, schools must have prior written consent before releasing information from a student’s education record to others aside from a parent/legal guardian.
- **Title 8, Chapter 6 of the Hawai‘i Administrative Rules** governs the confidentiality of personal records, including those of students.
- **Title 8, Chapter 34 of the Hawai‘i Administrative Rules** governs the protection of the educational rights and privacy of students and parents.
- **BOE Policy 500.21, Student Information and Confidential Records:** “Information relating to individual students or former students in the public schools shall not be divulged or released by the Department of Education (Department) personnel, except as authorized by the individual student, parent, or guardian, permitted by the Department, or specified by law. Reports designated as “confidential” contain information of an intimate and personal nature, and shall be safeguarded and respected in accordance with professional ethics. Such reports shall not be placed in files of general accessibility. [...] All public schools shall maintain individual files of permanent student records as required by the Department or by law.”

## Guidance

Schools should work toward creating a learning environment that values and respects all students and supports the development of the whole child. Guidance for common needs and situations that may arise are described below.

### *Determination of a Student’s Gender Identity*

Schools should accept a student’s sincerely held gender identity. A student does not need a medical or mental health diagnosis or treatment threshold to have his or her gender identity recognized and respected.

A transgender student who is ready to socially transition, regardless of whether the student is undergoing medical transition, may initiate a process to change how the student is addressed (preferred name, preferred pronoun), their attire, and access to preferred activities and facilities.

Every student’s situation is different, so this process should begin with a meeting between the student and an administrator, counselor to discuss the type of supports the student is requesting. During this initial meeting, the counselor or administrator should also try to discover the extent to which the student’s parents are aware of the student’s gender identity. An initial meeting may or may not include the student’s parents, depending on individual circumstances and how the meeting was initiated. There may be situations where a student has not yet talked to their parents about their transgender status, but

still makes a request for supports. These instances may be more common at the middle and high school levels, than at the elementary school level.

Schools should customize supports to optimize each student's integration, and the supports must be documented. Both the student and the school should sign the document describing agreed-upon supports. Schools are encouraged to use the attached Student Support Plan for Gender Identity (Attachment A) as documentation of the established understanding between all parties about supports that have been agreed upon.

Once a plan is established, the counselor or administrator should then follow up with the appropriate school personnel (as appropriate to the agreed-upon supports) to inform them of the student's asserted gender identity and agreed-upon supports. As a student's identity develops, their appropriate supports may change. The student or their parent/guardian may initiate a meeting with a counselor or school administrator to change the support plan, particularly if requested supports related to sex-segregated facilities will be affected by the change. A counselor or administrator should revisit the plan as needed, with the student (and parent, if involved) for continued appropriateness. Supports for transgender students should be applied consistently.

EXAMPLE ONE: A student who appears to be male is consistently seen wearing clothing that is traditionally considered female, such as skirts and dresses. The student regularly uses facilities designated for males and has never requested to do otherwise. The student continues to use the student's legal name, which is a traditionally male name. In this instance, it may not be necessary to do anything. This student appears to be gender nonconforming and may or may not identify as transgender. If the student is experiencing bullying or harassment, a counselor or other appropriate school official should intervene with supports to address the bullying or harassment.

EXAMPLE TWO: A student and the student's parents request a meeting with the principal. The student has documentation from a medical professional regarding the student's gender identity. This instance is much more straightforward. Again, this meeting, or a subsequent meeting, can be used to establish a Student Support Plan for Gender Identity for the transgender student. The counselor or school administrator should then follow up with the appropriate school personnel to inform them of the student's gender identity and the agreed upon supports.

EXAMPLE THREE: A student who appears female approaches a teacher and gives a male name and requests to be referred to using male pronouns. The teacher should agree to use the student's preferred name and pronouns and inform the student that, upon request, the school will work with the student regarding supports and accommodations.

### *Access to Sex---Segregated Facilities*

In cases where a student desires increased privacy or feels unsafe, schools should provide the student with reasonable access to alternative accommodations. This includes restrooms and locker rooms.

### *Restroom Accessibility*

Schools may maintain separate restroom facilities for male and female students. Students should have access to restrooms that correspond to their sincerely held gender identity.

When a transgender student's support includes access to a restroom that corresponds with their sincerely held gender identity, there may need to be accommodations made for other students. In this case, if any student, whether transgender or not, desires increased privacy, or feels uncomfortable, schools should make every effort to provide the student with reasonable access to an alternative restroom (e.g., single-stall restroom or the health office restroom). A transgender student should determine which restroom to use. A transgender student should not be compelled to use an alternative restroom. Schools may take steps to designate single stall "gender-neutral" restrooms on their campus.

EXAMPLE ONE: A transgender male (female to male) student wants to use the boys' restrooms on campus. He should be allowed to use the boys' restroom since this is consistent with his sincerely held gender identity.

EXAMPLE TWO: A non-transgender female student is uncomfortable because a transgender female (male to female) has been using the girls' restroom. The non transgender female student should be allowed to use an alternative restroom.

EXAMPLE THREE: A transgender female (male to female) is uncomfortable using the girls' restroom, but does not want to use the boys' restroom since she feels unsafe in that environment. The student should be allowed to use an alternative restroom as in the example above.

EXAMPLE FOUR: A student who appears to be male is seen walking into the girl's restroom. When approached by school personnel, the student indicates that their sincerely held gender identity is female. The student should be allowed to use the restroom of the gender with which the student identifies. Inform the student that, upon request, the school will work with the student regarding supports and accommodations.

### *Locker Room Accessibility*

Schools may maintain separate locker room facilities for male and female students. Students should have access to the locker room facility that corresponds to their sincerely held gender identity.

When a transgender student's support includes access to a locker room that corresponds to their sincerely held gender identity, there may need to be accommodations made for them or other students. If any student, whether transgender or not, desires increased privacy, regardless of the underlying reason, schools should provide access to a reasonable alternative, such as:

- (1) Assignment of a student locker in close proximity to the coaches' office or a supportive peer group;
- (2) Use of a private area within the public area of the locker room facility; (3) Use of a nearby private area; or
- (4) A separate changing schedule.

EXAMPLE ONE: A transgender male (female to male) wants to change in the boys' locker room. As long as the student feels safe, he should be allowed to change in the boys' locker room.

EXAMPLE TWO: A transgender male (female to male) is uncomfortable changing in the boy's locker room, but does not want to change in the girls' locker room because he identifies as male and feels that it would be inappropriate. The school should attempt to accommodate the student using one of the



alternatives listed in the Guidance or another similar alternative.

EXAMPLE THREE: A transgender female (male to female) has chosen to change in the girls' locker room. Several non-transgender female students are uncomfortable with this situation. The non-transgender female students should be provided one of the alternatives listed in this Guidance or other, similar alternatives.

### *Overnight Trips and Housing (Boarding Schools)*

Schools must allow transgender students to access housing accommodations that are consistent with the student's sincerely held gender identity. Schools cannot require a transgender student to stay in single-occupancy accommodations or to disclose personal information when not required of other students. A school is, however, not prohibited from honoring a student's voluntary request for single-occupancy accommodations, if the student so chooses.

### *Preferred Names and Pronouns*

Transgender students have the right to be addressed by a name and pronouns that correspond to their sincerely held gender identities. If requested by the students, staff should address them by the name and pronouns that correspond to each of their sincerely held gender identities. Transgender students are not required to obtain a legal name or gender change or to change their *official* records. This does not prohibit inadvertent slips or honest mistakes, but does apply to intentional or persistent refusal to respect a student's gender identity, which should be considered an act of discrimination.

Teachers and other school staff should be informed of the student's preferred name on student rosters and of the preferred pronouns to use when addressing the student. When the DOE's student information system (e.g., SIS) accommodates a "preferred name," the student's preferred name should be noted. Teachers and other school staff should take care to ensure that a transgender student's legal name, if different from the student's preferred name, is kept confidential.

EXAMPLE: A student approaches a teacher and gives a female name and requests to be referred to using female pronouns, even though the student's assigned sex at birth is listed as male and legal name is traditionally male. The teacher should agree to use the student's preferred name and pronouns and then assist the student to set up a meeting with a counselor or administrator. During this initial meeting, the counselor or administrator should also try to discover to what extent the student's parents are aware of the student's gender identity. A Student Support Plan for Gender Identity should be established at a follow up meeting. The counselor or administrator should then follow up with the teacher and other appropriate school personnel to inform them of the agreed upon supports.

### *Records, Privacy, and Confidentiality*

At this time, schools are required to use a student's legal name and assigned sex at birth on standardized tests and official reports. School staff should be mindful that a transgender student's gender identity and preferred name may not conform with the official records and protect the student's privacy by avoiding inadvertent disclosure of



the student's legal name and assigned sex at birth, whenever possible.

Information about transgender student's legal identity, transgender gender identity, and assigned sex at birth should be treated as confidential information. Disclosing such information to other students, their parents, or other third parties may violate privacy laws, such as FERPA. Do not disclose information that may reveal a transgender student's status to others, unless legally required to do so, or unless the student has authorized such disclosure. To the extent that the record or directory information provided about the student is not a legal record or the school is not legally required to use a student's legal name or sex, the school should use the name, pronouns, and gender marker requested by the student.

**EXAMPLE ONE:** A transgender male (female to male) has a female legal name and a male preferred name. On the first day of class, the teacher puts all of the students' names on cards on their desks. The student approaches the teacher to explain that he would like his preferred name on the desk. The teacher should make a new card with the student's preferred name. The teacher should further assist the student by setting up a meeting with a counselor or administrator. During this initial meeting, the counselor or administrator should also try to discover to what extent the student's parents are aware of the student's gender identity. A Student Support Plan for Gender Identity should be established at a follow up meeting. The counselor or administrator should then follow up with the teacher and other appropriate school personnel to inform them of the agreed upon supports.

**EXAMPLE TWO:** In order to distribute standardized test booklets, a teacher reads off the legal name of each student, as printed on the test booklets and the transgender student has already asserted the student's preferred name and pronouns to the teacher. Since the teacher knows that the student goes by a different name, the teacher should call the student by the student's preferred name and keep the student's legal name confidential, regardless of whether a Student Support Plan for Gender Identity has been established.

**EXAMPLES OF UNOFFICIAL RECORDS:** Class lists, student identification cards, yearbooks, club rosters and documents, student work, and graduation programs.

### *Physical Education*

Transgender students should not be denied the opportunity to participate in physical education. Students should be allowed to participate in gender-segregated recreational gym class activities and sports in accordance with their sincerely held gender identity.

**EXAMPLE ONE:** A transgender female (male to female) wants to dance the girl's part during a PE ballroom section. The student should be allowed to dance the girl's part.

**EXAMPLE TWO:** During a PE unit on soccer, the teacher divides the class by gender for individual games. A non-transgender female wants to play on one of the boy's teams. The student should be allowed to play on the boy's team.

### *Competitive Athletics*

The Department is in discussion regarding this issue. For any questions, please contact Nicole Isaijima, Title IX Specialist at (808) 586-3322 or lotus notes.

### *Dress Code*

All students should be permitted to wear the clothing of their choice, regardless of whether it conforms to traditional gender stereotypes, provided that such clothing does not violate the school's dress code. Dress codes should be gender neutral. Students may dress in accordance with their gender identity and gender expression. School personnel should not enforce a school's dress code more strictly against transgender and gender nonconforming students. This applies to dress at school as well as at a school's co- and extra-curricular activities.

EXAMPLE ONE: A student who appears to be male arrives to school in a dress. Unless the dress violates the school's dress code, the student should not be required to change.

EXAMPLE TWO: A student who appears to be male is accepted onto the cheerleading team and wants to wear the girl's cheerleading uniform. Regardless of whether the student is transgender or not, the student should be allowed to wear the uniform of his choice. This does not necessarily mean that the student should also have access to the girls' restrooms or locker rooms. A student who is gender nonconforming may not be transgender. A meeting with the student to better understand the student's gender identity would be a good next step.

EXAMPLE THREE: A student who appears to be female is seen by school staff to be wearing baggy jeans that expose the student's undergarments. Since this may be in violation of the dress code, regardless of gender, the student may be subject to consequences for violating the dress code.

EXAMPLE FOUR: A student who appears to be male comes to school in a tank top. The school dress code considers tank tops inappropriate for boys, but acceptable for girls as long as the straps are thick enough. The straps on the student's tank top would not be considered inappropriate if a student who appeared to be female was wearing it. In this instance, the student should be allowed to wear the tank top and the school should amend its dress code toward gender neutrality.

### *Other Gender---Based Activities*

Students should be permitted to participate in any gender-based activity and conform to any rule, policy, or practice consistent with their sincerely held gender identity.

EXAMPLE ONE: A transgender female (male to female) student wants to run for prom queen. The student should be allowed to run for prom queen and should not be compelled to run for prom king because of the student's assigned sex at birth.

EXAMPLE TWO: Students have organized a class performance for all Juniors during a pep rally. The performance has different groups performing different roles based on gender. Transgender students should be allowed to participate with the gender group with which they identify, e.g., a transgender female (male to female) should be allowed to be with the girls' group, while a transgender male (female to male) should be allowed to participate in the boys' group.

EXAMPLE THREE: A transgender female (male to female) wants to audition for Women's Ensemble, an elite choral group on campus. The advisor/teacher should permit the student to audition and should not evaluate the student more or less critically than any other female student.

EXAMPLE FOUR: A transgender female (male to female) requests to wear the color of the graduation attire associated with the female student population. The student should be allowed to wear the graduation attire associated with females.

## School Community

Starting with the 2016-17 school year, schools should do the following:

1. Send out an annual notice to all students, including their parents/guardians, informing them of the rights of transgender students to request supports. The notice should also include language directing any student with privacy concerns to contact the school. This annual notice will serve as notice to (a) transgender students and their families of their rights and how to initiate such supports; and (b) non transgender students and their families that such supports will be in place for transgender students.

The annual notice should be sent at the beginning of each school year. Waiting to send out the notice only when a transgender student initiates a request for support will have the effect of inadvertently identifying such student, resulting in possible privacy violations for the transgender student.

See Attachment B for sample language for the annual notice.

2. Include the following statement in their handbooks to inform the school community:

Transgender students should talk with their counselor if they have questions or concerns about supports for their own gender identity, including name, pronouns, gender expression, use of facilities, or participation in sex-segregated activities.

As schools begin to develop and employ supports for transgender students, there will be a period of adjustment for faculty, staff, students, and parents. Schools should make counselors and administrators available to discuss any concerns that a student may have and should work as a school community toward education and raising awareness of the reasons for these guidelines while protecting the privacy and confidentiality of each individual transgender student.

If you have questions, require additional information, or identify situations that require additional case-by-case consideration, please contact Beth Schimmelfennig, Acting Director of the Civil Rights Compliance Office or Nicole Isa-Iijima, Title IX Specialist at (808) 586-3322.

## Resources

Gay, Lesbian, Straight Education Network (GLSEN), <http://www.glsen.org> Gender

Spectrum, <https://www.genderspectrum.org>

US Department of Education, Office of Civil Rights,  
[http://www2.ed.gov/about/offices/list/ocr/docs/tix\\_dis.html](http://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html)

US Department of Education, Office of Civil Rights, October 26, 2010 “Dear Colleague Letter”  
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html>

State of Hawaii Board of Education Policy #305.10 (fka Board of Education Policy #4211)  
<http://www.hawaiiboe.net/policies/4200series/Pages/4211.aspx>