

5756 TRANSGENDER PUPILS

The Board of Education is committed to providing a safe, supportive, and inclusive learning environment for all pupils. The New Jersey Law Against Discrimination (NJLAD), N.J.S.A. 10:5-12(11)(f), generally makes it unlawful for schools to subject individuals to differential treatment based on gender identity or expression. Title IX of the Education Amendments of 1972 (“Title IX”) specifically prohibits discrimination on the basis of sex in Federally-funded education programs and activities [20 U.S.C. § 1681(a)].

N.J.S.A. 18A:36-41 directs the Commissioner of Education to establish guidelines outlined in this Policy to provide direction for schools in addressing common issues concerning the needs of transgender pupils, and to assist schools in establishing policies and procedures that ensure a supportive and nondiscriminatory environment for transgender pupils.

Definitions/Terms

A safe and supportive environment within a school begins with understanding and respect. The Board believes pupils, teachers, and administrators should be provided with common terminology associated with gender identity. The terms listed below are commonly used by advocacy and human rights groups, however pupils may prefer other terms to describe their gender identity, appearance, or behavior. It is recommended school personnel discuss with the pupil the terminology and pronouns each pupil has chosen.

“Gender identity” means a person’s internal, deeply held sense of gender. All people have a gender identity, not just transgender people. For transgender people, the individual’s internal gender identity is not the same as the gender assigned at birth.

“Gender expression” means external manifestations of gender, expressed through a person’s name, pronouns, clothing, haircut, behavior, voice, and/or body characteristics. Society identifies these cues as masculine and feminine, although what is considered masculine or feminine changes over time and varies by culture.

“Assigned sex at birth (ASAB)” refers to the biological sex designation recorded on a person’s birth certificate upon the initial issuance of that certificate, should such a record be provided at birth.

“Gender assigned at birth” refers to the gender a child is assigned at birth or assumed to be, based on their biological sex assigned at birth.

“Sexual orientation” describes a person’s enduring physical, romantic, and/or emotional attraction to another person. Gender identity and sexual orientation are not the same. A transgender person may be straight, lesbian, gay, bisexual, or asexual. For example, a person who transitions from male to female and is attracted solely to men may identify as a straight woman.

“Transgender” is a term for an individual whose gender identity and/or gender expression differs from those typically associated with the sex and gender assigned at birth.

“Transition” is the process by which a transgender person recognizes that their authentic gender identity is not the same as the gender assigned at birth, and develops a more affirming gender expression that feels authentic. Some individuals socially transition, for example, through dress, use of names and/or pronouns. Some individuals may undergo physical transition, which might include hormone treatments and surgery. School district personnel should avoid the phrase “sex change,” as it is an inaccurate description of the transition process; the process is more accurately described as “gender-confirming.”

“LGBTQ” is an acronym for “lesbian, gay, bisexual, transgender, and queer/questioning.”

“Gender nonconforming” describes a person whose gender expression does not conform to the gender expectations of their family or community. Gender nonconformity is not necessarily an indication that a youth is transgender; many non-transgender youth do not conform to stereotypical expectations.

“Gender expansive, Gender diverse, Gender fluid, Gender non-binary, A gender, Gender queer” are terms that convey a wider, more flexible range of gender identity and/or expression than typically associated with the binary gender system. For example, pupils who identify as gender queer or gender fluid might not identify as boys or girls; for these pupils, the non-binary gender identity functions as the pupil’s gender identity.

“Cisgender” refers to individuals whose gender identity, expression, or behavior conforms with those typically associated with their sex assigned at birth.

Pupil-Centered Approach

The school district shall accept a pupil’s asserted gender identity; parental consent is not required. A pupil need not meet any threshold diagnosis or treatment requirements to have his or her gender identity recognized and respected by the school district, school, or school staff members. In addition, a legal or court-ordered name change is not required. There is no affirmative duty for any school district staff member to notify a pupil’s parent of the pupil’s gender identity or expression.

There may be instances where a parent of a minor pupil disagrees with the pupil regarding the name and pronoun to be used at school and in the pupil's education records. In the event a parent objects to the minor pupil's name change request, the Superintendent or designee should consult the Board Attorney regarding the minor pupil's civil rights and protections under the NJLAD. School staff members should continue to refer to the pupil in accordance with the pupil's chosen name and pronoun at school and may consider providing resource information regarding family counseling and support services outside of the school district.

School districts should be mindful of disputes between minor pupils and parents concerning the pupil's gender identity or expression. Many support resources are available through advocacy groups and resources from the New Jersey Department of Children and Families and New Jersey Department of Education's "Child Abuse, Neglect, and Missing Children" webpage.

The Principal or designee should have an open, but confidential discussion with the pupil to ascertain the pupil's preference on matters such as chosen name, chosen pronoun to use, and parental communications. A transgender pupil shall be addressed at school by the name and pronoun chosen by the pupil, regardless of whether a legal name change or change in official school records has occurred. The school shall issue school documentation for a transgender pupil, such as pupil identification cards, in the name chosen by the pupil. A transgender pupil shall be allowed to dress in accordance with the pupil's gender identity.

The Principal or designee should also discuss with the pupil, and any other individuals at the pupil's request, the risks associated with the pupil's transgender status being inadvertently disclosed. For example, the Principal or designee should inform the pupil the transgender status may be revealed due to other pupils' discussions at home. The Principal or designee should work with the transgender pupil to ensure awareness of activities and events that may inadvertently disclose the transgender pupil's status.

Safe and Supportive Environment

The Board developed and adopted this Policy to ensure that its schools provide a safe and supportive learning environment that is free from discrimination and harassment for transgender pupils, including pupils going through a gender transition. Gender-based policies, rules, and practices can have the effect of marginalizing, stigmatizing, and excluding pupils, whether they are gender nonconforming or not.

The Superintendent or designee shall review and update existing policies and procedures, including those regarding classroom activities, school ceremonies, school photographs, and dress codes, to verify transgender pupils are not excluded. In addition, the school district shall take the following steps to establish and maintain a nondiscriminatory environment for all pupils, including transgender and transitioning pupils:

- The school district must comply with N.J.S.A. 18A:37-15 and N.J.A.C. 6A:16-7.7, which prohibit harassment, intimidation, and bullying. The Board is required to develop, adopt, and implement a Policy in accordance with N.J.S.A. 18A:37-15 and N.J.A.C. 6A:16-7.7 that prohibits harassment, intimidation, or bullying on school property, at a school-sponsored function, or on a school bus. If harassment, intimidation, or bullying based on gender identity creates a hostile environment, the school must take prompt and effective steps to end the harassment, intimidation, or bullying, prevent its recurrence, and, as appropriate, remedy its effects.
- The Superintendent or designee should ensure training is provided to school staff members on sensitivity and respect towards transgender pupils.
- Social and Emotional Learning (SEL) concepts should be incorporated into school culture and curricula.
- The school district may seek a variety of professionals, including counselors and school psychologists, to provide emotional supports for all pupils who demonstrate a need. The Superintendent or designee shall ensure school counselors are knowledgeable regarding issues and concerns relevant to transgender pupils, pupils facing other gender identity issues, or pupils who may be transitioning.
- Pupil dress codes should not be enforced more strictly for transgender and gender nonconforming pupils than for other pupils.
- The school district shall honor and recognize a pupil's asserted gender identity, and shall not require any documentation or evidence in any form, including diagnosis, treatment, or legal name change.
- A school's obligation to ensure nondiscrimination on the basis of gender identity requires schools to provide transgender pupils equal access to educational programs and activities, even in circumstances in which other pupils, parents, or community members raise objections or concerns.

Confidentiality and Privacy

School staff members may not disclose information that may reveal a pupil's transgender status except as allowed by law. The Principal or designee is advised to work with the pupil to create an appropriate confidentiality plan regarding the pupil's transgender or transitioning status.

The school district shall keep confidential a current, new, or prospective pupil's transgender status. Schools should address the pupil using a chosen name and the pupil's birth name should be kept confidential by school and school staff members.

Due to a specific and compelling need, such as the health and safety of a pupil or an incident of bias-related crime, the school district may be obligated to disclose a pupil's status. In this event, the Principal or designee should inform the pupil the school or school district intends to disclose the pupil's transgender status for the pupil's protection and well-being. Prior to disclosure, the pupil should be given the opportunity to personally disclose that information. The school district should make every effort to ensure any disclosure is made in a way that reduces or eliminates the risk of re-disclosure and protects the transgender pupil from further harassment. Those measures may include the facilitation of counseling for the pupil and the pupil's family to facilitate the family's acceptance and support of the pupil's transgender status.

During a harassment, intimidation, or bullying investigation the school district is obligated to develop a procedure to report, verbally and in writing, an act of harassment, intimidation, and bullying committed by an adult or youth against a pupil, pursuant to N.J.A.C. 6A:16-7.7(a)2viii. In this instance, the Principal or designee should inform the pupil of the school's obligation to report the findings of the harassment, intimidation, and bullying investigation pursuant to N.J.S.A. 18A:37-15(d), which permits the parents of the pupils who are parties to the investigation to receive information about the investigation in accordance with Federal and State law and regulation. Under harassment, intimidation, and bullying legal requirements, parents are entitled to know the nature of the investigation; whether the district found evidence of harassment, intimidation, or bullying; or whether disciplinary action was imposed or services provided to address the incident of harassment, intimidation, or bullying.

The Principal or designee shall take into account the circumstances of the incident when providing notification to parents of all pupils involved in the reported harassment, intimidation, or bullying incident and when conveying the nature of the incident, including the actual or perceived protected category motivating the alleged offense, pursuant to N.J.A.C. 6A:16-7.7(a)2viii(2).

Disclosure of personally identifiable information from a pupil's education record to other school officials within the school district, whom the school district has determined have a legitimate educational interest in the information, may be permissible under Family Educational Rights and Privacy Act (FERPA) (34 C.F.R. § 99.31(a)(1)). The school district shall make a concerted effort to ensure school officials obtain access to only those education records in which they have legitimate educational interests.

The school district shall comply with all laws and regulations regarding the confidentiality of pupil records and pupil privacy, including the requirements set forth at 20 U.S.C. § 1232g, Family Educational Rights and Privacy Act; 34 CFR Part 99, Family Educational Rights and Privacy; 20 U.S.C. § 1232h, Protection of Pupil Rights; 34 CFR Part 98, Pupil Rights in Research, Experimental Programs, and Testing; P.L. 104-191, Health Insurance Portability and Accountability Act; 45 CFR Part 160, General Administrative Requirements; 20 U.S.C. § 7917, Transfer of school disciplinary records; 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records;

N.J.S.A. 18A:40A-7.1, Confidentiality of certain information provided by pupils, exceptions; N.J.A.C. 6A:16-3.2, Confidentiality of pupil alcohol and other drug information; N.J.S.A. 18A:36-19, Pupil Records, creation, maintenance and retention, security and access, regulations, nonliability; N.J.S.A. 2A:4A-60, Disclosure of juvenile information, penalties for disclosure; N.J.A.C. 6A:32-7, Pupil Records; N.J.A.C. 6A:14-2.9, Pupil records; as well as all other existing Federal and State laws and rules pertaining to pupil records and confidentiality.

School Records

If a pupil has expressed a preference to be called by a name other than their birth name, permanent pupil records containing the pupil's birth name should be kept in a separate, confidential file. This file should only be shared with appropriate school staff members after consultation with a pupil. A separate file containing records bearing the pupil's chosen name may also be kept. If the pupil has previously been known at school or in school records by a birth name, the Principal or designee should direct school staff members to use the pupil's chosen name and not the pupil's birth name.

To ensure consistency among teachers, school administrators, substitute teachers, and other school staff members, every effort should be made to immediately update pupil education records (for example, attendance records, transcripts, Individualized Education Programs (IEP), etc.) with the pupil's chosen name and gender pronouns, consistent with the pupil's gender identity and expression, and not circulate records with the pupil's birth name, unless directed by the pupil.

- The school district shall report to the New Jersey Department of Education (NJDOE) through NJ SMART a pupil's name or gender based upon that pupil's chosen name and corresponding gender identity. Changing the name or gender identity from what was reported in previous years will not affect the reliability of the data reported.
- If the school district changes a pupil's name or gender identity, it must also maintain locally a separate record reflecting the pupil's legal name and sex assigned at birth until receipt of documentation of a legal change of name or gender.

Activities

With respect to gender-segregated classes or athletic activities, including intramural and interscholastic athletics, all pupils must be allowed to participate in a manner consistent with their gender identity.

The school district shall:

- Provide transgender pupils with the same opportunities to participate in physical education as other pupils in accordance with their gender identity;
- Permit a transgender pupil to participate in gender-segregated school activities in accordance with the pupil's gender identity;
- Permit and support the formation of pupil clubs or programs regarding issues related to lesbian, gay, bisexual, transgender, and queer/questioning (LGBTQ) youth; and
- Offer support in the creation of peer led educational groups.

Use of Facilities

All pupils are entitled to have access to restrooms, locker rooms, and changing facilities in accordance with their gender identity to allow for involvement in various school programs and activities.

In all cases, the Principal or designee must work with the pupil and school staff members so all parties are aware of facility policies and understand the pupil may access the restroom, locker room, and changing facility that corresponds to the pupil's gender identity. While some transgender pupils will want this arrangement, others may be uncomfortable with it. Transgender pupils who are uncomfortable using a sex-segregated restroom should be provided with a safe and adequate alternative, such as a single "unisex" restroom or the nurse's restroom. Similarly, some transgender pupils may be uncomfortable using the changing facilities that correspond to the pupil's gender identity. Non-transgender pupils should also be afforded the option to use a private facility, such as a unisex facility or the nurse's restroom, should they feel uncomfortable.

- The school district shall allow a transgender pupil to use a restroom or locker room based on the pupil's gender identity.
- Reasonable alternative arrangements shall be made if needed to ensure a pupil's safety and comfort. This direction for accommodations should come from the pupil.

The Superintendent or designee will make available to school staff members a variety of resources regarding professional development opportunities as sourced by the NJDOE as well as developmentally appropriate information for pupils regarding LGBTQ issues.

The Board adopts this Policy to help school and district administrators take steps to create an inclusive environment in which transgender and gender nonconforming pupils feel safe and supported, and to ensure each school provides equal educational opportunities for all pupils, in compliance with N.J.A.C. 6A:7-1.1 et seq.

N.J.S.A. 18A:36-41; 18A:37-15
N.J.A.C. 6A:7-1.1 et seq.; N.J.A.C. 6A:16-7.7
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