

ACCOMMODATING GENDER IDENTITY AND GENDER EXPRESSION IN SCHOOLS



Learning Targets

- Become familiar with rights of staff and students regarding their own gender identity and gender expression.
- Become familiar with some of the specific practices in our schools when working with transgender staff and students.
- Meet requirement of Risk Assessment Survey.



VOCABULARY

Gender identity is a person's deeply felt internal sense of being male or female, regardless of their sex assigned at birth.

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

Transgender is a general term used to describe a person whose gender identity or expression is different from that traditionally associated with the person's sex assigned at birth.

Transitioning is the process in which a person changes their gender expression to better reflect their gender identity.

Gender nonconforming is a term for people whose gender expression differs from stereotypical expectations about how they should look or act based on the sex they were assigned at birth. This includes people who identify outside traditional gender categories or identify as both genders.

ACCOMODATING EMPLOYEES



Hypothetical

- You are the HR director of a rural school district with a highly successful, state championship caliber wrestling program. One day, your coach, Paul, informs you that he will be transitioning to a woman immediately. He will want to be referred to as Paula, a female.
- Concerns?

Pretest

- Can you:
 - Ask him for additional information about this change?
 - Require him to resign from his position as coach?
Teacher?
 - Forbid him from wearing female clothing?
 - Inform parents of this change?
 - Refuse his request to use the women's' restroom?



Washington State

Human Rights Commission

"It's not Justice if it's not Equal!"

Washington Law Against Discrimination (WLAD), RCW 49.60

The Washington State Human Rights Commission (WSHRC) enforces the WLAD, which prohibits sexual orientation and gender expression/identity discrimination in employment for employers with eight or more employees or applicants on the basis of sexual orientation or gender expression/identity.

The WSHRC has had jurisdiction over sexual orientation and gender expression/identity discrimination since June 2006. Overall the WSHRC receives 3-4 complaints each month that allege discrimination on the basis of sexual orientation or gender expression/identity.

ANTI-DISCRIMINATION LAWS

The U.S. Ninth Circuit Court of Appeals – whose jurisdiction includes Washington – has made clear that transgender persons are protected from sexual harassment and discrimination based on their gender expression or identity under Title VII and other federal anti-discrimination statutes.



RESTROOMS

A transgender individual should be able to use the restroom that corresponds to his or her gender identity. For example, a transgender girl or woman (someone who was assigned male gender at birth, but identifies as female) should be able to use the women's restroom and a transgender boy or man (someone who was assigned female gender at birth but identifies as male) should be able to use the men's restroom.



Takeaways

- Employers may not treat a transgendered employee any differently from any other employee
- Employers may not subject a transgendered employee to any adverse employment action, including discipline, as a result of their gender identity
- Employers may not reveal protected and private information without the employee's consent
- Employers must address any indications of a hostile working environment on the basis of gender identity

(Re-)Pretest

- Can you:
 - Ask her for additional information about this change?
 - Require her to resign from his position as coach?
Teacher?
 - Forbid her from wearing female clothing?
 - Inform parents of this change?
 - Refuse her request to use the women's' restroom?

ACCOMMODATING STUDENTS



UNDERSTANDING GENDER IDENTITY AND GENDER EXPRESSION

Example 1: Alexis was assigned female at birth, but she identifies as *gender nonconforming*. Alexis prefers to express herself like a tomboy - she enjoys playing sports with boys in her class, and she prefers that her friends call her Alex. While Alex currently uses female pronouns, she is questioning her gender identity and is considering transitioning to a male role. Currently, Alex is consistently presenting as female at school, but that will change if she decides to transition.

UNDERSTANDING GENDER IDENTITY AND GENDER EXPRESSION, cont.

Example 2: Although Casey attended kindergarten and first grade as a boy, about midway through first grade, she and her family decided that Casey would transition and begin presenting as a girl. Casey prefers to dress in stereotypically feminine attire such as dresses and skirts. Although she is growing her hair out, it is still in a rather short, typically boyish haircut. Casey, her parents, and school administrators have asked her friends and teachers to use female pronouns to address her. Casey is consistently presenting as female at school.

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Do transgender and gender nonconforming students have the right to express their gender identity in school?

- *Yes.* Washington state law prohibits discrimination in public schools based on gender expression and identity (RCW 28A.642.010). Students must be permitted to dress according to the gender in which they consistently identify and should be addressed and treated using the name and pronouns of their choice (e.g., “he” and “him” or “she” and “her”).

Should transgender and gender nonconforming students have the right to express their gender identity in school? , cont.

- School districts are encouraged to adopt gender-neutral dress codes that do not restrict a student's clothing choices on the basis of gender. Dress codes should be based on educationally relevant considerations, apply consistently to all students, include consistent discipline for violations, and make reasonable accommodations when the situation requires an exception.

How should school districts address a student's name and sex on official records?

- School districts maintain permanent student records that include a student's legal name and legal gender.
- To the extent that the school district is not legally required to use a student's legal name and gender on school records or documents, the district should use the name and gender by which the student identifies. School IDs, for example, are not legal documents and should use the student's preferred name.

How should school districts address a student's name and sex on official records? , cont.

- The school district should change a student's official record to reflect a change in the student's legal name or gender *upon receipt of documentation that such change has been made pursuant to a court order or through amendment of state- or federally-issued identification.*
- In situations where school staff or administrators are required by law to use or report a student's legal name or gender, such as for standardized testing, school staff should adopt practices to avoid the inadvertent disclosure of such confidential information.

Should schools inform staff, students, or parents about a student's transgender status?

- Information about a student's transgender status, legal name, or gender assigned at birth may constitute confidential medical or education information. Disclosing this information to other students, their parents, or other third parties may violate privacy laws, such as the federal Family Educational Rights and Privacy Act (*FERPA*) (20 U.S.C. § 1232g; 34 C.F.R. Part 99).
- School staff should not disclose information that may reveal a student's transgender status to others, including parents and other school staff, unless legally required to do so or unless the student has authorized such disclosure. (*The district does not keep "lists" of any students based on sexual orientation or identity.*)

Should a school district require proof of medical treatments as a prerequisite for respecting a student's gender identity or expression?

- No. School districts should not require proof of medical treatments in order to respect a student's gender identity or expression.
- If a school district has an objective basis that would justify questioning whether a student's asserted gender identity is genuine, it may ask for information to show that the student's gender identity or expression is "sincerely held".

Should school districts allow transgender students to use the restroom of their choice?

- Yes. School districts should allow students to use the restroom that is consistent with their gender identity consistently asserted at school.
- Any student – transgender or not - who has a need or desire for increased privacy, regardless of the underlying reason, should be provided access to an alternative restroom (e.g., staff restroom, health office restroom). This allows students who may feel uncomfortable sharing the facility with the transgender student(s) the option to make use of a separate restroom and have their concerns addressed without stigmatizing any individual student.



Should school districts allow transgender students to use the restroom of their choice? , cont.

- No student, however, should be required to use an alternative restroom because they are transgender or gender nonconforming.





Safety and / or Privacy Concerns

- If school administrators have legitimate concerns about the safety or privacy of students as related to a transgender student's use of the restroom, they should bring these concerns to the school district compliance coordinator.
- Such privacy or safety issues should be immediate and reasonably foreseeable, not speculative.



Safety and /or Privacy Concerns, cont.

- School administrators and/or compliance coordinator should meet with the student and/or parents to determine if there is a need for an alternative facility. Determination to provide an alternative facility for any student should be on a case-by-case basis.
- **School administrators have the authority to take any immediate action necessary to ensure student, staff and patron safety.**

How should school districts address physical education and athletic participation by transgender students?

- School districts should allow students the opportunity to participate in physical education and athletic activities in a manner that is consistent with their gender identity.
- For interscholastic athletics, should any questions arise as to whether a student's request to participate in a sex-segregated activity consistent with his or her gender identity is bona fide, a student may seek review of his or her eligibility for participation by working through the Gender Identity Participation procedure set forth by the Washington Interscholastic Athletic Association (WIAA), available at <http://www.wiaa.com/subcontent.aspx?SecID=350>.

Should school districts allow a transgender student to use the locker room of their choice?

- The use of locker rooms by transgender students should be assessed on a case-by-case basis, with the goals of maximizing the student's social integration and equal opportunity to participate in physical education classes and sports, ensuring that student's safety and comfort, and minimizing the stigmatization of the student.
- In most cases, transgender students should have access to the locker room that corresponds to their gender identity consistently asserted at school.



Should school districts allow a transgender student to use the locker room of their choice? , cont.

- *Any student* who has a need or desire for increased privacy, regardless of the underlying reason, should be provided with a reasonable alternative changing area, such as the use of a private area (e.g., a nearby restroom stall with a door), or a separate changing schedule.
- Any alternative arrangement should be provided in a way that protects the student's ability to keep his or her transgender status private. No student, however, should be required to use a locker room that conflicts with his or her gender identity.



Balancing Rights

- How to balance the rights of a transgendered student vs. the rights and privacy of other students?
 - Case by case basis.
 - Identify any issues with safety and privacy, but comply with FERPA and HIPAA

H.I.B.

- Address potential issues related to bullying of students on the basis of gender identity and gender expression
- State law requires that district's bullying policy prohibit bullying on the basis of gender expression and identity (NKSD Board Policy 3207)

Takeaways

- Treat each on a case-by-case basis
- Determine if “sincerely held”
- Do not immediately assign to a gender-neutral bathroom
- Allow students to use preferred pronoun
- Do not require a transgendered student to use a bathroom/locker room/hotel room that does not correspond with their gender identity.
- Determine issues of safety and privacy
- Beware of bullying

Learning Targets

- Become familiar with rights of staff and students regarding their own gender identity and gender expression.
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- Meet requirement of Risk Assessment Survey.



QUESTIONS?

