

# Ensuring LGBTQI+ Inclusion in Sex-Separated Spaces

**63%**

of LGBTQI+ youth do not have a gender-neutral restroom at school<sup>1</sup>

**10**

states restrict transgender and nonbinary students from using restrooms<sup>2</sup>

**43%**

of LGBTQI+ students avoid locker rooms because they feel unsafe or uncomfortable<sup>3</sup>

**GLSEN recommends that schools permit students to access any school facility, program, or activity that is separated on the basis of sex in a manner consistent with their gender identity.**

In April 2024, the U.S. Department of Education updated Title IX regulations that prohibit sex-based discrimination in education programs and activities to explicitly protect LGBTQI+ students.<sup>4</sup> As part of these updates, the Department clarifies that schools should not deny students access to sex-separated facilities, programs, and activities that are consistent with their gender identity.<sup>5</sup>

## Safe and Consistent Access to Facilities

Since 2021, ten states have passed discriminatory laws that stop transgender and nonbinary students from using facilities, such as restrooms and locker rooms, that are consistent with their gender identity.<sup>6</sup> These laws and similar local policies dangerously force students to use a facility that is not consistent with how they express themselves or present to other students. In 2021, 68% of transgender students and 45% of nonbinary students reported that they faced discriminatory school policies that affected their ability to use restrooms, whereas 71% of transgender students and 43% of nonbinary students were kept from using locker rooms that were consistent with their gender identity.<sup>7</sup>

Without access to a sex-separated restroom consistent with their gender identity, transgender and nonbinary students have limited options. Only 37% of transgender and nonbinary students attend a school with gender-neutral or all-gender restrooms, resulting in many students being forced to use facilities that are inconsistent with their gender identity.<sup>8</sup> This dynamic puts transgender and nonbinary students at greater risk for victimization by peers, including verbal and physical harassment.<sup>9</sup> Transgender and nonbinary students are more likely to be sexually assaulted when forced into facilities that are inconsistent with their gender identity.<sup>10</sup> These different forms of victimization impact students' well-being and mental health, and the mere availability of gender-neutral restrooms is associated with a 29% lower likelihood of attempted suicide.<sup>11</sup>

As a result of discriminatory policies and pervasive bullying and harassment, transgender and nonbinary students avoid sex-separated spaces at a significantly higher rate than other school spaces.<sup>12</sup> Avoidance of restrooms, in particular, can lead to physical and physiological conditions, such as bladder dysfunction or lower urinary tract symptoms (LUTS).<sup>13</sup> These physiological challenges could have long-term impacts on other elements of children's health, leading to increased risk of adverse mental health conditions like depression and anxiety, reduced productivity, and decreased physical activity.<sup>14</sup> Bladder conditions, for example, are associated with a higher risk of attention-deficit/hyperactivity disorder (ADHD), which impacts a child's ability to focus and can negatively affect academic performance.<sup>15</sup>

Policies that police students' access to sex-separated facilities open the door to inappropriate scrutiny of children's bodies and increase the risk of safety and privacy concerns as a child's gender identity is interrogated and possibly exposed to others. In 2015, the U.S. Department of Education's Office for Civil Rights investigated a college for suspending a transgender student consistent with their gender identity.<sup>16</sup> In 2024, the Department opened an investigation into a school district in Oklahoma - which is subject to a state law requiring schools to force students to use facilities that are *inconsistent* with their gender identity - after a trans/nonbinary student was attacked in a school restroom the day before he died.<sup>17</sup>

Adopting inclusive policies related to facilities can mitigate the discrimination and associated challenges faced by transgender and nonbinary students. In 2021, transgender and nonbinary students reported a 65% lower likelihood of experiencing discrimination if their school had a policy allowing restroom use consistent with their gender identity and a 64% lower likelihood of experiencing discrimination if the school allowed locker room use consistent with their gender identity.<sup>18</sup> School policies promoting use of gender-neutral restrooms result in a 45% lower likelihood of discrimination.<sup>19</sup> Recent updates to the International Plumbing Code (IPC), codified in the 2021 IPC, have embraced gender-neutral restroom designs.<sup>20</sup> In addition to resolving challenges with sex-separated restrooms, gender-neutral designs reduce overall floor space spent on restrooms. School districts considering building upgrades, infrastructure improvements, or new construction should contemplate gender-neutral designs to best meet the needs of an increasingly diverse student body.

## Inclusion in Sex-Separated Classes and Activities

Title IX's general prohibition on sex-separated activities ensures that all students have access to the same classroom instruction, with few exceptions: physical education classes that focus on bodily contact or human sexuality classes.<sup>21</sup> Similar to facilities, LGBTQI+ youth - and particularly transgender, nonbinary, and gender-expansive youth - avoid physical education classes at higher rates than other elements of the school experience. 29% of cisgender LGBQ+ students, 43% of nonbinary students, and 51% of transgender students avoid physical education class.<sup>22</sup> Locker room access, physical contact with other students, and related harassment or bullying likely contribute to students' avoidance, which informs lower rates of overall physical activity among LGBTQI+ youth and longer-term health disparities.<sup>23</sup> Affirming a student's gender identity in sex-separated physical education classes works to mitigate these stressors.

Similar to physical education class, LGBTQI+ youth report lower participation in extracurricular sports. Only 30% of cisgender LGBQ+ youth and 19% of transgender youth are currently playing sports, which stands in stark contrast to the 65% of LGBTQI+ youth who participate in any extracurricular activity.<sup>24</sup> Even though Title IX's protections should ensure that students are affirmed in their gender identity in extracurricular activities, including overnight trips, sports programming at all levels - club, intramural, and interscholastic - has been subjected to increased scrutiny by state and local officials. State, school, and athletic association policies can suppress participation in school sports, with 25 state governments having adopted policies that restrict transgender, nonbinary, and intersex students from participating on teams consistent with their gender identity.<sup>25</sup> In 2023, the U.S. Department of Education initiated a separate rulemaking to provide further clarity about Title IX's protections in athletics. As that rulemaking is still under consideration, Title IX's protections should be robustly enforced to ensure that transgender, nonbinary, and intersex students can participate on sports teams consistent with their gender identity. In April 2024, the Fourth Circuit ruled that West Virginia's categorical ban on trans sports participation violated a student's Title IX rights.<sup>26</sup>

The second common exception that allows for sex-separated classes is human sexuality. Transgender and nonbinary students should be permitted to attend sex education classes that align with their gender identity. Only eight states require schools to include LGBTQI+ topics in sex education curriculum, which ensures that both gender-expansive students and the overall student population are better informed about gender identity.<sup>27</sup> Inclusive sex education is associated with safer school climates, including lower rates of in-person victimization and improved mental health outcomes for LGBTQI+ youth.<sup>28</sup> However, 21 states do not even require sex education and six states actually require instruction that discriminates against LGBTQI+ youth.<sup>29</sup> In addition to ensuring that students are affirmed in their ability to access sex-separated spaces, it is critical that schools implement inclusive learning strategies that reflect students' lived experience and educates the next generation.

"We now have all-gender bathrooms where over 4,000 students and staff all manage to make it work. The decision to implement all-gender bathrooms made us more welcoming of students whose gender expressions are different. When the kids feel safe, it's a part of building their confidence. They are more likely to reach out to a staff member when things go wrong. They don't feel as isolated, and that improves safety in our schools. Having gender-neutral bathrooms makes students feel seen in their identity."

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## ENDNOTES

- 1 The Trevor Project. 2023 U.S. National Survey on the Mental Health of LGBTQ Young People (2023). <https://www.thetrevorproject.org/survey-2023/>.
- 2 Movement Advancement Project. Bans on Transgender People Using Bathrooms and Facilities According to their Gender Identity. [https://www.lgbtmap.org/equality-maps/nondiscrimination/bathroom\\_bans](https://www.lgbtmap.org/equality-maps/nondiscrimination/bathroom_bans) (last updated Jan. 2024).
- 3 Kosciw JG, Clark CM, Menard L. The 2021 National School Climate Survey. GLSEN, at 12. <https://www.glsen.org/sites/default/files/2022-10/NSCS-2021-Full-Report.pdf> ("GLSEN NSCS").
- 4 U.S. Department of Education. Final Rule: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance. (April 2024) ("Final Title IX Rule").
- 5 Final Title IX Rule, *supra* n.4, at .
- 6 Movement Advancement Project, *supra* n.2.
- 7 GLSEN NSCS, *supra* n.3, at 92.
- 8 The Trevor Project, *supra* n.1.
- 9 McGuire JK, Anderson SO, Michaels C. "I don't think you belong in here:" The impact of gender segregated bathrooms on the safety, health, and equality of transgender people. *Journal of Gay & Lesbian Social Services* 34(1):40-62 (2021). <https://doi.org/10.1080/10538720.2021.1920539>.
- 10 Murchison GR, et al. School Restroom and Locker Room Restrictions and Sexual Assault Among Transgender Youth. *Pediatrics* 143(6) (2019). <https://doi.org/10.1542/peds.2018-2902>.
- 11 The Trevor Project, *supra* n.1.
- 12 GLSEN NSCS, *supra* n.3, at 89.
- 13 Lukacz ES, et al. A healthy bladder: a consensus statement. *International Journal of Clinical Practice* 65(10):1026-1036 (2011). <https://doi.org/10.1111/j.1742-1241.2011.02763.x>.
- 14 Lukacz, *supra* n.13.
- 15 Mahjani B, et al. Systematic review and meta-analysis: relationships between attention-deficit/hyperactivity disorder and urinary symptoms in children. *European Child & Adult Psychiatry* 31:663-670 (2022). <https://doi.org/10.1007/s00787-021-01736-3>; Arnold LE, et al. Long-Term Outcomes of ADHD: Academic Achievement and Performance. *Journal of Attention Disorders* 24(1) (2020). <https://doi.org/10.1177/1087054714566076>.
- 16 U.S. Department of Education, Office for Civil Rights. Letter to Dr. Tony Zeiss, Central Piedmont Community College. OCR Complaint No. 11-14-2265 (Aug. 14, 2015). <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/11142265-a.pdf>.
- 17 U.S. Department of Education, Office for Civil Rights. Letter to Kelley Robinson, Human Rights Campaign. OCR Complaint No. 05-24-1363 (Mar. 1, 2024). <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/files/OCR-Letter-Fri-March-1.pdf>.
- 18 GLSEN NSCS, *supra* n.3, at 74.
- 19 GLSEN NSCS, *supra* n.3, at 74.
- 20 International Plumbing Code §403.2.5-6 (2021). [https://codes.iccsafe.org/content/IPC2021P3/chapter-4-fixtures-faucets-and-fixture-fittings#IPC2021P3\\_Ch04\\_Sec403.2](https://codes.iccsafe.org/content/IPC2021P3/chapter-4-fixtures-faucets-and-fixture-fittings#IPC2021P3_Ch04_Sec403.2).
- 22 See Dear Colleague Letter from Stephanie Monroe, Assistant Secretary for Civil Rights (Jan. 31, 2007). <https://www2.ed.gov/about/offices/list/ocr/letters/single-sex-20070131.html>.
- 22 GLSEN NSCS, *supra* n.3, at 89.
- 23 See Bishop A, et al. Diet and Physical Activity Behaviors Among Adolescent Transgender Students: School Survey Results. *Journal of Adolescent Health* 66(4):484-490 (2020). <https://doi.org/10.1016/j.jadohealth.2019.10.026>.
- 24 Human Rights Campaign Foundation. 2023 LGBTQ+ Youth Report (Aug. 2023). <https://reports.hrc.org/2023-lgbtq-youth-report>.
- 25 GLSEN Navigator. Map: Trans and Nonbinary Interscholastic Athletic Inclusion Policies. <https://maps.glsen.org/trans-and-nonbinary-athletic-inclusion-policies> (last updated Jan. 2024).
- 26 *B.P.J. v. West Virginia State Board of Education*, No. 23-1078 (4th Cir. Apr. 16, 2024). <https://wp.api.aclu.org/wp-content/uploads/2024/04/Document.pdf>.
- 27 GLSEN Navigator. Inclusive Curricular Standards Policies. <https://maps.glsen.org/inclusivecurricular-standards-policies/> (last updated Mar. 2024).
- 28 Proulx CN, et al. Association of Lesbian, Gay, Bisexual, Transgender, and Questioning-Inclusive Sex Education With Mental Health Outcomes and School-Based Victimization in U.S. High School Students. *Journal of Adolescent Health* 64(5):608-614 (2019). <https://doi.org/10.1016/j.jadohealth.2018.11.012>.
- 29 SIECUS. Sex Ed State Law and Policy Chart (July 2022). <https://siecus.org/wp-content/uploads/2021/09/2022-Sex-Ed-State-Law-and-Policy-Chart.pdf>.