



# **State Education Agency Guidance on Implementation of Title IX and Other Federal Protections for LGBTQI+ Youth in K-12 Schools**

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## Introduction

Approximately 2 million youth aged 13 to 17 in the United States identify as LGBTQI+,<sup>1</sup> including an estimated 300,100 who identify as transgender.<sup>2</sup> LGBTQI+ students have the same innate aspirations and ability to thrive as all other youth, but many are not meeting this potential due to stigma and discrimination. These disparities are particularly stark for LGBTQI+ students who are transgender, nonbinary, and gender non-conforming; Black, Indigenous, and people of color (BIPOC); and/or students with disabilities. Schools are responsible not only for intervening in peer bullying, harassment, and violence, but for ensuring their own policies and practices do not discriminate, and taking proactive steps to address these educational inequities.

This resource details evidence-based actions that state education agencies (SEA) can take to support the implementation of Title IX at the local level and to proactively foster safe, inclusive schools where LGBTQI+ youth are less likely to experience harm.

### Part 1

Comprehensive state policies that prohibit anti-LGBTQI+ discrimination and violence. The adoption of comprehensive state policies that prohibit anti-LGBTQI+ victimization is associated with increased adoption of compliant policies at the local level.<sup>3</sup>

### Part 2

Statewide guidance to local education agencies (LEAs)—often named school districts—and schools on the implementation of Title IX. When SEAs issue statewide guidance, LEAs are more likely to implement compliant policies.<sup>4</sup>

### Part 3

Proactive steps to support Title IX implementation and compliance with federal reporting requirements. Statewide systems and standards, technical assistance, and dedicated task forces support continuous improvement in advancing intersectional, LGBTQI+ inclusive equity.

<sup>1</sup> Kerith J. Conron, “LGBT Youth Population in the United States,” The Williams Institute, UCLA School of Law (September 2020), <https://williamsinstitute.law.ucla.edu/publications/lgbt-youth-pop-us/>.

<sup>2</sup> Jody L. Herman, Andrew R. Flores, and Kathryn K. O’Neill, “How many adults and youth identify as transgender in the United States?” How Many Adults and Youth Identify as Transgender in the United States? The Williams Institute, UCLA School of Law (2022), <https://williamsinstitute.law.ucla.edu/publications/trans-adults-united-states/>.

<sup>3</sup> In states that have bullying prevention laws that expressly prohibit anti-LGBTQI+ bullying, SEA regulations that enumerate sexual orientation increased the likelihood of an LEA enumerating sexual orientation in its anti-bullying policy and,

Ryan M. Kull, Joseph G. Kosciw, and Emily A. Greytak, From Statehouse to Schoolhouse: Anti-Bullying Policy Efforts in US States and School Districts (GLSEN, NY: 2015), p. 6 <https://www.glsen.org/activity/statehouse-schoolhouse>.

<sup>4</sup> *Id*

## Discriminatory School Policies & Practices Harm LGBTQI+ Students' Well-Being & Educational Progress

LGBTQI+ youth are more likely to experience bullying at school than their non-LGBTQI+ peers.<sup>5</sup> In the 2021 GLSEN National School Climate Survey (NSCS), a majority of LGBTQI+ youth in schools (59%) reported experiencing LGBTQI+-related discriminatory policies or practices at school. LGBTQI+ students reported being disciplined for public displays of affection when straight and cisgender students were not (25%), forbidden from wearing clothes deemed “inappropriate” based on their gender assigned at birth (21%), and prohibited from addressing LGBTQI+-related topics in school assignments (16%) and extracurricular activities (17%).<sup>6</sup> Among LGBTQI+ youth who told school staff that they had been harassed or assaulted because of their sexual orientation, gender identity, or gender expression, three in five (60%) said school staff did nothing or told them to ignore it, 16% said school staff told them to change their behavior (e.g., to change the way they dressed), and 7% were themselves disciplined.<sup>7</sup> In these and similar cases, LGBTQI+ youth experience punitive and discriminatory discipline due to school policies and practices that, in effect, make it “against the rules” to be themselves.<sup>8</sup>

Transgender, nonbinary, and gender non-conforming students often face additional forms of unequal treatment at school. In the 2021 NSCS, transgender students reported being prevented from using their chosen name and pronouns (53%), being required to use school restrooms (68%) or locker rooms (71%) inconsistent with their gender identity, and being prevented from playing on a school sports team consistent with their gender identity (46%).<sup>9</sup>

Experiences of discrimination at school take a harmful toll on students' well-being and academic success. The 2021 NSCS found that, compared to LGBTQI+ students who experienced no anti-LGBTQI+ discrimination, those who had experienced any discrimination based on their sexual orientation, gender identity, or gender expression at school:

- Had lower GPAs (2.92 vs. 3.20)<sup>10</sup>;
- Were more than twice as likely to have missed school in the past three months because they felt unsafe or uncomfortable (16.4% vs. 43.3%)<sup>11</sup>;

<sup>5</sup> Michelle M. Johns, Richard Lowry, Laura T. Haderxhanaj, Catherine N. Rasberry, Leah Robin, Lamont Scales, Deborah Stone, and Nicolas A. Suarez, “Trends in violence victimization and suicide risk by sexual identity among high school students—Youth Risk Behavior Survey, United States, 2015–2019,” *MMWR* supplements 69, no. 1 (2020): 19–27, <https://doi.org/10.15585/2Fmmwr.su6901a3>; Michelle M. Johns, Richard Lowry, Jack Andrzejewski, Lisa C. Barrios, Zewditu Demissie, Timothy McManus, Catherine N. Rasberry, Leah Robin, and J. Michael Underwood, “Transgender identity and experiences of violence victimization, substance use, suicide risk, and sexual risk behaviors among high school students—19 states and large urban school districts, 2017,” *Morbidity and Mortality Weekly Report* 68, no. 3 (2019): 67–71, <http://dx.doi.org/10.15585/mmwr.mm6803a3>; CDC, Youth Risk Behavior Survey Data Summary & Trends Report: 2011–2021 (2023), [https://www.cdc.gov/healthyyouth/data/yrbs/pdf/YRBS\\_Data-Summary-Trends\\_Report2023\\_508.pdf](https://www.cdc.gov/healthyyouth/data/yrbs/pdf/YRBS_Data-Summary-Trends_Report2023_508.pdf).

<sup>6</sup> Joseph G. Kosciw, Caitlin M. Clark, and Leesh Menard, *The 2021 National School Climate Survey: The Experiences of LGBTQ+ Youth in Our Nation's Schools* (NY: GLSEN, 2022), p. 33, <https://www.glsen.org/research/2021-national-school-climate-survey>.

<sup>7</sup> *Id.* at p. 29.

<sup>8</sup> Compared to LGBTQI+ students who reported no discriminatory policies or practices, those who experienced anti-LGBTQI+ discrimination at school were nearly twice as likely to report disciplinary action in the past year. *Id.* at p. 39–40.

<sup>9</sup> *Id.* at p. 92.

<sup>10</sup> *Id.* at p. 36–37.

<sup>11</sup> *Id.* at p. 36, 38.

- Were nearly twice as likely to have been disciplined at school (51.2% vs. 26.2%), suggesting school policies and practices that make it “against the rules” to be LGBTQI+<sup>12</sup>;
- Reported lower levels of school belonging (36.7% vs. 72.5%)<sup>13</sup>; and
- Reported lower levels of self-esteem (36.1% vs. 55.9%), higher levels of depression (61.0% vs. 34.7%), and were more than twice as likely to have seriously considered suicide in the past year.<sup>14</sup>

Bullying, harassment, and other forms of peer victimization also constitute substantial barriers to equal educational opportunity. The 2021 NSCS found that, compared to LGBTQI+ students who experienced low levels of anti-LGBTQI+ peer victimization, LGBTQI+ students who had experienced severe anti-LGBTQI+ peer victimization at school:

- Were more than half as likely to report a positive sense of school belonging<sup>15</sup>;
- Had significantly lower GPAs<sup>16</sup>;
- Were more than twice as likely to have missed school in the past month<sup>17</sup>;
- Reported lower levels of self-esteem and higher levels of depression<sup>18</sup>; and
- Were at least twice as likely to have seriously considered suicide in the past year.<sup>19</sup>

Unequal treatment also contributes to students’ educational aspirations, including their plans to graduate. Among LGBTQI+ students who indicated that they did not plan to graduate high school or were unsure if they would graduate, more than half (51.5%) cited reasons related to a hostile school climate, including issues with harassment, unsupportive peers or educators, and school policies or practices that did not appropriately acknowledge and support their gender identities.<sup>20</sup>

GLSEN’s State Research Snapshots provide state-specific findings on LGBTQI+ students’ experiences with discrimination and harassment.<sup>21</sup>

<sup>12</sup> *Id.* at p. 40.

<sup>13</sup> *Id.* at p. 41.

<sup>14</sup> *Id.* at p. 43-44.

<sup>15</sup> This finding holds for victimization based on sexual orientation, gender identity, or gender expression experienced in-person and in online learning contexts. *Id.* at p. 41-42.

<sup>16</sup> This finding holds for victimization based on sexual orientation, gender identity, or gender expression experienced in-person and in online learning contexts. *Id.* at p. 35-37.

<sup>17</sup> This finding holds for victimization based on sexual orientation, gender identity, or gender expression experienced in-person and in online learning contexts. *Id.* at p. 36, 38.

<sup>18</sup> This finding holds for victimization based on sexual orientation, gender identity, or gender expression experienced in-person and in online learning contexts. *Id.* at p. 40.

<sup>19</sup> Students who experience victimization based on sexual orientation, gender identity, or gender expression in the context of online learning were more than three times as likely to have seriously considered suicide. *Id.* at p. 40-41.

<sup>20</sup> *Id.* at p. 34-35

<sup>21</sup> GLSEN Navigator. (2021). State Research Snapshots. <https://maps.glsen.org/state-research-snapshots/>.

## Inclusive School Policies and Practices Help Students Thrive and Succeed

Fortunately, research has demonstrated that there are evidence-based best practices that foster positive school climates. Over twenty years of research and thirty years of community-based learning, GLSEN continues to find that four supports are associated with improved education and well-being outcomes for LGBTQI+ students, including those who experience compounded marginalization, such as students who are Black, Indigenous, people of color, and people with disabilities:

1. *Comprehensive policies that prohibit victimization, e.g. discrimination, bullying and harassment, violence, assault, and punitive discipline that increases the risk of criminalization and entering the school-to-prison pipeline;*
2. *Supportive school staff and other adult allies;*
3. *Inclusive curriculum that includes positive representations of LGBTQI+, BIPOC, and other communities that experience marginalization; and*
4. *Youth leadership, including student clubs, such as GSAs (Gender and Sexuality Alliances or Gay Straight Alliances)*

Experience collaborating with communities in states and communities across the country demonstrates that the four supports—when adequately resourced and understood through available research—help LGBTQI+ youth thrive and reach their full potential. For example, LGBTQI+ youth in K-12 schools with bullying and harassment prevention policies that expressly prohibit bullying based on sexual orientation, gender identity, and other protected classes are less likely to hear slurs or other anti-LGBTQI+ remarks, more likely to report that teachers intervene in situations involving bias-based harassment and hostile language, and less likely to be otherwise victimized by peers overall.<sup>22</sup>

Transgender and nonbinary youth in schools with policies that are expressly inclusive and supportive are less likely to report facing discriminatory treatment by peers or staff, less likely to miss school because of feeling unsafe, and report feeling greater belonging at school.<sup>23</sup> Recent studies also show that transgender youth who are affirmed in their community — including through consistent use of their chosen name and correct pronouns — are measurably healthier and more successful, significantly mitigating disparities experienced by transgender youth compared to their non-transgender peers.<sup>24</sup>

<sup>22</sup> Kosciw, et al., *The 2021 National School Climate Survey*, p. 70-72, <https://www.glsen.org/research/2021-national-school-climate-survey>.

<sup>23</sup> *Id.* at p. xxiv, 73-34.

<sup>24</sup> Amanda M. Pollitt, Salvatore Ioverno, Stephen T. Russell, Gu Li, and Arnold H. Grossman, "Predictors and mental health benefits of chosen name use among transgender youth," *Youth & Society* 53, no. 2 (2021): 320-341; Stephen T. Russell, Amanda M. Pollitt, Gu Li, and Arnold H. Grossman, "Chosen name use is linked to reduced depressive symptoms, suicidal ideation, and suicidal behavior among transgender youth," *Journal of Adolescent Health* 63, no. 4 (2018): 503-505.; Lily Durwood, Katie A. McLaughlin, & Kristina R. Olson, "Mental health and self-worth in socially transitioned transgender youth," *Journal of the American Academy of Child & Adolescent Psychiatry* 56, no. 2 (2017): 116-123; Kristina R. Olson et al., "Mental health of transgender children who are supported in their identities," *Pediatrics* 137, no. 3 (2016). See also Ayden I. Scheim, Amaya G. Perez-Brumer, and Greta R. Bauer, "Gender-concordant identity documents and mental health among transgender adults in the USA: a cross-sectional study," *The Lancet Public Health* 5, no. 4 (2020): e196-e203.

## Title IX Prohibits Discrimination, Harassment, Bullying, and other forms of Victimization Based on Sex, including Sexual Orientation, Gender Identity, Sex Stereotypes, and Sex Characteristics

Title IX of the Education Amendments of 1972 prohibits discrimination based on sex in federally-funded education institutions. The U.S. Department of Education (ED) is the federal agency primarily responsible for enforcing Title IX. ED has provided guidance dating back to 1997 stating that sexual harassment directed against gay and lesbian students could violate Title IX.<sup>25</sup> In 2014, ED published guidance recognizing that discrimination on the basis of gender identity can also violate Title IX.<sup>26</sup> Although a subsequent administration withdrew that guidance, the Supreme Court’s decision in *Bostock v. Clayton County* in June 2020 communicated that discrimination based on being LGBTQI+ is prohibited by existing civil rights protections. In *Bostock*, the Supreme Court ruled that discrimination on the basis of sex inherently includes discrimination on the basis of sexual orientation, transgender status, or gender identity.<sup>27</sup>

ED’s Office for Civil Rights (OCR) subsequently issued guidance acknowledging that the Court’s decision in *Bostock* applies to students in schools as well as in workplace settings and stated that “OCR will fully enforce Title IX to prohibit discrimination based on sexual orientation and gender identity.”<sup>28</sup> OCR has also prepared several resources and fact sheets to assist recipients of federal funds, primarily SEAs and LEAs, to help educators understand and comply with the law, as well as provide information on rights under Title IX to students, parents, and others in K-12 learning communities.

### Key Resources from the U.S. Department of Education on Equal Educational Opportunity for LGBTQI+ Youth in Schools

U.S. Department of Education Toolkit: Creating Inclusive and Nondiscriminatory School Environments for LGBTQI+ Students: <https://www2.ed.gov/about/offices/list/ocr/docs/lgbtqi-student-resources-toolkit-062023.pdf>

U.S. Department of Education Fact Sheet on Supporting Transgender Youth in Schools: <https://www2.ed.gov/about/offices/list/ocr/docs/ed-factsheet-transgender-202106.pdf>

U.S. Department of Education Fact Sheet on Confronting Anti-LGBTQI+ Harassment in Schools: <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-tix-202106.pdf>

U.S. Department of Education Fact Sheet on Supporting Intersex Students: <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-intersex-202110.pdf>

<sup>25</sup> See 87 Fed. Reg. 41390, 41394 (July 22, 2022).

<sup>26</sup> *Id.*

<sup>27</sup> *Bostock v. Clayton Cty.*, 140 S.Ct. 1731, 1741 (2020) (“That is because it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.”) Further, after the Supreme Court issued its decision in *Bostock*, at least two federal courts of appeals held that the plain language of Title IX’s prohibition on sex discrimination must be read similarly. See e.g., *Doe v. Snyder*, 28 F.4th 103, 113–14 (9th Cir. 2022) and *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020), as amended (Aug. 28, 2020), cert. denied, 141 S. Ct. 2878 (Mem) (2020). The U.S. Department of Justice has taken a similar position in Title IX litigation. See e.g., U.S. Dep’t of Justice, *En Banc Brief as Amicus of the United States, Adams v. Sch. Bd. of St. Johns Cty.*, No. 18–13592, 22 (11th Cir. Nov. 26, 2021); U.S. Dep’t of Justice, *Statement of Interest of the United States, B.P.J. v. W. Va. Bd. of Educ.*, No. 2:21–cv–00316 (S.D.W. Va. June 17, 2021).

<sup>28</sup> United States Department of Education Dear Educator Letter, June 23, 2021, at p. 2. <https://www2.ed.gov/about/offices/list/ocr/correspondence/stakeholders/educator-202106-tix.pdf>; see also N. Haven Bd. of Ed. v. Bell, 456 U.S. 512, 546 (1982) (explaining that the Supreme Court has relied upon Title VII when interpreting sex discrimination under Title IX, and vice versa).

These and other resources are available at: <https://www2.ed.gov/about/offices/list/ocr/lgbt.html>

In April 2024, ED issued final Title IX regulations that expressly prohibit discrimination on the basis of sex stereotypes, sex characteristics, sexual orientation, and gender identity. The updated Title IX regulations also clarify that federal law prohibits schools from preventing transgender and nonbinary students from accessing sex-separated facilities, programs, or activities consistent with their gender identity. Covered entities, including SEAs, LEAs, charter schools, and private schools receiving federal financial funding, are required to review and update existing policies and practices for compliance with the Title IX civil rights obligations effective August 2024.

## Other Federal Protections for LGBTQI+ Students

Federal law provides other nondiscrimination, equal opportunity, equal access, and privacy protections for LGBTQI+ students.

### Constitutional Protections

The Equal Protection Clause of the U.S. Constitution also prohibits sex-based discrimination. ED has the authority to investigate and resolve complaints that federally funded schools are depriving students of equal protection based on sex (including sexual orientation, gender identity, and sex characteristics). The U.S. Department of Justice (DOJ) has the authority to initiate civil action in court and may intervene in cases of general public importance involving alleged denials of the “equal protection of the laws under the fourteenth amendment to the Constitution.”<sup>29</sup> The Equal Protection Clause applies to SEAs, LEAs, and all publicly funded schools. Even one of the dissenting opinions in *Bostock* recognized that the logical consequence of the Supreme Court’s *Bostock* decision was that it would be difficult for a public entity to justify discrimination based on sexual orientation or gender identity.<sup>30</sup>

### The Equal Access Act

The Equal Access Act (EAA) requires public secondary schools to treat all student groups equally, regardless of the religious, political, philosophical, or other organizing principle(s).<sup>31</sup> As explained in guidance issued by the U.S. Department of Education, the EAA’s “protections apply to groups that address issues relating to LGBTQI+ students and matters involving sexual orientation and gender identity, just as they apply to religious and other student groups.”<sup>32</sup> Under the Act, schools must treat student groups equally, and may not single out a group such as GSAs (Gender and Sexuality Alliances or Gay Straight Alliances) with limitations not imposed on other student groups.<sup>33</sup> There have been numerous court cases where efforts to block or restrict GSAs at school have been rejected.<sup>34</sup>

<sup>29</sup> 42 U.S.C. 2000c-6.

<sup>30</sup> See, *Bostock*, 140 S. Ct. at 1783 (Alito, J., dissenting) (Justice Alito’s dissenting opinion in *Bostock*: “By equating discrimination because of sexual orientation or gender identity with discrimination because of sex, the Court’s decision will be cited as a ground for subjecting all three forms of discrimination to the same exacting standard of review.”); see also *id.* at 1778-1783 (citing transgender students’ rights, namely access to bathrooms, locker rooms, and sports, among the “potential consequences of the Court’s decision.”)

<sup>31</sup> 20 U.S.C. § 4071(a)

<sup>32</sup> U.S. Department of Education, “Key Policy Letters from the Education Secretary and Deputy Secretary” (2011) <https://www2.ed.gov/policy/elsec/guid/secletter/110607.html>

<sup>33</sup> 20 U.S. Code § 4071.

<sup>34</sup> See ACLU, GSA Court Victories: A Guide for LGBTQ High School Students (2022), [https://www.aclu.org/sites/default/files/field\\_document/2022-02-15-gsa-legalvictories.pdf](https://www.aclu.org/sites/default/files/field_document/2022-02-15-gsa-legalvictories.pdf).



### **Federal Protections for Students with Disabilities**

Some transgender youth may have additional rights under the Individuals with Disabilities Education Act (IDEA),<sup>35</sup> Section 504 of the Rehabilitation Act,<sup>36</sup> and the Americans with Disabilities Act<sup>37</sup> based on a diagnosis of gender dysphoria or related conditions, which may include anxiety or depressive disorders. For some transgender youth, the distress caused by not having their gender identity affirmed at school may manifest in ways (anxiety, depression, school avoidance, inability to concentrate) that may be diagnosable and for which schools have an obligation to provide accommodations. For example, accommodations that have been provided include: ensuring consistent use of affirmed names and pronouns by all teachers, staff, and peers; access to sex-separated spaces in accordance with gender identity, including bathrooms and locker rooms; stress breaks; identifying a support person with whom the student feels safe and affirmed; and the provision of LGBTQI+ cultural competency training for teachers and staff. When a hostile school environment negatively impacts a student's health and ability to learn, protections for students with disabilities may be utilized as a powerful tool to create a more inclusive, safe, and supportive environment for transgender youth. For instance, in August 2022, the U.S. Court of Appeals for the Fourth Circuit ruled that gender dysphoria could qualify as a disability under the Americans with Disabilities Act.<sup>38</sup>

### **The Family Educational Rights and Privacy Act (FERPA)<sup>39</sup>**

FERPA is a federal law that protects personally identifiable information contained in student records from disclosure without a student or parent or guardian's consent in most circumstances and establishes a right to seek to have the records amended. FERPA affords parents the right to access the student records of their child if their child is a minor in the K-12 education system. When a student turns 18 years old or enters a postsecondary institution at any age, the rights under FERPA transfer from the parents to the student.

<sup>35</sup> The IDEA is a federal law that requires that all public schools provide a free appropriate public education (FAPE) to eligible children with disabilities, 20 U.S.C. § 1412(a)(1), which requires the creation and implementation of an Individual Education Plan (IEP) to meet the social, emotional, or academic needs of the individual student.

<sup>36</sup> Section 504 is a civil rights act that protects individuals from being denied benefits or discriminated against in any program receiving federal financial assistance (i.e. public schools) on the basis of disability. Under 34 C.F.R. § 104.3(j)(2)(ii), "learning" is considered a major life activity, so a student who is struggling to learn due to a non-affirming environment could qualify for a 504 Plan.

<sup>37</sup> UPDATE.

<sup>38</sup> See, *Williams v. Kincaid*, No 21-2030 (4th Cir. 2022), available at <https://acrobat.adobe.com/link/track?uri=urn%3Aaid%3Ausc%3A34033601-ed26-4416-a7b1-74113c5b82b8&mv=affiliate&mv2=red&viewer%21megaVerb=group-discover>.

<sup>39</sup> 20 U.S.C. § 1232g; 34 CFR Part 99.

## Part 1: Comprehensive state policies that prohibit anti-LGBTQI+ discrimination

### Adoption of a Comprehensive SEA Title IX Nondiscrimination Policy that Expressly Prohibits anti-LGBTQI+ Discrimination, Harassment, and Bullying

Under Title IX, SEAs are required to adopt and publish a nondiscrimination policy in compliance with federal Civil Rights obligations. The adoption of comprehensive state policies that expressly prohibit anti-LGBTQI+ discrimination is associated with lower rates of victimization and higher rates of students reporting incidents and staff intervening to prevent harassment. SEAs should therefore adopt nondiscrimination policies that enumerate sexual orientation, gender identity, sex stereotypes, sex characteristics (including intersex traits), and pregnancy or related conditions as specific forms of prohibited sex-based discrimination in compliance with Title IX and applicable state laws.

#### GLSEN Recommendations for SEAs

- Review and update their nondiscrimination policy to expressly prohibit discrimination, harassment, and bullying based on sex, including sexual orientation, gender identity, sex stereotypes, sex characteristics (including intersex traits), and pregnancy or related conditions, and to affirm each student’s right to be treated in accordance with their gender identity;
- Affirm each student’s right to be treated in accordance with their gender identity and specify flexible and minimally burdensome procedures to establish a student’s gender identity that may include a gender marker on a state-issued ID or amended birth certificate, but are not limited to these means (other methods of establishing a student’s gender identity that should be considered sufficient for eligibility purposes include a statement from a family member, health care provider, relative, community member, or the student’s consistent assertion of that gender identity at school).<sup>40</sup>
- Communicate that failure to prevent and effectively respond to bullying and harassment based on sex, including sexual orientation, gender identity, sex stereotypes, sex characteristics (including intersex traits), and pregnancy or related conditions, constitutes illegal discrimination based on sex; and
- Publish the updated nondiscrimination policy on their website and in SEA resources, including guidance to LEAs on the Every Student Succeeds Act (ESSA).

<sup>40</sup> Like religious beliefs, the sincerity of a student’s gender identity “is generally not in dispute” and is “generally presumed or easily established” (see: *Moussazadeh v. Tx. Dep’t of Crim. Just.*, 703 F.3d 781, 790 (5th Cir. 2012) (applying Religious Land Use and Institutionalized Persons Act (RLUIPA) and Equal Employment Opportunity Comm’n, Compliance Manual Section 12: Religious Discrimination, <https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination>).

### Sample SEA Nondiscrimination Policy

It is the policy of the [SEA] that no person shall be subjected to discrimination, harassment (including bullying and sexual harassment), and retaliation on the basis of race, color, ancestry, national origin, ethnicity, age, sex, sexual orientation, gender identity, sex stereotypes, sex characteristics, pregnancy or related conditions, marital or parental status, disability, and any other protected category as defined by the Constitution of the United States, the Constitution of the [State], and applicable federal and state laws, including Title VI of the Civil Rights Act of 1964 (Title VI), Title VII of the Civil Rights Act of 1964 (Title VII), Age Discrimination in Employment Act of 1967 (ADEA), Title IX of the Education Amendments of 1972 (Title IX), the Americans with Disabilities Act (ADA), the Individuals with Disabilities Education Act (IDEA), and Section 504 of the Rehabilitation Act of 1973 (Section 504), [applicable state laws], or on the basis of a person's association with a person or group with one or more of these actual or perceived characteristics in in any educational program or activity.

### Adoption of School Athletics Policies that Fully Include Transgender, Nonbinary, and Intersex Students

Title IX permits schools to create separate-gender teams where such teams address systemic sex-based discrimination and specifically the underrepresentation of girls in school athletics. Transgender, intersex, and nonbinary students benefit from access to school sports that are consistent with their gender identity. However, since 2020, 25 states have implemented policies that restrict transgender, intersex, and nonbinary students from fully participating in school sports, especially on interscholastic teams.

Any exclusionary restriction on participation consistent with gender identity (e.g., not permitting transgender and intersex girls to try out for and participate on girls teams) could be challenged as a violation of Title IX. Exclusionary policies also may have a spillover effect on cisgender girls who do not conform to gender stereotypes, disproportionately impacting Black and Latine girls.<sup>41</sup> In spring 2023, the U.S. Department of Education began a rulemaking process to clarify legal protections for student athletes. Although this rulemaking is still pending, recent data from the National Federation of State High School Associations demonstrates the benefits of inclusion: states with inclusive policies saw a 48% greater increase in women's sports participation than states with trans-exclusionary policies.

Participation rules for interscholastic sports, particularly for high school sports, are created by a state athletic association. As of [December 2023], fourteen states and Washington, D.C. have state athletic association policies that are inclusive of transgender students and support their participation in interscholastic sports in a manner consistent with their gender identity.<sup>42</sup>

For physical education, intramural sports, and other school sports that are not regulated by a state athletic association, the agency of jurisdiction (either the SEA or LEAs) must comply with federal Civil Rights obligations.

<sup>41</sup> Centers for Disease Control and Prevention. YRBS Explorer, Physical Activity, High School Students Who Played On At Least One Sports Team, 2019 and 2021 Data. <https://yrbs-explorer.services.cdc.gov/#/tables?questionCode=H80 &topicCode=C06&year=2021&location=XX>

<sup>42</sup> GLSEN Navigator: Trans and Nonbinary Athletic Inclusion Policies, <https://maps.glsen.org/trans-and-nonbinary-athletic-inclusion-policies/>

### GLSEN Recommendations for SEAs

- Coordinate with state athletic associations to support the adoption of policies on interscholastic sports participation that:
  - Provide all students the opportunity to participate in a manner consistent with their gender identity without restriction (i.e., where school sports are lawfully separated into boys’ and girls’ teams, transgender and intersex boys should be able to play on boys’ teams, transgender and intersex girls should be able to play on girls’ teams, and nonbinary students must be able to determine which separate gender team is the best fit for them based on safety and comfort; and
  - Specify flexible and minimally burdensome procedures to establish a student’s gender identity that may include a gender marker on a state-issued ID or amended birth certificate, but are not limited to these means (other methods of establishing a student’s gender identity that should be considered sufficient for eligibility purposes include a statement from a family member, health care provider, relative, community member, or the student’s consistent assertion of that gender identity at school).<sup>43</sup>
- Establish or communicate participation rules for physical education, intramural sports, and any other school sports that are not regulated by a state athletic association that are fully inclusive of transgender, nonbinary, and intersex students where the SEA has discretion or the responsibility to do so, as in states that have passed laws that specifically prohibit discrimination based on gender identity in the context of school sports.
  - Eliminate sex-separated physical education classes;
  - Review and eliminate unnecessary sex-separated activities to address gender disparities in school sports participation in intramural and other extracurricular sports contexts that are not regulated by a state athletic association; and
  - Where intramural and other extracurricular sports that are not regulated by a state athletic association are separated by gender, require that transgender, nonbinary, and intersex have equal opportunity to participate consistent with gender identity.

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<sup>43</sup> Like religious beliefs, the sincerity of a student’s gender identity “is generally not in dispute” and is “generally presumed or easily established” (see: *Moussazadeh v. Tx. Dep’t of Crim. Just.*, 703 F.3d 781, 790 (5th Cir. 2012) (applying Religious Land Use and Institutionalized Persons Act (RLUIPA) and Equal Employment Opportunity Comm’n, Compliance Manual Section 12: Religious Discrimination, <https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination>).

### Sample State Athletic Association Policy: Oregon School Activities Association<sup>44</sup>

#### A. Definitions. For the purposes of this policy, the following definitions apply:

1. Transgender refers to an individual whose gender identity does not match his or her assigned birth gender.
2. Gender identity — A person’s internal sense of being male, female or some other gender, regardless of whether the individual’s appearance, expression or behavior differs from that traditionally associated with the individual’s sex assigned at birth. Gender identity is distinct from and often unrelated to an individual’s sexual orientation.
3. Transition — The time when a person begins living as the gender with which they identify rather than the gender they were assigned at birth, which often includes changing one’s first name and dressing and grooming differently. Transition may or may not also include medical and legal aspects, including taking hormones, having surgery, or changing identity documents (e.g., driver’s license, Social Security record) to reflect one’s gender identity.
4. Intersex — An umbrella term used for people born with reproductive or sexual anatomy and/or chromosome pattern that does not seem to fit the typical definition of male or female. Intersex may also be known as Difference of Sex Development and may not always be known at birth but may be revealed at any stage of a person’s life.
5. Sexual orientation — Means a person’s physical, romantic, emotional, aesthetic, or other form of attraction to others. Sexual orientation and gender identity are not the same. Although, the Oregon Legislature adopted a broader definition of “sexual orientation” for purposes of all Oregon statutes to “mean an individual’s actual or perceived heterosexuality, homosexuality, bisexuality or gender identity, regardless of whether the individual’s gender identity, appearance, expression or behavior differs from that traditionally associated with the individual’s sex at birth.”
6. Nonbinary (Also Non-Binary) – Preferred umbrella term for all genders other than female/male or woman/man. Not all nonbinary people identify as trans and not all trans people identify as nonbinary.
7. As used herein, “Gender-Specific” activities are those in which only one gender participates, e.g. volleyball and softball, and “Gender-Segregated” activities are those in which the same activity is offered for both female and male students, e.g. girls basketball and boys basketball.

#### B. Participation.

For both historical reasons, as well as reasons related to compliance with Title IX, interscholastic athletics and activities have typically been divided by gender, with a few exceptions. Formulating new processes to address concerns about participation regardless of a student’s gender identity requires a new approach to eligibility, an approach reflected in these policies. In interpreting these policies, the OSAA recognizes the value of activities and sports for all students and the potential for inclusion to reduce harassment, bullying and barriers faced by certain students.

<sup>44</sup> Oregon School Activities Association, “Excerpt from 2022-2023 OSAA Handbook, Executive Board Policies: 39. GENDER IDENTITY PARTICIPATION,” <https://www.osaa.org/docs/handbooks/GenderIdentityParticipationBP.pdf>

1. As is true with all eligibility determinations, the student's member school will be the first point of contact for determining the student's eligibility. When a student registers for athletics or activities the student shall indicate the student's gender during that registration process, consistent with other school enrollment procedures. Athletics and activities personnel should refer to member school processes for registration/enrollment information. Disputes regarding these gender identity determinations will be resolved solely at the member school level; because of the diversity of private and public school rules that may bear on such determinations, and gender identity issues being particularly sensitive, the OSAA will not hear any appeal of a member school's determination made under this section.
2. Subject to section B(1), once a transgender student has notified the student's school of their gender identity, the student shall be consistently treated as that gender for purposes of eligibility for athletics and activities, provided that if the student has tried out or participated in an activity, the student may not participate during that same season on a team of the other gender.
3. Subject to section B(1), once a nonbinary or intersex student has notified the student's school of their gender identity, the student shall be treated as either gender for purposes of eligibility for athletics and activities that are gender-segregated or gender-specific, provided that if the student has tried out or participated in athletics or an activity that is gender-specific or gender-segregated, the student may not participate during that same season on a team of the other gender.

#### **Sample SEA Policy: New Jersey Department of Education<sup>45</sup>**

##### **Activities**

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

##### **School districts shall:**

- Provide all students with the same opportunities to participate in physical education as other students in accordance with their gender identity...

### **Collect, Review, and Publish LEA and School Policies Related to Title IX, including Exemptions Claimed by Certain Private Religious Schools**

SEAs can support the implementation of Title IX and related state laws at the local level by collecting and reviewing LEA policies on nondiscrimination and bullying prevention (if maintained separately) for compliance with Title IX and applicable state laws or regulations. By publishing reported nondiscrimination policies and bullying policies, if maintained separately, SEAs can provide easy access to critical information to students, families, and educators. LEA policy data can also be used to inform state reports on bullying and harassment in schools, as required by some state laws.<sup>46</sup>

<sup>45</sup> New Jersey Department of Education, "Transgender Student Guidance for School Districts," p. 6 <https://www.nj.gov/education/safety/sandp/climate/docs/Guidance.pdf>. See also: New Jersey Administrative Code 6A:7-1.7(d) (revised policy adopted August 2023).

<sup>46</sup> 105 Illinois Compiled Statutes 5/27- 23.7 and Illinois Administrative Code title 23, §1.295 (2022).

SEAs should further support students and families in making informed decisions about the likelihood of experiencing LGBTQI+ bias-based victimization and discrimination prior to enrollment by collecting and sharing data on exemptions claimed — or that intend to be claimed — by certain private schools that are controlled by a religious organization.

### GLSEN Recommendations for SEAs

- Require that LEAs and other covered entities submit their nondiscrimination and bullying prevention policies at least every two years;
- Review submitted policies for compliance with Title IX and related state laws and regulations;
- Create a publicly accessible online database of LEA nondiscrimination policies and bullying prevention policies (if maintained separately);
- Publish a state biennial report on bullying and harassment in schools; and
- Collect data on schools that have or intend to claim an exemption from Title IX prohibitions on sex-based discrimination, including sexual orientation and gender identity, and create a publicly accessible online database of schools that have or intend to claim an exemption.

### Sample SEA Policy for Collecting, Reviewing, and Publishing LEA Policies: *Illinois State Board of Education*<sup>47</sup>

Under 105 ILCS 5/27- 23.7 and Ill. Admin. Code Title 23, §1.295 (2022), all public school districts; nonsectarian, nonpublic schools; and charter schools in Illinois are required to develop and implement policies concerning bullying prevention, which must be filed with ISBE. The policies—including any revisions that are made — must be reviewed and reevaluated every two years and subsequently filed with ISBE. Additionally, state statute requires specific content and components, which are outlined in this document, to be included in a bullying prevention policy...

<sup>47</sup> Illinois State Board of Education, Bullying Prevention, <https://www.isbe.net/Pages/Bullying-Prevention.aspx>

## Part 2: Statewide guidance to LEAs and schools on the implementation of Title IX

Discrimination, harassment, and bullying based on sex, including sexual orientation, gender identity, sex stereotypes, sex characteristics (including intersex traits), and pregnancy and parental status, are prohibited in federally-funded education programs. Federal protections must be locally implemented. Statewide guidance is associated with compliant implementation of federal and state standards by LEAs. GLSEN's research has found that LEAs in states with comprehensive bullying and harassment prevention laws that prohibit anti-LGBTQI+ bullying are more likely to adopt compliant policies that enumerate sexual orientation and gender identity/expression, along with other protected classes, and to communicate accountability measures when their SEA has issued more comprehensive guidance that also addresses bias-based victimization.<sup>48</sup> Similarly, a 2020 study found that SEA guidance to LEAs helped LEAs identify programming that complies with federal requirements.<sup>49</sup>

### GLSEN Recommendations for SEA Guidance to LEAs on Implementation of Title IX

- Outline components of the Title IX regulation;
- Discuss related federal and state protections, including any additional requirements;
- Communicate required and recommended practices for preventing and effectively responding to anti-LGBTQI+ discrimination, harassment, and bullying;
- Address common situations, frequently asked questions and concerns;
- Directs to additional resources to support local policy adoption, professional development, training for students, and engagement with K-12 learning communities.

The following Model Statewide Guidance includes essential components of SEA guidance to implement student nondiscrimination protections for LGBTQI+ youth.

<sup>48</sup> Ryan M. Kull, Joseph G. Kosciw, and Emily A. Greytak, From Statehouse to Schoolhouse: Anti-Bullying Policy Efforts in US States and School Districts (GLSEN, NY: 2015), p. 6 <https://www.glsen.org/activity/statehouse-schoolhouse>.

<sup>49</sup> An overwhelming majority (70%) of LEAs with at least one Title I school reported consulting statewide guidance when developing their improvement strategy. Wei, Thomas and Johnson, Erica. (2020). How States and Districts Support Evidence Use in School Improvement. Institute of Education Sciences, p. 4. <https://ies.ed.gov/ncee/pubs/2020004/pdf/2020004.pdf>.



## Model Statewide Guidance on Implementation of Title IX

### **DISCRIMINATION, HARASSMENT, AND BULLYING**

Title IX of the Education Amendments of 1972 prohibits discrimination based on sex — including sexual orientation, gender identity, sex stereotypes, sex characteristics (including intersex traits), and pregnancy and parental status—in schools and education programs that receive federal funding. Title IX requires that schools promptly and effectively respond to bullying or harassment based on sex, which ED has clarified includes sexual orientation, gender identity, and sex characteristics (including intersex traits).

Title IX violations could include:

- Failing to take steps to prevent harassment or bullying of LGBTQI+ students, whether in online or in-person learning environments;
- Failing to investigate complaints of discrimination, including unlawful harassment, or to provide supportive measures and/or accommodations to a student who reports discrimination, in order to stop further harm and remedy its effects;
- Disproportionate discipline of LGBTQI+ students, whether in online or in-person learning;
- Intentional, persistent use of names or pronouns inconsistent with a student's gender identity;
- Excluding a transgender student from sex-separated school facilities or activities consistent with their gender identity, including athletics; and
- Targeting books by or about LGBTQI+ people for removal from school libraries.

The Equal Protection Clause of the 14th Amendment to the U.S. Constitution also prohibits LGBTQI+ discrimination.

Many states have student nondiscrimination laws that prohibit discrimination based on actual or perceived sexual orientation, gender identity, and gender expression.<sup>50</sup> Many states separately have anti-bullying laws that prohibit harassment or bullying based on actual or perceived sexual orientation, gender identity, and gender expression and require that LEAs adopt policies that expressly prohibit such harassment or bullying.<sup>51</sup>

All students and their families should be fully aware of students' rights and LEA and school policies and commitments to a supportive school climate for all students, including LGBTQI+ students. Title IX requires that LEAs and schools that receive federal funds adopt a nondiscrimination policy in compliance with federal Civil Rights obligations. LEAs and schools that receive federal funds have a responsibility to take proactive steps to prevent anti-LGBTQI+ discrimination, including harassment and bullying. Full enumeration of sexual orientation and gender identity in policies prohibiting victimization is associated with less anti-LGBTQI+ victimization. LEAs and other covered entities should therefore adopt nondiscrimination policies that enumerate sexual orientation, gender identity, sex stereotypes, sex characteristics (including intersex traits), and pregnancy or related conditions as prohibited sex-based discrimination in compliance with Title IX and applicable state laws.

<sup>50</sup> GLSEN Navigator, Student Nondiscrimination Policies, <https://maps.glsen.org/student-nondiscrimination-policies/>. See also: Movement Advancement Project, Equality Maps: Safe Schools Laws, [https://www.mapresearch.org/equality-maps/safe\\_school\\_laws](https://www.mapresearch.org/equality-maps/safe_school_laws).

<sup>51</sup> GLSEN Navigator, Enumerated Anti-Bullying and Harassment Policies, <https://maps.glsen.org/enumerated-anti-bullying-and-harassment-policies/>.

Title IX requires that the nondiscrimination policy identify and provide contact information for at least one staff person who serves as Title IX coordinator who oversees implementation of the regulations at the covered entity.<sup>52</sup> For public schools, each school should have a Title IX coordinator and each LEA should have a Title IX coordinator who oversees the LEA's compliance with Title IX, including by ensuring each school is adhering to the requirements of Title IX. The policy must also include information about how a student can report discrimination.<sup>53</sup>

Title IX further requires that LEAs and schools proactively inform students and families about their Title IX nondiscrimination policy and conduct professional development for staff regarding their obligations under Title IX.<sup>54</sup>

To comply with federal Title IX Civil Rights obligations, LEAs and federally-funded schools can adopt a comprehensive policy on discrimination, harassment, and bullying that expressly prohibits discrimination, harassment, and bullying based on actual or perceived sexual orientation, gender identity, gender expression, sex characteristics (including intersex traits), sex stereotypes, and pregnancy and related conditions.<sup>55</sup> If an LEA or school maintains a separate anti-bullying policy, this policy should be reviewed and updated to expressly prohibit bullying and harassment based on sex, including sexual orientation, gender identity, sex stereotypes, sex characteristics (including intersex traits), and pregnancy or related conditions, alongside other enumerated characteristics, such as race and disability.

LEAs have an obligation to collect and report data on allegations, incidents, responses to incidents, and the existence of policies related to bullying and harassment based on sex, including sexual orientation, gender identity, and sex characteristics, to ED through the Civil Rights Data Collection (CRDC).<sup>56</sup> LEAs may have additional data collection and reporting requirements pursuant to state anti-bullying laws and regulations.<sup>57</sup>

### GLSEN Recommendations for LEAs and Federally-Funded Schools

- Review and update their nondiscrimination policy to:
  - Expressly prohibit discrimination based on sex, sexual orientation, gender identity, sex stereotypes, sex characteristics (including intersex traits), and pregnancy or related conditions;
  - Communicate that failure to prevent and effectively respond to bullying and harassment based on actual or perceived sex, sexual orientation, gender identity, sex stereotypes, sex characteristics (including intersex traits), and pregnancy or related conditions, constitutes illegal discrimination based on sex under Title IX;

<sup>52</sup> U.S. Department of Education, Office for Civil Rights. Final Rule: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance (Apr. 19, 2024), at § 106.8, p. 1517 <https://www2.ed.gov/about/offices/list/ocr/docs/t9-unofficial-final-rule-2024.pdf>.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> See, e.g., Chicago Public Schools, Section 102.8A: Comprehensive Policy on Non-Discrimination, Harassment, Sexual Harassment, Sexual Misconduct and Retaliation, <https://www.cps.edu/sites/cps-policy-rules/policies/100/102/102-8a/>.

<sup>56</sup> Bonnie Washick, Aaron Ridings, and Tessa Juste, LGBTQ+ Data Inclusion: Advancing Intersectional Equity in K-12 Education Systems (Washington, DC: GLSEN, 2022), <https://www.glsen.org/LGBTQ-data-inclusion>.

<sup>57</sup> See, e.g., Maryland State Department of Education, "Bullying Data Collection Manual Guidance Document." Available at <http://marylandpublicschools.org/about/Documents/DSFSS/SSSP/Bullying/BullyingGuidanceKPreview.pdf>.

- Affirm each student’s right to be treated in accordance with their gender identity and specify flexible and minimally burdensome procedures to establish a student’s gender identity<sup>58</sup>;
- Identify and include contact information for at least one staff person who will serve as a Title IX coordinator (public schools should include contact information for both their schoolwide Title IX coordinator and their LEA Title IX coordinator);
- Include information about how a student can report discrimination;
- Review and update a separately maintained policy on harassment and/or bullying (if applicable) to expressly prohibit harassment and/or bullying based on actual or perceived sex, sexual orientation, gender identity, sex stereotypes, sex characteristics (including intersex traits), pregnancy or related conditions, race, color, ethnicity, national origin, religion, and disability;
- Notify students, families, and other members of K-12 learning communities at least annually of the nondiscrimination policy and, if applicable, the bullying prevention policy;
- Publish the nondiscrimination policy on their website and in student handbooks, back-to-school messages, and other materials;
- Encourage students and families to fully review the policies and participate in available trainings;
- Collect data on allegations, incidents, and responses to incidents of anti-LGBTQI+ discrimination, bullying, and harassment, as required by the CRDC and any applicable state laws;
- Use LGBTQI+ inclusive school climate surveys to measure students’ experiences with anti-LGBTQI+ discrimination, bullying, harassment, and other forms of bias-based victimization;<sup>59</sup> and
- Adhere to any related SEA reporting requirements (see Part 1: Collect, Review, and Publish LEA and School Policies Related to Title IX, including Exemptions Claimed by Certain Private Religious Schools).

<sup>58</sup> While the gender marker on a state-issued ID or amended birth certificate may be accepted as a means of establishing eligibility, students should not be limited to these means given the cost involved and the potential interaction with discriminatory state legislation, such as those prohibiting amending the gender marker on a birth certificate or requiring proof of surgery before an amended birth certificate or Driver’s License reflecting the individual’s gender identity will be issued. Other methods of establishing a student’s gender identity that should be considered sufficient for eligibility purposes include a statement from a family member, health care provider, and the student’s consistent assertion of that gender identity at school. Like religious beliefs, the sincerity of a student’s gender identity “is generally not in dispute” and is “generally presumed or easily established” (see: *Moussazadeh v. Tx. Dep’t of Crim. Just.*, 703 F.3d 781, 790 (5th Cir. 2012) (applying Religious Land Use and Institutionalized Persons Act (RLUIPA) and Equal Employment Opportunity Comm’n, Compliance Manual Section 12: Religious Discrimination, <https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination>).

<sup>59</sup> Washick, et al., LGBTQ+ Data Inclusion, pp. 4-6, 10-11, <https://www.glsen.org/LGBTQ-data-inclusion>.

### **GLSEN Recommendations for Private Schools that Receive Federal Funding, but Claim an Exemption From Title IX**

- Publish exemptions that the school claims or intends to claim from Title IX prohibitions on sex-based discrimination on the school website, student handbook, and within the nondiscrimination policy required pursuant to Title IX regulations, as well as within the contents of its required notice of nondiscrimination<sup>60</sup>; and
- Adhere to any related SEA reporting requirements (see Part 1: Collect, Review, and Publish LEA and School Policies Related to Title IX, including Exemptions Claimed by Certain Private Religious Schools).

### **Sample SEA Statewide Guidance: Oregon Department of Education<sup>61</sup>**

#### **Discrimination and Harassment: Oregon Law**

Oregon law prohibits discrimination in all public elementary and secondary schools that receive state funding, including discrimination based on gender identity. Under Oregon law, discrimination means “any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on age, disability, national origin, race, color, marital status, religion, sex, sexual orientation, or gender identity.”

ODE recommends that schools and school districts respond to all reports of discrimination by acting to end the discrimination, remedy any impacts, and prevent discrimination from happening again. Because discrimination may include both intended and unintended acts, schools should take care in their investigations to determine the effects and impact of any alleged discriminatory acts or conduct, not merely the intent behind them. Likewise, schools should carefully consider their policies and procedures to ensure they are not engaging in any systemic discrimination through the implementation of a policy or practice that appears to evenly apply to all students, but that disproportionately impacts protected class students. A policy that is applied to all students equally, but that has uneven and harmful effects on gender-expansive students, could be considered discriminatory.

Oregon also requires schools to adopt policies prohibiting harassment, intimidation, bullying, and cyberbullying. The definition of harassment, intimidation, and bullying includes behaviors that are based on any protected class, including gender identity. When an act of harassment, intimidation, bullying, or cyberbullying is based on a student’s gender identity, it must also be treated as discrimination. Schools should make sure they follow both policies when responding to these reports. Schools may wish to consult ODE’s August 2021 Every Student Belongs Guidance on the Issue of Bullying, which addresses questions about Oregon’s harassment, intimidation, bullying, and cyberbullying law and policy.

Some incidents may implicate multiple forms of discrimination; for example, an incident of harassment may be both gender identity discrimination and racial discrimination. Schools are encouraged to analyze any reports of bullying, harassment, or discrimination carefully to ensure they are providing support and remedies to all elements of each incident.

<sup>60</sup> 34 CFR § 106.8(b).

<sup>61</sup> Oregon Department of Education, “Supporting Gender Expansive Students Guidance for Schools,” January 5, 2023. Accessible at: <https://www.oregon.gov/ode/students-and-family/equity/civilrights/Documents/ODE-Supporting-Gender-Expansive-Students.pdf>.

### Discrimination and Harassment: Federal Law

Federal Law, including Title IX, requires schools to ensure that gender-expansive students have equal access to all aspects of a school's programs and activities, including school processes for responding to discrimination. Title IX also prohibits harassment or discrimination that is a result of sex stereotyping, or biased assumptions about a person's sex or gender. A recent OCR case resolution found that sex discrimination predicated on sex stereotyping occurred when a gender-expansive student was harassed because of their name, pronouns, presentation, clothing, manner of speaking, and other behavior that did not align with traditional gender roles or expectations, and when the school failed to recognize the student's reports of this behavior as sex discrimination and respond to it as such.

Every school or district that receives federal funding must designate a Title IX Coordinator who is responsible for coordinating the school or district's response to all sex discrimination, including discrimination based on gender identity. All gender identity discrimination, including bullying and harassment based on gender identity, should be reported to the Title IX Coordinator or another school official authorized to carry out the school's Title IX response. When a school becomes aware of possible discrimination, ODE recommends treating it as a complaint of discrimination and acting in accordance with the school's relevant policies and with state and federal law.

### NAMES AND PRONOUNS

Equal education opportunity (provided by Title IX and applicable state laws) requires that all students be treated with respect, including through routine greetings and interactions. As noted above, a growing body of research finds that using a student's affirmed name and pronouns, consistent with their gender identity, has a measurable, positive impact on their health and well-being.<sup>62</sup> While unintentional mistakes can happen, especially when a transition or name change is recent, intentionally and persistently misgendering a student through the use of a former name or incorrect pronouns can amount to prohibited sex-based discrimination (if school staff or administration are responsible) or harassment (in the case of peer victimization).<sup>63</sup>

In addition to Title IX, FERPA protects information contained in student records from disclosure without a student or parent or guardian's consent in most circumstances. A student's sexual orientation, transgender status, gender identity, current or former legal name, sex assigned at birth, and related medical history are confidential, protected

<sup>62</sup> Amanda M. Pollitt, Salvatore Ioverno, Stephen T. Russell, Gu Li, and Arnold H. Grossman, "Predictors and mental health benefits of chosen name use among transgender youth," *Youth & Society* 53, no. 2 (2021): 320-341; Stephen T. Russell, Amanda M. Pollitt, Gu Li, and Arnold H. Grossman, "Chosen name use is linked to reduced depressive symptoms, suicidal ideation, and suicidal behavior among transgender youth," *Journal of Adolescent Health* 63, no. 4 (2018): 503-505.; Lily Durwood, Katie A. McLaughlin, & Kristina R. Olson, "Mental health and self-worth in socially transitioned transgender youth," *Journal of the American Academy of Child & Adolescent Psychiatry* 56, no. 2 (2017): 116-123; Kristina R. Olson et al., "Mental health of transgender children who are supported in their identities," *Pediatrics* 137, no. 3 (2016). See also Ayden I. Scheim, Amaya G. Perez-Brumer, and Greta R. Bauer, "Gender-concordant identity documents and mental health among transgender adults in the USA: a cross-sectional study," *The Lancet Public Health* 5, no. 4 (2020): e196-e203.

<sup>63</sup> See, e.g., U.S. Department of Education, Office for Civil Rights (OCR), letter to Tamalpais Union School District, June 23, 2022, <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/09181466-a.pdf> (finding that the district failed to investigate known allegations that the other student had repeatedly harassed a transgender student about her appearance, her voice, her body, her name, and her pronouns); *Jameson v. U.S. Postal Service*, Equal Employment Opportunity Commission Appeal No. 0120130992, 2013 WL 2368729 (May 21, 2013) (intentional misuse of the employee's new name and pronoun may cause harm to the employee, and may constitute sex based discrimination).

personally identifiable information, the disclosure of which violates a school’s obligations under this law.<sup>64</sup>

Schools must consider requests by students or their parents or guardians to amend information in a student’s education record that is “inaccurate, misleading, or in violation of the student’s privacy rights.”<sup>65</sup> Courts have found the disclosure of a person’s transgender status is “excruciatingly private and intimate for those who wish to keep it private”<sup>66</sup> and have held that students have a reasonable expectation of privacy regarding their gender identity and sexual orientation, including at school.<sup>67</sup>

FERPA violations may include:

- Disclosing a student’s transgender status or gender assigned at birth to other students, parents or guardians, or media without the parent or student’s consent; and
- Using a student’s legal name in school directories, yearbooks, or other publications where a parent or student has requested otherwise.

Students have the right to choose to discuss or disclose protected information in any way they wish. In addition, the U.S. and many state constitutions prohibit schools from disclosing sensitive information such as a student’s sexual orientation or gender identity to anyone—including parents—without a compelling interest in doing so<sup>68</sup> (such as where the circumstances make it necessary in order to discuss an immediate threat to the student’s health or safety) or the student’s consent.

### GLSEN Recommendations for LEAs and Federally-Funded Schools

- Ensure staff addresses persistent, intentional misgendering as a form of harassment; and
- Ensure that staff model use of a student’s chosen name and pronouns consistent with their gender identity (including gender-neutral pronouns such as “they” and “them”) in the classroom, on class rosters, and in all other places where visible to others.

### Sample SEA Statewide Guidance 1: *Maine Human Rights Commission*<sup>69</sup>

If a student so chooses, the educational institution’s employees should be required to address the student by the student’s chosen name and use pronouns consistent with the student’s gender identity. The educational institution should also, at the request of any student, instruct its students to address the student by the student’s chosen name and use pronouns consistent with the student’s gender identity. Inadvertent slips and honest mistakes will not be considered a violation of the Act, but a pattern of refusal to acknowledge a student’s gender identity by using their chosen name and pronouns may be considered to constitute such a violation.

<sup>64</sup> 20 U.S.C. § 1232g; 34 C.F.R. §§ 99.00 et seq.

<sup>65</sup> *Id.*

<sup>66</sup> See e.g., *Powell v Schriver*, 175 F.3d 107, 111 (2d Cir. 1999).

<sup>67</sup> See e.g., *Sterling v. Borough of Minersville*, 323 F.3d 190 (3d Cir. 2000); *Nguon v. Wolf*, 517 F.Supp.2d 1177, 1192-85 (C.D. Cal. 2007).

<sup>68</sup> See *Nguon v. Wolf*, 517 F. Supp. 2d 1177, (C.D. Cal. 2007); *Wyatt v. Kilgore Indep. Sch. Dist.*, 200 WL 601 6467 (E.D. Tex. Nov. 30, 2011), *rev’d in part on other grounds*, 718 F.3d 496 (5th Cir. 2013).

<sup>69</sup> Maine Human Rights Commission, “Interpretation of the Education Provisions of the MHRA” (2016) <https://www.maine.gov/mhrc/sites/maine.gov/mhrc/files/pdfs/CCmemo.education.so.pdf>.

### Sample SEA Statewide Guidance 2: *Hawaii Department of Education*<sup>70</sup>

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.

## **STUDENT PRIVACY AND SCHOOL RECORDS**

Students, like adults, have a fundamental right to privacy under both the federal and most state constitutions, which encompasses “the right to determine whether or not sensitive information about oneself will be disclosed to others.”<sup>71</sup> For LGBTQI+ students, this includes information related to their LGBTQI+ identity.<sup>72</sup> To the extent such information is contained in student records, this information is also protected by FERPA and applicable state public records and student privacy laws.

Students should choose whether, how, and to whom to disclose personal information such as their gender identity, transgender status, recorded gender (gender reflected in a student’s school record), or gender assigned at birth (if different from their gender asserted at school), any former name, any medical history related to gender transition, or their sexual orientation. Private information regarding a student should be disclosed only to those staff who need to know because they handle administrative matters that require the use of students’ legal names, to parents based on an important educational need or a proper student records request, or when specifically required or permitted by law, such as in cases where there is potential harm to the student. While schools may discuss their policies and efforts to meet the needs of all students with the school community or with the press, personal information should not be disclosed publicly.

If a student’s current or former legal name is different from the name the student currently uses, unnecessary disclosure of this information may effectively disclose the student’s transgender status and may violate privacy and nondiscrimination laws. The same is true for the student’s “legal” gender, as evidenced on identification documents at the time of enrollment, if it differs from the student’s gender asserted at school.

Unintentional disclosure of a student’s transgender status often occurs through the disclosure of their legal name and/or sex assigned at birth, including on student roll or attendance lists, substitute rosters, yearbooks, student ID badges, and other places that such information may appear in a school setting. Refusal to permit records updates for transgender students can facilitate unintentional disclosure and may violate privacy and nondiscrimination laws.<sup>73</sup>

<sup>70</sup> Hawaii State Board of Education, “Guidance on Supports for Transgender Students” <https://static1.squarespace.com/static/573351352fe131d8f562b106/t/59e27f5a49fc2b4d44daf34/1508015963634/Hawaii+Draft+Guidelines.pdf>

<sup>71</sup> See *Whalen v. Roe*, 429 U.S. 589, 599– 600 (1977) (the federal constitutional right to privacy not only protects individual’s right to bodily autonomy but also the right to control the nature and extent of highly personal information released about that individual); *Obergefell v. Hodges*, 576 U.S. 644, 663 (2015) (fundamental liberties include “personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs” such as a person’s sexual orientation).

<sup>72</sup> See *supra*, *Nguon*, at 517 F.supp 2d at 1193 (student’s “right to privacy with regards to her sexual orientation falls under the broader right to informational privacy” under federal law); see also, *C.N. v. Wolf*, 2007 WL 9702949, at \*5 (C.D. Cal. Dec. 14, 2007) (“this Court’s decision will likely lead subsequent courts to conclude that the right to privacy in one’s sexual identity is now clearly established”).

<sup>73</sup> See, e.g., *Complainant v. Dep’t of Veterans Affairs, Equal Employment Opportunity Commission Appeal No.*

### GLSEN Recommendations for LEAs and Federally-Funded Schools

- Review how and when gender data is collected from students and only collect where required by law or where it is voluntarily provided and tied to legitimate goals such as improving school climate;
- Review and update enrollment and other school forms to allow students and families to self-identify their gender and preferred names and pronouns.
- Review and remove unnecessary printing or disclosure of student gender markers, including on test booklets and school ID cards;
- Treat as confidential and protected by law information regarding a student’s gender identity, transgender status, enrolled gender, or gender assigned at birth (if different from their gender asserted at school), any former name or legal name if in conflict with affirmed name, any medical history related to gender transition, or their sexual orientation;
- Follow the requirements of FERPA and any applicable state public records laws with respect to such information in student records. Such information should not be disclosed absent a valid exemption under these laws, such as to prevent harm to the student or to comply with a parent’s request for student records;
- Where a student has requested to use a new name due to a gender transition, but has not currently obtained a legal name change order:
  - Make the new name the primary name for all student records;
  - Record the legal name in a separate field or record;
  - Use the legal name only when explicitly required by law (for reporting or other purposes);
  - Use the chosen name exclusively for all other purposes, including for class rosters, transcripts, school directories, yearbooks, other places where the name is publicly displayed or available;
  - Update the recorded gender listed in any student record upon request to male, female, nonbinary (if available), or undesignated (if nonbinary is not available);
  - Upon request, issue or re-issue a student transcript or diploma using the student’s chosen name;
- Provide the option for a student to change their display name and pronouns in campus information systems used by students and staff;
- Maintain and, where required, report student data in a manner that respects and affirms their gender identity and privacy, using their chosen name and self-reported gender identity (unless legally required to do otherwise); and
- Take steps to prevent accidental disclosure of a student’s current or former legal name and recorded gender — if different from the student’s chosen name and gender identity — in electronic and physical files (such as through limited administrative permissions for electronic files, or a separate file and locked filing cabinet for physical files).

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*0120133123, 2014 WL 1653484 (Apr. 16, 2014) (an allegation involving the failure to revise agency records pursuant to gender transition stated a valid sex discrimination claim).*



### Sample SEA Statewide Guidance 1: Kentucky Department of Education<sup>74</sup>

#### Protected Identity Information

Legal Last Name, Legal First Name, Legal Middle Name, Legal Suffix, and Legal Gender: These fields are not available when using the Student Locator tool; but can be accessed on the Identities tab (Census > People > Identities) with proper tool rights. These fields should only be entered in the rare case where it is necessary to track a name or gender that is not the same as what is listed on their birth certificate or other legal document. Do not enter nicknames here or in the required name fields. These fields should be used if the student's health or safety would be in jeopardy if their legal name were visible in Infinite Campus. These fields should be used for transgender students who want to be identified with a name and gender that has not yet been officially changed on their birth certificate or other legal document. The student's preferred name and gender should be entered in the required name and gender fields and the name and gender from the birth certificate or other legal document entered in the legal name and gender fields.

### Sample SEA Statewide Guidance 2: Adapted from Washington Office of the Superintendent of Public Instruction<sup>75</sup>

#### Public School Records

Public school records should use the student's requested name, pronoun, and gender designation unless there is a legal reason not to do so.

- Non-official Records should refer to a student by their requested name. For example, school identification cards, athletic rosters, playbills, attendance lists, etc. should display the student's requested name. Schools should review and eliminate unnecessary disclosure of student gender designations on non-official records.
- Official Records. Certain education records, such as the transcript, may still require a school to use a student's legal name. Schools should change the student's name on a transcript if the student provides documentation of a legal name change. Schools should change a student's gender designation if a parent or student requests the change (i.e., no proof of legal change required).

#### Name & Gender Designation Changes

A legal name or gender designation change is not required in order for public schools to use the student's requested name, pronoun, and gender designation during class, on seating charts, during roll call, on tests and assignments, and on other public school records.

#### Reporting Data from School Records

Student data should be reported in a manner that respects and affirms their gender identity and privacy, using their chosen name and self-reported gender identity, except to the extent legally required for specific reporting purposes.

<sup>74</sup> Kentucky Department of Education, Data Standard Student Enrollment Rev. 7/3/2023 [https://education.ky.gov/districts/tech/sis/documents/data\\_standard-enrollment.pdf](https://education.ky.gov/districts/tech/sis/documents/data_standard-enrollment.pdf)

<sup>75</sup> Washington Office of the Superintendent of Public Instruction, Gender-Inclusive Schools, <https://www.k12.wa.us/policy-funding/equity-and-civil-rights/information-families-civil-rights-washington-schools/gender-inclusive-schools>. See also: Washington Office of the Superintendent of Public Instruction, Comprehensive Education Data and Research System (CEDARS) Reporting Guidance, November 2023, [https://ospi.k12.wa.us/sites/default/files/2023-11/2024\\_cedars\\_reporting\\_guidance\\_161\\_adav1128.pdf](https://ospi.k12.wa.us/sites/default/files/2023-11/2024_cedars_reporting_guidance_161_adav1128.pdf).

“Gender” is not defined by federal statute; therefore, for the purpose of federal collections, LEAs and schools should report a student’s self-identified gender. If a student’s gender is currently not designated as male or female, and a federal collection does not allow for reporting nonbinary gender data, schools may report data based on original enrollment data or as “missing” or “unavailable.”

## **RESTROOMS AND CHANGING ROOMS**

Using restrooms and changing rooms is another routine part of school life where no student should be singled out or excluded. Every student should have access to convenient, private, and safe facilities. If restrooms or changing rooms are divided by gender, all students should be able to use facilities consistent with their gender identity.

Most states and localities follow established international plumbing and building codes established by the International Code Council. As of the 2021 edition, the International Plumbing Code requires restrooms to be designated for all persons if they are single-user, and permits multi-user restrooms to be designated as all-gender.<sup>76</sup> Schools should also consider universal-design approaches for new or remodeled facilities that provide enhanced privacy and can be open to all students. For example, schools may consider an approach recognized by the American Institute of Architects’ 2018 Innovation Award, involving an open restroom plan with fully enclosed stalls.<sup>77</sup> All-user facilities have been implemented in K-12 schools to enhance student privacy and improve sanitation through an easier-to-supervise and maintain communal hand washing area.<sup>78</sup> All-user facilities may also reduce instances of bullying.<sup>79</sup>

### **GLSEN Recommendations for LEAs and Federally-Funded Schools**

- Ensure all students can use facilities consistent with their gender identity;
- Enable students who do not identify as either male or female to decide, with parental input when appropriate, whether existing girls’ or boys’ facilities feel safe and comfortable for them;
- Provide more private options to students upon request and other related accommodations that may be necessary, including for non-LGBTQ+ students who may request additional privacy (e.g. extra time to change if private facilities are further away from the gym);
- Designate existing single-user facilities as available to all students (including, when necessary, converting staff bathrooms into student bathrooms);
- For existing construction, consider low-cost retrofits such as curtains or partitions to increase privacy in changing rooms; and
- For new construction or remodeling, consider universal-design approaches for all-gender facilities with enhanced privacy.

<sup>76</sup> International Code Council, 2021 International Plumbing Code, 3rd version, 403.2. “Separate facilities” (Sept. 2021). Available at [https://codes.iccsafe.org/content/IPC2021P3/chapter-4-fixtures-faucets-and-fixture-fittings#IPC2021P3\\_Ch04\\_Sec403.1.2](https://codes.iccsafe.org/content/IPC2021P3/chapter-4-fixtures-faucets-and-fixture-fittings#IPC2021P3_Ch04_Sec403.1.2).

<sup>77</sup> Joel Sanders, “Stalled!: Transforming Public Restrooms,” Footprint (Autumn/Winter 2017): 109-118. See also <https://www.stalled.online>.

<sup>78</sup> Alex Geli, “Elanco’s \$2.4M locker room plan features non-gender-specific changing areas, showers,” Lancaster Online, October 15, 2019, [https://lancasteronline.com/news/local/elancos-2-4m-locker-room-plan-features-non-gender-specific-changing-areas-showers/article\\_b72b7932-eef6-11e9-9c27-cb87d14dc505.html](https://lancasteronline.com/news/local/elancos-2-4m-locker-room-plan-features-non-gender-specific-changing-areas-showers/article_b72b7932-eef6-11e9-9c27-cb87d14dc505.html); Denise Wong, “Inside new schools: Gender-neutral bathrooms, hubs,” KOLO-TV, May. 31, 2019, <https://www.kolotv.com/content/news/Gender-neutral-bathrooms-and-hub-spaces-Inside-WCSDs-new-schools-510696261.html>.

<sup>79</sup> Andrew LaRowe and Mike Raible, “A Moment of Privacy,” School Planning & Management (April 2018). Available at <https://spaces4learning.com/Articles/2018/04/01/Restrooms.aspx?Page=1>.

### **Sample SEA Statewide Guidance 1: Minnesota Department of Education<sup>80</sup>**

Within the school setting, school officials and leaders need to ensure that all students have access to restrooms, have access to locker rooms to fully participate in classes, sports and activities and have access to hotel accommodations when traveling with school groups for athletic, educational and/or cultural purposes.

Schools should work with transgender and gender nonconforming students to ensure that they are able to access needed facilities in a manner that is safe, consistent with their gender identity and does not stigmatize them. Privacy objections raised by a student in interacting with a transgender or gender nonconforming student may be addressed by segregating the student raising the objection provided that the action of the school officials does not result in stigmatizing the transgender and gender nonconforming student.

### **Sample SEA Statewide Guidance 2: New Jersey Department of Education<sup>81</sup>**

All students 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 school principal must work with the student and staff so all parties are aware of facility policies and understand that the student may access the restroom, locker room, and changing facility that corresponds to the student's gender identity. While some transgender students will want that arrangement, others may be uncomfortable with it. Transgender students 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 students may be uncomfortable using the changing facilities that correspond to the student's gender identity. Non-transgender students 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.

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

## **GENDERED CLASSES AND CLASSROOM ACTIVITIES**

Federal Title IX law, as well as federal and state constitutions, limit the separation of students by gender in the classroom and for extracurricular activities. Generally, any gender-separated activity must be substantially related to an important educational purpose, which must be periodically evaluated, and must provide equal opportunities to all students.<sup>82</sup> Many instances of sex-separation — such as dividing up boys and girls for

<sup>80</sup> Minnesota Department of Education, "A Toolkit for Ensuring Safe and Supportive Schools for Transgender and Gender Nonconforming Students," revised September 25, 2017. Available at <https://education.mn.gov/MDE/dse/safe/index.htm>.

<sup>81</sup> New Jersey Department of Education, "Transgender Student Guidance for School Districts," <https://www.nj.gov/education/safety/sandp/climate/docs/Guidance.pdf>.

<sup>82</sup> For an overview, see U.S. Dept. of Education, Office for Civil Rights, Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities (Dec. 1, 2014), <https://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf>.

classroom activities as a matter of convenience, or based on gender stereotypes about learning styles — will not meet this standard.

In any activity for which students are separated by gender, students should be able to participate in accordance with their gender identity. Thus, if a school maintains separate physical education classes or separate overnight trip accommodations, a transgender boy should be able to participate in the same manner as other boys, a transgender girl should be able to participate in the same manner as other girls, and a nonbinary student should be able to determine which option is the best fit for them based on safety and comfort.

### **GLSEN recommendations for LEAs and Federally-Funded Schools**

- Make classroom activities gender-neutral and avoid dividing students by gender, absent an important, evidence-based educational purpose;
- Evaluate all gender-separated activities at least every two years to ensure it complies with Title IX and other federal and state standards;
- Ensure all students can fully participate in all school activities in a manner consistent with their gender identity — including physical education classes, intramural sports, and overnight trips accommodations; and
- Where school activities or accommodations are separated by gender, enable students whose gender identity is neither male nor female to determine whether participating with boys or girls is most appropriate for them.

### **Sample SEA Statewide Guidance 1: Maryland State Department of Education<sup>83</sup>**

When developing transgender policy or procedure, school systems and administrators may want to consider the following:

- Eliminate gender based sorting of students
  - Old Practice: boys line up over here.
  - New Practice: birthdays between January and June; everybody who is wearing something green, etc.

### **Sample SEA Statewide Guidance 2: Massachusetts Department of Elementary and Secondary Education<sup>84</sup>**

As a general matter, schools should evaluate all gender-based policies, rules, and practices and maintain only those that have a clear and sound pedagogical purpose. Gender-based policies, rules, and practices can have the effect of marginalizing, stigmatizing, and excluding students, whether they are gender nonconforming or not. In some circumstances, these policies, rules, and practices may violate federal and state law. For these reasons, schools should consider alternatives to them.

<sup>83</sup> Maryland State Department of Education, “Providing Safe Spaces for Transgender and Gender Non-Conforming Youth: Guidelines for Gender Identity Non-Discrimination,” October 2015, <http://marylandpublicschools.org/about/Documents/DSFSS/SSSP/ProvidingSafeSpacesTransgenderGenderNonConformingYouth012016.pdf>.

<sup>84</sup> Massachusetts Department of Elementary and Secondary Education, “Guidance for Massachusetts Public Schools Creating a Safe and Supportive School Environment” <http://www.doe.mass.edu/sfs/lgbtq/GenderIdentity.html>.

Whenever students are separated by gender in school activities or are subject to an otherwise lawful gender-specific rule, policy, or practice, students must be permitted to participate in such activities or conform to such rule, policy, or practice consistent with their gender identity.

## **SCHOOL ATHLETICS**

Title IX permits schools to create separate-gender teams to address systemic discrimination and underrepresentation of girls in school athletics. Schools are not required to create separate-gender teams and in many cases, coeducational school sports will best support equal opportunity if schools adopt inclusive practices.

Where school sports are lawfully separated into boys' and girls' teams, transgender and intersex boys should be able to play on boys' teams, transgender and intersex girls should be able to play on girls' teams, and nonbinary students should be able to play on the separate-gender team on which they are most comfortable.

Participation rules for interscholastic sports, particularly in high school, are typically created by a state athletic association.<sup>85</sup> For physical education, intramural sports, and other school sports that are not regulated by a state athletic association, the agency of jurisdiction (either the SEA or LEAs) must comply with federal Civil Rights obligations.

### **GLSEN Recommendations for LEAs and Federally-Funded Schools**

- Adopt policies for intramural sports and other school athletic programming not regulated by the state interscholastic athletics associations that enable all students to participate in a manner consistent with their gender identity (if such policy creation is in their purview rather than the SEA);
- Ensure students and families are informed of school athletics policies; and
- Notify their state interscholastic athletic association and SEAs of any barriers for their students under current state interscholastic athletic association policies.

### **Sample SEA Statewide Guidance 1: *New York State Department of Education*<sup>86</sup>**

Physical Education & Athletics Physical education is a required component of P-12 education and an important part of many students' school lives. The New York State Physical Education Learning Standards are universal and not segregated by gender. New York State Education Law §3201-a prohibits discrimination based on sex, including gender identity and expression, with respect to inclusion in physical education classes and athletics. Therefore, teachers will want to provide inclusive opportunities for all students and phase out the practice of separating physical education classes or activities by gender, as it marginalizes [transgender and gender expansive (TGE)] students and marks them as "others." Separating classes by gender can be eliminated, as most sports have the same rules for all participants, even if there are slight differences in equipment (e.g., golf, basketball, volleyball, soccer, handball,

<sup>85</sup> GLSEN Navigator, "Trans and Nonbinary Athletic Inclusion Policies" <https://maps.glsen.org/trans-and-nonbinary-athletic-inclusion-policies/>.

<sup>86</sup> New York State Department of Education, "Creating a Safe, Supportive, and Affirming School Environment for Transgender and Gender Expansive Students: 2023 Legal Update and Best Practices," <https://www.nysed.gov/sites/default/files/programs/student-support-services/creating-a-safe-supportive-and-affirming-school-environment-for-transgender-and-gender-expansive-students.pdf>.

ice skating, track and field, gymnastics, swimming, etc.). Instead, teachers could group students by characteristics more applicable to physical education activities, such as skill level or experience, to greater assist with student development in the sport.

Teachers should only run gender-segregated activities after careful consideration and students should be allowed to participate in a manner most consistent with their gender identity without penalty. For example, gender-specific lacrosse equipment and rules may necessitate gender-segregated practices to allow students to learn the necessary skills should they wish to pursue the sport at the post-secondary or professional level. However, teachers should provide inclusive opportunities for all students to learn how to use the equipment and explain the various rules for a given sport. Physical education teachers can use such sports as an opportunity to examine gender bias in sports, the pros and cons of gender segregation, and current events.

### **Sample SEA Statewide Guidance 2: Oregon Department of Education<sup>87</sup>**

In Oregon, the Oregon School Activities Association’s (OSAA) policies allow gender expansive students to participate in school athletics and activities in accordance with their consistently asserted gender identity. Not allowing students to participate in athletics in alignment with their gender identity may violate Oregon nondiscrimination rules. Schools should regularly review their athletics policies to ensure that they do not engage in discrimination against gender expansive students. The United States Department of Education may also consider the exclusion of students from athletic participation based on their gender identity to violate Title IX.

The U.S. Department of Education and the U.S. Department of Justice filed a joint statement of interest in *B.P.J. v. West Virginia State Board of Education* stating that “Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., and the Equal Protection Clause of the Fourteenth Amendment do not permit West Virginia to categorically exclude transgender girls from participating in single-sex sports restricted to girls.”

OSAA’s 2022-2023 handbook states that nonbinary, intersex, genderfluid, Two Spirit, and other students who do not consistently identify with the gender binary must be allowed to play on athletic teams of either gender, provided that if the student has tried out or participated in athletics or an activity that is gender-specific or gender-segregated, the student may not participate during that same season on a team of another gender. However, that student may also participate in any non-gendered sports or activities (e.g., football, dance), and may try out for/participate on teams of another gender in subsequent seasons.

#### **Example: Athletic Access and Support**

- A nonbinary intersex student (they/them), whose school records note their sex as X, participates in girls volleyball in the fall and boys swimming in the winter in alignment with state law and OSAA’s regulations. The school meets with the student to discuss comfort and safety needs, and the student requests a slight uniform modification for swimming. The school reviews NFHS uniform rules and consults with OSAA, and provides a swim uniform that covers the student’s torso.

<sup>87</sup> Oregon Department of Education, *supra* note 71.

## **DRESS AND APPEARANCE RULES**

Schools may set basic standards for appropriate dress and appearance, but these rules should be written and enforced in a manner that does not discriminate on the basis of actual or perceived race, color, national origin, disability, or sex, including on the basis of sexual orientation and gender identity.

Dress and appearance rules that impose different rules or expectations for boys and girls may violate Title IX.<sup>88</sup> Separate gender dress and appearance codes can facilitate both sex-based and race-based discrimination. These rules and regulations are often based on impermissible sex stereotypes based on expectations about gender expression for males and females. For example, an appearance rule that requires boys to keep their hair short while permitting girls to have long hair may result in more than de minimis harm, including emotional or dignity harm,<sup>89</sup> especially where maintaining long hair is culturally meaningful to boys.<sup>90</sup> Dress and appearance codes can also enable race-based discrimination when they implicitly or explicitly adopt white norms of dress and appearance as the standard, including by prohibiting hairstyles like braids or locs.<sup>91</sup>

To ensure clarity, equal application, and equal educational opportunities, the best approach is to ensure any dress or appearance rules are gender-neutral and do not require a particular hair texture or style, nor codify gender-based stereotypes and expectations regarding gender expression. Further, such discriminatory restrictions or dress code rules can violate a student's constitutional right to freedom of expression.<sup>92</sup>

### **GLSEN Recommendations for LEAs and Federally-Funded Schools**

- Ensure dress and appearance rules are gender-neutral to avoid reliance on sex stereotypes regarding gender expression;
- Avoid subjective language like “appropriate” or “distracting,” which can facilitate discriminatory and arbitrary enforcement<sup>93</sup>; and
- Track and evaluate implementation to prevent disproportionate implementation.

<sup>88</sup> Rehearing En Banc Brief for the United States as Amicus Curiae at 28 n.5, *Peltier v. Charter Day School, Inc.*, No. 20-1001(L), 20-1023 (4th Cir. Nov. 18, 2021); *Hayden v. Greensburg Cmty. Sch. Corp.*, 743 F.3d 569, 583 (7th Cir. 2014). See also, *Peltier v. Charter Day School, Inc.*, Brief of National Women's Law Center and Coalition of Civil Rights and Public Interest Organizations as Amici Curiae in Support of Plaintiff-Appellees, July 13, 2020, <https://nwl.org/resource/challenge-to-skirts-required-dress-code-policy-peltier-et-al-v-charter-day-school-inc-et-al/>; <https://www.aclutx.org/en/news/texas-students-took-their-school-district-court-discrimination-and-won>.

<sup>89</sup> U.S. Department of Education, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 41535 (July 12, 2022).

<sup>90</sup> Brice Helms, “ACLU Texas files Civil Rights complaint against Sharyland ISD for 5-year-old boy told to cut hair,” CBS 4 / NBC 23 Valley Central News, November 15, 2021, <https://www.valleycentral.com/news/local-news/aclu-texas-files-civil-rights-complaint-against-sharyland-isd-for-5-year-old-boy-told-to-cut-hair/>.

<sup>91</sup> The Official Campaign of The CROWN Act Led by the CROWN Coalition. Accessible at: <https://www.thecrownact.com/>.

<sup>92</sup> Students have a liberty interest in expressing themselves, including in clothing and accessories, in accordance with their gender identity. See *Richards v. Thurston*, 424 F.2d 1281 (1st Cir. 1970); *Doe ex rel Doe v. Yuntis*, No. 001060A (Mass. Super. Oct 11, 2000); *Tinker v. Des Moines*, 393 U.S. 503 (1969).

<sup>93</sup> U.S. Government Accountability Office (GAO), “K-12 Education: Department of Education Should Provide Information on Equity and Safety in School Dress Codes” (2022) <https://www.gao.gov/products/gao-23-105348>.

### Sample SEA Statewide Guidance 1: Michigan State Board of Education<sup>94</sup>

Students should have the right to express their gender at school, within the parameters of the school's dress code, without discrimination or harassment. The school's dress code should be gender-neutral. In the event that the dress code has differing expectations or practices based on gender, students should be permitted to dress in accordance with their gender identity.

### Sample SEA Statewide Guidance 2: Hawaii Department of Education<sup>95</sup>

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 extracurricular activities.

## **STUDENT ORGANIZATIONS**

The federal Equal Access Act (EAA) requires that all secondary student organizations be treated equally.<sup>96</sup> This means that GSAs (Gender and Sexuality Alliance and Gay Straight Alliance) must be recognized and provided access to the same resources as other student groups.

Under the EAA, secondary schools that receive federal funding and allow meetings of other non-curricular student clubs (even just one club that doesn't directly relate to school classes) are not allowed to prohibit the formation of GSAs.<sup>97</sup> Requiring permission slips from parents or guardians should not be used as a way to keep LGBTQI+ students from forming GSAs, and cannot be required unless required for all student-initiated groups or clubs.

## **GLSEN Recommendations for LEAs and Federally-Funded Schools**

- Ensure all non-curricular student groups are treated equally and that no student group is singled out for any limitation based on subject matter or viewpoint; and
- Permit and support the formation and activities of student groups that provide support to LGBTQI+ students, including during distance learning.

<sup>94</sup> Michigan State Board of Education Statement and Guidance on Safe and Supportive Learning Environments for Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) Students (2016) [https://www.michigan.gov/documents/mde/SBStatementonLGBTQYouth\\_534576\\_7.pdf](https://www.michigan.gov/documents/mde/SBStatementonLGBTQYouth_534576_7.pdf)

<sup>95</sup> Hawaii State Board of Education, "Guidance on Supports for Transgender Students" <https://static1.squarespace.com/static/573351352fe131d8f562b106/t/59e27f5a49fc2b4d44daf34/1508015963634/Hawaii+Draft+Guidelines.pdf>

<sup>96</sup> See The Equal Access Act ("EAA") (20 U. S. C. §§ 4071-74) "It shall be unlawful for any public secondary school which receives Federal financial assistance and which has a limited open forum to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, or other content of the speech at such meetings."

<sup>97</sup> See *Colin v. Orange Unified Sch. Dist.*, 83 F.Supp.2d 1135, 1149 (C.D. Cal. 2000) (finding plaintiffs likely to prevail on Equal Access Act claim where the district had denied students' application to form a Gay Straight Alliance student group); see also, 20 U.S.C. § 4071(c)(1) (a school shall be deemed to offer a fair opportunity to students who wish to conduct a meeting if the school uniformly provides that "the meeting is voluntary and student-initiated.")



### **Sample SEA Statewide Guidance 1: Michigan State Board of Education<sup>98</sup>**

In accordance with the Equal Access Act, support the formation of extracurricular student-led clubs, such as Gay-Straight Alliances or Gender and Sexuality Alliances (GSAs) in middle and high schools. The GSA should be afforded the same rights and privileges as other student-led extracurricular clubs in all areas, such as appointment of advisors, publicity for events, and inclusion on school websites. These groups have been shown to improve school climate for all students, regardless of sexual orientation, gender identity, or gender expression, and are protective for all students, both members and non-members. They can serve different functions, including supporting potentially isolated and at-risk LGBTQI+ students and their allies, educating the larger school community, and advocating for a more inclusive school climate.

### **Sample SEA Statewide Guidance 2: Illinois State Board of Education<sup>99</sup>**

If a school allows any student clubs, students have the right to form LGBTQ+-affirming clubs, such as GSAs, on the same terms as any other student group. *Colin ex rel. Colin v. Orange Unified Sch. Dist.*, 83 F. Supp. 2d 1135 (C.D. Cal. 2000) (holding that students had the rights to form GSAs, meet at school, use the school's public address system, and be featured in the school yearbook like other student clubs). Under the federal Equal Access Act, secondary schools that allow meetings of other non-curricular student clubs (clubs that do not directly relate to school classes) are also prohibited from discriminating against any student group based on its viewpoint, including GSAs. 20 U.S.C. § 4071. All student clubs must be treated the same, regardless of purpose. Thus, for example, GSAs may not be singled out for parental permission requirements before a student can join the club.

## **SOCIAL AFFIRMATION SUPPORT PLANS**

Because students spend a significant amount of their time in school settings, schools should have a plan to provide an affirming and supportive environment in which all students, including LGBTQ+ students, can thrive and reach their full potential. For transgender students this can include support for social transition, which allows young people in schools to live consistently in accordance with their gender identity.

Medical treatment is medically necessary for some transgender students who experience gender dysphoria and schools should ensure that such medical needs are addressed in exactly the same way as medical needs for any other student (i.e. use of an inhaler for a student with asthma, access to insulin for a student with diabetes, etc.). Students must always have access to medications that are prescribed by the student's treating physician and provided to the school by the student's parent(s), regardless of the young person's gender identity. Students may also need accommodations in the form of excused absences or late arrival for medical/therapy appointments.

<sup>98</sup> Michigan State Board of Education Statement and Guidance on Safe and Supportive Learning Environments for Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) Students (2016) [https://www.michigan.gov/documents/mde/SBStatementonLGBTQYouth\\_534576\\_7.pdf](https://www.michigan.gov/documents/mde/SBStatementonLGBTQYouth_534576_7.pdf)

<sup>99</sup> Illinois State Board of Education, "Supporting Transgender, Nonbinary and Gender Non-Conforming Students," Non-regulatory Guidance, p. 13, <https://www.isbe.net/Documents/ISBE-Guidance-Supporting-Transgender-Nonbinary-Gender-Nonconforming-Students.pdf>.

Some schools have adopted a practice of creating confidential gender support plans for students, which can include communication plans that allow students to plan for how and when information about their identities is communicated to others.<sup>100</sup>

### GLSEN Recommendations for LEAs and Federally-Funded Schools

- Encourage schools to work with students and their families, as appropriate, to create individualized support and safety plans;<sup>101</sup>
- Designate one or more staff members on each campus who can assist students with obtaining a support and safety plan and communicate that information to all students regularly, including by making this information available online and in the student handbook; and
- Support educators (including teachers, administrators, and classified staff) in receiving the training and ongoing support to build trusting, connected and inclusive environments.

### Sample SEA Statewide Guidance 1: *New York State Education Department*<sup>102</sup>

In some cases, schools will need to provide extra assistance for [transgender or gender expansive (TGE)] students to support them and keep them safe. Schools will want to work closely with the student and their parents/guardians, if given permission by the student to involve them in the planning, in devising an appropriate plan regarding the confidentiality of the student's TGE status. Each student has an individualized life situation that requires different school plans and responses, based on the needs, and wants of the student. It is paramount that schools are cautious about understanding each student's sense of safety and ability to be "out" at home and school...

#### ... At a planning meeting, whether the parents/guardians attend or not, the school will want to:

- discuss the school's role in supporting the student's transition;
- make resources available to the student to address questions or concerns;
- discuss, as appropriate, the timing of the transition, planning responses to questions from school staff and students, changing the student's information in school records, and any other relevant matters;
- put in place measures for supporting the student and creating a safe environment;
- update student education records with the student's affirmed name and appropriate gender marker, and not circulate records with the student's legal name to ensure consistency among teachers, school administrators, substitute teachers, and other staff (For more information see educational records.); and

<sup>100</sup> U.S. Department of Education, Supporting Transgender Youth in Schools, June 2021, <https://www2.ed.gov/about/offices/list/ocr/docs/ed-factsheet-transgender-202106.pdf>.

<sup>101</sup> See Chicago Public Schools "Gender Support Plan for Transgender and Gender Nonconforming Students," <https://www.cps.edu/globalassets/cps-pages/services-and-supports/health-and-wellness/healthy-cps/healthy-environment/lgbtq-supportive-environments/cpsgendersistplan.pdf>.

<sup>102</sup> New York State Education Department, Creating a Safe, Supportive, and Affirming School Environment for Transgender and Gender Expansive Students: 2023 Legal Update and Best Practices, <https://www.nysed.gov/sites/default/files/programs/student-support-services/creating-a-safe-supportive-and-affirming-school-environment-for-transgender-and-gender-expansive-students.pdf>.

- discuss with the student how the student should be referred to, e.g., appropriate pronoun use, in written communication to the student’s parent/guardian. Schools will want to adopt a flexible approach, given that transgender students may not feel comfortable or safe being their authentic selves in all contexts.

A Gender Support Plan is a document that can help schools systematically address various aspects of a transgender or gender expansive student’s experiences at school. It can also be used to help schools create a shared understanding among students, school staff, and parents/guardians about the ways in which the student’s authentic gender will be recognized and supported at school. Students should be included in the creation of these plans, even in cases where their parents/guardians/family are supportive.

### **Sample SEA Statewide Guidance 2: Oregon Department of Education<sup>103</sup>**

Districts and schools have responsibilities related to gender-affirming care that may be fulfilled by a variety of personnel roles depending on district size and staffing capacity. Oregon law requires designated personnel to follow medication administration requirements to determine if the prescribed frequency or schedule of gender-affirming medication necessitates its administration within schools in order for the student to attend or remain in school, as they do with all medications. When schools partner with external organizations to administer parts of their educational program, they must ensure that those partnerships comply with nondiscrimination practices as required by state or federal law. Schools should consult with legal counsel if they have questions about nondiscrimination requirements of external partnerships. Mental health care or social health professionals who work in schools are reminded that Oregon law prohibits “conversion therapy” as defined in ORS 675.850 for any youth under the age of 18. Conversion therapy has been denounced as harmful by dozens of healthcare organizations.

## **PROFESSIONAL DEVELOPMENT**

All school staff should be informed of student’s rights and their obligations in making sure those rights are protected. Therefore, staff must have access to appropriate professional development opportunities.

SEAs should support LEAs by providing technical assistance on creating professional development opportunities for every school on supporting LGBTQI+ students. In addition, technical assistance on publishing and disseminating professional development materials and resources. SEAs and LEAs may also consider utilizing GLSEN’s professional development program, which provides educator training workshops, and resources on supporting LGBTQI+ students.<sup>104</sup>

### **GLSEN Recommendations for LEAs and Federally-Funded Schools**

- Ensure all K-12 educational professionals, including principals, teachers, coaches, school counselors, school psychologists), nurses, have access to high-quality, culturally affirming, accessible professional development opportunities, covering at minimum the following topics:

<sup>103</sup> Oregon Department of Education, *supra* note 71.

<sup>104</sup> GLSEN Professional Development. See more: <https://www.glsen.org/professional-development>; Request form: <https://form.asana.com/?k=9bs3HKpvANdbMhNsRe4Mtg&d=7347765056153>

- Understanding student’s rights and applicable policies regarding nondiscrimination, harassment and bullying, privacy and records;
- Intervening in anti-LGBTQI+ bullying, harassment, and other forms of anti-LGBTQI+ peer victimization;
- Recognizing and reporting incidents of LGBTQI+ discrimination;
- Understanding and using students’ affirmed names and pronouns;
- Avoiding unnecessary gender-specific language or gender-separation in classes and extracurricular activities;
- Understanding young people’s intersecting identities that are inclusive of gender identity and sexual orientation;
- Understanding LGBTQI+ students’ experiences in school and their impacts on student safety, well-being, and academic success;
- Ways to support LGBTQI+ students and to improve the school environment;
- Engaging with parents and guardians in supporting their LGBTQI+ children; and
- Understand federal and state protections from employment discrimination based on sexual orientation, gender identity, sex characteristics (including intersex traits), and sex stereotypes.
- Ensure that, in addition to the above, Title IX coordinators have completed all required training, including on:
  - Investigating complaints of anti-LGBTQI+ discrimination, including harassment or bullying;
  - Grievance procedures and informal resolution processes;
  - Recordkeeping related to complaints of discrimination, harassment, or bullying based on sex, including sexual orientation, gender identity, sex characteristics (including intersex traits), sex stereotypes, and pregnancy or related conditions.
- Ensure that school staff other than Title IX coordinators that are responsible for implementing grievance procedures or facilitating informal resolution processes have completed required training on their responsibilities and the standards or rules that apply.

**Sample SEA Statewide Guidance 1: Massachusetts Department of Elementary and Secondary Education (DESE)<sup>105</sup>**

In order to further a safe and supportive school environment for all students, schools should incorporate education and training about transgender and gender nonconforming students into their anti-bullying curriculum, student leadership training, and staff professional development.

As with other efforts to promote a positive school culture, it is important that student leaders and school personnel, particularly school administrators, become familiar with the gender identity law, regulations, guidance, and related resources, and that they communicate and model respect for the gender identity of all students.

Professional development for school staff could include topics on gender identity and gender nonconformity such as: the Massachusetts Student Anti-discrimination Law and Regulations; the DESE Guidance on Notifying Parents When a Student Has Been Bullied Based on Sexual Orientation or Gender Identity/Expression; key terms related to

<sup>105</sup> Massachusetts Department of Elementary and Secondary Education, Guidance for Massachusetts Public Schools Creating a Safe and Supportive School Environment. Accessible at: <https://www.doe.mass.edu/sfs/lgbtq/GenderIdentity.html>

gender identity and expression; the development of gender identity; the experiences of transgender and other gender nonconforming students; risk and resilience data regarding transgender and gender nonconforming students; ways to support transgender students and to improve the school climate for gender nonconforming students; gender-neutral language and practices; and this guidance.

### **Sample SEA Statewide Guidance 2: Michigan Department of Education (MDE)<sup>106</sup>**

Provide professional development opportunities on issues affecting LGBTQI+ students to district staff and board members. These opportunities should extend beyond teachers, administrators, and school mental health staff, to include anyone who interacts with students (e.g., coaches, bus drivers, cafeteria workers, custodians, and administrative support staff). The MDE conducts introductory and advanced workshops to help educators and other school personnel understand, assess, and improve school safety and climate for all students, including those who are LGBTQI+. Districts should encourage and support staff attendance at these and other role-appropriate professional development opportunities.

### **ADDITIONAL RESOURCES FOR LEAS ON LGBTQI+ ISSUES IN K-12 EDUCATION**

GLSEN recommends that SEAs list additional resources that may be helpful to LEAs in guidance on LGBTQI+ student nondiscrimination protections, such as reports, surveys or other research data, and information on evidence-based best practices. SEAs should consider the resources listed below from GLSEN and other organizations.

#### **U.S. Department of Education Toolkit: Creating Inclusive and Nondiscriminatory School Environments for LGBTQI+ Students**

#### **U.S. Department of Education Fact Sheets:**

- **Supporting Transgender Youth in Schools**
- **Confronting Anti-LGBTQI+ Harassment in Schools**
- **Supporting Intersex Students**

#### **U.S. Department of Education Resources for LGBTQI+ Students**

#### **CDC Resource: LGBTQ-Supportive School Policies and Practices Help All Students Thrive**

#### **GLSEN and NCTE Model District Policy on Transgender and Gender Nonconforming Students**

#### **GLSEN Model District Anti-Bullying & Harassment Policy**

**GLSEN Changing the Game Resources** (for administrators, athletic directors, P.E. teachers, and coaches to foster inclusive school sports)

**GLSEN Local School Climate Survey** (for collecting data on anti-LGBTQI+ harassment or bullying and other school climate indicators)

**GLSEN Report: States' Use of ESSA to Advance LGBTQ+ Equity** (to identify federal funds that can support local policy review and development and programming to foster safe, inclusive schools).

<sup>106</sup> Michigan Department of Education, "State Board of Education Statement and Guidance on Safe and Supportive Learning Environments for Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) Students," [https://www.michigan.gov/documents/mde/SBStatementonLGBTQYouth\\_534576\\_7.pdf](https://www.michigan.gov/documents/mde/SBStatementonLGBTQYouth_534576_7.pdf).

## Part 3: Proactive steps to support TitleIX implementation and compliance with federal reporting requirements.

Discrimination based on sex, including sexual orientation, gender identity, sex stereotypes, sex characteristics (including intersex traits), and pregnancy and parental status, in federally-funded education programs. Proactively fostering safe and inclusive school climates where LGBTQI+ students, including those who are transgender, nonbinary, BIPOC, and people with disabilities, are able to thrive and reach their full potential helps prevent and prepare educators to effectively respond to illegal discrimination, harassment, and bullying based on sex, including sexual orientation, gender identity, sex stereotypes, sex characteristics (including intersex traits), and pregnancy and parental status.

Part 3 details how SEAs can support LEAs in improving school climate for LGBTQI+ youth by adopting statewide systems and standards; providing technical assistance and resources; and convening and maintaining task forces and offices dedicated to advancing intersectional, LGBTQI+ inclusive equity.

### Eliminate Technical Barriers to Equal Educational Opportunity through the Use of an Inclusive Statewide Student Information System

Statewide student information systems or student information management systems can support LEAs in accurately recording gender identity data, maintaining confidential files when necessary, and preventing the harm of a transgender or nonbinary student being addressed by the incorrect name or pronouns.

Washington State uses a Comprehensive Education Data and Research System (CEDARS), regularly updates the CEDARS manual, and provides additional guidance to assist schools in maintaining and, where required, reporting student data in a manner that respects and affirms their gender identity and privacy.<sup>107</sup>

#### GLSEN Recommendations for SEAs

- Ensure any statewide student information system is able to:
  - Include separate data fields for a student’s chosen name (to be used for all routine school purposes) and legal name (to be used where explicitly required for reporting or other purposes);
  - Permit a student’s gender marker to be updated to male, female, nonbinary or another gender;
- Only contract with student information system student vendors that provide the above functions; and

<sup>107</sup> Washington Office of the Superintendent of Public Instruction, CEDARS, <https://www.k12.wa.us/data-reporting/reporting/cedars>. See also: Washington Office of the Superintendent of Public Instruction, Comprehensive Education Data and Research System (CEDARS) Reporting Guidance, November 2023, [https://ospi.k12.wa.us/sites/default/files/2023-11/2024\\_cedars\\_reporting\\_guidance\\_161\\_adav1128.pdf](https://ospi.k12.wa.us/sites/default/files/2023-11/2024_cedars_reporting_guidance_161_adav1128.pdf) on page 40.

- Disseminate clear technical guidance to LEAs on how to input information related to current and legal name (if different), and gender identity and enrolled gender (if different), in student information systems (see Part 2: Student Privacy and School Records in the Model Statewide Guidance for detailed recommendations).

## Provide Technical Assistance to Schools and LEAs on Collecting and Reporting Data, including the Civil Rights Data Collection (CRDC)

LEAs and schools have many reporting requirements and some may create additional challenges for the adoption of more inclusive student information systems. Most federal collections still require schools to report students' gender as "male" or "female." However, the 2021-2022 CRDC permits school districts to submit student gender data categorized as "male," "female," or "nonbinary"<sup>108</sup> and, beginning with the 2022-2023 collection, ED requires that LEAs that collect nonbinary data to report it via the CRDC. The CRDC now also includes measures related to allegations of anti-LGBTQI+ harassment and bullying.

SEAs can support LEAs by disseminating the latest federal technical assistance and by directly supporting LEAs in fulfilling their reporting obligations. For example, the Wisconsin Department of Public Instruction (WDPI) compiles available data required by the CRDC on behalf of LEAs and has a hub where LEAs can access federal and state resources, federal communications regarding the CRDC, and further support.<sup>109</sup>

### GLSEN Recommendations for SEAs

- Disseminate clear technical guidance on how to report gender identity data if different from enrolled gender data and in cases where a federal collection does not permit reporting of nonbinary gender identity data (see Part 2: Student Privacy and School Records in the Model Statewide Guidance for detailed recommendations);
- Provide training to designated LEA and school staff on accurate collection and reporting of data for the CRDC, including that related to:
  - Nonbinary inclusive student information systems and nonbinary gender data;
  - Harassment or bullying based on sexual orientation, gender identity, sex stereotypes, and sex characteristics (including intersex traits);
  - Bullying prevention policies that enumerate sexual orientation and gender identity;
  - School discipline;
  - School law enforcement officers;
  - Title IX coordinators contact information;
- Disseminate information about federal reporting tools such as online reporting portals and sample reporting forms;
- Reduce burden on LEAs by compiling LEA data available through a statewide student information system;

<sup>108</sup> U.S. Department of Education, 2023–24 Civil Rights Data Collection: General Overview, Changes, and List of Data Elements, <https://www2.ed.gov/about/offices/list/ocr/docs/2023-24-crdc-qa.pdf>.

<sup>109</sup> Wisconsin Department of Public Instruction, "Civil Rights Data Collection (CRDC) Support for Districts SY 2021-22," (<https://dpi.wi.gov/wise/federal-reporting/crdc>).

- Remind and encourage LEAs and schools to complete the CRDC during collection years; and
- Provide similar support to LEAs and schools when reporting data required by state law and regulations protecting LGBTQI+ youth’s equal education opportunity.

## Use State Task Forces or Commissions to Support Title IX Implementation and Continuous Improvement

Ensuring equitable educational opportunities for all students requires proactive planning that considers every aspect of education. SEAs should engage communities throughout the state to inform these efforts, including through a statewide task force or commission on supporting marginalized students and youth, including LGBTQI+ students and youth.<sup>110</sup> A state task force may be convened by the SEA, or by the Governor or another state agency in collaboration with the SEA. For example, the Oregon Department of Education established an advisory group that produced an “LGBTQ2SIA+ Student Success Plan” in June 2020, which was later updated in 2023.<sup>111</sup> The Massachusetts Commission on LGBTQI+ Youth is a standing, independent state agency that regularly meets with state agencies and community stakeholders, produces annual recommendations, and administers the state’s Safe Schools Program in collaboration with the Department of Elementary and Secondary Education.<sup>112</sup> SEAs, in coordination with other state agencies and governors, should assess the best approach for their state.

Task force members should represent diverse communities and stakeholders, should have relevant expertise, and should be empowered to meet with or survey those with relevant experience, including LGBTQI+ students; LGBTQI+ parents, caregivers, and family of students; LGBTQI+ educators; and community-based groups serving LGBTQI+ youth.

### GLSEN Recommendations for SEAs

- Convene or participate in a standing statewide task force or commission that addresses Title IX implementation (and related state protections) and best practices for fostering safe, inclusive schools for LGBTQI+ youth;
- Report to the statewide task force or commission on SEA actions (undertaken or planned) and guidance (issued or planned) related to Title IX implementation and invite feedback to inform future or final actions and guidance; and
- Invite or receive recommendations from the statewide task force or commission on at least an annual basis.

<sup>110</sup> Massachusetts Commission on LGBTQ Youth, Homepage. Available at: <https://www.mass.gov/orgs/massachusetts-commission-on-lgbtq-youth>.

<sup>111</sup> Oregon Department of Education, *supra* note 71.

<sup>112</sup> Massachusetts Commission on LGBTQ Youth, Homepage. Available at: <https://www.mass.gov/orgs/massachusetts-commission-on-lgbtq-youth>.



## Support GSAs and Inclusive School Communities

In addition to ensuring that student organizations are treated equally, SEAs can take steps to foster an inclusive school community, including:

- Offering training, technical assistance, and reference materials for LEAs, educators, and GSAs on activities and best practices to foster an inclusive school climate and community<sup>113</sup>;
- Establishing a dedicated office or staff position to provide such training and technical assistance, such as the Massachusetts Safe Schools Program for LGBTQI+ Students<sup>114</sup>;
- Supporting and encouraging the virtual continuation of afterschool programs, including GSAs and including in the context of online learning;
- Working with LEAs and community groups to establish state and/or regional GSA Councils, such as the Massachusetts GSA Leadership Council<sup>115</sup>.

## Adopt Inclusive Curricular Standards and/or Support LEAs in Adopting and Implementing LGBTQI+ Inclusive Curriculum

GLSEN’s research indicates that LGBTQI+ inclusive curricular resources, including curriculum and school library offerings, have profound positive impacts on LGBTQI+ students. The 2021 National School Climate Survey found that, compared to students who did not have access to any LGBTQI+-inclusive curriculum, LGBTQI+ students who did have access to curriculum inclusive of LGBTQI+ people were less likely to hear homophobic remarks, were less likely to hear negative remarks about gender expression, performed better academically in school, and were more likely to plan on pursuing post-secondary education.<sup>116</sup> The majority of LGBTQI+ students (66.9%) who were taught an LGBTQI+-inclusive curriculum reported that their classmates were somewhat or very accepting of LGBTQI+ people, as compared to 35.3% of LGBTQI+ students who were not taught an inclusive curriculum.<sup>117</sup>

A growing number of states have passed curricular standards laws that include addressing LGBTQI+ populations in one or more academic subjects and in sexual and reproductive health education.<sup>118</sup>

<sup>113</sup> For example, the Michigan Department of Education partners with Regional School Health Coordinators to provide introductory and advanced workshops to help educators and other school personnel understand, assess, and improve school safety and climate for all students, including those who are LGBTQI+. Michigan Department of Education, Creating Safe Schools for Sexual Minority Youth, <https://www.michigan.gov/mde/services/health-safety/curriculum/health/topics/creating-safe-schools-for-sexual-minority-youth>.

<sup>114</sup> Massachusetts Department of Elementary and Secondary Education, “Safe Schools Program for LGBTQI+ Students”, <https://www.doe.mass.edu/sfs/lgbtq/>.

<sup>115</sup> Massachusetts Department of Elementary and Secondary Education, “Massachusetts Gender and Sexuality Alliance (GSA) Leadership Council” <https://www.doe.mass.edu/sfs/lgbtq/gsalcouncil.html>

<sup>116</sup> Kosciw, J. G., Clark, C. M., & Menard, L. (2022). The 2021 National School Climate Survey: The experiences of LGBTQI+ youth in our nation’s schools. New York: GLSEN. (p. 62-65).

<sup>117</sup> *Id.* at p. 65.

<sup>118</sup> GLSEN, Navigator: Inclusive Curricular Standards Policies, <https://maps.glsen.org/inclusive-curricular-standards-policies/>.

### GLSEN Recommendations for SEAs

- Review and adopt curricular standards that expressly include the histories, contributions, and perspectives of people who are LGBTQI+, BIPOC, individuals with a disability, and who otherwise experience marginalization<sup>119</sup>;
- Develop model inclusive curriculum<sup>120</sup> and other resources that encourage educators to consider diversity and inclusion throughout all lesson plans, including in the choice of topics, problems, events, and primary source materials<sup>121</sup>;
- Supporting and encouraging school libraries in identifying and acquiring appropriate LGBTQI+ inclusive materials and materials focusing on LGBTQI+ related topics; and
- Provide technical assistance, including professional development, to LEAs and schools to support the adoption of inclusive curriculum.<sup>122</sup>

### Additional GLSEN Resources for SEAs

**Inclusive Curricular Standards: Representation of LGBTQ+ and Other Marginalized Communities Promotes Student Achievement and Wellbeing**

**LGBTQ+ Data Inclusion: Advancing Intersectional Equity in K-12 Education Systems States' Use of ESSA to Advance LGBTQ+ Equity**

**The GSA Study Report: Results of National Surveys About Students' and Advisors' Experiences in Gender and Sexuality Alliance Clubs**

**The National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation's Schools**

<sup>119</sup> Washington, DC K-12 Social Studies Standards, Revised Standards (March 2023) [https://osse.dc.gov/sites/default/files/dc/sites/osse/page\\_content/attachments/FINAL\\_DRAFT\\_3.16.23%20OSSE%20social%20studies%20standards%20SBOE%20revisions%20CLEAN%20COPY.pdf](https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/FINAL_DRAFT_3.16.23%20OSSE%20social%20studies%20standards%20SBOE%20revisions%20CLEAN%20COPY.pdf).

<sup>120</sup> GLSEN, Connecticut Funds K-8 Model Curriculum that Includes LGBTQ+ Studies, July 2, 2021, <https://www.glsen.org/news/connecticut-funds-k-8-model-curriculum-includes-lgbtq-studies>

<sup>121</sup> Illinois State Board of Education, "Supporting Transgender, Nonbinary and Gender Non-Conforming Students," Non-regulatory Guidance, p. 15, <https://www.isbe.net/Documents/ISBE-Guidance-Supporting-Transgender-Nonbinary-Gender-Nonconforming-Students.pdf>.

<sup>122</sup> For example, the Oregon Department of Education provides professional development training, sample lesson plans, and organizes "train the trainer" events throughout the state, as required by S.B. 13 (2017) Tribal History/Shared History. <https://www.oregon.gov/ode/students-and-family/equity/NativeAmericanEducation/Pages/Senate-Bill-13-Tribal-HistoryShared-History.aspx>.

The California State Board of Education provides trainings on its state curriculum frameworks, or curricular standards, which include LGBTQ+ communities. California positions inclusive curriculum as part of a broad strategy to support student transitions through grade levels and to prevent dropping out. The state gives LEAs receiving ESSA Title I aid priority registration for these trainings. California State Board of Education (2020). California ESSA Consolidated State Plan (p. 108). <https://www.cde.ca.gov/re/es>.

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