



School Leaders Risk Management Association

UPDATE

May 2014



Are you Addressing the Needs of Your Transgender Students?

More and more schools are facing the threat of lawsuits over a failure to systematically address the issues surrounding the education of transgender and non-gender conforming students. Use SLRMA's District Transgender and Gender Non-conforming Student Self-Audit Checklist and Best Practices now to help your school address the issues.

Approximately 700,000 people in the United States identify themselves as transgender.¹ "Transgender" is a term for people whose gender identity, expression or behavior is different from those typically associated with their assigned sex at birth. This can lead to significant issues for transgender people as they seek to navigate life subject to "normal" expectations and social mores while still maintaining their gender identity. The medically recognized psychological distress associated with having a gender identity different from the sex that one is assigned at birth is called "gender dysphoria."

Schools are not immune to the issues associated with having transgender students. In response to a 2011 survey of 6,500 people who expressed a transgender identity or gender

non-conformity, 78% of those people surveyed reported harassment, 35% reported suffering physical assaults and 12% reported suffering sexual violence while in K-12 schools. These abuses led to almost 15% of the respondents leaving their K-12 or higher education school.²

The Federal Government and the courts are taking notice and holding schools responsible for equal treatment. On April 29, 2014, the U.S. Department of Education's Office of Civil Rights ("OCR") formally declared that it considers Title IX applicable to transgender and gender non-conforming students. In its guidebook, Questions and Answers Title IX and Sexual Violence (available for immediate download at SLRMA.org), the OCR also stated that it will investigate complaints involving discrimination based on gender identity.

¹ *How many people are lesbian, gay, bisexual, and transgender?* (April 2011) Gary J. Gates, The William Institute. The last national census in 2010 did not allow for individuals to identify themselves as anything other than "male" or "female".

² *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (2011); National Center for Transgender Equality and National Gay and Lesbian Task Force.

District Transgender and Gender Non-conforming Student Self-Audit Checklist and Best Practices

for School Districts on Providing Equal Access to the Educational Environment for Transgender and Gender Non-conforming Students.

II. Has the district developed a vocabulary for discussing issues that arise involving transgender and gender non-conforming students? Yes No

Does the policy establish a common vocabulary for school personnel to use when discussing these topics? Yes No

Does the policy define the following terms:

- gender expression,
- gender identity,
- transgender,
- gender transition,
- gender nonconformity,
- gender stereotype,
- sex-specific facilities, and
- sex assigned at birth?

III. Does the district's policy state its purpose? Yes No

Does the policy cite any relevant federal, state or local laws (or ordinances) prohibiting discrimination or harassment based on a student's transgender or gender non-conforming status and its mission to uphold such laws (or ordinances)? Yes No

IV. Does the district's policy address the use of school restrooms? Yes No

Does the policy state that using gender-neutral restrooms shall be a matter of choice (not a requirement) for transgender and gender non-conforming students (i.e. any student who desires increased privacy can use a gender-neutral restroom regardless of the reason, or can use the restroom that corresponds to his or her gender identity)? Yes No

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VI. Does the district's policy address interscholastic sports and physical education classes? Yes No

Does the policy state that transgender and gender non-conforming students may not be required to use the locker room that corresponds to their sex assigned at birth if they do not choose to do so? Yes No

Does the policy include a list of what might constitute reasonable alternatives to the traditional male or female locker room (such as a restroom stall with a door, a physical education instructor's office, a separate changing room, or another arrangement that keeps the student's gender identity confidential)? Yes No

VII. Does the district's policy address non-sport school activities that are often segregated by gender? Yes No

When students are typically separated by gender for school activities (such as class discussions and field trips, including overnight events both on and off campus), does the policy require school personnel to ensure students may participate according to the gender identity that they consistently assert at school (even if it is not the sex assigned at birth)? Yes No

Maine's highest court: Transgender student's rights were violated

Nicole Maines' school was wrong to require the fifth-grader to use a unisex bathroom, justices rule in a historic gender-identity decision that could be a model for other states.

—Portland Press Herald
January 31, 2014

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Moreover, the Maine Supreme Court recently found a school district liable for violating a student's civil rights when it refused to allow the transgender female student, (a transgender person who identifies as a woman), to use the girl's washroom. (*Doe v. Regional School Unit 26*, 2014 WL 325906, Maine Sup. Ct. January 2014). Significantly, the court specifically recognized the student was subject to a "504" plan given her gender dysphoria.

Public school districts will be one of the first institutions that will need to adapt to and address the needs of transgender people. The issues will not only arise from the student body, but employees and parents as well. For example, schools are already facing allegations of employment discrimination from transgender teachers and other employees for schools' failure to make accommodations.

With the OCR's decision to enforce Title IX with respect to transgender students, and the likely applicability of the Individuals with Disabilities Education Act to gender dysphoria (as found in the Maine case discussed above), it is apparent that schools must begin to immediately address the issues applicable to transgender and gender non-conforming students.

To assist your school in creating or evaluating its policies and procedures regarding the treatment of transgender and gender non-conforming students, SLRMA is pleased to offer its *District Transgender and Gender Non-conforming Student Self-Audit Checklist and Best Practices*, available for immediate download at SLRMA.org. We believe your district will find this checklist helpful. ▲



SLRMA's Checklists are tools to help you avoid potentially damaging liability.

In April, SLRMA's most popular checklists were:

- 1 School Districts Cloud Computing Services Self-Audit Checklist
- 2 District Social Media Policy, Part 2: Administrator/Teacher Social Media Policies Checklist
- 3 District Social Media Policy, Part 1: Student Social Media Policies Checklist
- 4 Fair Labor Standards Act: Self-Audit Checklist For School District Employers, 2013 Update

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SLRMA UPDATE | May 2014

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MILESTONE: US Dept. of Education. Announces Title IX Protects Transgender Students

On Tuesday, the Department of Education's Office for Civil Rights (OCR) issued explicit guidance barring schools that receive federal Title IX funds from discriminating against transgender and gender-nonconforming students.

— *MotherJones.com*
April 29, 2014

**Download SLRMA's
2014 District Transgender and Gender Non-conforming
Student Self-Audit Checklist and Best Practices
Today to Protect Your School**