

Pender County Schools Administrator's Workshop

Equity & Diversity: Transgender Issues in Public Schools

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A 2016 UCLA study estimated that there are 1.4 million transgender adults in the United States.

Roadmap

Terminology

Gender Anti-Discrimination Laws

Transgender Issues: Employees

Transgender Issues: Students

Questions



Terminology

Sex Assigned At Birth

- Female
- Male
- Other/Intersex

Gender Identity

- Female/Woman/Girl
- Male/Man/Boy
- Other Gender(s)

Gender Expression

- Feminine
- Masculine
- Other

Physically Attracted To

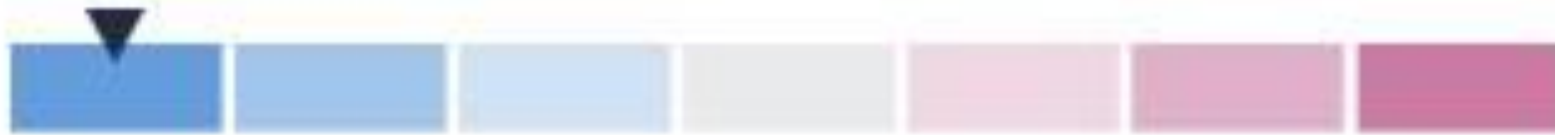
- Women
- Men
- Other Gender(s)

Emotionally Attracted To

- Women
- Men
- Other Genders

Masculine

Feminine





Gender Anti- Discrimination Laws

Gender Anti- Discrimination Laws

United States Constitution

Federal Laws

North Carolina Anti-Discrimination Laws

United
States
Constitution

Equal Protection Clause

Substantive Due Process
(Right to Privacy)

First Amendment

Title VII, Civil Rights Act of 1964

It shall be unlawful employment practice for an employer—

- (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to their compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
- (2) to limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect their status as an employee, because of such individual's race, color, religion, sex, or national origin.

Title IX of the Education Amendments of 1972

- No person in the United States shall, **on the basis of sex**, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.
- Applies in sports, admissions, employment, as well as to sexual harassment.



North Carolina Anti-Discrimination Laws

N.C. Gen. Stat. 126-16

- Prohibits discrimination by public employers

N.C. Gen. Stat. 143-422.2

- Equal Employment Practices Act – only provides that it is the “public policy” of the State to protect the right of employees to obtain employment without discrimination. No mandate or enforcement provided.

N.C. Gen. Stat. 115C-335.5

- Local boards may adopt sexual harassment policies

N.C. Gen. Stat. 115C-407.15 *et seq.*

- Prohibits bullying and harassment in public schools & requires local board policies

Important Sex Discrimination Cases

- *Meritor Savings Bank v. Vinson* (1986)
 - U.S. Supreme Court holds that sexual harassment resulting in hostile work environment prohibited as disparate treatment under Title VII
- *Price Waterhouse v. Hopkins* (1989)
 - U.S. Supreme Court holds that sexual stereotyping can be a form of prohibited sex discrimination
 - “[G]ender must be irrelevant to employment decisions”
- Both cases laid the groundwork for later cases involving discrimination on the basis of sex, sexual orientation, and gender identity

Important Sex Discrimination Cases

Gerdom v. Continental Airlines, Inc. (9th Cir. 1983)

- Airline had weight restrictions for female “flight hostesses” but not for males in similar positions
- Not legal under Title VII

Carroll v. Talman Fed. Sav. & Loan Assoc. (7th Cir. 1980)

- Females required to wear uniforms, but males could wear business suits
- Not legal under Title VII



Transgender Issues: Employees

Bostock v. Clayton County

- Title VII protects employees against discrimination based on sexual orientation **and** gender identity
- Companion Case: *R.G. & G.R. Harris Funeral Homes, Inc. v. EEOC*
 - Involved transgender employee who was terminated as the employee was starting to transition
 - Violation of Title VII (Discrimination on the basis of sex)

Bostock v. Clayton County

“An employer who fired an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex.”

- **Justice Gorsuch**

- **Bottom Line:** An employer may not, under Title VII, discriminate against an employee based upon sexual orientation **OR** transgender status.
- **Remember:** This includes discrimination in the “terms and conditions” of employment and also includes sexual stereotyping.

Before Bostock

Prior to 2004

- Several cases held it was a violation of Title VII to terminate an employee based on gender transition

Obergefell v. Hodges (2015)

- Under the Due Process Clause, same-sex couples may not be deprived of basic, fundamental right to marry

Grimm v. Gloucester School Board

- School district violated the Constitution and Title IX with a policy that prohibited transgender student from using the bathroom aligned with the student's gender identity

Before Bostock

Cruzan v. Special School Dist. #1 (8th Cir. 2002)

- Policy of allowing transgender co-worker to use women's (faculty) restroom does not amount to discrimination, sexual harassment, or hostile environment of non-transgender employee

Parents for Privacy v. Barr (9th Cir. 2020)

- Lawsuit by parents and students alleging bathroom policy allowing transgender students to use restrooms, locker rooms, and showers that matched their gender identity violated the following:
 - Fundamental right to privacy
 - Title IX (Created harassment & fear based on sex)
 - Fundamental right of parents to direct the care and education of their children
 - First Amendment – Right to Free Exercise of Religion (Parents' and students' right to their religious beliefs around modesty)
- 9th Circuit rejected all claims and upheld bathroom policy

Recent Developments

Meriwether v. Hartop (6th Cir. 2021)

- Public college professor stated First Amendment claim after being reprimanded for failure to refer to students by their preferred pronouns

26 Mar. 21

6 Aug. 21

Kluge v. Brownsburg Comm. School Corp. (S.D. Indiana, 2020)

- Teacher's Title VII claim for religious discrimination based on his religious objection to using transgender students' preferred pronouns is dismissed.
- Court held that the teacher had no claims to Free Speech or Free Exercise Clause in his failure to follow the school's policy regarding addressing transgender students.

7 Dec. 20

Byron Tanner Cross v. Loudoun County School Board (20th Judicial Cir. VA 2021)

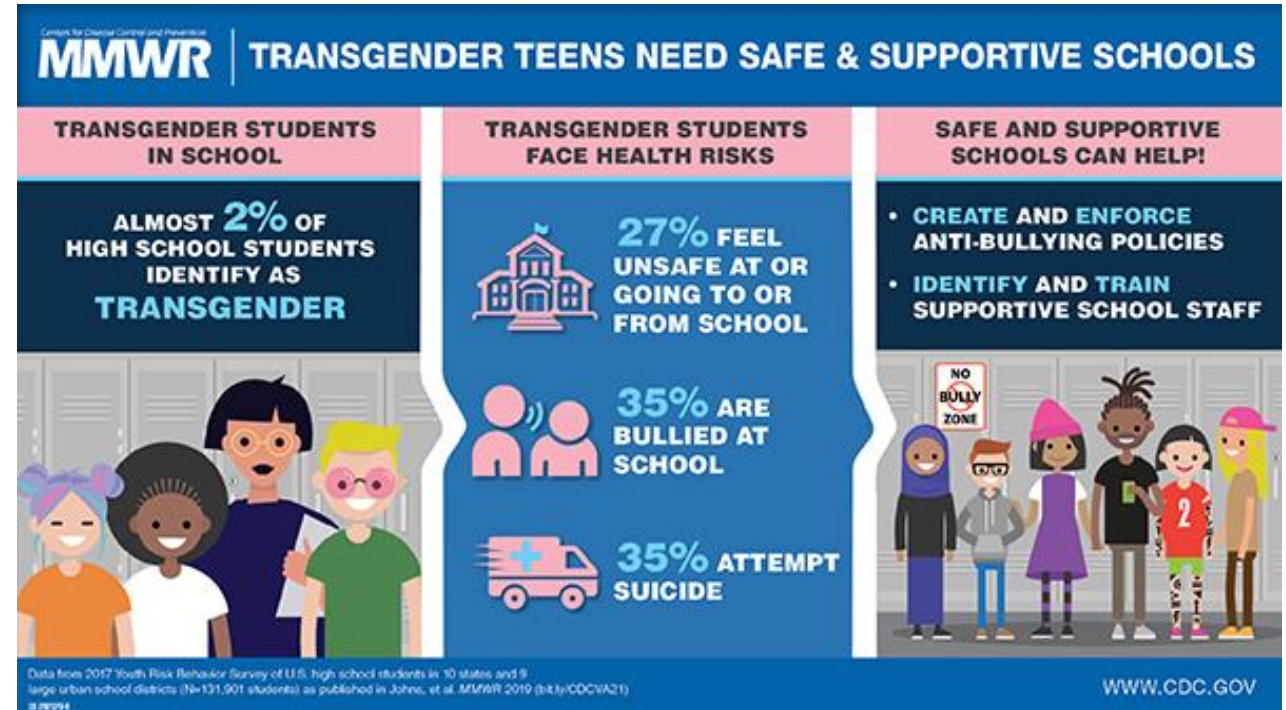
- Trial judge issued preliminary injunction ordering school district to reinstate teacher who refused to address transgender students with their preferred names and pronouns.



Transgender Issues: Students

2019 Centers for Disease Control and Prevention

- Transgender youth appear to be at a higher risk for violence victimization, substance use, suicide risk, and sexual risk behaviors than cisgender youth
- Other Statistics
 - More than 2/3 transgender students avoid using the bathroom at school
 - 31.8% of LGBTQ+ students miss school because they feel unsafe
 - 71.5% of LGBTQ+ students avoid school functions



Title IX

Title IX provides that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. 1681(a).

Grimm v. Gloucester

- After travelling to the U.S. Supreme Court and back down to the Federal District Court, the case was back in the 4th Court of Appeals, which handed down a final decision in August 2020, following the Supreme Court decision in *Bostock*
 - The 4th Circuit applied *Bostock*, which dealt with Title VII, to Grimm's sex discrimination claims under Title IX.
- Board policy requiring students to use bathrooms that correspond to their biological sex violated transgender male student's rights under Title IX and the Equal Protection Clause
- Judge Wynn's concurring opinion compares this bathroom segregation to racial segregation:
 - The board's action here "is indistinguishable from the sort of separate-but-equal treatment that is anathema under our jurisprudence."
 - The result is to label students "as unfit for equal participation in our society."
- **Note:** *Grimm* case sets precedent and applies in North Carolina

Recent Developments

Executive Order No. 13988, Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation

- The order is based on Bostock and extends the sex discrimination prohibition to other laws, including Title IX

20 Jan. 2021

8 Mar. 2021

Executive Order No. 14021, Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation and Gender Identity

- Requires the U.S. Department of Education to conduct a comprehensive review of existing regulations, orders, guidance documents, policies, and other agency actions that may be inconsistent with the stated policy

Recent Developments

Memorandum from U.S. Department of Justice

- Announced DOJ's interpretation that Title IX's prohibition on discrimination "on the basis of sex" includes discrimination on the basis of gender identity and sexual orientation

26 Mar. 2021

6 Apr. 2021

U.S. Department of Education Letter to Students, Educators, and Stakeholders

- Outlines the steps DOE will take to carry out Exec. Order No. 14021, including: 1) immediate and comprehensive review of OCR guidance on LGBTQ+ issues; 2) plans for a public hearing to hear from interested parties of sexual harassment, including sexual violence, and discrimination based on sexual orientation and gender identity; 3) plans to issue a Q&A document about DOE's new Title IX Regulations; and 4) notice of anticipated rulemaking to amend those new Title IX Regulations

Recent Developments

Changes in PowerSchool

- DPI introduced a new system in PowerSchool that allows a student to enter their “preferred” name in addition to their legal name

Mar. 2021

16 June 2021

U.S. Department of Education Notice of Interpretation

- OCR stated that it will investigate allegations of discrimination on the basis of sexual orientation or gender identity in education programs or activities.
- This includes “allegations of individuals being harassed, disciplined in a discriminatory manner, excluded from, denied equal access to, or subjected to sex stereotyping in academic or extracurricular opportunities and other education programs or activities.”

Changes in PowerSchool

“Preferred Name” vs. Legal Name

- “Preferred Name” is default for non-legal documents (report cards, grade books)
- Legal name is still used for student ID, NC transcript, ECATS, and diploma
- “Preferred Name” can be changed at a student’s request, parent/guardian consent is not needed
- Note: Under FERPA, N.C. Gen. Stat. 115C-402.15, and Pender County Board Policy 4700, Student Records, there is a right to request amended of “inaccurate or misleading” information in a student’s education records; Important in the event there is a legal name or gender change

4700 STUDENT RECORDS

4700 Student Records

All student records must be current and maintained with appropriate measures of security and confidentiality. The Principal is responsible for complying with all legal requirements pertaining to the maintenance, review and release of records retained at the school.

A. ANNUAL NOTIFICATION OF RIGHTS

The Superintendent or designee shall provide eligible students and parents with annual notification of their rights under the Family Educational Rights and Privacy Act (FERPA). The notice must contain all information required by federal law and regulations, including the following:

1. the right to inspect and review the student’s educational records and the procedure for exercising this right;
2. the right to request **amendment** of the student’s educational records that the parent or eligible student believes to be inaccurate, misleading or in violation of the student’s privacy rights; and the procedure for exercising this right;



Practical Implications

Practical Implications for Administrators

- Respect individuals' preferred names and pronouns
- Dress Code
 - Apply your dress code consistently against all students and employees, cisgender and transgender
- Sex-Segregated Facilities
 - Allow all students to use bathrooms, locker rooms, and other sex-segregated facilities that conform to their gender identity
 - Provide a student who is uncomfortable with using a sex-segregated facility a gender-neutral option – but do **not** require use

Practical Implications for Administrators

- Field Trips & Off-Campus Extracurriculars
 - Schools should not deny a transgender student an equal opportunity to participate in activities
- Student Privacy
 - FERPA
- Student Mental Health
- Bullying
- Stay Tuned:
 - Preferred Pronoun Use
 - Participation in Sports

1710-4021-7230 PROHIBITION AGAINST DISCRIMINATION, HARASSMENT, AND BULLYING

The board acknowledges the dignity and worth of all students and employees and strives to create a safe, orderly, caring and inviting school environment to facilitate student learning and achievement. The board prohibits discrimination on the basis of race, color, national origin, sex, disability or age and will provide equal access to the Boy Scouts and other designated youth groups as required by law.



Questions?