

## **State Board of Education Statement and Guidance on Safe and Supportive Learning Environments for Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) Students**

The below are meant to be guidelines to support schools in creating an inclusive school environment for all students. These guidelines are voluntary and should not be considered mandates or requirements. Decisions by districts to utilize this guidance should be made at the local level employing the normal community input process.

The State Board of Education (SBE) is committed to promoting a safe, supportive, and inclusive learning environment for all students and ensuring that every student has equal access to educational programs and activities. Due to a variety of factors, the school experience can be significantly more difficult for some students including those with marginalized identities. Students continue to face challenges that threaten their health, safety, and learning opportunities in schools.

Research indicates that LGBTQ students, nationally and in Michigan, are targeted with physical violence and experience a hostile school environment more frequently than their non-LGBTQ peers.

- Data from the 2015 Michigan Youth Risk Behavior Survey<sup>1</sup> (YRBS) show that students who identify as lesbian, gay, or bisexual (LGB), 8.4 percent of all high school students, are 2.3 times more likely to be threatened or injured with a weapon on school property than their non-LGB peers, and they are 2.3 times more likely to skip school because they feel unsafe. Forty-one percent of LGB students report being bullied on school property, and they are 4.5 times more likely to attempt suicide.
- According to a national report, 26 percent of transgender students were physically assaulted, (e.g., punched, kicked, or injured with a weapon) in school in the past year because of their gender expression.<sup>2</sup>
- Overall, LGBTQ students who are bullied and harassed are more likely to experience depression and anxiety, feel excluded from the school community, and experience lower academic achievement and stunted educational aspirations.
- Lesbian, gay, bisexual, and transgender (LGBT) students are over-represented in the unaccompanied homeless youth population, creating significant barriers to health, safety, and school success.
- Not all LGBTQ students are equally affected by these risk factors. LGBTQ students with intersecting, marginalized identities are at greater risk of negative outcomes, including school failure and dropout.
- The adverse health and educational consequences for transgender students are even greater than those for LGB students.

Supportive environments that acknowledge and affirm a student's identity are protective factors that improve health and educational outcomes.

As articulated in our strategic goals, the SBE and the Michigan Department of Education (MDE) are committed to reducing the impact of high-risk factors and providing equitable resources and access to quality educational opportunities to meet the needs of all students.<sup>3</sup> The SBE recognizes the need for all students to have a safe and supportive school environment to progress academically and developmentally, and believes school administrators, teachers, staff, families, and students all play an important role in creating and sustaining that environment. To that end, students should be treated equally, fairly, and be protected from discrimination based on their real or perceived<sup>4</sup> sexual orientation, gender identity, and gender expression. The SBE encourages districts to consider these best-practices strategies to create a more supportive learning environment for all students, including those who are LGBTQ. Districts should engage with their community to develop a process that works for all students.

- 1) Adopt, implement, and enforce policies protecting students from harassment, violence, and discrimination for any reason including based on their real or perceived sexual orientation, gender identity, and/or gender expression (e.g., enumerated nondiscrimination, anti-bullying, and anti-harassment policies).**<sup>5</sup>

Inclusive school policies and administrative guidelines regarding implementation provide clear guidance for school administrators, teachers, support staff, families, and students to ensure all members of the school community have similar, consistent expectations for what is considered appropriate conduct in school and at school-related activities. Those same protections should also be afforded to LGBT staff to provide a diverse workforce and role models who are supported.

- 2) Provide professional development opportunities on issues affecting LGBTQ 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 LGBTQ.<sup>6</sup> Districts should encourage and support staff attendance at these and other role-appropriate professional development opportunities.

- 3) 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 LGBTQ students and their allies, educating the larger school community, and advocating for a more inclusive school climate.

- 4) Provide appropriate and meaningful family engagement and support.** Parental and family support are key determinants of LGBTQ student health<sup>7</sup>; therefore, student support teams, staff, and community partners should provide resources to help families and students locate information, affirming counseling, and support services. School mental health professionals (school counselors, school social workers, and school psychologists) play an important role in helping students evaluate their academic and family situations, support systems, and resources, and have the necessary training to conduct mental health and substance use assessments, as needed. Schools should provide a welcoming environment for diverse families, including those that are headed by LGBTQ parents,<sup>8</sup> and are encouraged to educate all families in their community about this SBE Statement and Guidance.

- 5) Encourage respect for the human and civil rights of all people, including those who are LGBTQ.**<sup>9</sup> Incorporating LGBTQ topics throughout the educational culture of the school fosters an inclusive and safer environment for all students, regardless of sexual orientation or gender identity.

- 6) Provide developmentally-appropriate information about LGBTQ issues in school libraries and in student and faculty resource centers.** School libraries are encouraged to include a selection of LGBTQ books and media. Selection of library materials should be guided by local policies and procedures. Schools are encouraged to review the computer-filtering protocol to ensure that students and other school community members can access

age-appropriate information related to LGBTQ youth, local and national resources, and LGBTQ health information.

- 7) Collect and review data to identify disparities that create barriers to a safe and successful learning experience for LGBTQ students.** LGBTQ students are disproportionately at risk for experiencing bullying, truancy, violence, substance use, unaccompanied homelessness, discipline treatment, and involvement with the juvenile justice system. Districts are encouraged to analyze available attendance, suspension, expulsion, bullying, student risk behavior, and school climate data to promote practices that improve LGBTQ students' attendance and participation in school.<sup>10</sup> The United States Office for Civil Rights (OCR) requires every public school in the nation to report data on key education and civil rights issues, including incidents of bullying based on sexual orientation and sex (which can include gender- or gender identity-based bullying).
- 8) Designate a building-level staff member who is conversant in issues related to sexual orientation, gender identity, and gender expression.** Students report feeling safer at school when they know where to go for information or support regarding LGBTQ issues, or when they have a trusted teacher or school staff person available. This person may assume a leadership role in working with LGBTQ students and their families, educate the school community regarding these topics, serve as the point person for the building, work closely with the district Title IX Coordinator, and be a liaison to MDE.

### **Guidance to Support Transgender and Gender Nonconforming (GNC) Students**

Due to the increased risks facing transgender and GNC students, as well as the unique circumstances that may arise when working with these students and their families, the SBE is providing additional guidance and recommendations to help ensure these students receive the same educational opportunities as their peers.

Districts make important decisions regarding policies and practices to promote student safety and support, with equal access to all programs, services, and facilities provided by school districts. It is the position of the SBE that students should be treated equally and fairly, free from discrimination, harassment, and bullying based on their real or perceived sexual orientation, gender identity, and gender expression. This commitment to equal and fair treatment includes transgender and GNC students, and applies to all district operations, programs, and activities.

The legal basis for the following recommendations is grounded in the U.S. Department of Education (USED) Office for Civil Rights' (OCR) interpretation of Title IX. As a condition of receiving federal funds, schools agree that they will not discriminate on the basis of sex in their educational programs or activities. The USED treats a student's gender identity as the student's sex. This interpretation is consistent with courts' and other agencies' interpretations of federal laws prohibiting sex discrimination.<sup>11</sup> In essence, schools must not treat a transgender student differently from the way they treat other students of the same gender identity, regardless of the student's sex assigned at birth.<sup>12</sup>

These recommendations facilitate district compliance with local, state, and federal laws, while furthering the goals of cultivating and sustaining caring, supportive, respectful, and affirming learning environments that provide for the education, safety, and welfare of all students. While this guidance provides important suggestions for school staff, it does not anticipate every situation that might occur. The unique needs and concerns of each student should be addressed on a case-by-case basis, with a student-centered approach that includes the ongoing engagement of the student, the parent(s) (except in situations where educators are aware parental knowledge might threaten the student's safety and/or welfare), and school

personnel with a legitimate educational interest per the Family Education Rights and Privacy Act (FERPA). The overall goal is to ensure the safety, comfort, and healthy development of all students, including transgender and GNC students, maximizing inclusion and social integration while minimizing exclusion and stigmatization.

- 1) Student Identity.** Gender identity is a characteristic that is established at a young age. It is a core part of a person's identity. When a student's gender identity is respected by schools and supported by parents, the student is more likely to learn and thrive.

The person best situated to determine a student's gender identity is the individual student. In the case where a student is not able to self-advocate, the request to treat the student in accordance with their gender identity will likely come from the student's parents or guardians. Outside confirmation from medical or mental health professionals, or documentation of legal changes, is not required.

When students have not come out to their parent(s), a disclosure to parent(s) should be carefully considered on a case-by-case basis, school districts should consider the health, safety, and well-being of the student, as well as the responsibility to keep parents informed. Privacy considerations may vary with the age of the students.

Once a school has been notified by a parent/guardian and/or student that the student is transgender or GNC, school staff are encouraged to work closely with the student and their parent(s)/guardian(s) to develop a plan to address the student's particular circumstances or needs.<sup>13</sup> The needs may vary depending upon where a student is in their gender transition process. If a student's asserted gender identity is not genuine, the establishment of the above-mentioned plan will assist school officials with identifying an individual claiming a false gender identity for improper purposes. Such matters should be addressed immediately, according to disciplinary procedures.

- 2) Names and Pronouns.** When requested by the parent/guardian and/or student, school staff should engage in reasonable and good faith efforts to address students by their chosen name and pronouns that correspond to their gender identity, regardless of whether there has been a legal name change. Upon request, the chosen name and gender should be included in the district's information management systems, in addition to the student's legal name. District-generated student email addresses should also reflect the student's chosen name, if first names are identifiable in such addresses. These changes inform all staff, including substitute teachers, of the name and pronoun to use when addressing the student, and help avoid inadvertent disclosures.

- 3) Student Records.** When requested, schools should engage in reasonable and good faith efforts to change current unofficial student records (e.g., class and team rosters, yearbooks, school newspapers, and newsletters) with the chosen name and appropriate gender markers to promote consistency among teachers, substitute teachers, school administrators, and other staff.<sup>14</sup> The Michigan School Code requires proof of identity and age for school entry (e.g., birth certificate, passport) but does not address changing names and gender markers in student records. Per communications with the U.S. Department of Education, the gender marker in the pupil's official record should reflect the gender identity of the student regardless of what appears on the birth certificate.<sup>15</sup> While Michigan law provides a process for people to seek a legal name change, there may be extenuating circumstances that make a legal name change desired but unattainable. Parents, or students who are age 18 or older, have the right to seek amendment to the school records (per FERPA) if their records are deemed "inaccurate, misleading, or in violation of the student's privacy." School districts should comply if transgender students ask the district to amend their secondary educational records, including diplomas and

transcripts after graduation, to ensure that those requesting records (e.g., college admissions offices or potential employers) will only see the name and gender marker corresponding to the student's gender identity.

- 4) Privacy and Confidentiality Regarding Disclosures.** A student's transgender status, birth name, and sex assigned at birth are confidential information and considered personally identifiable information (PII) under FERPA.<sup>16</sup> Schools should engage in reasonable and good faith efforts to protect students' and their family's privacy by not disclosing, or requiring students or their parent/guardian to disclose, PII to the school and/or school community. Such disclosures may be harmful, infringe upon the privacy of students and their families, and may possibly violate FERPA or constitutional privacy protections.

When students have not come out<sup>17</sup> to their parent(s), a disclosure to parent(s) should be carefully considered on a case-by-case basis. School districts should consider the health, safety, and well-being of the student, as well as the responsibility to keep parents informed. Privacy considerations may vary with the age of the students.

- 5) Gender-Segregated Activities and Facilities.** Title IX permits a school to provide gender-segregated restrooms, locker rooms, athletic teams, and classes, as long as they are comparable. When a school provides gender-segregated activities and facilities, transgender students should be allowed to participate in such activities and access such facilities consistent with their gender identity. Providing transgender students with activities and facilities consistent with their gender identity may feel uncomfortable for some students and/or their families. The OCR has emphasized, "a school's Title IX obligation to ensure nondiscrimination on the basis of sex requires schools to provide transgender students equal access to educational programs and activities even in circumstances in which other students, parents, or community members raise objections or concerns. As is consistently recognized in civil rights cases, the desire to accommodate others' discomfort cannot justify a policy that singles out and disadvantages a particular class of students." <sup>18</sup>

- 5a) Restrooms.** Every student needs to be safe in the restroom. For a variety of reasons, a student may have concerns about privacy or comfort when using a restroom with other students. Any student who has a need or desire for increased privacy, regardless of underlying reasons, has the right to access a single-user restroom.<sup>19</sup> Students should be allowed to use the restroom in accordance with their gender identity. Alternative and non-stigmatizing options, such as an all-gender or single-user restroom (e.g., staff bathroom or nurse's office), should be made available to all students who request them. While gender-neutral bathroom facilities are often the solution that works best for all students, including transgender students, districts are reminded that current interpretation of federal civil rights laws protect the right of transgender students to use the bathroom of their gender identity if they so choose.<sup>20</sup> By making behavioral expectations clear, supervising facilities appropriately, and enforcing relevant policies, schools can address concerns about safety and privacy in these spaces.

- 5b) Locker Rooms and Changing Facilities.** Every student needs to be safe in locker rooms and changing facilities. For a variety of reasons, a student may have concerns about privacy or comfort when using these facilities with other students. Any student who has a need or desire for increased privacy, regardless of the underlying reasons, may request options such as 1) an adjusted changing schedule; 2) use of a private area in the facility (e.g., nearby restroom stall with a door, an area separated by a curtain, a physical education instructor's office in the locker room); and 3) use of a nearby private area (e.g., restroom, nurse's office). Current interpretation of federal civil rights laws say no

transgender student should be forced to use a changing facility incongruent with their gender identity. Use of these facilities should be determined on a case-by-case basis. By making behavioral expectations clear, supervising facilities appropriately, and enforcing relevant policies, schools can address concerns about safety and privacy in these spaces.

- 5c) Physical Education Classes and Intramural Sports.** Students should be allowed to participate in physical education classes and intramural sports in accordance with their gender identity.
- 5d) Interscholastic Sports.** Generally, students should be allowed to participate in interscholastic sports in accordance with their gender identity.<sup>21</sup> Eligibility of transgender students in Michigan High School Athletic Association (MHSAA)-sponsored, post-season tournaments is governed by the MHSAA, subject to state and federal civil rights laws.
- 5e) Gender-Based Activities or Practices.** Districts should evaluate all gender-based programs and practices and maintain only those that have a clear and sound educational purpose. Gender-based programs and practices can have the unintentional consequence of marginalizing, stigmatizing, and excluding transgender and GNC students. Moreover, in some circumstances, they may violate state and federal laws. When students are separated by gender in school activities, students should be allowed to participate in accordance with their gender identity. When considering overnight accommodations, situations should be assessed on a case-by-case basis, seeking solutions that are inclusive, respectful, and acceptable to the student and do not impose an additional expense or burden on the student.
- 6) Dress Code.** 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.

**Adopted by the State Board of Education on September 14, 2016.**

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## Definitions

A number of terms are used in this document that may not be commonly known. A short list of definitions is included in the endnotes to facilitate a shared understanding. It is not an all-inclusive list.

*Biological sex assigned at birth*—a person's biological sex is a combination of bodily characteristics, including chromosomes, hormones, internal and external genitalia, and secondary sex characteristics. At birth, infants are assigned a sex, usually male or female, based solely on the appearance of their external anatomy.

*Gender identity*—a person's deeply-held internal sense or psychological knowledge of their own gender, regardless of the biological-sex they were assigned at birth.

*Gender expression*—the manner in which a person represents or expresses gender to others, often through one’s name, pronouns, behavior, clothing, haircut, activities, voice, mannerisms, and other distinctive cultural markers of gender.

*Transgender*—an adjective describing a person whose gender identity or expression is different from their biological-sex assigned at birth.

*Gender nonconforming (GNC)*—an umbrella term for people whose gender expression differs from stereotypical expectations of the biological-sex they were assigned at birth. GNC people may identify as girls, boys, neither girls nor boys, or some other gender.

*Gender transition*—the process in which transgender people begin asserting the sex that corresponds to their gender identity instead of the sex they were assigned at birth. During gender transition, people begin to live and identify as the sex consistent with their gender identity and may dress differently, adopt a new name, and use pronouns consistent with their gender identity. 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. Gender transition can happen swiftly or over a long duration of time. Not all transgender or GNC people transition or desire to transition in the same way.

*Sexual orientation*—a person’s emotional, romantic, and/or sexual attraction to other people. Sexual orientation is not the same as gender identity.

*Questioning*—a person’s process of exploring and discovering their own sexual orientation and/or gender identity.

## Endnotes

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- <sup>1</sup> Michigan Department of Education (2016). Risk behaviors and sexual identity report. 2015 Youth Risk Behavior Survey. Unpublished data.
- <sup>2</sup> Greytak, E., A., Ksciw, J. G., & Diaz, E. M. (2009). Harsh realities: The experiences of transgender youth in our nation's schools. New York: GLSEN.
- <sup>3</sup> The Department has engaged in numerous initiatives to engage and improve learning outcomes for at-risk populations (e.g., African-American Young Men of Promise). Retrieved from [http://www.michigan.gov/mde/0,4615,7-140-6530\\_30334-297206--,00.html](http://www.michigan.gov/mde/0,4615,7-140-6530_30334-297206--,00.html).
- <sup>4</sup> As used in this document, the word "perceived" refers to another person's perception of a student's sexual orientation, gender identity, or gender expression.
- <sup>5</sup> See State Board of Education Model Anti-Bullying Policy as an example of an enumerated policy that includes sexual orientation, gender identity and gender expression. Retrieved from [http://www.michigan.gov/documents/mde/SBE\\_Model\\_AntiBullying\\_Policy\\_Revised\\_9.8\\_172355\\_7.pdf](http://www.michigan.gov/documents/mde/SBE_Model_AntiBullying_Policy_Revised_9.8_172355_7.pdf). The State Board of Education Model Code of Student Conduct, Sample Notice of Discrimination, is another example of enumeration. Retrieved from [https://www.michigan.gov/documents/mde/Revised\\_Code\\_of\\_Student\\_Conduct\\_SBE\\_Approved\\_46540\\_6\\_7.pdf](https://www.michigan.gov/documents/mde/Revised_Code_of_Student_Conduct_SBE_Approved_46540_6_7.pdf).
- <sup>6</sup> The introductory workshop (*A Silent Crisis: Creating Safe Schools for Sexual Minority Youth*) and advanced workshop (*Planning for Action: Next Steps in Creating Safe Schools for Sexual Minority Youth*) are available at regional sites throughout the states. For more information, go to [www.michigan.gov/mde-smy](http://www.michigan.gov/mde-smy).
- <sup>7</sup> Gay and transgender teens who were highly rejected by their parents and caregivers were at very high risk for health and mental health problems when they become young adults compared with those who were not rejected or were only a little rejected by their parents. For more information, refer to the Family Acceptance Project website at <http://familyproject.sfsu.edu/>.
- <sup>8</sup> When used in this document, the term "parent" refers to a parent as well as legal guardian.
- <sup>9</sup> In a recent national study, Michigan was one of 20 states that scored an "F" in teaching about civil rights. Retrieved from <http://www.scribd.com/doc/266143260/Teaching-the-Movement-2014>.
- <sup>10</sup> The Michigan Profiles for Healthy Youth (MiPHY) collects risk data on students in Grades 7, 9, and 11, with questions regarding students who identify as lesbian, gay, or bisexual or engage in same sex sexual behavior. Standard reports include cross tabulations that compare these students with all others on academic achievement. For more information, see [www.michigan.gov/miphy](http://www.michigan.gov/miphy).
- <sup>11</sup> See *Dear Colleague Letter on Transgender Students* (2016). Retrieved from <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>.
- <sup>12</sup> For example, a transgender boy should be treated the same as any other boy, and a transgender girl should be treated the same as any other girl.
- <sup>13</sup> For a sample school gender support plan, see educational resources from Gender Spectrum. Retrieved from <https://www.genderspectrum.org/resources/education-2/#more-424>.
- <sup>14</sup> Note that schools should not be expected to make changes to unofficial student records that existed prior to the request for a name and gender change.
- <sup>15</sup> C. Foley, U.S. Department of Education, ED*Facts* Partner Support Center, personal communication with C. Jones in CEPI, July 10, 2015.
- <sup>16</sup> Note that transgender and GNC students, as well as their families, have the right to decide when, with whom, and to what extent to share private information regarding transgender status. These discussions are an important part of a gender support plan.
- <sup>17</sup> Coming out is a figure of speech that refers to a person's self-disclosure of their gender identity and/or sexual orientation.
- <sup>18</sup> See *Dear Colleague Letter on Transgender Students* (2016). Retrieved from <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>.

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<sup>19</sup> Note that in the event that the school does not have such a facility, every effort must be made to accommodate the student's needs.

<sup>20</sup> Note that transgender students already face numerous barriers to acceptance at school; requiring them and not others to use a single stall restroom is stigmatizing. A school's insistence that they be segregated from their peers can increase their sense of isolation and reduce their school connectedness. This can be harmful and also threaten their safety, by inadvertently outing an individual who has chosen to keep their transgender status private. Requiring transgender students to use the single stall option, while not requiring all students to use the single stall option, would be inequitable treatment and may violate Title IX.

<sup>21</sup> See *Dear Colleague Letter on Transgender Students* (2016) for additional guidance. Retrieved from <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>.