

# DIGNITY

# FOR

# ALL?



Discrimination Against Transgender *and* Gender  
Nonconforming Students *in* New York State



September 1, 2015

Dear friends,

I'm pleased to present this New York Civil Liberties Union report, *Dignity for All? Discrimination Against Transgender and Gender Nonconforming Students in New York State*.

The report – initially released electronically on June 24, 2015 – was intended to bring attention to the discrimination, harassment and violence that transgender kids experience in New York public schools, and to bring to life the ongoing harms of our state's failure to take necessary steps to ensure that all kids can feel safe going to school and being themselves.

One day after the NYCLU released this report, Governor Cuomo responded by writing a letter to the State Education Department expressing his "outrage" and calling the discrimination faced by transgender students "completely unacceptable, dangerous ... and in complete contradiction to the values of our great state." He demanded that the Department take immediate steps to address our report's findings.

In a landmark victory for transgender students, the Department released a policy on July 20 mirroring the model policy contained in the report, which was developed by the Empire Justice Center, Empire State Pride Agenda and the NYCLU, with contributions and support from organizations across the state.

This policy will help families with transgender and gender nonconforming kids understand their rights and what schools need to do to make them a reality. And it will help every school district understand how to follow the law and protect the rights of transgender youth by:

- Respecting students' right to privacy and confidentiality in regards to maintenance of student records;
- Providing all students with access to restrooms and locker rooms that correspond with their gender identity, and providing private bathrooms and changing spaces to all students who desire additional privacy (although private facilities should never be forced upon any student), and providing transgender students the same opportunities to participate in gender-segregated activities as other students;
- Encouraging the regular training of all adults working in schools to ensure they understand the range of gender identities and expressions and know what they must do to create a supportive environment for all students; and
- Providing resources for school faculty to use to educate themselves and their students.

We urge all schools to adopt and follow the *Model Policy for Creating Safe and Supportive School Environment for Transgender and Gender Nonconforming Students* included in this report in order to be in compliance with state and federal laws.

All of New York's children have the right to be themselves and get an education in a safe environment, no matter where they go to school. The NYCLU will continue to work with advocates and the State Education Department to ensure all students are treated with dignity and respect. And we welcome districts, educators and students to reach out to us with questions or requests for support in following this policy.

We would like to thank the kids and parents who bravely shared their heartbreaking stories for this report; our allies in the fight for equality across the state; and Governor Cuomo, the State Education Department and the regents for acknowledging the failures demonstrated by this report and moving quickly to adopt our guidance.

Sincerely,

  
Donna Lieberman

## **Dignity for All?**

### Discrimination Against Transgender and Gender Nonconforming Students in New York State

June 2015

#### **Acknowledgments**

Dignity for All? was written by Lauren Frederico with Ujala Sehgal, who also edited it. It was additionally edited by Jennifer Carnig, Johanna Miller, Erin Harrist, Bobby Hodgson and Donna Lieberman. The report was illustrated by Noah Breslau. Additional support was provided by Becca Cadoff. It was designed by Abby Allender.

The NYCLU would like to thank the many people who generously shared their stories with us for this report. Dignity for All? was inspired by the requests for legal help we received from students, parents and educators who continue to fight for equality across the state.

#### **About the New York Civil Liberties Union**

The New York Civil Liberties Union (NYCLU) is one of the nation's foremost defenders of civil liberties and civil rights. Founded in 1951 as the New York affiliate of the American Civil Liberties Union, we are a not-for-profit, nonpartisan organization with eight offices and nearly 60,000 members across the state. The mission of the NYCLU is to defend and promote the fundamental principles and values embodied in the Bill of Rights, the U.S. Constitution and the New York Constitution, including freedom of speech and religion, and the right to privacy, equality and due process of law for all New Yorkers. For more information, please visit [www.nyclu.org](http://www.nyclu.org).

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## Executive Summary

**The spring of 2015 marked the 10th highly publicized suicide of a transgender youth so far this year – an “epidemic” that transgender youth and advocates have witnessed for years.**

Transgender and gender nonconforming youth – across the country and in New York State – face serious challenges.<sup>1</sup> Nationally, a staggering 41 percent of people who are transgender will attempt suicide at least once.<sup>2</sup> The vast majority (almost 75 percent) of transgender students report being verbally harassed at school in the past year, and one-in-three have been physically assaulted.<sup>3</sup> More than half have avoided going to school due to harassment, and one-in-six (15 percent) have left school altogether.<sup>4</sup> Close to 60 percent experience family rejection.<sup>5</sup> One-in-five transgender people experience homelessness during their lives, and in New York City, the average age that a transgender person becomes homeless is only 13-and-a-half.<sup>6</sup>

Until recently, the experiences of transgender individuals were, all too often, hidden from public view. But lately the efforts of transgender individuals and activists have drawn the media’s spotlight. *Rolling Stone* named 2014 the “Biggest Year in Transgender History.”<sup>7</sup> *TIME* magazine’s June 2014 cover called transgender rights the next civil rights frontier.<sup>8</sup> In May 2015, *The New York Times* launched an unprecedented editorial series about transgender rights.<sup>9</sup> On social media, Facebook added more than 50 custom gender options for users to choose from, including “transgender” and “gender non-conforming.”<sup>10</sup> And during the 2015 State of the Union, President Barack Obama became the first U.S. president to say “transgender” in a formal speech.<sup>11</sup>

The spotlight has freshly exposed an alarming truth: In New York State, transgender and gender nonconforming youth face discrimination and harassment every day. Despite New York’s reputation as a progressive leader, transgender New Yorkers face barriers when trying to access even the most basic services, including an education. In public schools across the state, transgender and gender nonconforming children as young as five face relentless harassment, threats and even violence for trying to access their right to an education.<sup>12</sup>

It’s not supposed to be that way.

In 2010, former New York Governor David Paterson signed historic, anti-discrimination legislation called the Dignity for All Students Act into law. Unlike existing federal laws against discrimination, the Dignity Act explicitly prohibits discrimination in schools on the basis of actual or perceived gender, gender identity and gender expression.<sup>13</sup> More than just compelling schools to respond to discrimination, the Dignity Act also requires that schools take additional, affirmative steps to ensure they do not become hostile environments for children. Schools must train staff and offer inclusive curricula, as well as report incidents of harassment to the state.<sup>14</sup>

Nonetheless, discrimination based on gender identity and expression is pervasive in New York public schools and the rights of transgender and gender nonconforming children remain largely misunderstood by educators and administrators.

Without state guidance on how to follow the law and protect the basic rights of children who are transgender and gender nonconforming, districts and schools have come up with their own ad-hoc policies – most of which are insufficient, against the law and deeply damaging to transgender and gender nonconforming youth.

Vulnerable youth pay the price. Many transgender students and their families have courageously and successfully advocated within their schools to make changes. In some schools, educators and administrators are leading the way. But individuals should not have to blaze new trails, to protect existing civil rights, one school at a time.

Over the past five years, the NYCLU has received requests for legal assistance from transgender and gender nonconforming students and their families from communities large and small across the state. These requests make painfully clear that the discrimination suffered by children who are transgender impacts each and every aspect of their school day, from attendance to using the bathroom – daily indignities which ultimately push many transgender youth out of school.

Discrimination against transgender and gender nonconforming students not only violates the law – it has a lasting, damaging impact on the child targeted. Bullying of transgender youth has been connected to depression and suicidal behaviors, unemployment and homelessness.<sup>15</sup> Due to pervasive discrimination and harassment in school, virtually all transgender students whose stories are featured in this report have asked to leave school or have taken matters in their own hands by avoiding classes and disengaging from the school community.

- *School employees publicly interrogate Danny so often about his name that he stopped eating lunch, then started avoiding school altogether. He is failing three classes and the school is threatening to hold him back.<sup>16</sup>*
- *Josh is so afraid that his school's refusal to let him use the locker room will out him to his fellow classmates that he asked to be home-schooled. His father is afraid Josh is at risk of physical or sexual assault.*
- *Sara's bullying has become so severe she suffers depression and anxiety symptoms and can only spend half the day at school. Her school has never recorded or effectively addressed a single bullying incident.*
- *Jessie was physically attacked when she was only five-years-old.*

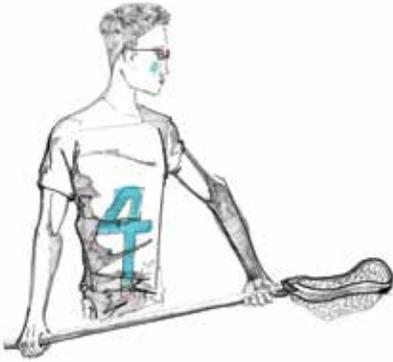
This report explores school climate for transgender and gender nonconforming youth in New York State since the passage of the Dignity Act. Telling the stories of real NYCLU clients, it documents the experiences of students facing discrimination. In some of these cases, the NYCLU was able to work with students to address problems at school; in others, we continue to fight. This report also provides recommendations to New York public schools on how to both comply with state and federal law and create a school climate that nurtures and respects all of New York's children.

## RECOMMENDATIONS

Many New York public schools are failing to protect transgender and gender nonconforming students' right to an education. The State Education Department must take immediate action to ensure New York schools are following state and federal laws, and to provide transgender children the opportunity to become successful, supported young people with bright futures – instead of pushing them out of school. The NYCLU recommends the Education Department take the following actions:

- **Issue immediate guidance and training for all school staff. (See Appendix for Model Policy).**  
Issue clear and immediate guidance outlining the responsibilities of all schools to respect the preferred names and gender pronouns of students, provide all students with access to restrooms and locker rooms that correspond with their gender identity, provide private bathrooms and changing spaces to all students who desire additional privacy, and provide transgender students the same opportunities to participate in sports and physical education as other students.  
  
Require mandatory and regular training for all adults working in schools – not just teachers – to ensure they understand the range of gender identities and expression and know what they can do to create a supportive environment for all students.
- **Improve data collection and reporting.** Increase oversight to ensure all schools are in compliance with Dignity Act reporting requirements and revise the current Dignity Act reporting form to clarify what information must be captured. In addition, creating a shorter reporting period (currently, schools report incidents only once every school year) would assist in tracking and addressing ongoing violations.
- **Ensure all schools have an accessible, confidential means of accepting complaints or reports of discrimination, harassment and bullying.**
- **Pass and enforce a Commissioner's Regulation to ensure transgender and gender nonconforming youth have the same educational benefits and opportunities that all students are entitled to.**<sup>17</sup>

## Defining Gender



A person's **sex assigned at birth** is the sex designation, usually "male" or "female," assigned to them when they are born, while **gender identity** is a term used to describe a person's inner sense of being – male, female, both or neither.

A **cisgender** person is someone whose sex assigned at birth corresponds to their gender identity. A **transgender** person is someone whose gender identity is different from the sex assigned to them at birth. Transgender is an adjective that can also be used to describe people with a broad range of identities and experiences that fall outside of traditional notions of gender.<sup>18</sup>

**Gender nonconforming** is used to describe people whose gender expression does not fit into gender stereotypes. **Gender expression** is the manner in which a person expresses gender to others, often through behavior, clothing, hairstyles, activities, voice or mannerisms.<sup>19</sup>

The term **transition** is used to refer to the process in which a person goes from living and identifying as one gender to living and identifying as another. For most youth, and for all young children, the experience of gender transition involves no medical intervention. Rather, most transgender youth will undergo gender transition through a process commonly referred to as **social transition**, during which they begin to live as the gender consistent with their gender identity.<sup>20</sup>

Many transgender youth do not have supportive families and are unable to fully express themselves at home for safety concerns. These youth may be openly transgender at school but not at home. (This is why schools should always ask the student first before discussing their transition or transgender status with their parent or guardian.)<sup>21</sup>

Some transgender youth have a diagnosis of **gender dysphoria**. Gender dysphoria is the formal diagnosis used by medical and mental health care providers to describe people who experience a conflict between their sex assigned at birth and the gender they identify with. Being transgender or gender nonconforming is not a mental disorder. Rather, the diagnosis of gender dysphoria is assigned with the presentation of clinically significant distress associated with the condition.<sup>22</sup>

**Sexual orientation** is not the same as gender identity. Sexual orientation refers to a person's emotional and sexual attraction to other people based on the gender of the other person. Transgender youth can identify as lesbian, gay, bisexual or straight.<sup>23</sup> **Lesbian, Gay, Bisexual and Transgender (LGBT)** is an acronym commonly used to discuss concepts related to sexual orientation and gender identity.

## Introduction: Dignity for All?

More and more people are starting to identify as transgender earlier in their lives.<sup>24</sup> But youth who are transgender and gender nonconforming face pervasive discrimination and bullying everywhere they turn. Approximately 41 percent – close to half – of transgender and gender nonconforming individuals will attempt suicide at least once in their lives.<sup>25</sup>

Family rejection can have a devastating impact. As many as 40 percent of homeless youth identify as LGBT, despite LGBT individuals composing only 10 percent of the general population. “Family rejection” is the most commonly cited reason behind transgender homelessness. One-in-five transgender people experience homelessness during their lives.<sup>27</sup> In New York City, the average age that transgender youth become homeless is 13-and-a-half.<sup>28</sup>

Unfortunately, not only are transgender and gender nonconforming youth pushed out of their homes, they are pushed out of their schools. As fraught as home environments can be, as one focus group of transgender youth in New York City reported: Attending school was reported to be “the most traumatic aspect of growing up.”<sup>29</sup>

For youth to thrive in their schools and communities, they need to feel socially, emotionally and physically safe and supported. But almost 75 percent of transgender students have been verbally harassed in school because of how they express their gender.<sup>30</sup> The Gay, Lesbian & Straight Education Network’s (GLSEN) 2013 National School Climate Survey found that **almost two-out-of-three transgender students felt unsafe at school.**<sup>31</sup>

Exacerbating the harassment by other students is the behavior of school staff, which often ranges from indifference or misunderstanding to outright discrimination and hostility. Only one-third of transgender students who reported victimization to school staff members feel that their situation was taken care of adequately and effectively.<sup>32</sup> School staff often treat transgender and gender nonconforming youth like they are the problem, or they enforce discriminatory policies against them. For example, youth are unfairly disciplined for wearing clothes that don’t conform to gender stereotypes and most (59 percent) of transgender students nationally have been denied access to restrooms consistent with their gender identity.<sup>33</sup>

Moreover, due to the widespread lack of family acceptance, many transgender youth do not have the benefit of having a parent advocate on their behalf against bullying or discrimination in school. Family acceptance has a protective effect against many threats to the wellbeing of transgender youth in the face of extensive institutional discrimination.<sup>34</sup> But many transgender and gender nonconforming youth receive no such protection.

What is the impact of this discrimination and harassment?

More than half of transgender youth stay away from school on a regular basis.<sup>35</sup> Drop-out rates are staggering, and those who stay in school have lower grade point averages and are less likely to plan on continuing their education.<sup>36</sup>

The impact of discrimination and school push-out can last a lifetime. The unemployment rate for people who are transgender is twice the rate of the general population.<sup>37</sup> One-in-five transgender individuals will experience homelessness.<sup>38</sup> And transgender people are funneled into the criminal justice system and are disproportionately represented in jails and prisons.<sup>39</sup>

In fact, anti-transgender harassment in schools has also been found to directly correlate with homelessness, unemployment and incarceration.<sup>40</sup> One-in-four (25 percent) transgender and gender nonconforming youth who were verbally harassed, physically or sexually assaulted, or expelled because of their gender identity experience homelessness as compared to 14 percent of those who did not experience this mistreatment at school.<sup>41</sup> For those transgender youth who had to leave school due to harassment, research has found that nearly half (48 percent) were currently or formerly homeless.<sup>42</sup>

The health risks of harassment are also devastating. Studies have found direct links between bullying of transgender youth and negative health outcomes including depression and suicidal behavior.<sup>43</sup> The majority (51 percent) of transgender or gender nonconforming youth who were verbally harassed, physically or sexually assaulted, or expelled because of their gender identity reported having attempted suicide. Of those who were physically assaulted, 64 percent attempted suicide, and of those who had to leave school because of the harassment, 68 percent reported having attempted suicide.<sup>44</sup> Suicide attempt rates rose dramatically when teachers were the reported perpetrators: 59 percent for transgender and gender nonconforming youth harassed or bullied by teachers in K-12 or higher education.<sup>45</sup>

## A Parent's Perspective: Casey's story

### Casey, age 11, Capital Region

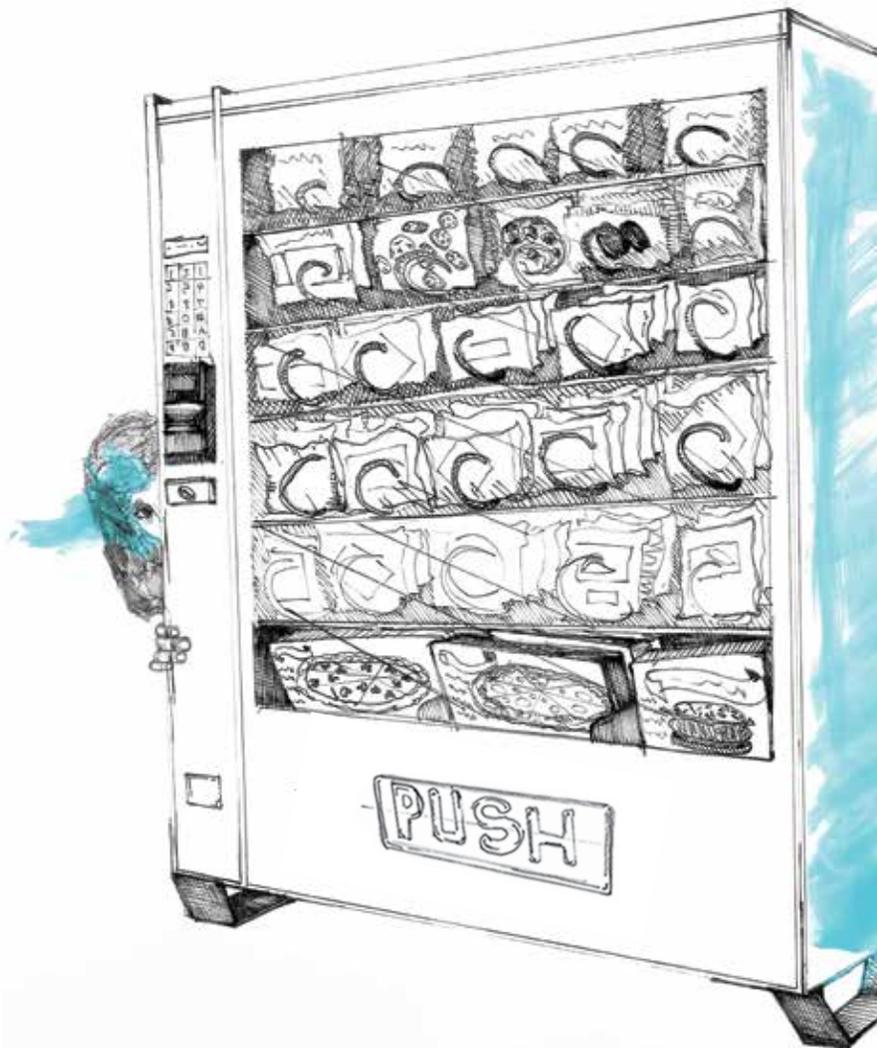
*In 2003 I gave birth to a beautiful baby boy. Casey had a full head of brown hair with blond highlighted tips that many women pay a lot of money to have.*

*Casey, by the age of two, would say things like he was a girl. When we were out and people would comment on what a cute little boy I had, Casey would quickly pipe up and state that he was a girl.*

By the time Casey was eight, her mom learned through a counseling center that what she needed to do for her child was let Casey live out the rest of her life as a girl. She transferred Casey to a new school so Casey could have a fresh start, and was relieved when the new school agreed to register Casey as female, having heard horror stories and not knowing what to expect.

*At first, her fourth grade year was off to a great start: She was making new friends and was happier than I'd ever seen her.*

But Casey's school started treating her differently from other students, and now her mom is scared. Casey is not openly transgender. But the school forces Casey to use a separate bathroom, making her feel "like a freak," and she has gotten in trouble for using the girls' bathroom. During breaks, when all the other girls go to the bathroom, Casey is often left standing in the hallway by herself. Casey sometimes holds her urine all day, or goes to the bathroom during class –



missing valuable learning time – to avoid questions from her friends.

During gym class, she is forced to use the nurse’s office instead of the locker room with her peers – so she waits in the hallway or hides behind a vending machine until all of the students are gone before she goes to get ready.

Rumors have started circulating. Casey dreads having to make up excuses about why she doesn’t use the locker room like the other girls.

Casey’s mom thinks the anxiety has changed Casey. Her daughter gets very upset when people confront her, and she has come home from school in tears. Casey cries at home and has emotional breakdowns because of the way she is treated in school. Her mom knows about the suicide rates of transgender youth. She’s worried about her daughter’s health and welfare.

Casey wants to change schools, even though it would mean leaving all of her friends. But her mother worries about the cost of moving again and has no way of knowing whether or not they will run into the same problems in another district. She feels like there is nowhere to turn.

*She just lay in my lap crying, and I cried knowing that I cannot do anything to help her.*

## Introducing the Dignity for All Students Act

The rights of transgender students are protected by a host of federal and state laws. Under federal law, Title IX prohibits discrimination in schools on the basis of sex, which includes gender identity.<sup>46</sup> The U.S. Constitution’s Equal Protection Clause protects against differential treatment on the basis of sex, which also includes gender identity.<sup>47</sup> The First Amendment guarantees students the right to free expression, including how they present their gender to others. Furthermore, transgender students also have a right to privacy, and schools are required to keep their transgender status confidential.<sup>48</sup>

In 2010, New York State expanded on the protections already in place by adopting a historic anti-discrimination law called the Dignity for All Students Act. While the New York State Constitution – which requires that all students have access to a sound, basic education – applies broadly to transgender youth, the Dignity Act was the first time New York State law created explicit protections for students based on their perceived or actual **gender identity, gender expression** and **sexual orientation**.<sup>49</sup> Under the law, harassment is defined to include the creation of a “hostile learning environment” that interferes with a student’s education or emotional wellbeing. The State Education Commissioner is ultimately responsible for helping school districts create a learning environment free of discrimination or harassment, and schools must investigate and report on all discrimination complaints.<sup>50</sup>

With the passage of the Dignity Act, New York became one of only 18 states, along with the District of Columbia, that have passed measures to explicitly prohibit discrimination and harassment in schools on these three categories, giving New York some of the strongest legal protections for transgender students in the country.<sup>51</sup>

Unfortunately, in the five years since the Dignity Act passed, the State Education Department has failed to issue guidance to school districts on how to follow the law regarding transgender youth. The rights of transgender students still remain largely misunderstood by educators and administrators. In the absence of state guidance, a patchwork of problematic policies have cropped up among school districts and schools.



Map credit: GLSEN

Well-intentioned superintendents and principals have made the mistake of adopting faulty policies from other schools and districts regarding transgender youth even as they intend to follow the Dignity Act. As one superintendent who reached out to the NYCLU said, *It's nerve-wracking not knowing if the policies we're adopting are going far enough and exposing us to lawsuits. We have to answer to students, parents and the community. Different policies are circulating around the state. Where is the state guidance?*

## Discrimination under the Dignity Act: By the Numbers

Under the Dignity Act, schools are required to collect data on all incidents of discrimination or harassment and report them annually to the State Education Department.

### Discrimination based on “Gender Stereotypes”

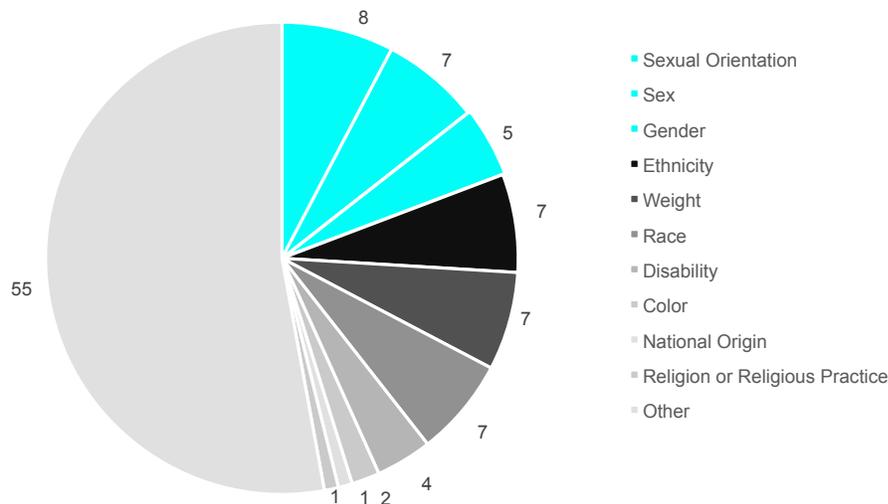
While no single category of reported incidents captures all of the discrimination experienced by transgender and gender nonconforming students, reports of discrimination related to gender stereotypes are the best indicators of school climate issues facing transgender and gender nonconforming youth.

Pervasive discrimination and harassment based on gender stereotypes impact all students, and create particularly hostile learning environments for transgender and gender nonconforming students.<sup>53</sup>

Under the Dignity Act, discrimination based on gender stereotypes is reported under the categories of “sex,” “gender” and “sexual orientation” (while “sexual orientation” is not the same as gender identity, often, for example, homophobic remarks are used to harass students who do not conform to gender stereotypes).<sup>54</sup>

The Dignity Act does not include a specific reporting category for discrimination based on transgender

## PERCENTAGE OF REPORTED INCIDENTS, BY CATEGORY



status.<sup>55</sup> Incidents impacting transgender and gender nonconforming students are generally reported – when they are in fact reported – under these three categories.

Reporting under the Dignity Act shows that discrimination based on gender stereotypes – “sex,” “gender” and “sexual orientation” – is the most commonly reported type of discrimination across New York.<sup>56</sup>

During the 2012–13 school year, New York schools reported 24,478 incidents of harassment and discrimination.<sup>57</sup> The reported incidents occurred at schools in every county in the state. Of the incidents reported, 4,756 (19 percent) were incidents related to a student’s perceived or actual sex, gender or sexual orientation.<sup>58</sup> No category of harassment or discrimination made up as many incidents as these three categories combined, except “other” which covers a broad array of categories. Of the reported incidents, 1,863 were related to a student’s perceived or actual sexual orientation, 1,738 were categorized under sex discrimination and 1,155 were based on gender.<sup>59</sup>

Incidents of discrimination based on gender stereotypes occurred in schools across the state, and in some schools they made up the majority, if not all, of reported incidents. In 474 schools, at least half of all harassment incidents per school involved students who were bullied, harassed or discriminated against because of their sex, gender or sexual orientation.<sup>60</sup> At 172 schools, all reported incidents related to one of these three categories (sexual orientation, sex and gender).<sup>61</sup>

### Data Limitations under the Dignity Act

Limitations in the current reporting requirements under the Dignity Act result in an incomplete picture of the extent of harassment experienced by transgender students.

For one, the total number of transgender or gender nonconforming students in New York public schools is unknown, and the Dignity Act data does not include a specific reporting category for discrimination related to a student’s transgender status.<sup>62</sup> While data collection and reporting of this demographic information could help document the need for increased transgender student services, many advocates have concerns about the ability of schools to collect this sensitive information ethically and confidentially.

Further complicating any effort to quantify the extent of the harassment students who are transgender and gender nonconforming face is severe under-reporting. During the 2012–13 school year, 4,654 schools throughout New York State reported 24,478 incidents of harassment and discrimination under the Dignity Act. Approximately one-third of schools (1,346) failed to report data altogether.<sup>63</sup> Moreover, students and staff are often unaware of how complaints should be reported. The Dignity Act requires every school to have at least one designated staff member who is trained to handle issues related to the law’s protected categories, including students reporting harassment or bullying related to gender (defined to include gender identity or expression) and sex.<sup>64 65</sup> A 2013 survey of New York City high school students found that only 9 percent of students could correctly identify their Dignity Act coordinator.<sup>66</sup> Anecdotal evidence collected through the NYCLU’s statewide trainings and legal assistance process also confirms that many students have never heard of the Dignity Act, and even fewer understand what it requires of schools.

In addition, transgender and gender nonconforming youth are less likely to report discrimination. GLSEN found in 2013 that the majority of students, nearly 60 percent, of LGBT students who were harassed or assaulted in New York schools never reported it to school staff.<sup>67</sup> Among LGBT students who did report incidents to school authorities, only 32 percent said that reporting resulted in effective intervention by staff.<sup>68</sup>

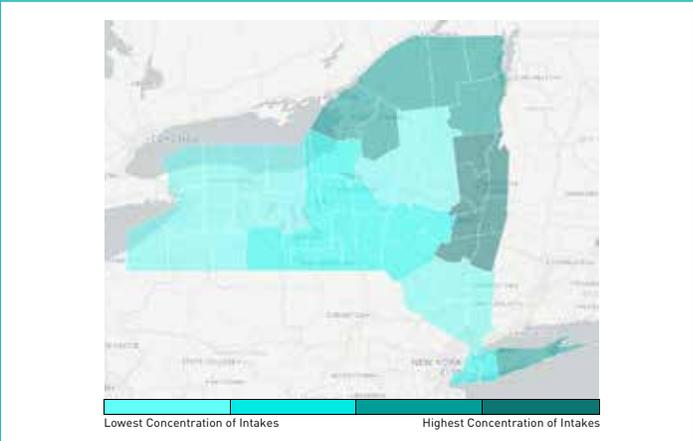
## Discrimination: A Transgender Student’s Perspective

Since the passage of the Dignity Act, the NYCLU has received a number of reports of discrimination from transgender students and their parents from every corner of New York State – from districts as large as New York City to smaller districts in the state’s most rural areas.

The following stories, pulled from these reports, show that without guidance from the State Education Department, transgender youth in New York public schools are in crisis. Widespread misunderstandings held by school administrators and teachers impact each and every part of the school day for transgender students, from enrolling as a student to using sex-segregated spaces like bathrooms to taking part in routine activities like after-school sports.

Most students featured in this report have chosen to remain anonymous. Many keep their transgender status private. Many felt empowered to actively challenge discrimination in their school environment, while others lack the support systems to safely speak out. Some students contacted the NYCLU with the support of their families, but others fear family rejection or conflict if they are vocal about their gender

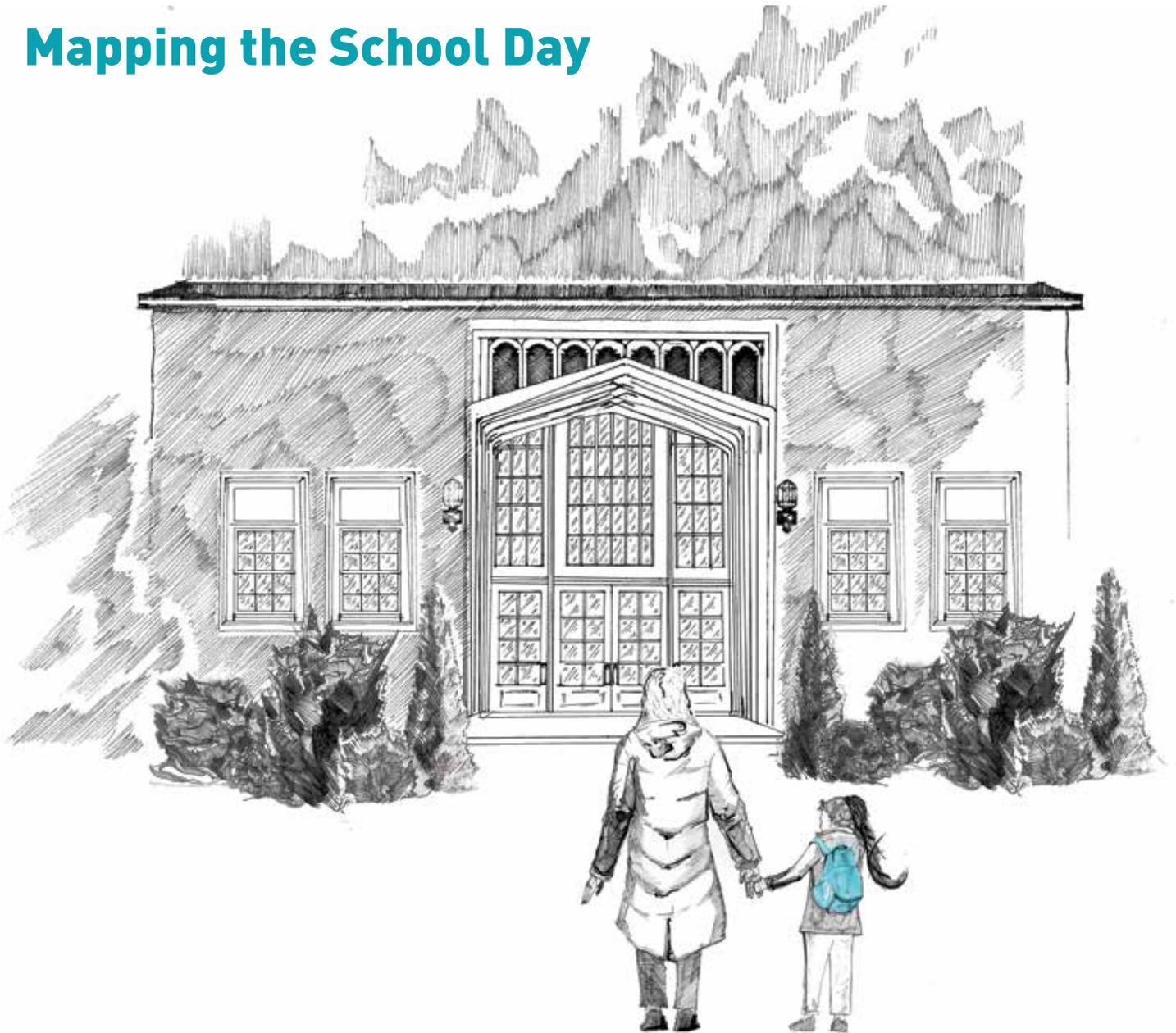
## MAP OF INTAKES BY NYCLU REGION



identity or the issues they face in school.

Together, their stories demonstrate the range of issues facing transgender youth across New York and the urgent need for statewide guidance and reform.

# Mapping the School Day



## STARTING SCHOOL: RECORDS AND ENROLLMENT

Danny, age 16, Long Island

Danny is a basketball player who is in the same school as he was before he transitioned. Danny just wants to blend in, go to school and be himself. But his school refused to update his records, including his ID card and name on attendance sheets, to reflect his correct name and gender pronouns. So on a regular basis, Danny has to publicly explain that he is transgender. He is routinely harassed by hallway monitors on his way to use the nurse's office, where he has to change for gym class instead of the locker room. At lunch time, cafeteria workers call him out of line and question him about the name and photo on his ID card. Many times, Danny just doesn't eat lunch. He told school officials about these occurrences but they responded that he had to accept such challenges.

Many days Danny dreads going to school so much that he is unable to get out of bed and stays home. Formerly an honor student, he's now failing three classes due to poor attendance, will not be able to take the Regents exams, and his school is threatening to hold him back another year. His mother is afraid the school staff's attitude is ruining Danny's life.

*They are causing him emotional harm, his mother said. And I can't afford to put him through summer school classes. I don't know what to do.*

The issue of what name and pronoun to use when referring to a transgender student is one of the first issues a school must resolve to create a supportive environment.<sup>69</sup> As in Danny's case, failure to update a transgender student's records can not only put that student in uncomfortable situations throughout the school day, but also effectively "out" that student as transgender, violating their constitutional right to privacy and even risking their personal safety.<sup>70</sup>



## Alex, age 15, North Country

The summer before Alex entered ninth grade, he and his mom met with school officials to discuss his transition. At the meeting, the superintendent said the school would need documentation to "prove" Alex was a boy and that his transition was not just a "troubled student acting out." When Alex told his guidance counselor how distressing this was, he was told he would need to start hormone therapy or get a legal name change in order to be recognized as male by the school.

Neither Alex nor his mother felt comfortable following up with school officials again.

All schools need to determine the gender identity of a student is a statement from that student.<sup>71</sup> The process of transitioning is different for every young person, based on a variety of factors from personal choice to access to mental health care.<sup>72</sup> So a young person's transition can occur with or without a medical diagnosis of gender dysphoria or interventions like hormone therapy or gender reassignment surgery.<sup>73</sup> Therefore schools should never require medical documents to affirm a student's gender identity. Likewise, other state agencies like the New York State Department of Health no longer require proof of gender reassignment surgery or hormonal treatments in order to change someone's gender marker on a birth certificate.

Unfortunately, the State Education Department fails to provide school districts with guidance on registering transgender students or providing support to students who transition while they are enrolled in the same school. As a result, administrators routinely ask highly invasive and inappropriate questions in their attempt to navigate the registration process with transgender youth and, in cases like Alex's, wrongfully require burdensome "proof" of a student's gender identity.<sup>74</sup>

## HARASSMENT IN THE HALLWAYS

Sara, age 14, North Country

*Sara leaves for school at 8:30 a.m. and by 10 a.m. she is texting me until I can come pick her up, said her mother. Recently she was talking about cutting herself. I worry all the time that she is going to hurt herself and that one day she won't reach out and text me when she is feeling depressed at school.*

Sara suffered so much bullying in ninth grade that she had an emotional breakdown over her safety, having to stay home for several weeks. She hears harassing comments throughout the day, whether she is waiting in line for the vending machine or playing volleyball in gym. Her classmates routinely ask her explicit questions during the school day like, *Do you have a d--- in your pants?*

*One day we went shopping for a wig, and Sara was so happy. Only she came back to school to be bullied by the other students. It was a really dark time. She wants friends so badly she is willing to tolerate just about anything.*

Telling her school's Dignity Act coordinator about the bullying was out of the question – Sara saw him act rudely to another transgender student at her school. But she told the guidance counselor about every incident. However, not a single incident was recorded or investigated – and therefore also not reported to the State Education Department to help her or other transgender students in her school.

Moreover, the school said it would not take any action in response to the harassment because there were no witnesses.

As a result of the ongoing bullying, Sara now suffers from anxiety and symptoms of depression. In school she suffers from chronic stomachaches and headaches and is in and out of the doctor's office. She goes to the guidance counselor as often as six times a day.

*I've never seen her like this before. I never know when she is going to burst into tears or start yelling. She thinks no one likes her, even her family. I spend 75 percent of my time helping her deal with her anxieties and bringing her to therapy.*

Because of the ongoing harassment, and the anxiety it caused her, Sara and her mom have requested that she be tutored at home for the remainder of the school year.

Students who are harassed because of their gender identity or perceived sexual orientation report higher levels of depression and lower self-esteem.<sup>75</sup> In one study of LGBT young adults, those who were harassed at school during adolescence were 5.6 times more likely to report having attempted suicide.<sup>76</sup> Students who experience high levels of harassment based on gender identity are also twice as likely to miss class or stay home from school, and have lower grade point averages compared to their peers.<sup>77</sup> The effects are tragic and lasting: Anti-transgender bullying has also been found to directly correlate with homelessness and unemployment.<sup>78</sup>

Given the severe consequences of harassment, the Dignity Act requires schools to immediately investigate all reports of discrimination and harassment, and after an investigation, they must take immediate steps to resolve incidents and ensure students feel safe and supported. Moreover, the Dignity Act's reporting requirement – that schools document and track all reports of discrimination and harassment and report them to the state – helps shine a light on schools where the environment is especially hostile for students, to prevent harassment of other students. Unfortunately, Sara's school is not alone in failing to comply with the Dignity Act's reporting requirements. One-third of schools in New York State did not report any data whatsoever on harassment and discrimination for the 2012-13 school year.

## IN THE CLASSROOM

Locke, age 17, Southern Tier

Like many transgender youth, Locke receives little support at home. His mom refused to acknowledge his gender identity for years. Locke was determined to make school a more supportive place. But it has been a struggle.

*I wanted my transgender status to remain unknown so that my peers would only know me as a guy,* Locke said. He was willing to advocate for himself. He went to the principal to ask for access to the boy's bathroom and to be called by his preferred name and gender pronouns. But the principal refused. Unable to use the right bathroom or locker room, Locke has to constantly publicly explain his transition. The school only agreed to put "Locke" in parenthesis on attendance sheets next to his birth name, like a nickname. Substitute teachers call out his birth name in front of everyone when reading the roster, and Locke has to repeatedly go in front of the class to re-explain his transition. People pick on him and rumors spread.

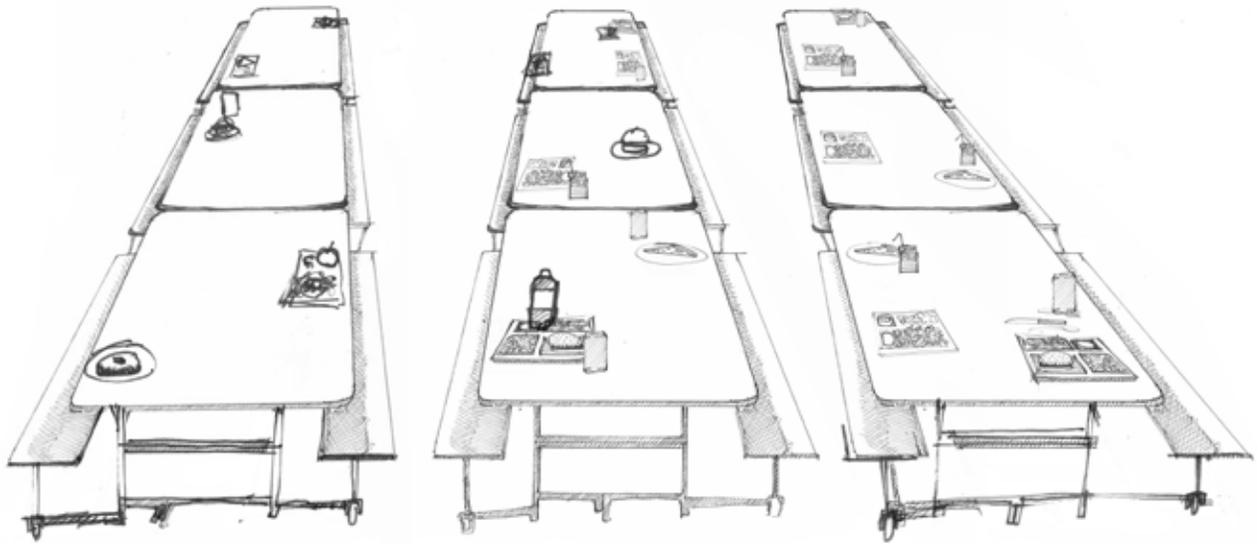
Locke is targeted by his regular teachers, too. One teacher repeatedly calls him his birth name and uses female pronouns to refer to him. During class one day that teacher called Locke and his friends *You girls* so many times that another student eventually protested. But Locke is afraid that he'll be thought of as a trouble-maker if he stands up for himself too much.

Locke is doing whatever he can to seek support. *I wanted to create a supportive school environment but I get depressed.* For his birthday, he asked his mom for therapy. *I go through hardships for no reason at all. I just want to...be.*

Consistent disregard for a transgender student's preferred name or gender pronouns is a form of discrimination prohibited under the Dignity Act. Discrimination by teachers, like the teacher who harassed Locke, can especially make students feel disrespected, alienated and unsafe.<sup>79</sup> Teachers are in positions of power, and their use of a student's correct name and gender pronouns sets a behavioral example for the entire school community. Research shows that transgender students who have been harassed by teachers show "dramatically worse health and other outcomes." For example, 51 percent of transgender or gender nonconforming youth who were harassed at school because of their gender identity reported having attempted suicide; these numbers rose dramatically when teachers were the reported perpetrators: 59 percent harassed by teachers in K-12 or higher education reported attempting suicide.<sup>80</sup>

All staff are in need of more training and access to information about transgender and gender nonconforming youth.<sup>81</sup> Moreover, "school staff" does not just include teachers – cafeteria workers, hallway monitors, school safety officers and school administrators regularly interact with youth and play a role in shaping school climate. But apart from a school's designated Dignity Act coordinator, in New York State many staff members receive little to no guidance about how to set up a gender-inclusive learning environment or the issues impacting transgender youth. Even trained Dignity Act coordinators express confusion: While some coordinators might be clear on the rights of transgender students, many report feeling "powerless" to make changes to school policies or procedures in their school.<sup>82</sup>





## LUNCH TIME

Mark, age 15, Capital Region

Mark, who is gender nonconforming, was eating lunch in the cafeteria when his principal pulled him aside and asked him to remove his makeup. *You're a boy with a full beard. It's not right. You can do what you want to do in your own time, but this is distracting to other students.* The principal then contacted Mark's father to let him know she had instructed Mark to remove his red lipstick and blue eye shadow, even though identical makeup is allowed for female students. She said she wasn't sure if Mark was *going through something personally*, but that it was not appropriate for him to wear makeup to school and that it was distracting to the educational environment.

*The principal made him feel like he couldn't be himself at school*, said Mark's father. *My son doesn't need to feel bad about himself. He's not hurting anyone.* But his father is nervous that if he protests the principal's behavior further, she will only retaliate by continuing to target Mark. *I'm worried that the principal will be watching what he is wearing every day. My son just needs to be comfortable in school.*

Under the Dignity Act, all students have the right for their gender expression to be respected in school, even when they don't conform to gender stereotypes. Schools are permitted to enforce a dress code, but they cannot enforce traditional stereotypes of "masculinity" or "femininity." Fear that a student's appearance will be "distracting" – as Mark's principal told him – is not a legally sound reason to ask them to change.<sup>83</sup> Unfortunately in New York State, gender nonconforming students like Mark are often targeted for "dress code violations" that lead to uncomfortable encounters with school staff or, in some cases, disciplinary action.<sup>84</sup> Research shows gender nonconforming youth are disproportionately targeted by school discipline policies, and receive harsher disciplinary action than their gender conforming peers.<sup>85</sup>

## BATHROOM BREAKS

Kate, age 14, Capital Region

When Kate transitioned to female, she had the support of a large group of friends at school. But the school didn't want her to use the girls' bathroom. When she did, she'd get sent to the principal's office and threatened with suspension for insubordination, and staff would call her parents at home. Soon, all staff knew she wasn't allowed to use the girls' bathroom and Kate was constantly confronted, which made her anxious and afraid. Some teachers started telling her she had a bad attitude.

Kate felt like she was the school's enemy. She started having anxiety attacks, where her breathing changed and she became dizzy and overwhelmed. Or she would get choked up and have to fight back tears. She brought her therapist to a meeting with the school's superintendent to explain that school was causing her mental distress, and that bathroom access was necessary for people with gender dysphoria. When the superintendent refused, Kate broke down.

After a long dispute, the school eventually changed their policy and agreed to allow Kate to use the girls' facilities. But it was too late. *I was labeled a trouble-maker*, said Kate. *It's like the faculty was against me*. Despite going through a year of disrupted education at her school, Kate chose to uproot herself and transfer.

Prohibiting a transgender student from using the bathroom that corresponds with their gender identity is discrimination under the Dignity Act.<sup>86</sup> All students are entitled to have access to bathrooms and locker rooms that correspond with their gender identity. Separate changing areas such as nurse's offices or gender neutral bathrooms should be made available to students who want them, but never forced upon them. Otherwise the school would be sending the message to other students that it is acceptable to treat transgender students differently. But bathroom access is an urgent problem for transgender students across the state. In fact, almost all the requests for legal assistance received by the NYCLU regarding transgender students have dealt with issues related to restroom and locker room access.

Bathroom access is a critical health issue. Denying transgender youth access to bathrooms that correspond with their gender identity can lead to serious medical complications. Many transgender students also keep their status private – they have a constitutional right to do so – and schools that refuse them access to the appropriate bathroom almost certainly “out” them to their friends and classmates. Transgender students who are not allowed bathroom access describe limiting trips to the bathroom, even going all school day without using the bathroom, out of fear they will arouse the suspicion of other students. Routinely “holding it” can result in health problems including dehydration, urinary tract infections, kidney infections and kidney-related problems.<sup>87</sup>

Being segregated is damaging to any student, but for a transgender student, like Kate, segregation also undermines their full integration into society. When transgender students challenge unfair school policies like Kate did they can be labeled as “trouble-makers” by their school or



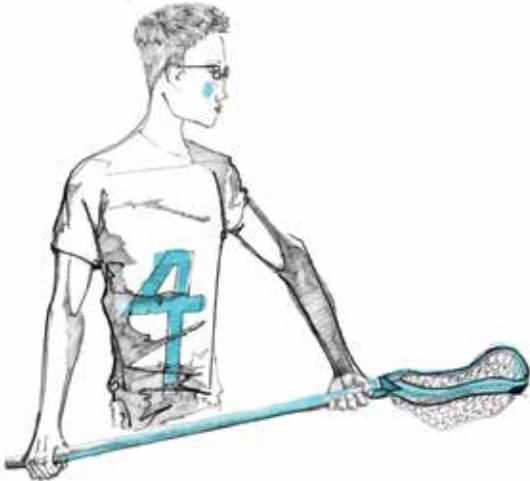
face disciplinary action. Research also shows that transgender and gender nonconforming youth of color, like Kate, experience discipline disparities and harsher punishment for the same or similar infractions compared to their peers.<sup>88</sup>

## GYM, SPORTS AND LOCKER ROOMS

Josh, age 17, Syracuse

Josh has to struggle for his basic needs at home and at school. At home, Josh's parents are separated and his parents did not always agree on how to support him. At school, where Josh is a serious athlete, other students don't know about his transgender status and he had been using the boys' locker room without incident. But a staff member reported Josh to the principal, and the school asked him to use the nurse's office instead until it creates an official policy for transgender students.

If Josh's friends see him changing in the nurse's office, they ask him questions. He's afraid that if his classmates find out he's transgender, he'll be subject to bullying, harassment and violence. Josh's father is scared, too: *If he's outed, he's not going to be safe. He'll be a target for physical or sexual assault.*



So even though Josh is best at gym, he skips gym class, either waiting in the principal's or guidance counselor's offices. One day he just left school and his father picked him up early. *I feel so sad – straight out of a movie sad*, said Josh. His gym class average is declining, and his chances of staying on the honor roll are now at risk. He has asked if he can be home-schooled.

*I'm having a whole bunch of bad things going on at home, and now a whole bunch of bad things are going on at school. It's setting me up for depression. I've been to nine different therapists. I went to one lady who said the devil was trying to work through me.*

*School can make a huge difference. The school has signs that say "safe space." But the signs are wrong.*

School districts may not treat transgender students differently with regard to the services, benefits or opportunities provided to them, including all school activities and intramural sports.<sup>89</sup> Sports in particular can be a place for students to form friendships and establish a sense of belonging.<sup>90</sup> Most students featured in this report were discouraged or outright prohibited from playing on teams that correspond with their gender identity.<sup>91</sup> Denying transgender students the ability to engage in extra-curricular activities and sports can affect their college applications and academic achievement and even fundamentally damage their ties to the school community.<sup>92</sup>

But even when the rules are clear, the lack of compliance with the Dignity Act in New York State means that schools are denying transgender youth like Josh their rights and even putting them into danger. Rather than pushing kids toward their diploma and higher education, the school climate is pushing transgender kids out. School push-out can take a range of forms: For some students it means dropping out or transferring. For others it means disengaging from the school community, skipping class or opting out of extracurricular activities. Even students like Josh who receive little support at home ask to stay there rather than risk their safety in school.

## PREVENTION?

Jessie, age 6, New York City

Six-year-old Jessie doesn't conform to stereotypes about her gender. She plays with boys and wears boys' clothing. But at her public school in New York, she is already being bullied. Gender-based bullying of Jessie began when she was a five-year-old in kindergarten. This year, in first grade, a classmate began taunting her for looking like a boy. Over several weeks the taunting escalated to kicking, hair-pulling, knocking over her lunch tray and finally tackling her and hitting her repeatedly. Despite her mother filing a report with the school, the bullying continues.

Her mother recognizes that Jessie may one day identify as male, though at her young age her gender identity may still be forming. But school is making Jessie embarrassed and confused.

When she lined up with her female classmates after being asked to line up by gender, another kid made fun of her and shouted, *You're a boy!* Jessie doesn't understand what these comments mean, but she said the taunting made her *heart hurt*.

*She doesn't even want to tell me what's happening, her mother said. I'm afraid she is going to get hurt. She's already experienced physical violence. I'm trying to protect her. I'm spending my time going to meetings with the school to see if they can bring in resources. Otherwise I could only imagine what would be happening to her in school.*

Under the Dignity Act, in addition to investigating, reporting and resolving incidents of bias-based discrimination, schools are required to take proactive measures to prevent them. One way for schools to accomplish this is by being mindful of the impact that separating students into "boys" and "girls" has on gender nonconforming youth like Jessie. Whenever possible, schools should limit separating children by gender – whether for class, school ceremonies or photos – to only when it has a clear and sound purpose.<sup>93</sup> The classroom is also one of the most effective places to promote respect. National research shows that LGBT students who attend schools with LGBT-inclusive curricula are less likely to miss school for safety reasons and to report hearing negative comments.<sup>94</sup>

However, even though the Dignity Act requires schools to use inclusive curricula that promotes tolerance and diversity, only 30 percent of New York students surveyed in 2013 were taught positive representations of LGBT people and their history.<sup>95</sup> A 2012 analysis of New York School's health education curricula found 83 percent of districts did not teach students about gender identity or transgender people in health classes.<sup>96</sup> When schools did discuss gender identity, nearly a quarter of the districts surveyed used materials that *reinforced* gender stereotypes.<sup>97</sup>

When Jessie's mom learned her daughter was being harassed, she contacted the principal and recommended that the school start using age appropriate lesson plans to address gender stereotypes as a way to prevent future harassment. But the school resisted, claiming the administration "fulfilled all of their training requirements" for the year and that parents in the community would not approve. "I'm going to get 800 phone calls that we are teaching 'gay stuff' in school," the principal said. Unfortunately, this isn't an isolated occurrence.

Education research shows that many teachers feel unprepared to work with transgender children, and the lack of information about transgender students in professional training programs has left school staff feeling "stressed, anxious and incompetent."<sup>98</sup> Feelings of stress and fear are heightened further by the lack of information, guidance and protocols for school staff working with transgender youth. In such

situations, “district-wide policies and protocols provide security for educators because following protocol means they are representing ‘official’ positions and will have ‘backup’ if anything goes wrong.”<sup>99</sup> At all levels, educators and administrators are often frustrated by the lack of information and protocol made available to them.<sup>100</sup>



## Recommendations

### WHEN THE DIGNITY ACT WORKS:

Central Park East II elementary school in New York City was approached by a family looking for a supportive school for their transgender child. The school's principal recognized that the first step was to make sure all of the staff felt equipped to support transgender and gender nonconforming students. The principal planned a series of trainings for teachers and administrative staff to ask questions and learn best practices, relying on free or low-cost trainings from community-based organizations.<sup>101</sup> Educating parents was also critical. The school organized workshops for parents to ensure the whole school community understood how gender diversity contributes to the academic and emotional success of all students.

Now, students at the school are not segregated by gender for forming lines, gym class teams or classroom groups. Teachers try not to address students as *boys and girls* but gender neutral terms like *friends* and *kiddos*. The school is also exploring how to create gender neutral bathrooms. Parents and community members have ongoing education opportunities and a support line to voice their concerns and get help from the school.

Without state guidance, school districts in New York have come up with their own patchwork of often inadequate or even illegal policies regarding transgender youth. Even superintendent and principals who are committed to complying with the Dignity Act – some of whose schools are featured in this report – struggle without guidance.

The following recommendations are necessary to improve school climate at all New York public schools for transgender youth.

#### **1. Pass a state regulation to ensure all schools are treating transgender and gender nonconforming students equally.** *(See Appendix for Model Policy)*

Schools need clear guidelines and support so they know how to follow both the letter and spirit of the law and can provide a supportive learning environment for all students. States, cities and districts across the country have paved the way and created model policies that all New York schools can adopt. **At a minimum, state-issued guidance and regulations should clearly state that all schools are required to:**

- Prevent and address all reports of discrimination and harassment, in accordance with the procedures set forth in the Dignity Act.
- Respect student privacy, and keep information about a student's transgender status private and confidential.

- Respect the preferred names and gender pronouns of all students, including updating school records and documents to reflect a student’s preferred name and gender.
- Provide transgender students the same opportunities to participate in sports and physical education that all other students enjoy.
- Provide all students with access to restrooms, locker rooms and changing facilities that correspond with their gender identity.
- Provide private bathrooms and changing spaces to all students, regardless of their gender identity, who desire additional privacy. (No student can be required to use a private bathroom or changing space.)
- Limit gender-segregated activities whenever possible. When students are separated by gender in school activities (i.e., overnight field trips), permit transgender students to participate in accordance with their gender identity.
- Implement a dress code that supports the gender expression of all students.
- Provide resources for, and about, transgender or “transitioning” students, including age appropriate lesson plans and resources for parents.

## **2. Improve data collection and reporting.**

- Increase oversight to ensure all schools are in compliance with current reporting requirements. Approximately one-third of New York State schools did not report any Dignity Act data for the 2012-13 school year.
- Revise the Dignity Act reporting form to clarify existing categories and create new ones as needed. The category “other” accounts for more than half of all reported incidents. Training or guiding definitions are needed to ensure educators understand the reporting categories. Adding additional categories may also allow for a more accurate analysis of incidents. For example, adding “gender expression” as a category could help capture incidents targeted toward transgender and gender nonconforming students.
- Require Dignity Act reporting on a quarterly or semi-annual basis. Shorter reporting periods will enable schools, districts and advocates to better understand the trends and patterns of reported incidents in a school community and the impact of new policies or reform efforts.
- Require schools to report preventative measures taken to improve school climate. Data should be reported about local training opportunities provided to school staff as well as the number of employees who participated.

## **3. Increase training opportunities for all school staff.**

Most school staff receive little or no guidance on how to best support transgender and gender nonconforming students.

- Training is needed for all adults working in schools to ensure they understand the range of gender identities and expression and how to take steps to create a supportive environment for all students.
- In addition, for the Dignity Act to be effective, school staff and students need access to informa-

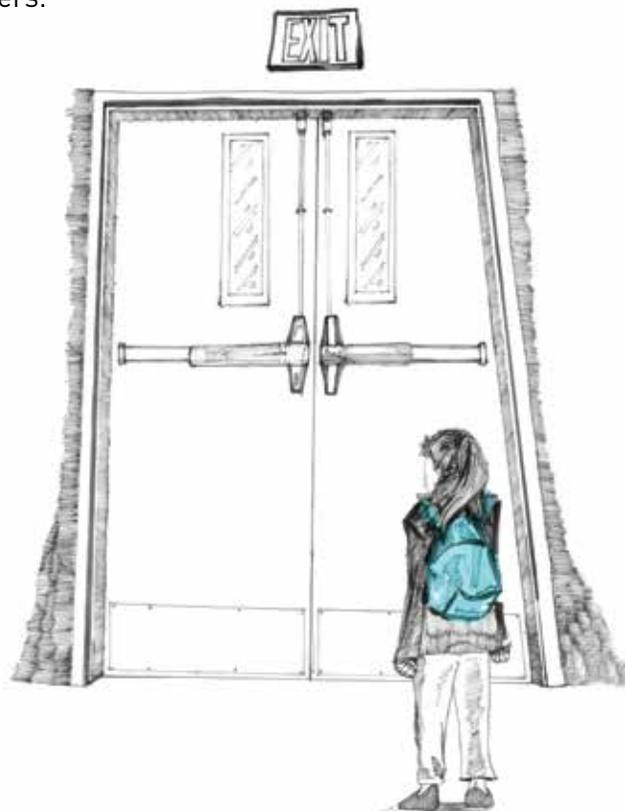
tion about what the law requires, what to do when incidents occur, and best practices to prevent bullying and harassment. Trainings should be regular, mandatory and include a review of gender inclusive school policies.

#### 4. Increase student access to information.

- Incorporate positive information about transgender issues into curricula.
- Provide students and parents with information about the Dignity Act, how to file reports and identify adult allies at school.
- Students need access to trained adults when incidents of bullying, harassment or discrimination occur in school. Individual schools should take proactive measures to ensure all students are empowered to recognize and report incidents impacting their school community.
- Provide students with information about transgender affirming mental health care resources and health care providers.
- Ensure school computers are free of filtering software that blocks information about LGBT people, history, rights and organizations.
- Provide students and staff with information about mental health care services and positive information about gender identity and expression. Materials can be integrated into health classes and displayed in the nurse and guidance offices.

#### 5. Promote positive behavioral interventions and supports.

The Dignity Act holds the State Education Commissioner responsible for helping school districts develop effective responses to bullying that are focused on solutions, intervention and education. When bullying does occur in schools, punishing students should not be the primary form of intervention. Instead positive methods for preventing and resolving conflict should be used to address harmful behavior and enable students to develop a stronger sense of empathy and compassion for each other, as well as for their teachers.<sup>102</sup>



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- 13 N.Y. Educ. Law § 11 ("'Gender' shall mean actual or perceived sex and shall include a person's gender identity or expression"); see also N.Y. Educ. Law §§10-18, 801-a, 2801 (2012).
- 14 See *id.*
- 15 See National Transgender Discrimination Survey, *supra* note 4.

- 16 For most students in this report, pseudonyms have replaced actual names to protect their privacy. The ages of the youth featured in this report refer to their age at the time the NYCLU first received their legal intake. Many of the events the students described therefore took place when the student was younger.
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- 30 See GLSEN 2013 School Climate Survey, *supra* note 3.
- 31 *Id.*
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- 34 National Transgender Discrimination Survey, *supra* note 4, at 7 ("In the face of extensive institutional discrimination, family acceptance had a protective affect against many threats to well-being including health risks such as HIV infection and suicide").
- 35 See Greytak, et al., *supra* note 4.
- 36 Harassment is negatively associated with transgender students' grade point averages, and with their likelihood of stating they plan to go to college. See *id.*
- 37 National Transgender Discrimination Survey, *supra* note 4, at 51.

38 One-in-five transgender people in the United States has been discriminated against when seeking a home, and more than one-in-ten have been evicted from their homes, because of their gender identity. This data is provided by the National Center for Transgender Equality and is available at <http://transequality.org/issues/housing-homelessness> (last visited May 27, 2015).

39 National Transgender Discrimination Survey, *supra* note 4, at 153.

40 See generally National Transgender Discrimination Survey, *supra* note 4 [experiences of anti-transgender harassment and violence at school were correlated with a range of negative outcomes including unemployment, homelessness, incarceration and resorting to drugs and alcohol to dull the pain of abuse].

41 See *id.* at 44.

42 *Id.*

43 See *id.* at 33-45. Fifty-one percent of youth who were verbally harassed, physically or sexually assaulted, or expelled because they were transgender or gender nonconforming reported having attempted suicide. Large majorities of those who had been physically assaulted by peers (64 percent) and those who had been harassed (59 percent) or assaulted (76 percent) by teachers or staff had at some point attempted suicide. See also Haas, et al., *supra* note 2.

44 *Id.*

45 *Id.*

46 Title IX of the Education Amendments of 1972. 20 U.S.C. §§ 1681 – 1688. In 2014, the Department of Education issued official guidance confirming that “Title IX’s sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity.” Office for Civil Rights, U.S. Dep’t of Education, Questions and Answers on Title IX and Sexual Violence (April 29, 2014) 5-6. Available at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf> (last visited May 27, 2015).

47 See U.S. Const., amend. XIV, § 1.

48 See *Powell*, F.3d 107 at 111.

49 The Dignity Act was signed into law on September 13, 2010 and took effect in 2012. It amended the New York State Education Law by creating a new Article 2, Dignity for All Students, and revising section 801-a on instruction in civility, character, education, tolerance and respect for others. N.Y. Educ. Law §§10-18, 801-a, 2801 (2012).

50 *Id.*

51 A map created by GLSEN indicates states which have anti-bullying laws which specifically protect students on the basis of sexual orientation and gender identity. These states include Arkansas, California, Colorado, Connecticut, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New York, North Carolina, Oregon, Rhode Island, Vermont and Washington. Available at <http://glsen.org/article/state-maps> (last visited May 27, 2015).

52 *Id.* Map created by GLSEN. Available at <http://glsen.org/article/state-maps> (last visited May 27, 2015).

53 See generally National Transgender Discrimination Survey, *supra* note 4.

54 See New York State Department of Education, *A Resource and Promising Practices Guide for School Administrators & Faculty, Appendix A: Dignity for All Students Act (Dignity Act) Glossary and Acronym Guide* (New York: New York State Department of Education 2013). Dignity Act guidance defines sex as the biological and physiological characteristics that define men and women. Sex is different than gender, and people may have gender identities or gender expressions that differ from their sex. Sex and gender discrimination and harassment may also overlap, particularly when a student is gender nonconforming, meaning he or she expresses his or her gender in a way that does not conform to society’s expectations. Harassment directed toward that student may take the form of both sexual harassment and gender harassment. See also William P. McFarland, “The Legal Duty to Protect Gay and Lesbian Students from Violence in School,” *Professional School Counseling*, 4 (2001) 171.

55 N.Y. Educ. Law § 11[6]. Student privacy concerns make ethical, and confidential, collection of information about transgender and gender nonconforming youth challenging.

56 NYCLU analysis of Dignity for All Students Act reporting via N.Y. Educ. Law § 15 (hereinafter “Dignity Act Data”) 2012-13.

57 *Id.*

58 *Id.*

59 *Id.*

60 *Id.*

61 *Id.*

62 Evie Blad, "Efforts Build to Track School Climate for LGBT Students," *Education Week*, Oct. 2014. Available at <http://www.edweek.org/ew/articles/2014/10/22/09lgbt.h34.html> (last visited: May 27, 2015).

63 Dignity Act Data, *supra* note 56.

64 In New York City, the NYCLU's legal intakes indicate that the Dignity Act coordinator is often referred to as the "Respect for All" coordinator or liaison.

65 Identifying and Appointing the Dignity Act Coordinator (DAC), 8 NYCRR §100.2[jj][4][vii].

66 The NYCLU's Teen Activist Project (TAP) created and distributed a survey in 2013-14 to find out if students could identify Dignity Act coordinators in their schools. TAP members distributed and collected 370 anonymous surveys to their peers, ranging from ninth to 12th grade, in New York City schools. The Teen Activist Program, *Making Dignity a Reality: Dignity Act Implementation, Report Back and Recommendations*, New York Civil Liberties Union, June 2013. For a copy, contact the NYCLU at [info@nyclu.org](mailto:info@nyclu.org).

67 Gay, Lesbian & Straight Education Network, *School Climate in New York: State Snapshot* (New York: GLSEN, 2014) (hereinafter "New York Snapshot"). Available at <http://www.glsen.org/sites/default/files/GLSEN%202013%20New%20York%20State%20Snapshot.pdf> (last visited May 27, 2015).

68 *Id.*

69 See New York Civil Liberties Union, *Policy for Creating a Safe and Supportive School Environment For Transgender and Gender Nonconforming Students*, June 2015: 6 (hereinafter "Model Policy") (citing *Application of Halligan*, 361 N.Y.S.2d 458, 460 (4th Dep't 1974) ("[A]n individual possesses a broad right to assume a new name at common law and in most instances denial of the application will accomplish little except delay the change and add to the confusion of records until a new name is established by usage")).

70 *Powell*, 175 F.3d at 111.

71 The responsibility for determining a student's gender identity rests with the student or, in the case of very young students not yet able to advocate for themselves, with the parent. Confirmation of a student's asserted gender identity is usually as simple as a statement from the student; it may also include a letter from a parent, health care provider, school staff member familiar with the student (a teacher, guidance counselor, or school psychologist, among others), or other family members or friends. See Model Policy, *supra* note 69.

72 See Standards of Care, *supra* note 20, at 176-9.

73 While some transgender students may have a diagnosis of "gender dysphoria," not all transgender youth want, or have access to, mental health care. See Eve Glicksman, "Transgender Today," *Monitor on Psychology*, 44 (2013) 36. To the extent that a student has a diagnosis, discrimination on the basis of disability is prohibited under New York State laws, including the Dignity Act. Furthermore, standard treatment for transgender youth diagnosed with gender dysphoria is that the child be allowed to live, uninterrupted, in the gender with which they identify. School policies that prohibit a student with gender dysphoria from living fully in the gender they identify with is a form of discrimination on the basis of disability. See *Wilson v. Phoenix House*, 978 N.Y.S.2d 748, 750 (N.Y. Sup. Ct. 2013) (holding that gender dysphoria is a disability that must be accommodated under New York law, and that a reasonable accommodation for a transgender woman is being "entitled to experience living as" a female); *Doe v. Bell*, 754 N.Y.S.2d 846, 851 (Sup. Ct. 2003); N.Y. Civ. Rights § 40-c(2) (defining disability as consistent with the New York State Human Rights Law).

74 Transgender youth registration is not the only context where problems have emerged due to school staff members acting as "gatekeepers" to school enrollment. In New York State, widespread reports over the past several years indicated that school staff members were creating unlawful barriers to enrollment for immigrant children across the state, prompting the NYCLU to write a 2014 letter to Commissioner John King. See Donna Lieberman and Johanna Miller, letter to New York

State Department of Education Commissioner John King, 2014 (“We ask that the New York State Education Department (‘SED’) take immediate steps to ensure that all districts in New York adopt enrollment forms and requirements that affirm every child’s right to an education”). Available at [http://www.nyclu.org/files/releases/SEDletter\\_studentenrollmentbarriers\\_10.30.14.pdf](http://www.nyclu.org/files/releases/SEDletter_studentenrollmentbarriers_10.30.14.pdf) (last visited May 27, 2015).

75 Joseph G. Kosciw, et al., *The 2011 National School Climate Survey: The experiences of lesbian, gay, bisexual and transgender youth in our nation’s schools*, Gay, Lesbian & Straight Education Network 2012: xiii-xx.

76 Stephen T. Russell, et al., “Lesbian, gay, bisexual, and transgender adolescent school victimization: implications for young adult health and adjustment,” *Journal of School Health* 81 (2011) 223.

77 See Greytak et al., *supra* note 4.

78 See generally National Transgender Discrimination Survey, *supra* note 4 (experiences of anti-transgender harassment and violence at school were correlated with a range of negative outcomes including unemployment, homelessness, incarceration, and resorting to drugs and alcohol to dull the pain of abuse).

79 See, e.g., Carrie Kilman, “The Gender Spectrum,” *Teaching Tolerance* 44 (2013). Available at <http://www.tolerance.org/gender-spectrum> (last visited: May 27, 2015).

80 National Transgender Discrimination Survey, *supra* note 4, at 3, 33.

81 Education research has found that lack of education about addressing the needs of transgender students, as well as lack of awareness of the existence and experience of transgender students, poses significant impediments to educators responding in a professional and effective way. “Future school professionals have few opportunities in their training programs to reflect on the likelihood that at some point, they will be working with LGBTQ or gender nonconforming children or parents. In short, they have not been trained on how to work with these students, and this lack of training left them feeling stressed, anxious, and incompetent when faced with creating accommodations for a transgender child.” Elizabeth Payne and Melissa Smith, “The Big Freak Out: Educator Fear in Response to the Presence of Transgender Elementary School Students,” *Journal of Homosexuality*, 61 (2014) 399, 405.

82 These reports consist of NYCLU interviews and intakes since 2009.

83 See *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969).

84 See Lambda Legal, *Protected and Served? School Security, Policing and Discipline* (Lambda Legal 2015). Available at <http://www.lambdalegal.org/protected-and-served-schools> (last visited May 27, 2015).

85 Hilary Burdge, Zami T. Hyemingway and Adela C. Licon, *Gender Nonconforming Youth: Discipline Disparities, School Push-Out, and the School-to-Prison Pipeline*, Gay-Straight Alliance Network, Oct. 2014: 4-5. Available at [http://www.gsanetwork.org/files/aboutus/GSA\\_GNC\\_FINAL-web.pdf](http://www.gsanetwork.org/files/aboutus/GSA_GNC_FINAL-web.pdf) (last visited May 27, 2015).

86 The Dignity Act prohibits the creation of a “hostile environment” that may interfere with a student’s educational performance or opportunities, or harm their mental, emotional and/or physical well-being. The New York State Education Department, in the *Promising Practices Guide for School Administrators & Faculty*, *supra* note 54, defines *school climate* as “the quality and character of school life.”

87 Jody L. Herman, “Gendered Restrooms and Minority Stress: The Public Regulation of Gender and its Impact on Transgender People’s Lives,” *Journal of Public Management & Social Policy* 19 (2013) 65-80. Available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Herman-Gendered-Restrooms-and-Minority-Stress-June-2013.pdf> (last visited May 27, 2015).

88 See Lambda Legal, *supra* note 84.

89 U.S. Department of Education, Office for Civil Rights, letter to Downey Unified School District Superintendent John Garcia (2014) (hereinafter “Downey Letter”) (Title IX of the Education Amendments Acts of 1972 prohibits discrimination against students who do not conform to sex stereotypes in all federally funded school programs and activities, including sex segregated sports). Available at <http://www2.ed.gov/documents/press-releases/downey-school-district-letter.pdf> (last visited: May 27, 2015).

90 Jon Douglas Willms, *Student Engagement at School: A Sense of Belonging and Participation*, Organisation for Economic Co-Operation and Development, 2003. Available at <http://www.oecd.org/edu/school/programmeforinternationalstudentassessmentpisa/33689437.pdf> (last visited May 27, 2015).

91 See GLSEN 2013 School Climate Survey, *supra* note 3, at 58 (For students in general, prior research has shown that

participation in school activities like sports is positively linked to academic achievement and psychological well-being. Yet students who experience frequent harassment at school may choose not to spend additional time in that environment and may be less likely to be involved in optional school activities like extracurricular clubs, and in fact, many students in our survey reported specifically avoiding extracurricular activities because they felt unsafe or uncomfortable. These students may not gain the same benefits from extracurricular participation as students who experience less frequent harassment.)

92 *Id.*

93 See Model Policy, *supra* note 69.

94 See generally GLSEN 2013 School Climate Survey, *supra* note 3. National research shows that LGBT students who attend schools with LGBT inclusive curriculum are less likely to miss school because they feel unsafe and were less likely to report negative comments about gender expression often or frequently.

95 New York Snapshot, *supra* note 67.

96 Melissa Goodman, et al., *Birds, Bees and Bias: How Absent Sex Ed Standards Fail New York's Students*, New York Civil Liberties Union, Sept. 2012: 44. Available at [http://www.nyclu.org/files/publications/NYCLU\\_SexEd\\_report.pdf](http://www.nyclu.org/files/publications/NYCLU_SexEd_report.pdf) (last visited May 27, 2015).

97 *Id.*

98 Payne, *supra* note 81, at 408.

99 *Id.*

100 *Id.*

101 The NYCLU and The Gender and Family Project of the Ackerman Institute for the Family held workshops at Central Park East II.

102 Andrea M. Cohn, *Positive Behavioral Supports: Information for Educators*, National Association of School Psychologists, 2001. Available at [http://www.nasponline.org/resources/factsheets/pbs\\_fs.aspx](http://www.nasponline.org/resources/factsheets/pbs_fs.aspx) (last visited May 27, 2015).



# Model Policy for Creating a Safe and Supportive School Environment For Transgender and Gender Nonconforming Students

Developed by the Empire Justice Center, the Empire State Pride Agenda and the NYCLU, with contributions and support from organizations across the state.<sup>1</sup>

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## INTRODUCTION

Federal, state and local laws require schools to treat transgender and gender nonconforming (GNC) students equally and fairly. All students need a safe and supportive school environment to progress academically and developmentally. Administrators, faculty, staff and students each play an important part in creating and sustaining that environment. This policy is intended to help school and district administrators take steps to create a culture in which transgender and GNC students feel safe, supported and fully included, and to meet each school's obligation to provide equal educational opportunities for all students in compliance with the law. This guidance recognizes that transgender and GNC students enrolled in our schools face disproportionately high rates of discrimination and harassment.

The purpose of this policy is to foster an educational environment that is safe and free from discrimination for all students – regardless of sex, gender identity or expression – and to facilitate compliance with local, state and federal laws concerning bullying, harassment, discrimination and student privacy.

In order to make this document as helpful as possible, illustrative examples that highlight frequently-asked questions appear in italics throughout. These scenarios, based on real-life examples from students and schools, provide context for how this policy can be followed.

## DEFINITIONS

Understanding the terminology associated with gender identity is important to providing a safe and supportive school environment for students whose rights are protected under the law. The following terms appear in this document and are defined to assist in understanding the guidance presented. These are the most commonly used terms, though students may prefer other terms to describe their gender identity, appearance or behavior. Terminology and language describing transgender and GNC individuals can differ based on region, language, race or ethnicity, age, culture and many other factors. School staff and educators should inquire which terms students prefer and avoid terms that make students uncomfortable; a good general guideline is to employ terms the students use to describe themselves.

*Assigned sex at birth:* the sex designation, usually “male” or “female,” assigned to a person when they are born.

*Gender expression:* the manner in which a person represents or expresses gender to others, often through behavior, clothing, hairstyles, activities, voice or mannerisms.

*Gender identity:* a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth.

*Gender nonconforming (GNC):* a term used to describe people whose gender expression differs from stereotypic expectations. The terms “gender variant” or “gender atypical” are also used.

*Sexual orientation:* a person's emotional and sexual attraction to other people based on the gender of the other person. Sexual orientation is not the same as gender identity. Not all transgender youth identify as

gay, lesbian or bisexual, and not all gay, lesbian and bisexual youth display gender-nonconforming characteristics.<sup>2</sup>

**Transgender:** an adjective used to describe a person whose sex assigned at birth does not correspond to their gender identity.

**Transition:** the process in which a person goes from living and identifying as one gender to living and identifying as another.

## THE LAW

This policy<sup>3</sup> provides guidance on how to follow existing laws that protect transgender, GNC and all other students from discrimination, bullying and harassment based on sex, gender identity or gender expression.

Specifically, New York's Dignity for All Students Act (Dignity Act) is designed to prevent bullying, harassment and discrimination in public primary and secondary schools, including on the basis of gender identity.<sup>4</sup> The Dignity Act includes gender as a protected category and defines gender as "a person's actual or perceived sex and includes a person's gender identity or expression."<sup>5</sup> The Dignity Act's "Resource and Promising Practices Guide for School Administrators & Faculty" contains a section on creating an inclusive school community and fostering sensitivity to the school experience of LGBTQ students.<sup>6</sup>

## UNDERSTANDING THE SCHOOL CLIMATE

Transgender and GNC students are targeted with physical violence and experience a hostile school environment at an even higher rate than their LGB peers, both nationally and in New York.<sup>7</sup> In one 2011 national survey, 75 percent of transgender students reported having been verbally harassed in the previous year, 32 percent physically harassed, and 17 percent physically assaulted.<sup>8</sup> These high rates of bullying correspond to adverse health and educational consequences. A different national survey, also conducted in 2011, found that 51 percent of respondents who were harassed or bullied in school reported attempting suicide, compared to less than 2 percent of the general population.<sup>9</sup> Students also suffered harassment

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2 California School Board Association, *Policy Brief: Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students*, 1 (2014), available at <http://www.csba.org/~media/E68E-16A652D34EADA2BFDCD9668B1C8F.ashx>.

3 This policy is modeled on Massachusetts Department of Elementary and Secondary Education, *Guidance for Massachusetts Public Schools Creating a Safe and Supportive School Environment*, (2012), <http://www.doe.mass.edu/ssce/Gender-Identity.pdf> and GLSEN and the National Center for Transgender Equality, *Model District Policy on Transgender and Gender Nonconforming Students*, (2013), [http://www.transequality.org/PDFs/Trans\\_ModelPolicy\\_2013.pdf](http://www.transequality.org/PDFs/Trans_ModelPolicy_2013.pdf).

4 N.Y. Educ. Law §10-18 (2010); 8 NYCRR §100.2(l)(2).

5 N.Y. Educ. Law §11(6).

6 New York State Education Department (NYSED), *The Dignity Act, A Resource and Promising Practices Guide for School Administrators & Faculty, Creating an Inclusive School Community: Sensitivity to the Experience of Specific Student Populations: LGBTQ Children*, Section II (Mar. 11, 2014), available at <http://www.p12.nysed.gov/dignityact/rgsection2.html> (defining LGBTQ as "individuals who self-identify as either lesbian, gay, bisexual, transgender, or questioning").

7 GLSEN (Gay, Lesbian, Straight Education Network), *School Climate in New York (State Snapshot)*, 2 (2013), available at <http://glsen.org/learn/research/local/state-snapshots> (finding the majority of New York K-12 students surveyed reported being verbally harassed based on their gender identity/expression and/or sexual orientation).

8 GLSEN, *2011 National School Climate Survey*, available at <http://glsen.org/sites/default/files/2011%20National%20School%20Climate%20Survey%20Full%20Report.pdf> [hereinafter "National School Climate Survey"].

so severe that it led almost one-sixth (15 percent) to leave a school in K-12 settings or in higher education.<sup>10</sup> Moreover, LGBT students who are bullied and harassed are more likely to miss days of school, feel excluded from the school community, and have lower academic achievement and stunted educational aspirations.<sup>11</sup>

The Dignity Act and this policy reflect the reality that transgender and GNC students are enrolled in New York public schools. These students, because of widespread misunderstanding and lack of knowledge about their lives, are at a higher risk for peer ostracism, victimization and bullying. Educators play an essential role in advocating for the well-being of students and creating a school culture that supports them.

## UNDERSTANDING GENDER IDENTITY

Transgender youth are those whose assigned birth sex does not match their internalized sense of their gender (their “gender-related identity”), and GNC youth are those whose gender-related identity does not meet the stereotypically expected norms associated with their assigned sex at birth. A transgender boy, for example, is a youth who was assigned the sex of female at birth but has a clear and persistent identity as male. A transgender girl is a youth who was assigned the sex of male at birth but has a clear and persistent identity as female. GNC youth range in the ways in which they identify as male, female, some combination of both, or neither.

The responsibility for determining a student’s gender identity rests with the student or, in the case of very young students not yet able to advocate for themselves, with the parent.<sup>12</sup> One’s gender identity is an innate, largely inflexible characteristic of each individual’s personality that is generally established by age four, although the age at which individuals come to understand and express their gender identity may vary based on each person’s social and familial social development. As a result, the person best situated to determine a student’s gender identity is that student.

### EXAMPLE:

*In one town, the parents of a preschool-age child who was assigned “female” at birth noted throughout the child’s early years that their child identified as a boy. For as long as the parents could remember, the child preferred to play with boys rather than girls, wanted a short haircut, rejected wearing any clothing that the child identified as “something a girl would wear” and ignored anyone who called him by his stereotypically feminine name. When it was time for the child to enter kindergarten, the child said to his parents, “You have to tell them when I go to kindergarten that I’m a boy.”*

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9 Jaime M. Grant, et al., National Center for Transgender Equality and National Gay and Lesbian Task Force, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, 3, 45 (2011), [http://www.thetaskforce.org/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf)

10 *Id.* at 3.

11 *National School Climate Survey*, *supra* note 7, at xv, 4, 21, 25-26, 40-41, 58, 61, 64-65, 122.

12 When used in this document, the term “parent” refers to parent as well as legal guardian.

A school should accept the gender identity a student asserts. In most situations, determining a student's gender identity is simple. A student who says she is a girl and wishes to be regarded that way throughout the school day should be respected and treated like a girl. The same applies to a student who says he is a boy. Both students should be respected and treated as the gender identity they assert.

Many transgender people experience discrimination and some experience violence due to their status. Some environments may feel safe and inclusive, and others less so, challenging a person's ability to live consistently with one gender identity in all aspects of life. For example, it is possible that a student assigned "male" at birth, with a female gender identity, who lives as a girl, does not express her female gender identity all the time.

#### EXAMPLE:

*In one case, a student agreed to present as a boy when visiting relatives until the student's parents could explain the student's transgender identity to them. The fact that the student did not exclusively assert her female identity did not alter the fact that she had a female gender identity.*

Confirmation of a student's asserted gender identity is usually as simple as a statement from the student; it may also include a letter from a parent, health care provider, school staff member familiar with the student (a teacher, guidance counselor or school psychologist, among others), or other family members or friends. A letter from a social worker, doctor, nurse practitioner or other health care provider stating that a student is being provided medical care or treatment relating to her/his/their gender identity is one form of confirmation of an asserted gender identity. It is not, however, the exclusive form upon which the school or student may rely. A letter from a clergy member, coach, family friend or relative stating that the student has asked to be treated consistent with her/his/their asserted gender identity, or photographs at public events or family gatherings are other potential forms of confirmation. These examples are intended to be illustrative rather than comprehensive, and in most cases nothing beyond a statement from the student should be required. Transgender and GNC students form a diverse community, and they may differ in how they present, including differences in factors like their comfort level with being known as transgender or GNC, their transition status, their age and their gender expression.

#### EXAMPLE:

*In one middle school, a student assigned "male" at birth explained to her guidance counselor that she was a transgender girl who expressed her female gender identity only at home. The stress associated with having to hide her female gender identity at school was having a negative impact on her mental health, as well as on her academic performance. The student and her parents asked if it would be okay if she expressed her female gender identity at school. The guidance counselor assured the student and her parents that she could. The fact that the student presented no documentation to support her gender identity was not a concern since the school had no reason to believe the request was based on anything other than a sincerely held belief that she had a female gender identity.*

## GENDER TRANSITION

Many, though not all, transgender youth undergo the experience of gender transition. The term “gender transition” describes the experience by which a person goes from living and identifying as one gender to living and identifying as another. For most youth, and for all young children, the experience of gender transition involves no medical intervention. Rather, most transgender youth will undergo gender transition through a process commonly referred to as “social transition,” whereby they begin to live and identify as the gender consistent with their gender-related identity. Some transgender youth who are close to reaching puberty, or after commencing puberty, may complement social transition with medical intervention that may include hormone suppressants, cross-gender hormone therapy, and, for a small number of young people, a range of gender-confirming surgeries. The decision about whether and how to undergo gender transition is personal and depends on the unique circumstances of each individual. There is no threshold medical or mental health diagnosis or treatment requirement that any student must meet in order to have his/her/their gender identity recognized and respected by a school.

Some transgender and GNC students have not talked to their families about their gender identity for reasons including safety concerns or a lack of acceptance. School personnel should speak with the student first before discussing a student’s gender nonconformity or transgender status with the student’s parent or guardian. For the same reasons, school personnel should discuss with the student how the school should refer to the student, e.g., appropriate pronoun use when communicating with the student’s parent or guardian.

## NAMES AND PRONOUNS

The issue of the name and pronoun to use in referring to a transgender student is one of the first that schools must resolve to create an environment in which that student feels safe and supported. Transgender students often choose to change the name assigned to them at birth to a name that is associated with their gender identity. As with most other issues involved with creating a safe and supportive environment for transgender students, the best course is to engage the student, and in the case of a younger student,

### EXAMPLE:

*In one situation where a transgender girl was entering high school, she and her parent asked the principal to inform her teachers that even though her school records indicate that her name is John, she goes by the name Jane and uses female pronouns. With permission from Jane, the school principal sent the following memorandum to the student’s classroom teachers: “The student John Smith wishes to be referred to by the name Jane Smith, a name that is consistent with the student’s female gender identity. Please be certain to use the student’s preferred name in all contexts, as well as the feminine pronouns. It is my expectation that students will similarly refer to the student by her chosen name and preferred pronouns. Your role modeling will help make a smooth transition for all concerned. If students do not act accordingly, you may speak to them privately after class to request that they do. Continued, repeated and intentional misuse of names and pronouns may erode the educational environment for Jane. It should not be tolerated and can be grounds for student discipline. If you need any assistance to make sure that Jane Smith experiences a safe, nondiscriminatory classroom atmosphere, please contact me.”*

the parent, with respect to name and pronoun use, and agree on a plan to initiate that name and pronoun use within the school. The plan also could include when and how this is communicated to students and their parents. In the case of a transgender student who is enrolling at a new school, it is important that the school respect the student’s privacy (see the following section) and chosen name.

New York law recognizes common law name changes.<sup>13</sup> An individual may adopt a name that is different from the name that appears on his/her/their birth certificate provided the change of name is done for an honest reason, with no fraudulent intent. Nothing more formal than usage is required. Hence, when requested, schools should accurately record the student’s chosen name on all records, whether or not the student, parent or guardian provides the school with a court order formalizing a name change.

In sum, school personnel should use the student’s chosen name and pronouns appropriate to a student’s gender identity, regardless of the student’s assigned birth sex. For those students who have been attending a school and undergo gender transition while attending the same school, it is important to develop a plan for initiating use of the chosen name and pronouns consistent with the student’s gender identity.

## PRIVACY, CONFIDENTIALITY AND STUDENT RECORDS

Under the Constitution, students have a right to keep their transgender status confidential if they so choose.<sup>14</sup> Under the New York Education Law,<sup>15</sup> information about a student’s assigned birth sex, name change for gender identity purposes, gender transition, medical or mental health treatment related to gender identity, or any other information of a similar nature, regardless of its form, is part of the individual’s student record, is confidential and must be kept private and secure, except in limited circumstances. The Family Educational Rights and Privacy Act (FERPA) also protects the privacy of education records and requires that personally identifiable information be kept secure and confidential.<sup>16 17</sup>

When a transgender or GNC student new to a school is using a chosen name, the birth name is considered private information and may be disclosed only with authorization from the student or the student’s parents as provided under the New York Education Law. If the student has previously been known at school or in school records by his or her birth name, the principal should direct school personnel to use the student’s chosen name. Every effort should be made to update student records (for example, attendance records, Individualized Education Programs, etc.) with the student’s chosen name and not circulate records with the student’s birth name. Records with the student’s birth name should be kept in a separate, confidential file.

### EXAMPLE:

*One school nurse dealt with information in the student’s file by starting a new file with the student’s chosen name, entered previous medical information (for example, immunizations) under the student’s chosen name, and created a separate, confidential folder that contained the student’s past information and birth name.*

13 *Application of Halligan*, 361 N.Y.S.2d 458, 460 [4th Dep’t 1974] (“[A]n individual possesses a broad right to assume a new name at common law and in most instances denial of the application will accomplish little except delay the change and add to the confusion of records until a new name is established by usage”).

14 *Powell v. Schriver*, 175 F.3d 107, 111 [2d Cir. 1999] (holding that “the Constitution does indeed protect the right to maintain the confidentiality of one’s transsexualism”).

15 N.Y. Educ. Law § 2-d (Unauthorized Release of Personally Identifiable Information).

16 20 U.S.C. § 1232g; 4 C.F.R. §§ 99.00 et seq.

17 For more information on student privacy, see NYSED’s Parents’ Bill of Rights for Data Privacy and Security at <http://www.p12.nysed.gov/docs/parents-bill-of-rights.pdf>.

When determining which, if any, staff or students should be informed that a student's gender identity is different from the assigned birth sex, decisions should be made in consultation with the student, or in the case of a young student, the student's parent or guardian. As a general matter, school personnel should not share this information without express permission from the student or the student's parents. The key question is whether and how sharing the information will benefit the student.

#### EXAMPLE:

*In one case, parents of a transgender elementary school student requested that only the school principal and the school nurse be aware that the student was assigned the sex of male at birth. After a discussion with the school principal, the parents agreed that the student's teacher, the school secretary and the district superintendent would also be informed. In this situation, the school principal kept the student's birth certificate in a separate, locked file that only the principal could access, and put a note in the student's other file saying that the principal had viewed the student's birth certificate. In another situation, where a student assigned "male" at birth came to school after April vacation as a girl, the school principal and guidance counselor, in collaboration with the student and her parents, developed a plan for communicating information regarding the student's transition to staff, parents and students. The plan included who was going to say what to whom, and when the communication would take place.*

Transgender and GNC students may decide to discuss and express their gender identity openly and may decide when, with whom, and how much to share private information. Whether a student decides to share this information with peers or others does not change the obligation of school personnel to keep that information private and treat it as confidential.

## GENDER MARKERS ON STUDENT RECORDS

A gender marker is the designation on school and other records that indicates a student's gender. For all students, records that include an indication of a student's gender should reflect that student's gender identity (for example, "male" or "female" on a permanent record). For most students, gender identity and assigned sex at birth will align. For transgender students, however, a documented gender marker may not reflect their assigned sex at birth. This means that if a transgender student whose gender identity is male has a school record that reflects an assigned sex at birth of female, then upon request by the student or, in the case of young students not yet able to advocate for themselves, by the parent or guardian, the school should change the gender marker on the record to male. Schools are advised to collect or maintain information about students' gender only when necessary. This also applies to the use of gender markers on documents generated from the school's student information system (i.e. class schedules, report cards, school pictures) and schools are advised to remove that information wherever possible.

In addition, transgender students who transition after having completed high school may ask their previous schools to amend school records or a diploma or transcript that include the student's birth name and gender. When requested, and when satisfied with the gender identity information provided, schools should amend the student's record, including reissuing a high school diploma or transcript, to reflect the student's current name and gender.

## EXAMPLE:

*One school reviewed the documentation requests it sent out to families and noticed that field trip permission forms included a line to fill in indicating the student's gender. Upon consideration, the school determined that the requested information was irrelevant to the field trip activities and deleted the line with the gender marker request.*

## RESTROOMS, LOCKER ROOMS, AND CHANGING FACILITIES

All students are entitled to have access to restrooms, locker rooms and changing facilities that are sanitary, safe and adequate, so they can comfortably and fully engage in their school program and activities. In meeting with the transgender or GNC student (and parent) to discuss the issues set forth in this policy, it is essential that the principal and student address the student's access to the restrooms, locker room and changing facility. Each situation needs to be reviewed and addressed based on the particular circumstances of the student and the school facilities. In all cases, the principal should be clear with the student (and parent) that the student may access the restroom, locker room and changing facility that corresponds to the student's gender identity. While some transgender or GNC students will want that arrangement, others will not be comfortable with it. Transgender or GNC students who are uncomfortable using a sex-segregated restroom should be provided with the least stigmatizing, safe and adequate alternative, such as a single "unisex" restroom or the nurse's restroom. Similarly, some transgender or GNC students may not be comfortable undressing in the changing facilities that correspond to the student's gender identity. Schools should provide private changing spaces to all students, regardless of gender identity, who desire additional privacy. These alternative accommodations should be made available to all students who request additional privacy, regardless of gender identity, but never forced upon them. The following are examples of ways in which school officials have responded to these situations:

## EXAMPLES:

*In one elementary school, a transgender second-grader socially transitioned from female to male. After consultation with the student's family and in accordance with the student's wishes, the principal informed the staff: In order to foster an inclusive and supportive learning environment, the student will begin using male restrooms, in accordance with the student's male gender identity and expression.*

*In one middle school, a sixth-grader socially transitioned from male to female over the summer. Beginning in seventh grade, she used the girls' restrooms and locker rooms.*

*In one high school, a transgender female student was given access to the female changing facility, but the student was uncomfortable using the female changing facility with other female students because there were no private changing areas within the facility. The principal examined the changing facility and determined that curtains could easily be put up along one set of lockers, providing private changing areas for any students who wished to use them. After the school put up the curtains, the student was comfortable using the changing facility.*

Some students may feel uncomfortable with a transgender or GNC student using the same sex-segregated restroom, locker room or changing facility. This discomfort is not a reason to deny access to the transgender student. School administrators and counseling staff should work with students to address the discomfort and to foster understanding of gender identity in order to create a school culture that respects and values all students.

It is strongly recommended that districts include an appropriate number of gender-neutral restrooms commensurate with the size of the school, and at least one gender-neutral changing facility, into the design of new schools and school renovations, in order to accommodate any student, regardless of their gender identity, who desires increased privacy.

School staff as well as students and their families may find the use of restrooms and changing facilities to be among the more challenging issues presented by this policy, perhaps due to issues of personal privacy. As emphasized in other sections of this policy, these issues should be resolved through dialogue with students and parents and through leadership in creating safe and supportive learning environments.

## PHYSICAL EDUCATION CLASSES AND INTRAMURAL AND INTERSCHOLASTIC ATHLETIC ACTIVITIES

Physical education and school-based athletics are an important part of many students' lives. Most physical education classes in New York's schools are coed, so the gender identity of students should not be an issue with respect to these classes. Where there are sex-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. With respect to interscholastic athletics, the New York Interscholastic Athletic Association should rely on the gender determination made by the student's district; it will not make separate gender identity determinations.

## OTHER GENDER-BASED ACTIVITIES, RULES, POLICIES AND PRACTICES

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 transgender or GNC 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.

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.

The Dignity Act provides a good opportunity for schools to review their gender-distinct policies. For example, some schools require students to wear gender-based garb for graduation or have gender-based dress codes for prom, special events and daily attire. Schools should eliminate gendered policies and practices such as these, or open up options that were previously gender-based to all students.

## EXAMPLE:

*One school that previously had blue graduation gowns for boys and white ones for girls switched to blue gowns for all graduates. The school also changed its gender-based dress code for the National Honor Society ceremony, which had required girls to wear dresses.*

Similarly, some classroom teachers may routinely include gender-based practices in the classroom. For example, some teachers may have boys and girls line up separately to leave the classroom to go to lunch, the gymnasium, restrooms or recess, and they may never have considered the educational value of non-gendered alternatives, such as having students line up in the order of their birthdays, alphabetically by name or in the order in which they are sitting.<sup>18</sup>

## EDUCATION AND TRAINING

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

As with other efforts to promote a positive school culture, it is important that student leaders and all 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.

The Dignity Act requires at least one staff member at every school be designated and trained as a Dignity Act Coordinator to handle issues that arise in areas including, but not limited to, gender identity and expression. In addition to trainings provided specifically for Dignity Act Coordinators, professional development for school staff could include topics on gender identity and gender nonconformity;<sup>19</sup> key terms related to gender identity and expression; the development of gender identity; the experiences of transgender and GNC students; risk and resilience data regarding transgender and GNC students; ways to support transgender students and to improve the school climate for GNC students; gender-neutral language and practices and this guidance.

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18 Human Rights Campaign Foundation: Welcoming Schools, *Gender and Children: A Place to Begin for Educators*, (2013), available at <http://hrc-assets.s3-website-us-east-1.amazonaws.com/welcoming-schools/documents/Welcoming-Schools-Gender-Children-Place-to-Begin1.pdf>.

19 Examples include *DASA Training in Harassment, Bullying, Cyberbullying and Discrimination in Schools: Prevention and Intervention* (<http://www.p12.nysed.gov/dignityact/dasatraining.html>) and *DASA Harassment and Bullying Prevention and Intervention Guidance for Local Implementation* (<http://www.p12.nysed.gov/dignityact/documents/DASAGuidanceLocalImplementation.pdf>).

## COMMUNICATION WITH SCHOOL COMMUNITY AND FAMILIES

Superintendents and principals need to review existing policies, handbooks and other written materials to ensure that they are updated to reflect the Dignity Act's and Title IX's prohibition on sex, gender and gender identity discrimination and may wish to inform all members of the school community, including school personnel, students and families, of the recent change to state law and its implications for school policy and practice. This could take the form of a letter that states the school's commitment to being a supportive, inclusive environment for all students, as well as the school's legal obligation to provide equal educational opportunities for all students. Such a letter might include the definitions provided at the beginning of this document and some basic information about transgender and GNC youth; a link to the school's anti-bullying and anti-harassment policies; information about the Dignity Act and the school's Dignity Act Coordinator; a link to this guidance; and other resources, including individuals to contact with additional questions.

### EXAMPLE:

*A letter from one principal explained:*

*"All people have a gender identity. For most people, their gender identity matches their assigned sex at birth. For transgender people, that is not the case. Transgender girls are individuals who were assigned the male sex at birth but whose lived experience of who they are is female. Transgender boys are individuals who were assigned the female sex at birth but whose lived experience of who they are is male. As a school community, we want to provide a safe environment and support all of our students so they can achieve academically. That means making sure that our school's policies and practices are inclusive and respectful of all students, including transgender students. Toward that end, we have ... [describe steps taken to follow the law]."*

## CONCLUSION

This guidance cannot anticipate every situation in which questions may come, and the specific needs of each transgender or GNC student should be assessed and addressed on a case-by-case basis.



