



Legal Issues Related to Transgender Students

Published online in [TASB School Law eSource](#)

In recent years, the legal rights of transgender students have been the topic of federal guidance, litigation, state legislative activity, and increased public awareness. This article addresses some of the more common questions that school districts face in this emerging area.

1. Does a student have a right to be recognized as transgender at school?

Generally, yes. The extent of the student's right, and the district's duty, depends on the specific situation. Under federal law, transgender students have the right to be free from discrimination based on their gender identity and to freely express that gender identity. As such, transgender students should be permitted to wear clothing that aligns with their gender identity. School districts should also use the preferred name and gender of the transgender student unless specifically prohibited by law.

School districts have a legal duty to protect all students, including transgender students, from bullying and harassment by students or employees. While all students deserve a safe place to learn, transgender and gender-nonconforming students face a heightened risk of bullying, violence, and discrimination.¹ Bullying of a student because of the student's nonconformity with gender norms is a form of harassment based on sex in violation of federal law.²

In some instances, reconsidering whether an activity or event needs to divide students by gender may help to avoid calling attention to a transgender or gender-nonconforming student. In other instances, a district may need to group the student with other students of the same gender identity in order to ensure student safety and minimize disruptions to the educational environment. While each student's safety and privacy needs will inevitably vary, the positions and potential risks are clear. Consequently, districts should apply a common sense, case-by-case approach to reach the best resolution in each specific situation.

¹ See Gay, Lesbian, Straight Education Network, [The 2015 School Climate Survey](#) (2016) (finding 57.6 % of LGBTQ students feel unsafe at school and that school-related supports can improve student experiences).

² See, e.g., *Carmichael v. Galbraith*, 574 F. App'x 286 (5th Cir. 2014) (holding that parents of middle school male student who committed suicide after allegedly being bullied by male students because of gender-based stereotypes sufficiently stated student-on-student sexual harassment claim under Title IX).

2. What are common terms for understanding and discussing transgender issues?

The following terms and their definitions have been used by the U. S. Department of Education Office for Civil Rights³ (OCR) or suggested by other sources, including the American Academy of Pediatrics.⁴

Assigned sex or sex assigned at birth: the gender designation listed on one's original birth certificate. Also referred to as biological sex.

Gender-affirming health care: A term that encompasses a range of social, psychological, behavioural or medical interventions designed to support and affirm an individual's gender identity. Interventions may include counseling and medication, such as hormone treatments. Gender-affirming surgeries are typically reserved for adults.

Gender expression: How a person represents or expresses gender identity to others, often through behavior, clothing, hairstyles, voice, mannerisms, or physical characteristics.

Gender identity: One's internal sense of gender, which may be different from one's assigned sex, and which is consistently and uniformly asserted, or for which there is other evidence that the gender identity is sincerely held as part of the person's core identity.

Gender nonconforming: A term for individuals whose gender expression is different from societal expectations related to gender.

Gender stereotypes: Stereotypical notions of masculinity and femininity, including expectations of how boys or girls represent or communicate their gender to others, such as through their behavior, clothing, hairstyles, activities, voice, mannerisms, or physical characteristics.

Gender transition: The process by which a transgender person begins to assert the sex that corresponds to the person's gender identity instead of the person's assigned sex at birth.

Sexual orientation: A term describing a person's attraction to members of the same sex and/or different sex, usually defined as lesbian, gay, bisexual, heterosexual, or asexual. Sexual orientation is a distinct concept from transgender status. In the context of nondiscrimination law, however, sexual orientation and transgender status are frequently analyzed together.

³ See U.S. Dep't of Educ., Office for Civil Rights, and the U.S. Dep't of Justice, Civil Rights Division, [Resolution Agreement between the Arcadia Unified Sch. Dist. and the U.S. Dep't of Educ.](#), OCR Case No. 09-12-1020, at 1-2 (July 24, 2013).

⁴ Am. Assoc. of Pediatrics, [Policy Statement: Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents](#) (Oct. 2018).

Transgender: A term for people whose gender identity is different from their assigned sex at birth. Medical treatments or procedures are not a prerequisite for recognition as transgender.

Transgender female: Someone who identifies as a female but was assigned the sex of male at birth. Also known as MTF or “male-to-female.”

Transgender male: Someone who identifies as male but was assigned the sex of female at birth. Also known as FTM or “female-to-male.”

3. Are school districts subject to OCR Title IX enforcement for claims of gender-based discrimination by transgender students?

Yes. Title IX of the Education Amendments of 1972 (Title IX)⁵ is a federal civil rights law that prohibits discrimination on the basis of sex in federally funded education programs and activities. OCR is the federal agency with the responsibility for enforcing Title IX.

In June of 2021, OCR issued a formal notice of interpretation regarding the application of Title IX to discrimination on the basis of sexual orientation and gender identity. OCR stated that the guidance was necessary in light of the U.S. Supreme Court’s decision in *Bostock v. Clayton County* that Title VII of the Civil Rights Act, a different federal statute, protects gay and transgender individuals from workplace discrimination.⁶ In *Bostock*, the Court concluded that to discriminate on the basis of sexual orientation or gender identity “requires an employer to intentionally treat individual employees differently because of their sex.”⁷ Like Title VII, Title IX prohibits discrimination, including harassment, based on a person’s sex. Therefore, OCR stated that it “will fully enforce Title IX to prohibit discrimination based on sexual orientation and gender identity in education programs and activities that receive Federal financial assistance from the Department.”⁸

Even before *Bostock* was decided, OCR’s written policy guidance indicated that Title IX protects students from gender-based harassment, regardless of the student’s sexual orientation or gender identity:

[G]ender-based harassment, including that predicated on sex-stereotyping, is covered by Title IX if it is sufficiently serious to deny or limit a student’s ability to participate in or benefit from the program. Thus, it

⁵ 20 U.S.C. § 1681.

⁶ *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731 (2020).

⁷ *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1742 (2020).

⁸ U.S. Dep’t of Educ., OCR, [Federal Register Notice of Interpretation: Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of *Bostock v. Clayton County*](#) (June 22, 2021).

can be discrimination on the basis of sex to harass a student on the basis of the victim's failure to conform to stereotyped notions of masculinity and femininity.⁹

In other words, Title IX protects all students, including transgender students, from harassment because of the student's deviation from stereotypical gender norms. It does not matter whether or not a harasser is the same or opposite sex in relation to the targeted student's assigned sex or gender identity. A school district may be liable under Title IX for employee or student harassment of transgender students when there is notice of harassment, followed by deliberate indifference and a failure to respond appropriately.¹⁰ If a complaint is filed alleging discrimination or harassment of a transgender student, school officials should work closely with the district's attorney.

4. What does TASB policy say about transgender students?

TASB offers a model policy that: (1) prohibits discrimination, harassment, dating violence, and retaliation against students; and (2) outlines remedial steps to report, investigate, and respond to concerns. Since 2005, a version of this policy has been at code FFH(LOCAL) in Texas school districts' policy manuals. The TASB policy prohibits various forms of discrimination, including discrimination on the basis of sex, gender, or "any other basis prohibited by law." The policy does not speak directly or solely about the rights of transgender students. As discussed above, the U.S. Supreme Court and Department of Education have found that discrimination on the basis of gender identity is a form of sex discrimination.

5. What additional guidance should we consider in addressing the rights of transgender students?

There are many resources available online:

- OCR's [Resources for LGBTQI+ Students](#) website includes policy guidance, court filings, and examples of resolution agreements regarding Title IX requirements related to "students who are lesbian, gay, bisexual, transgender, queer, questioning, asexual, intersex, nonbinary, and individuals who identify their sexual orientation or gender identity in other ways (LGBTQI+)";

⁹ U.S. Dep't of Educ., OCR, [Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties](#) at v (Jan. 19, 2001).

¹⁰ See *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274 (1998) (holding that damages may not be recovered for teacher-student sexual harassment in an implied private action under Title IX unless a school district official who at a minimum has authority to institute corrective measures on the district's behalf has actual notice of, and is deliberately indifferent to, the teacher's misconduct); *Davis ex rel. LaShonda D. v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629 (1999) (holding that Title IX action for damages may lie against a school board in cases of student-on-student harassment only when there is actual knowledge and deliberate indifference as to severe, pervasive, and objectively offensive harassment that deprives the victim of educational opportunities or benefits).

- In June 2021, OCR and the U.S. Department of Justice issued a joint fact sheet, [Confronting Anti-LGBTQI+ Harassment in Schools: A Resource for Students and Families](#), which cites examples of the types of incidents the agencies might investigate under Title IX;
- The Centers for Disease Control and Prevention (CDC) [Lesbian, Gay, Bisexual, and Transgender Health](#) website provides resources for the special health needs of this youth population, including resources for parents, families, and educators.

Districts should review national guidance in light of state law and local policies. In addition, note that the law in this area is evolving; online resource materials may not be updated to reflect the most recent developments.

6. Do students have a legal right to wear attire that does not match their assigned sex at birth?

Yes, a legal right exists to the extent that a court is likely to conclude that dressing in accordance with a student's expression of gender or sexual orientation is a form of protected expression. Courts have found that wearing gender-nonconforming clothing may be protected by the First Amendment as free speech, by the Fourteenth Amendment with regard to equal protection, and by Title IX.¹¹ In light of this legal authority, a school district could permit a transgender male student to wear a tuxedo for his yearbook photo consistent with his expressed gender identity. Or, similarly, a district might allow a transgender female student to attend the prom in feminine attire.

Transgender and gender-nonconforming students are still subject to the established student dress code for the student's preferred gender attire. The dress code must be applied fairly to all students. For example, if feminine attire at the prom requires dresses with a certain neckline and length, then all students who dress in feminine attire must abide by those requirements, including a transgender female. At the same time, these students should not be asked to "tone it down" or be required to dress in a different manner than other students in the expressed gender.

7. Should a district change school records to reflect a transgender student's preferred name and gender?

At least one federal circuit court has found that a school district's refusal to change a transgender student's records to reflect his male gender identity violated Title IX and the Equal Protection Clause.¹² While the Fourth Circuit case is not binding legal authority in Texas, it reflects a legal trend that may be persuasive in a Texas court.

¹¹ See, e.g., *McMillen v. Itawamba Cnty. Sch. Dist.*, 702 F. Supp. 2d 699 (N.D. Miss. 2010) (finding that a lesbian female student demonstrated her likelihood of success on the merits of a First Amendment claim when school denied her permission to wear a tuxedo or other masculine attire to prom).

¹² *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020).

Texas law does not definitively resolve this issue, but a district does have some flexibility with regard to requests to change a student's name and gender.

Texas Education Code section 25.0021 requires that a student be identified by his or her legal surname, or last name, as that name appears (1) on the student's birth certificate or other document suitable as proof for the student's identity, or (2) in a court order changing the student's name. However, Section 25.0021 does not address students' first names or genders.

In general, a student's legal name is used on permanent records, especially when required by state or federal laws and regulations. For example, Texas school districts are required to complete and maintain permanently the academic achievement record, or "AAR" of high school students (often referred to as a "transcript"), including full legal name and gender.¹³ Following guidelines developed by the Texas commissioner of education, the AAR must have the complete name from the student's birth certificate or other legal document, without use of nicknames or abbreviations.¹⁴ The student's legal name, the name submitted to Public Education Information Management System (PEIMS) at the Texas Education Agency (TEA), and the name recorded on the AAR must be identical.¹⁵ Any changes in the AAR must be dated, explained and kept as part of the student's permanent file.¹⁶ TEA has informally stated that it will accept the student gender that a district reports through PEIMS, including a report that changes the student's gender following a student and/or parent request to alter the record.

In contrast to permanent school records, however, teachers and other school district employees often informally address students by, and have non-permanent school records that reflect, preferred names or nicknames that are not a student's legal first name. A school district should apply this practice equally with transgender students. For example, the transgender student's preferred first name and gender should be used in speaking with the student and for class rosters, identification badges, awards, and any other similar purpose. OCR and DOJ's 2021 guidance cites a failure to address a transgender student by the student's chosen name and pronouns as an example of sex-based discrimination within the agencies' enforcement authority under Title IX.¹⁷

Following a gender transition, a student or the student's parents may request that a district change the student's name and gender in educational records based upon a claim that such records are incorrect, misleading, or a violation of privacy under the

¹³ Tex. Educ. Code § 28.025(e); 19 Tex. Admin. Code § 74.5(b); Tex. Educ. Agency, [Minimum Standards for the Academic Achievement Record](#) (2012).

¹⁴ Tex. Educ. Agency, [Minimum Standards for the Academic Achievement Record](#), Section 1.11 (2012).

¹⁵ Tex. Educ. Agency, [Minimum Standards for the Academic Achievement Record](#), Section 1.11 (2012).

¹⁶ Tex. Educ. Agency, [Minimum Standards for the Academic Achievement Record](#), Section 1.9 (2012).

¹⁷ U.S. Dep't of Educ., OCR and U.S. Dep't of Justice, [Confronting Anti-LGBTQI+ Harassment in Schools: A Resource for Students and Families](#).

Family Educational Rights and Privacy Act (FERPA).¹⁸ In a 1991 letter regarding a former male student who had graduated from a school district and thereafter transitioned to female, the U.S. Department of Education advised that “whether to amend the students’ education records to reflect a name and gender other than that of the students’ [name and gender] during their attendance would be considered a substantive decision of the District” and not a matter of required amendment under FERPA.¹⁹ In other words, the district had the option of complying with the former student’s request. Some districts in Texas have opted to change a former student’s records with appropriate documentation. Doing so may be a matter of significant personal safety; tragically, some transgender individuals have been subjected to harassment and even violence when their assigned-at-birth sex is revealed.

In assessing a request to change or correct records, school district officials may wish to seek specific guidance from the district’s legal counsel.²⁰ The district should also communicate and coordinate with any other agency that has authority related to the record at issue, such as TEA.

Note of Caution on Student Privacy

School districts and their employees should exercise caution in the release of information about a transgender student and seek guidance from the district’s attorney when in doubt. Depending on the circumstances, FERPA may protect from disclosure information about a transgender student that would be considered non-confidential directory information for another student. For example, a student may transition genders when moving from one school to another. In the process, the transgender student may request to be addressed by a new preferred first name and gender. The student may also want to keep private the previous name and gender that would be part of the student’s educational records.

For most students, name and gender are categorized under FERPA regulations and local policy as *directory information*, which may be released without parental consent. For the transgender student, however, the former name and gender noted in the previous district’s records would not meet the definition of directory information because its release could be considered harmful or an invasion of privacy. In addition, note that all parents, and students aged 18 and older, have the right to opt out of disclosure of directory information and the district must provide annual notice of this right.²¹

¹⁸ 20 U.S.C. § 1232g; 34 C.F.R. § 99.7(a)(2)(ii).

¹⁹ U.S. Dep’t of Educ., Family Policy Compliance Office, *Letter from FPCO Director Leroy S. Rooker to Karol Johnson, Superintendent, Great Falls Public Schools* (Nov. 13, 1991).

²⁰ U.S. Dep’t of Educ., OCR, and the U.S. Dep’t of Justice, Civil Rights Division, [Resolution Agreement between the Arcadia Unified School District and the U.S. Dep’t. of Educ.](#), OCR Case No. 09-12-1020, (July 24, 2013); U.S. Dep’t of Educ., OCR, and the U.S. Dep’t of Justice, Civil Rights Division, [Resolution Agreement Downey Unified School District](#), OCR Case No. 09-12-1095, (Oct. 8, 2014).

²¹ 34 C.F.R. §§ 99.3, .37. See TASB Policies FL(LEGAL) and (LOCAL).

8. What should a school district do if a transgender student requests to use sex-specific restrooms or locker rooms based on the student's gender identity?

Title IX regulations have long permitted school districts to segregate male and female students in separate but comparable toilet, shower, and locker room facilities.²² The legal issue presented by transgender students is how to define “male” or “female” when a student’s consistently expressed gender identity does not match the student’s assigned sex at birth. The Title IX statute and regulations were not designed to answer this question when they were adopted in the 1970s. As federal agencies with enforcement authority under Title IX, however, OCR and DOJ’s 2021 guidance cites a district’s refusal to allow a transgender student to use the restroom according to the student’s gender identity as an example of sex-based discrimination.²³

The issue of a transgender student’s legal right to access sex-specific facilities based on gender identity has been litigated in many states, where most federal courts have found in favor of a student’s right to use facilities corresponding to the student’s gender identity.

In the first major case to address this issue, a transgender male student in Virginia challenged a school district policy that required him to use gender-neutral facilities rather than the communal boys’ restroom. In 2020, the Fourth Circuit Court of Appeals held that the school district’s policy violated Title IX and the Equal Protection Clause.²⁴ Other federal courts have similarly ruled in favor of transgender student rights, particularly in the wake of the U.S. Supreme Court’s decision in *Bostock*.²⁵ In 2022, however, the Eleventh Circuit Court of Appeals ruled that a Florida district’s policy for transgender students did not violate equal protection or Title IX.²⁶ The district’s policy stated that no student would be required to use the bathroom that corresponded with their biological sex, and the district provided gender-neutral bathrooms as an alternative. If the Florida student who was denied use of the communal boys’ bathroom under this policy pursues his case in the U.S. Supreme Court, the Court may issue a ruling that would impact public schools and transgender students across the country.

²² 34 C.F.R. § 106.33.

²³ U.S. Dep’t of Education, OCR and U.S. Dep’t of Justice, [Confronting Anti-LGBTQI+ Harassment in Schools: A Resource for Students and Families](#).

²⁴ *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2021), *cert denied* June 28, 2021.

²⁵ *See Whitaker ex rel. Whitaker v. Kenosha Unified Sch. Dist. No. 1, Bd. of Educ.*, 858 F.3d 1034 (7th Cir. 2017), *cert. dismissed* Mar. 5, 2018 (finding district refusal to allow transgender male student to use boys’ restroom likely violated Title IX and Equal Protection); *also see Doe ex rel. Doe v. Boyertown Area Sch. Dist.*, 890 F.3d 1124 (3d Cir. 2018) (upholding denial of injunction to students claiming that district’s policy allowing transgender students to use bathroom in accordance with gender identity violated non-transgender students’ constitutional right to privacy.)

²⁶ *Adams ex rel. Kasper v. Sch. Bd. of St. John’s Cnty., Fla.*, No. 18-13592, 2022 WL 18003879 (11th Cir. Dec. 30, 2022).

To date, no court with jurisdiction in Texas has issued a final decision that clarifies exactly how a district must respond when a transgender student asks to use communal, sex-specific facilities that correspond to the student's gender identity. In the meantime, it remains clear that the transgender student has a right to be free from discrimination or harassment based on gender identity, while other students may claim a right to privacy or raise a safety concern about sharing a sex-specific facility with a transgender student. Districts are tasked with finding a reasonable resolution that addresses each situation as best as possible, in light of nondiscrimination principles and practical options.

As an initial step, the school district should communicate with the transgender student and the student's parents to determine the student's preference as to gender-specific facilities. Some school officials have found that the student voluntarily agrees to or prefers a separate unisex restroom, shower and changing area. If available, the district may make individual-user facilities an option for any student seeking greater privacy. Such facilities should be selected with safety, accessibility, and lack of educational disruption in mind.

While separate unisex facilities may work for some transgender students, others may feel that such an arrangement negatively singles them out and isolates them from their peers. Consequently, the transgender student may request to use communal sex-specific facilities that match the student's gender identity. There is no law that prohibits a district from granting the transgender student's request to use these facilities. If other students or their parents object to the use of a sex-specific facility by a transgender student, a school district may be able to amicably address the competing interests by making individual-user facilities and private areas available for all students.

If the transgender student's requests are not granted, then a school district will need to be prepared to demonstrate all the options considered and attempted, and to articulate a reasonable, non-discriminatory rationale for denying any requests.

Due to the potential risk of litigation, a district should promptly consult with legal counsel in order to determine a defensible plan of action, including documentation of the district's efforts to address legitimate safety and privacy concerns while upholding the principles of nondiscrimination.

9. What do we do if a transgender student requests to participate in a sport based on gender identity instead of assigned sex on a birth certificate?

The answer to this question is in flux, but the first issue is always whether the sport in question falls under the jurisdiction of the University Interscholastic League (UIL). In 2021, the Texas Legislature amended the Texas Education Code to prohibit an interscholastic athletic team sponsored or authorized by a school district or open-enrollment charter school from allowing a student to compete in an athletic competition that is designated for the biological sex opposite to the sex as correctly

stated on the student's official birth certificate, or other government record if the birth certificate is unobtainable. The only exception is that, consistent with Title IX regulations, schools may continue to allow female students to compete in UIL competitions designated for male students if a corresponding activity for female students is not offered or available.

A statement of the student's sex on a birth certificate is considered correct if entered at or near the time of the student's birth or modified to correct any type of scrivener or clerical error. In adopting this law, the Legislature stated that its purpose was to further the governmental interest of ensuring that sufficient interscholastic athletic opportunities remain available for girls to remedy past discrimination on the basis of sex.²⁷ The new law applies to athletic competitions held on or after January 18, 2022.

Prior to this change in law UIL's nondiscrimination policy required Texas public schools to use a student's birth certificate to determine eligibility.²⁸ However, the UIL did not have a rule requiring a student to compete as the biological sex stated on the birth certificate *at or near the time of birth*, therefore a student that had legally modified a birth certificate to match the student's gender identity was eligible to compete as that gender. The law requires UIL to adopt rules to implement this new law, which must be approved by the commissioner of education and must ensure compliance with state and federal law regarding the confidentiality of student medical information.

While the Education Code settles the UIL's position on eligibility, a district's decision to enforce such a position, or to apply these rules to sports that are not under the jurisdiction of UIL, is still subject to legal challenge and review by the OCR and the federal courts, both of which are likely to consider exclusion of a student based on their transgender status as sex-based discrimination under Title IX. In addition, President Biden is urging Congress to pass a statute that would supersede state laws denying rights to transgender individuals.

Therefore, school districts should assess each request individually and determine the best course of action based on a thorough evaluation of all of the issues and potential risks, and in consultation with the district's attorney.

10. How should a district handle field trips for transgender students?

Districts must not deny a transgender student an equal opportunity to participate in field trips, or any other curricular or extracurricular activity, in which students are segregated by sex. School officials can reduce the risk of complaints by addressing accommodations for individual transgender students in advance with the goals of

²⁷ Tex. Educ. Code § 33.0834.

²⁸ The Univ. Interscholastic League, Constitution and Contest Rules, Subchapter J, [Section 360: Nondiscrimination Policy](#), subsection (h).

maximizing the student’s opportunity to learn and socialize with peers while ensuring safety and privacy interests for all students.²⁹ When the district agrees on an arrangement for the student’s use of private, unisex, or sex-specific facilities at school, school officials must be prepared to ensure that the student has a safe place to use the restroom when away from campus. For example, when planning an event that will occur off-campus, a district employee may be assigned to call the location in advance to get information about private or alternative bathrooms or locker rooms.

For field trips involving overnight stays, an administrator or counselor may ask the student to identify other students with whom the student feels comfortable sharing a room. In this case, the administrator should seek written consent from the parent of a minor transgender student (or the student, if 18 years old) allowing the district to share information with the other students and their parents.³⁰

11. Are school district employees legally obligated to report gender-affirming care as child abuse?

On February 18, 2022, Texas Attorney General Ken Paxton issued an opinion concluding that certain “ ‘sex change’ procedures and treatments . . . when performed on children, can legally constitute child abuse under several provisions of chapter 261 of the Texas Family Code.”³¹ The attorney general’s opinion discussed gender-affirming health care treatments such as puberty-blocking hormone therapy. Days later, Texas Governor Greg Abbott issued a letter to the Department of Family and Protective Services (DFPS), which is the state agency that investigates child abuse under the Texas Family Code. The letter directed DFPS and other state agencies to “follow the law as explained in OAG Opinion No. KP-0401.”

After these events, the family of a child diagnosed with gender dysphoria and a doctor who treats such children filed a lawsuit against Governor Abbott and DFPS, seeking a statewide order restricting the defendants from investigating families who pursue gender-affirming health care for suspected child abuse. The plaintiffs succeeded in obtaining a court order prohibiting the state from investigating gender-affirming health care as child abuse. The Texas Supreme Court later lifted the statewide nature of the injunction but left it in place with regard to the plaintiffs in the case. The Court found that “neither the Governor nor the Attorney General has statutory authority to directly control DFPS’s investigatory decisions.”³²

²⁹ See U.S. Dep’t of Educ., OCR, [Examples of Policies and Emerging Practices for Supporting Transgender Students](#) (2016) (citing policies and regulations for accommodating transgender students on overnight field trips).

³⁰ 34 C.F.R. §§ 99.31, .5.

³¹ Tex. Att’y Gen. Op. No. KP-0401 (2022).

³² *In re Greg Abbott*, No. 22-0229, 2022 WL 1510326 (Tex. May 13, 2022).

Given the recent publicity given to gender-affirming care, school officials may want to remind staff that the legal standard for child abuse reporting is unchanged. A person having reasonable cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person must [immediately make a report](#) as provided by Texas Family Code chapter 261. Reporting is an obligation of each individual person; school districts must inform staff about reporting obligations but should not attempt to influence educators' judgment about whether to report in particular circumstances.

As discussed above, federal law prohibits discrimination on the basis of sex in public schools. Targeting certain students or their parents on the basis of their children's gender identity or expression could be viewed as a violation of these anti-discrimination laws. Moreover, educators and other mandatory reporters who are not medical professionals should defer medical care to licensed professionals. Unless abuse or neglect are suspected, parents have the right to direct the upbringing of their children and make medical decisions for them.

For more information about reporting child abuse, see TASB Legal Services' [Child Welfare Issues in Texas Public Schools](#).

12. What if a parent does not support a student's gender transition?

The law does not provide a clear path for educators in this difficult situation, but some principles are clear. Under FERPA, parents have a right of access to their minor students' education records; this right transfers when the student turns 18.³³ The Texas Education Code also gives parents the right to "full information" about their child's school activities, except for in child abuse investigations, and employees who encourage or coerce a child to withhold information from the child's parent may be subject to discipline, including termination.³⁴ In 2016, the Texas attorney general opined that a district's guidelines for transgender student accommodations violated the Texas Education Code to the extent that the guidelines could have limited parental access to full information.³⁵ In 2022, the attorney general opined that the same principles in Chapter 26 of the Texas Education Code would prohibit withholding a minor student's health or medical information from the student's parents.³⁶

In light of these parameters, Texas educators typically work with parents to decide on appropriate accommodations for transgender students. Nonetheless, it is important to keep in mind that transgender students are at particular risk of harm, including self-harm, when a parent disagrees with the student's gender identity. The National

³³ 34 C.F.R. § 99.5.

³⁴ Tex. Educ. Code § 26.008.

³⁵ Tex. Att'y Gen. Op. No. KP-0100 (2016).

³⁶ Tex. Att'y Gen. Op. No. KP-0406 (2022)

Association of School Psychologists has advised that transgender youth who experience low family acceptance of their gender identity are more likely than peers to experience depression, substance abuse, and suicidal thoughts.³⁷ As such, a student may request that a district employee not tell his or her parent about the student's gender identity. School officials should proceed with caution in this case, in accordance with district policy regarding student counseling, crisis intervention, and child abuse.³⁸ It may be possible to reach an agreement with the student and parent that satisfies everyone: for example, schools have instructed staff to call a transgender student by the student's preferred name at school but to refer to the student by the name on the birth certificate in all communications with parents. Ultimately, the best advice is to assess each situation as it comes, working closely with the student, parents and district counsel to reach a resolution that protects the learning environment for all.

This document is continually updated at tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Students/documents/legal_issues_related_to_transgender_students.pdf. For more information on school law topics, visit TASB School Law eSource at schoolawesource.tasb.org.

This document is provided for educational purposes and contains information to facilitate a general understanding of the law. References to judicial or other official proceedings are intended to be a fair and impartial account of public records, which may contain allegations that are not true. This publication is not an exhaustive treatment of the law, nor is it intended to substitute for the advice of an attorney. Consult your own attorney to apply these legal principles to specific fact situations.

Published January 2023

³⁷ See Nat'l Assoc. of School Psychologists (NASP), Position Statement: Safe Schools for Transgender and Gender Diverse Students (May 2014).

³⁸ See TASB Policies FFB (Crisis Intervention), FFEA (Assistance Programs/Counseling), and FFG (Child Abuse and Neglect).