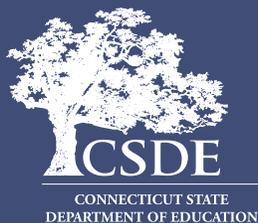


Guidance on Civil Rights Protections and Supports for Transgender or Gender-Diverse Students



Connecticut State Department of Education
Updated January 2024

Contents

Introduction	1
Gender Identity and Expression Terminology	2
The Big Picture: Equal Treatment for Transgender or Gender-Diverse Students	3
Nondiscriminatory Environment	3
Gender Dysphoria	5
Schools' Obligations under State and Federal Laws	6
Establishing Gender Identity	6
Names, Pronouns, and Gender Markers	6
Parental Notice, Communications, and Objections	7
Other Considerations	9
Issues Concerning Student Records	9
Restrooms, Locker Rooms, and Physical Education	11
School-Based Clubs and Activities	12
Dress Code	12
Conclusion	13
Appendix: Relevant Statutory Language Protecting Transgender Students	14

The Connecticut State Department of Education is committed to a policy of equal opportunity/affirmative action for all qualified persons. The Connecticut Department of Education does not discriminate in any employment practice, education program, or educational activity on the basis of race; color; religious creed; age; sex; pregnancy; sexual orientation; workplace hazards to reproductive systems, gender identity or expression; marital status; national origin; ancestry; retaliation for previously opposed discrimination or coercion, intellectual disability; genetic information; learning disability; physical disability (including, but not limited to, blindness); mental disability (past/present history thereof); military or veteran status; status as a victim of domestic violence; or criminal record in state employment, unless there is a bona fide occupational qualification excluding persons in any of the aforementioned protected classes. Inquiries regarding the Connecticut State Department of Education's nondiscrimination policies should be directed to: Attorney Louis Todisco, Connecticut State Department of Education, by mail 450 Columbus Boulevard, Hartford, CT 06103-1841; or by telephone 860-713-6594; or by email louis.todisco@ct.gov.

Introduction

In 2011, the Connecticut General Assembly passed Public Act 11-55, which amended multiple statutes to specifically prohibit discrimination based on gender identity and expression in employment, public accommodation, housing, and extending credit. In part, Public Act 11-55 codified protections for gender-diverse individuals that the State of Connecticut Commission on Human Rights and Opportunities (CHRO) had recognized in a declaratory ruling as early as 2000. It also amended Section 10-15c(a) of the Connecticut General Statutes (C.G.S.) to provide all students with equal access to educational programming and activities, regardless of gender identity or expression, thereby reiterating Connecticut's strong commitment to ensuring that all students feel valued, visible, protected, and empowered to pursue their education in a safe and inclusive learning environment.

In September 2017, pursuant to then-Governor Dannel P. Malloy's Executive Order No. 56, the Connecticut State Department of Education (CSDE), in consultation with the CHRO, issued guidance for Connecticut school districts on the rights, responsibilities, and best educational practices for transgender¹ students. That guidance document was designed to assist schools and districts in understanding and implementing the rights of gender-diverse students. Since the issuance of that September 2017 guidance, however, there have been developments in federal law which either directly affect — or could indirectly impact — transgender students and which are reflected in this updated guidance.

For example, on June 16, 2021, the United States Department of Education's Office for Civil Rights (OCR) issued a "Notice of Interpretation," with an effective date of June 22, 2022, advising that the proscription of sex-based discrimination in Title IX of the Education Amendments of 1972 (Title IX) covers (1) discrimination based on sexual orientation; and (2) discrimination based on gender identity.² Consequently, gender-diverse students in Connecticut are currently protected against discrimination by both Title IX and C.G.S. §10-15c.³ In accordance with those statutes, schools must ensure that all students, regardless of their gender identity or expression, are treated equitably and provided with an equal opportunity to participate in school activities, programs, and courses of study, free of discrimination or harassment.

This document is intended to provide information and guidance to assist school districts in meeting these obligations. Districts should continue to monitor legal developments in the form of applicable statutes, regulations, court decisions, and guidance documents from OCR, the CSDE, and the CHRO. They should also seek legal advice from their attorneys regarding specific issues, factual scenarios, and questions that may arise within their districts or schools. Furthermore, the CSDE continues to stress the importance of Connecticut schools and school districts including professional learning opportunities for their administrators and staff regarding student gender identity or expression as well as related district and staff expectations and obligations.

1. Hereinafter, "transgender" and "gender diverse" are used interchangeably.

2. Pursuant to a July 15, 2022, federal court order, OCR has been "enjoined and restrained from implementing" this policy in the following states: Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, Tennessee, South Carolina, South Dakota, and West Virginia. See *State of Tenn., et al. v. United States Dept. of Educ.*, Civil Action No. 3:21-CV-308 (E.D. Tenn. 2022). This order, however, has no effect on Connecticut.

3. Additionally, C.G.S. §46a-58(a) empowers the Connecticut Commission on Human Rights and Opportunities to investigate and adjudicate student claims of discrimination that are based on the deprivation of rights secured by state laws such as C.G.S. §10-15c. See *Commission on Human Rights and Opportunities v. Board of Education of the Town of Cheshire*, 270 Conn. 665, 855 A.2d 212 (2004).

Gender Identity and Expression Terminology

Gender identity or expression: Sections 1-1n and 46a-51(21) of the Connecticut General Statutes define “gender identity or expression” as “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, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person’s core identity or not being asserted for an improper purpose.”

Agender: A person who doesn’t identify with any gender label or who doesn’t use gender as part of their identity.⁴

Cisgender: Individuals whose current gender identity is the same as the sex they were assigned at birth.

Gender: The cultural roles, behaviors, activities, and attributes expected of people based on their sex.

Gender expression: How an individual chooses to present their gender to others through physical appearance and behaviors, such as style of hair or dress, voice, or movement.

Gender fluid: Displaying flexibility in gender identity and expression. Gender-fluid people typically aren’t limited by gender norms and expectations. They may identify and express themselves as masculine, feminine, some combination of both, or neither.

Gender identity: An individual’s sense of their self as man, woman, transgender, or something else.

Gender diverse/transgender: Individuals whose gender identity (man, woman, other) or expression (masculine, feminine, other) is different from their sex (male, female) assigned at birth.

Gender nonbinary: Individuals who do not identify their gender as man or woman. Other terms to describe this identity include genderqueer, agender, bigender, gender creative, etc.

Gender nonconforming: The state of one’s physical appearance or behaviors not aligning with societal expectations of their gender (a feminine boy, a masculine girl, etc.).

Sex: An individual’s biological status as male, female, or something else. Sex is assigned at birth and associated with physical attributes, such as anatomy and chromosomes.

4. Unless otherwise noted, all definitions are from the CDC’s Division of Adolescent and School Health (DASH): [Terminology | DASH | CDC](#) or the Mayo Clinic [Transgender facts - Mayo Clinic](#).

The Big Picture: Equal Treatment for Transgender or Gender-Diverse Students

Connecticut law requires Connecticut public schools to provide all students with an equal opportunity to participate in courses of studies as well as in school activities and programs, both curricular and extracurricular, without discrimination on account of “race . . . color, sex, *gender identity or expression*, religion, national origin, sexual orientation or disability” C.G.S. §10-15c(a) (emphasis added). Furthermore, under C.G.S. §46a-58, it is a discriminatory practice for anyone to deprive another person of any rights, privileges, or immunities secured or protected by Connecticut or federal laws or constitutions, including, but not limited to, C.G.S. §10-15c. Additionally, and as noted, on June 16, 2021, OCR issued a “Notice of Interpretation,” extending Title IX’s protections to include a student’s gender identity or expression. Consequently, as a condition of receiving federal funds, Title IX prohibits schools from subjecting students to adverse treatment in educational programming or activities on the basis of their gender identity or expression.

The obligation of school districts and schools to provide gender-diverse students with equal access to educational programs and activities applies irrespective of concerns or objections raised by other students, parents, staff, or community members. Both courts and the Equal Employment Opportunity Commission (EEOC) have held in employment-related matters that the discomfort of others is not a permissible basis for failing to accommodate an individual’s gender identity or expression or for implementing policies that discriminate against individuals on such bases.⁵ It is likely that the underlying reasoning of these holdings and guidance would be found equally applicable in the context of providing equitable access to gender-diverse students.⁶

Nondiscriminatory Environment

A fundamental component of providing an equal educational opportunity is creating a safe school environment for every student. Consequently, schools must ensure that all students are treated equally and are not subjected to either adverse or inequitable treatment by staff members or other students due either to their gender identity or expression or to belonging to any of the other protected classes iterated in C.G.S. §10-15c. Under Title IX, public and private schools that receive federal funds are required to promptly and effectively address claims of harassment, bullying, disparate, or discriminatory treatment that is based upon sex — which includes gender identity or expression — and must take reasonable steps to stop such conduct.⁷

In determining whether specific conduct violates Title IX, the United States Supreme Court has held that:

1. such harassment or discrimination must have occurred in a location or activity over which the school district has control, such as on school grounds or at school-sponsored, extracurricular activities — including, but not limited to, school trips;
2. the district must have had “actual knowledge” of such conduct but was nonetheless “deliberately indifferent,” and;
3. the conduct must have been “so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school.”⁸

5. See *Glenn v. Brumby*, 663 F.3d 1312, 1321 (11th Cir. 2011); *Cruzan v. Special Sch. Dist. No. 1*, 294 F.3d 981, 984 (8th Cir. 2002); *Lusardi v. Department of the Army*, EEOC Appeal No. 0120133395 (April 1, 2015); “Protections Against Employment Discrimination Based on Sexual Orientation or Gender Identity” (EEOC June 15, 2021) (citing *Bostock v. Clayton County, Georgia*, 590 U.S. ---, 140 S. Ct. 1731 (2020)).

6. See *A.C. by M.C. v. Metropolitan School Dist. of Martinsville*, 75 F.4th 760 (7th Cir. 2023).

7. See *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274 (1998); *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629 (1999). June 16, 2021, OCR “Notice of Interpretation.”

8. *Davis v. Monroe County Bd. of Educ.*, 526 U.S. at 645, 648-50.

“Actual knowledge” is attributable to a school district or school upon notice to any employee of illegal harassment, even if such employee fails to take action or fails to report it to the school administration.⁹ “Deliberate indifference” is typically characterized by a failure to act or by actions that are so ineffective as to be “clearly unreasonable,” thereby facilitating or resulting in harassment.¹⁰ For example, a district or school could be deemed deliberately indifferent if it responded to discriminatory conduct only after “a lengthy and unjustifiable delay” or its response was so inadequate that it essentially enabled further discrimination.¹¹ Thus, although schools are not required to implement the specific consequences sought by the victim of discrimination,¹² the district or school must take prompt and effective steps to address the illegal behavior.

As noted, Connecticut has its own antidiscrimination provisions — including C.G.S. §10-15c and C.G.S. §46a-58 — that, like Title IX, prohibit adverse and disparate treatment based upon an individual’s gender identity or expression. In interpreting these antidiscrimination statutes, Connecticut courts often look to — but are not bound by — analogous federal case law. Furthermore, Connecticut courts have in some cases interpreted the state’s antidiscrimination statutes more broadly than federal courts have construed analogous federal statutes. Consequently, the standards that Connecticut courts, or even the CHRO, apply when interpreting Section 10-15c and Section 46a-58 may prove more expansive than those the United States Supreme Court has set forth in the context of Title IX. In addition to the courts, students and/or their parents or guardians can file complaints with OCR, the CHRO, or both for violations of antidiscrimination statutes, including those that prohibit harassment based upon gender identity or expression.

All forms of harassment and discrimination proscribed by C.G.S. §10-15c(a) are equally pernicious, and thus, under Connecticut as well as federal law, districts and schools must ensure that:

1. every student is treated equitably by staff, by other students, or by individuals or entities with whom a district has contracted to provide services to students; and
2. no student is subjected to different rules, standards, or expectations due to falling within one of the protected classes set forth in C.G.S. §10-15c, including gender identity or expression.¹³

To reiterate, and as with all other forms of illegal harassment, districts must take swift and meaningful steps to eliminate harassment that is based upon a student’s gender identity or expression once the existence of such conduct has been established.

Furthermore, as they do for all children, districts should strive to ensure that their schools are “safe spaces,” in which gender-diverse students feel welcome and supported. This can include providing resources to transgender students, such as identifying — and advising students and employees of — specific administration and staff members who can serve as contacts with whom students can discuss concerns or incidents, or can otherwise check in.

9. 34 C.F.R. §106.30(a).

10. *Davis*, 526 U.S. at 648; *Hayut v. State University of New York*, 352 F.3d 733, 751 (2nd Cir. 2003).

11. *Zeno v. Pine Plains Central Sch. Dist.*, 702 F.3d 655, 669 (2nd Cir. 2012).

12. *Davis*, 526 U.S. at 648.

13. Conn. Gen. Stat. §10-15c(a) prohibits discrimination based upon “race, as defined in section 46a-51, color, sex, gender identity or expression, religion, national origin, sexual orientation or disability.”

Gender Dysphoria

Some gender-diverse students may struggle with “gender dysphoria,” which the Mayo Clinic defines as “the feeling of discomfort or distress that might occur in people whose gender identity differs from their sex assigned at birth or sex-related physical characteristics.” Should gender dysphoria substantially limit a major life activity, such as learning, it could qualify as a disabling condition under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §701 (Section 504), which applies to public or private schools that receive *any* federal funding.¹⁴ Although far less common, if the gender dysphoria were so pronounced as to constitute an emotional disability that resulted in a student’s need for specialized instruction, the student may qualify for special education and related services under the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. §§1400, *et seq.* (IDEA).

As such, it is incumbent upon school districts to provide those students who are deemed eligible for accommodations or services under either Section 504 or the IDEA as a result of gender dysphoria with the same rights and protections they would extend to students with other qualifying disabilities. These rights include, “child find,” comprehensive evaluations, and accommodation plans or, for students deemed eligible for special education services, an individualized education program (IEP).

14. The Americans with Disabilities Act of 1990, 42 U.S.C. §§12101, *et seq.* (ADA), was to a certain extent modeled upon Section 504 and eligibility thereunder is predicated upon the same tripartite test, but Section 504 is more commonly cited in the context of disability claims brought against educational entities that are federal fund recipients. Title III of the ADA, however, generally applies to private schools, regardless of whether they receive federal funds. 42 U.S.C. §12181(7)(J).

Schools' Obligations under State and Federal Laws

Establishing Gender Identity

As noted, C.G.S. §§1-1n and 46a-51(21) provide that gender-related identity can be established in various ways, including, but not limited to: (1) medical history; (2) care or treatment of the gender-related identity; (3) consistent and uniform assertion of such an identity; or (4) any other evidence that the identity is sincerely held, part of a person's core identity, or that the person is not asserting such an identity for an improper purpose. This list, however, is not exhaustive and does not describe all the ways in which gender identity may be established.

- **Consistency of Expression Not Required:** While consistency and uniform assertion may be a way for individuals to indicate their gender identity, neither federal nor Connecticut law requires that individuals consistently and uniformly assert or express a particular identity. Students who identify as gender fluid may express that in ways that conform with more than one gender, even from one day to the next.
- **Documentation Not Required:** Neither federal nor Connecticut law requires students to produce identification documents for the school to acknowledge their gender identity or expression. Requiring such identification — which students are often unable to obtain — could have the practical effect of limiting or denying students equal access to educational programming and activities, including, but not limited to, athletics. Furthermore, except as is discussed in the section of this guidance pertaining to educational records, notice from a parent or guardian is not required in order for a school to recognize the student's gender identity or expression.

Names, Pronouns, and Gender Markers

Recognition of and respect for student preferences is important for a student's well-being. Furthermore, although OCR has stated that “[b]y itself, refusing to use transgender students' preferred pronouns is not a violation of Title IX,”¹⁵ when considered in a greater context, the failure to do so could be deemed discriminatory under Title IX as well as under C.G.S. §10-15c. For example, OCR has noted that if a school routinely honors student requests to be called by a particular name but refuses to do so simply because the requested name and pronouns do not comport with the sex assigned at the student's birth, this refusal could be found to constitute gender-based discrimination.

Similarly, if the refusal to honor a student's request to use names and pronouns consistent with the student's gender identity and expression was so severe, pervasive, and objectively offensive that it deprived a student of equal access to educational opportunities and benefits, it could be regarded as hostile-environment sex harassment under Title IX.¹⁶ Of further note, and as previously discussed, the CHRO and Connecticut courts might apply a lesser standard for determining gender-based harassment under C.G.S. §10-15c and §46a-58(a) than the “severe, pervasive, and objectively offensive” paradigm the United States Supreme Court has articulated in the context of Title IX. Additionally, to the extent that such conduct adversely, and foreseeably, affects a student's emotional well-being, it could possibly constitute grounds for common law claims of negligent or intentional infliction of emotional distress.¹⁷ Finally, ongoing references to the student's former gender by school personnel and peers, such as continuing to use the student's former name and

15. OCR's March 9, 2020, *Letter to Green*, p.1.

16. See *Davis v. Monroe County Bd. of Educ.*, 526 U.S. at 645, 648-50. Furthermore, and analogously, the EEOC has held in a claim of employment discrimination that “intentionally and repeatedly using the wrong name and pronouns to refer to a transgender employee could contribute to an unlawful hostile work environment.” “Protections Against Employment Discrimination Based on Sexual Orientation or Gender Identity” (EEOC June 15, 2021) (citing *Lusardi v. Department of the Army*, EEOC Appeal No. 0120133395 (April 1, 2015)).

17. See *Haynes v. City of Middletown*, 314 Conn. 303, 322-26, 101 A.3d 249 (2014).

pronouns, is contrary to the goal of treating all students with dignity and respect. To put it in the simplest terms, if a cisgender student were named “Jane,” a staff member would not intentionally and repeatedly call her by a different name. It is no different with gender-diverse students.

For these reasons, school districts and schools are advised to craft and implement policies regarding the use of names and pronouns consistent with a student’s stated gender identity. It is also critical to provide professional learning opportunities to administrators, teachers, and staff about both the importance of using a student’s chosen name and correct pronouns regardless of the student’s sex assigned at birth, and the possible legal consequences of failing to do so. Districts are further advised to include proscriptions against gender-diverse discrimination or harassment within their Title IX and nondiscrimination policies as well as in their student codes of conduct.

Schools and districts should become familiar with best practices concerning effective and appropriate communication with elementary and secondary students regarding these issues, a source for which is [“Examples of Policies and Emerging Practices for Supporting Transgender Students, U.S. Department of Education,”](#) May 2016.

Parental Notice, Communications, and Objections

As previously mentioned, and, again, except as discussed in the context of student records, there is currently no law that requires notice from a parent or guardian for a school to recognize the student’s gender identity or expression. In the absence of notice from a parent or guardian, however, a related question is whether a school district is obligated to inform a student’s parents or guardians of the student’s request to be referred to by a name, pronouns, and gender markers that do not correspond to the sex that was assigned to the student at birth.

Education is a collaborative effort between school and home, and open and honest communication between schools and parents or guardians is in a student’s best interest. In fact, C.G.S. §10-4p(a) requires the State Board of Education to “develop a five-year implementation plan with appropriate goals and strategies to . . . encourage greater parental and community involvement in all public schools of the state.” Similarly, the General Assembly established a Planning Commission for Education “to develop and recommend the implementation of a strategic master plan for public education in Connecticut,” including “ways to ensure effective communication and partnership between school districts and the families of children who attend public school in such school district, with particular focus on diversity” (C.G.S. §10-25a(b)(2)). Consequently, while there is no law that specifically requires districts or schools to inform parents or guardians of a student’s gender identity or expression, the legislature has recognized the importance of fostering both “effective communication” between schools and parents and parental involvement in their children’s schools.

Additionally, there are certain situations in which parental communication and involvement are essential to effectuating a school district’s legal obligations, most notably under Section 504 and the IDEA. More specifically, and as previously discussed, some gender-diverse students may struggle with gender dysphoria or related anxiety disorders and, as a result, qualify for accommodations under Section 504 or, in cases in which the emotional disability is so pronounced as to require specialized instruction, for an IEP, which also includes accommodations, under the IDEA.

The IDEA expressly includes parents as members of a special education student’s planning and placement team (PPT) and further requires that they be provided with a meaningful opportunity to participate in developing the student’s IEP.¹⁸ Although Section 504 does not include a similarly specific inclusion of parents on a student’s Section 504 Team, parental consent is nonetheless required to identify a student as eligible for accommodations under Section 504, and it is obviously best practice to include parents in

18. 34 C.F.R. §§300.321 & 300.322.

all Section 504 meetings.¹⁹ Thus, to ensure the parents' or guardians' meaningful participation in developing their children's 504 Accommodations Plan or IEP, the Section 504 Team or PPT would necessarily be required to share with the parents the nature of, and reasons for, the creation of such plans. Furthermore, in crafting a Section 504 Plan or IEP, the respective teams may recommend as an accommodation that the student be referred to by the name, pronouns, and gender markers that correspond to the student's gender identity or expression, a recommendation of which the parents would necessarily be aware.

There may also be situations where a parent or guardian asks an administrator or staff member whether their child has shared with the district or school a gender identity or expression that does not correspond with the sex that was assigned at birth. There is no federal statute or Connecticut statute that specifically confers upon district or school staff confidentiality protections regarding a student's gender expression or identity, although Connecticut law does recognize certain privileged, confidential communications.²⁰ And, as noted, the legislature has recognized the importance of fostering "effective communication" between schools and parents. Balanced against this general preference for open communication, however, is a consideration of a student's physical and emotional wellbeing.

Therefore, it is strongly recommended that should there be a good-faith concern that sharing this information with a parent or guardian could threaten the student's physical or emotional health, districts and schools consult with their legal counsel as to how best to proceed. These consultations with counsel should include, but not necessarily be limited to, a discussion of established district or school practices with respect to parent or guardian notice as well as the specific circumstances, such as the student's preference and any concerns regarding the student's well-being.²¹ Additionally, schools should be alert to the possible emotional impact that this disagreement could have on the student and be prepared to make counseling available to the student.

There are cases in which parents or guardians may object to a student's request to be referred to by a name or pronoun that the student feels more accurately corresponds to the student's gender identity or expression. Consent from parents or guardians is generally required to effectuate many determinations that affect students, from going on class trips to receiving special education and related services or Section 504 accommodations.²² At the same time, school boards and superintendents of schools are invested with responsibility for, respectively, the creation and the administration of school policies. These obligations include the school board's provision of "an appropriate learning environment for all its students which includes . . . a safe school setting," and the superintendent's supervision of such safe-school settings "as the chief executive officer of the board."²³

These statutes provide school boards with broad authority to establish district policies, including those that pertain to students. Thus, school boards can develop, and superintendents can administer, policies regarding whether such information will be shared with parents or guardians and, if so, the criteria for sharing, including, but not limited to, student preferences and student safety. Such policies can also govern the use of a gender-diverse student's chosen name, pronouns, and gender markers despite the objections of parents or guardians. All such policies, of course, would have to be consistent with applicable federal and Connecticut laws. It is, therefore, recommended that districts and schools consult with their legal counsel about the crafting of such policies.

19. See OCR's [Protecting Students With Disabilities \(ed.gov\)](https://www.ed.gov/protecting-students-with-disabilities)

20. For example, C.G.S. §52-146q protects from disclosure oral and written communications between an individual and a licensed social worker. Similarly, communications with a licensed "professional counselor" — as defined in C.G.S. §20-195aa — are privileged pursuant to C.G.S. §52-146s. There is nothing in either statute that precludes this privilege being applied to appropriately licensed individuals who work in schools.

21. See also C.G.S. §§17a-101, *et seq.* (Connecticut's mandated-reporting statutes).

22. If the student has reached the age of eighteen or has been declared an emancipated minor, the student holds the right to make educational decisions and thus the student's preference is controlling.

23. C.G.S. §10-220(a). C.G.S. §10-157(a).

Other Considerations

Both public school staff members and students have longstanding rights to religious freedom under the United States and Connecticut Constitutions.²⁴ Recently, the United States Supreme Court has issued a series of decisions reinforcing the religious rights of individuals — including public school employees — under the Free Exercise Clause of the First Amendment to the United States Constitution.²⁵ It is indisputable that district staff must refrain from engaging in actions, or inaction, against a student that are motivated by discriminatory intent or are otherwise illegal. In the wake of these recent decisions, however, it is unclear as to whether courts would limit the ability of districts and schools to compel a staff member to use student names and pronouns that correspond with a student’s gender identity if doing so would violate the staff member’s sincerely held religious beliefs.

Similarly, although courts have generally recognized that students have less-extensive First Amendment rights than those afforded employees, they still enjoy protections thereunder.²⁶ In addition, C.G.S. §10-15c(a) prohibits discrimination against a student on the basis of such student’s religion. Thus, as with employees, there is some uncertainty regarding what, if any, weight would be given to student claims of sincerely held religious beliefs in the context of a district’s gender-diversity policies. Consequently, districts and schools are strongly encouraged to consult with their own legal counsel should such issues arise.

While it is not clear how courts would rule with respect to a possible conflict between the religious rights of staff and students and the rights of gender-diverse students, even staff and students with sincerely held religious beliefs are not immune from the same behavioral expectations that apply to all members of the school community. In short, *any* student’s physical, verbal, or emotional assault or bullying of a classmate due to the latter’s gender identity or expression would be subject to the same disciplinary consequences that apply to all students. Similarly, the imposition of appropriate discipline would apply equally to *any* staff member who intentionally harassed or discriminated against a student, or who otherwise subjected a student to adverse treatment due to the student’s gender identity or expression.

Issues Concerning Student Records

School districts sometimes receive requests from parents, guardians, or students themselves to change student educational records in a variety of contexts. The federal Family Educational Rights and Privacy Act (FERPA)²⁷ addresses rights and responsibilities pertaining to student education records and a student’s personally identifiable information. FERPA applies to public and private “educational agencies,” or schools, that receive any form of federal funds (34 C.F.R. §99.1(a)).

Under FERPA, educational agencies must provide parents, guardians, and “eligible students” — which are defined as students who have “reached 18 years of age or [are] attending an institution of postsecondary education” — with “the opportunity to inspect and review the student’s education records” (34 C.F.R. §§99.3 & 99.10(a)). These education records can be in paper or digital formats, including electronic school-information systems. If a parent or eligible student believes the student’s education records “contain information that is inaccurate, misleading, or in violation of the student’s rights of privacy,” they can request that the educational agency amend the record (34 C.F.R. §99.20(a)).

24. U.S. Const., Amend. I; Conn. Const., Article I, §3. See also C.G.S. §46a-60(b)(1) and C.G.S. §10-15c(a).

25. See, e.g., 303 Creative LLC v. Elenis, 600 U.S. ---, 143 S. Ct. 2298 (2023); Groff v. DeJoy, 600 U.S. ---, 143 S. Ct. 2279 (2023); Kennedy v. Bremerton School Dist., 597 U.S. ---, 142 S. Ct. 2407 (2022).

26. See, e.g., Carson, As Next Friend of O.C. v. Makin, 595 U.S. ---, 142 S. Ct. 1987 (2022); Espinoza v. Montana Dept. of Revenue, 591 U.S. ---, 140 S. Ct. 2246 (2020). Cf Mahanoy Area Sch. Dist. v. B.L., 594 U.S. ---, 141 S. Ct. 2038 (2021); Tinker v. Des Moines Independent Community Sch. Dist., 393 U.S. 503, 89 S. Ct. 733 (1969).

27. 20 U.S.C. §1232g and further delineated in its implementing regulations at 34 C.F.R. §§99.1–99.67.

Connecticut law similarly provides that parents or legal guardians “of a minor student shall, upon written request to a local or regional board of education and within a reasonable time, be entitled to knowledge of and access to all educational, medical, or similar records maintained in such student’s cumulative record” (C.G.S. §10-15b(a)). In fact, by providing parents or guardians with the entitlement to “knowledge of and access to all . . . medical, or similar records,” Connecticut law is more expansive than FERPA. At the same time, however, Connecticut has no statutory provision comparable to FERPA regarding the right to amend a document that the parent, legal guardian, or eligible student considers inaccurate, misleading, or violative of the student’s privacy.

Pursuant to FERPA, then, a parent, guardian, or eligible student may request that the school amend a student’s education records to make them consistent with the student’s chosen name and gender identity. Under Title IX, districts and schools must treat requests to change student records based on gender identity or expression no differently than they would treat any other request under FERPA for a change to student records (34 C.F.R. §106.31(b)(4)). Consequently, the same process that schools have adopted for making changes to school records should be used in cases involving gender identity or expression.

Neither federal nor Connecticut law requires that a parent, guardian, or eligible student obtain a court-sanctioned name change prior to requesting a change to student records. Furthermore, and as previously noted, a parent, guardian, or eligible student is not required to submit any specific kind of documentation to change student records relative to gender identity. Consequently, upon a parent, guardian, or eligible student’s request, schools should amend student education records to reflect the student’s chosen name and gender identity, regardless of whether the student has completed a legal name change.²⁸ **Please note, however, that if the student has not completed a legal name change, districts should advise the parent, guardian, or eligible student of the potential consequences of inconsistent records on college materials, driver’s licenses, and other future documents and advise the family to consider consulting with an attorney regarding such matters.**

Updating a transgender student’s education records upon the request of a parent, guardian, or eligible student to reflect the student’s gender identity and chosen name protects the student’s privacy and helps ensure that district or school staff consistently uses appropriate names and pronouns. In instances where a student is using a chosen name, the student’s birth name and gender information is considered private information and may not be disclosed except as permitted by FERPA. The student’s sex assigned at birth is considered private medical information. Records with the student’s sex assigned at birth or birth name (e.g., birth certificate, medical records) should be kept in a separate file from the student’s cumulative record to ensure privacy. Except for those exceptions that are expressly iterated therein, inappropriately disclosing personally identifiable information from education records to the school community without prior consent would violate FERPA. See 34 C.F.R. §§99.30 & 99.31.

There may be instances where a parent or guardian disagrees with a *non*-eligible student regarding the name, gender marker, and pronoun to be used in the student’s education records. As noted, FERPA provides that a parent, guardian, or eligible student holds the right to amend the student’s education records; *there is no comparable provision expressly authorizing non-eligible students to do so*. Consequently, although districts should seek to work with families to resolve such differences, ultimately *only* the parent, guardian, or eligible student has the authority to seek the amendment of education records.

28. If a district declines to amend the records, it is required to inform the parent, guardian, or eligible student of the right to a hearing to contest such refusal. 34 C.F.R. §§99.20(c) & 99.21(a).

Restrooms, Locker Rooms, and Physical Education

Title IX permits school districts to provide single-sex restrooms, locker rooms, shower facilities, and athletic teams so long as both sexes are treated equitably.²⁹ Nonetheless, while a school may provide single-sex restroom and locker facilities, under Title IX and C.G.S. §10-15c, all students must be allowed to access those facilities that correspond to their gender identity. Furthermore, courts have held that district or school policies that prohibit gender-diverse students from using bathrooms that are consistent with their gender identity serve no substantial public interest and violate both Title IX and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.³⁰ Similarly, such a prohibition would likely be held to violate Connecticut law, specifically C.G.S. §10-15c(a).³¹ In simple terms, just as cisgender males and females must be allowed to use facilities that comport with their respective gender identities, so too must gender-diverse students be allowed to use facilities that align with their individual gender identities.

In keeping, then, with both federal and Connecticut law, schools cannot require that gender-diverse students use facilities that are inconsistent with their gender identity. Similarly, schools cannot compel gender-diverse students to use individual-user facilities when other students are not required to do so, regardless of whether other students, parents, guardians, district staff, or community members raise objections.

- **Ensuring Privacy for All Students:** Although students cannot be required to use such alternatives, if either a cisgender or gender-diverse student requests a private bathroom or changing option for themselves, schools should provide one. This can be in the form of a single stall “unisex” restroom or the health office restroom. Similarly, in locker rooms, additional privacy may be provided to a student requesting such privacy through various options, which include: private changing areas such as a curtained changing room or a bathroom stall with a door; a private changing area within the public area of the locker room; a separate changing schedule; or use of a nearby private area. These options, however, *cannot* be forced upon a student. Additionally, if a privacy/unisex option is utilized, said facility should be as close as possible to the facilities the other students are using, and it should not be located in another building or on a different floor. The purpose of this option is to accommodate a student request, not to ostracize the student because of it.

29. On April 25, 2021, the United States District Court for the District of Connecticut dismissed on procedural grounds a lawsuit brought by four cisgender female athletes, who had alleged that the CIAC’s Transgender Participation Policy -- which permits high school students to compete on gender-specific athletic teams consistent with their gender identity -- violated Title IX by depriving cisgender females of an equitable opportunity to participate in athletics. The dismissal was affirmed by a three-judge panel of the United States Court of Appeals for the Second Circuit on December 16, 2022. *Soule v. Connecticut Ass’n of Schools*, 57 F.4th 43 (2nd Cir. 2022). On December 15, 2023, however, the full Second Circuit --- noting that it was not addressing the merits of the case but rather only the procedural basis for the dismissal -- reversed the three-judge panel’s prior decision and returned the case to the District Court for further proceedings. [21-1365-2023-12-15.pdf \(justia.com\)](#).

30. See, e.g., *Grimm v. Gloucester County Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020), *cert. denied*, --- U.S. ---, 141 S. Ct. 2878 (2021). But see *Adams v. School Bd. of St. Johns County*, 57 F.4th 791 (11th Cir. 2022) (separating school bathrooms based on biological sex passes constitutional muster and comports with Title IX). Neither the Fourth Circuit’s decision in *Grimm* nor the Eleventh Circuit’s decision in *Adams* is binding on Connecticut, which lies within the Second Circuit. Nonetheless, and although *Adams* postdates *Grimm*, it is significant that the United States Supreme Court left undisturbed the decision in *Grimm*, which, as noted, held that denying a transgender student the use of bathrooms consistent with the student’s gender identity violated the United States Constitution and Title IX. In any event, C.G.S. §10-15c would provide an additional basis for permitting student use of facilities that comport with the student’s gender identity.

31. Connecticut courts could be guided in that regard by the Maine Supreme Court’s interpretation of Maine’s comparable nondiscrimination statute in *Doe v. Regional School Unit 26*, 86 A.3d 600 (Me. 2014).

School-Based Clubs and Activities

As noted, both federal and Connecticut laws require public schools to provide all students with an equal opportunity to participate in school activities and programs, both curricular and extracurricular. With respect to extracurricular activities, that includes the right of students to form clubs or organizations composed of or related to transgender students to the same extent as other students are permitted to establish extracurricular activities.³² Refusing to allow students to do so simply because it was formed by gender-diverse students or was intended to focus on issues pertinent to and supportive of such students would likely be found to constitute a discriminatory practice in violation of C.G.S. §§10-15c and 46a-58(a) as well as of Title IX.

Similarly, students cannot be precluded from participating in school or class trips due to their gender identity or expression. Just as it would be illegal to exclude a student from a school activity, such as a trip, due, for example, to the student's race, color, or religion, so too would it violate the law to deny a student an equitable opportunity to participate based upon gender identity or expression.

Dress Code

Schools must permit transgender students to dress in accordance with their gender identity or expression and wear clothing that is appropriate for students with the same gender identity.³³ If a school maintains a particular dress code or uniform policy, the school must allow gender-diverse students to dress in accordance with the code or policy consistent with their gender identity or expression. This requirement applies to graduation attire and requires schools to allow gender-diverse students to wear the graduation attire consistent with their gender identity or expression.

32. See, e.g., *Good News Club v. Milford Central School*, 533 U.S. 98, 121 S. Ct. 2093 (2001).

33. See *Peltier v. Charter Day School, Inc.*, 37 F.4th 104 (4th Cir. 2022), *cert. denied* --- U.S. ---, 143 S. Ct. 2657 (2023).

Conclusion

As previously discussed, districts and schools are encouraged to provide teachers, staff, and administrators with professional learning opportunities on the protections afforded gender-diverse students. Districts should keep abreast of legal developments, including any federal and Connecticut statutory changes, federal and Connecticut court and agency decisions, federal interpretive information, particularly from OCR, and guidance from the CSDE and the CHRO. Schools and school districts should also consult with their attorneys regarding specific issues, factual scenarios, and questions to ensure compliance with their legal obligations and to ensure student access to a safe, respectful, equitable, and inclusive educational environment.

In addition to other pertinent obligations, foundational requirements under Title IX include:

1. Each school district shall designate at least one employee to serve as its Title IX Coordinator, responsible for, as the title suggests, coordinating the district's compliance with, and fulfillment of, its legal responsibilities under Title IX (34 CFR §106.8).
2. The school district must notify students and employees of the name, office address, and phone number and other contact information of the Title IX Coordinator (34 CFR §106.8).
3. The school district must adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any discrimination based on sex (34 CFR §106.8(b)).

For additional resources, schools and school districts can refer to the United States Department of Education's [Resources for LGBTQI+ Students \(ed.gov\)](#).

Appendix: Relevant Statutory Language Protecting Transgender Students

The following statutory provisions from the Connecticut General Statutes (C.G.S.), as well the relevant language from Title IX, provide civil rights protections to Connecticut students based on gender identity and expression. While this list includes the primary statutory protections under Connecticut law and Title IX, it is not exhaustive and does not cover additional protections in other areas, such as employment.

C.G.S. §10-15c(a)

*The public schools shall be open to all children five years of age and over who reach age five on or before the first day of October of any school year, and each such child shall have, and shall be so advised by the appropriate school authorities, an equal opportunity to participate in the activities, programs and courses of study offered in such public schools, at such time as the child becomes eligible to participate in such activities, programs and courses of study, without discrimination on account of race, color, sex, **gender identity or expression**, religion, national origin or sexual orientation; provided boards of education may, by vote at a meeting duly called, admit to any school children under five years of age.*

C.G.S. §46a-58(a)

*It shall be a discriminatory practice in violation of this section for any person to subject, or cause to be subjected, any other person to the deprivation of any rights, privileges or immunities, secured or protected by the Constitution or laws of this state or of the United States, on account of religion, national origin, alienage, color, race, sex, **gender identity or expression**, sexual orientation, blindness, mental disability or physical disability.*

C.G.S. §46a-64(a)(1), (2)

*It shall be a discriminatory practice in violation of this section: (1) To deny any person within the jurisdiction of this state full and equal accommodations in any place of public accommodation, resort or amusement because of race, creed, color, national origin, ancestry, sex, **gender identity or expression**, marital status, age, lawful source of income, intellectual disability, mental disability or physical disability, including, but not limited to, blindness or deafness of the applicant, subject only to the conditions and limitations established by law and applicable alike to all persons; (2) to discriminate, segregate or separate on account of race, creed, color, national origin, ancestry, sex, **gender identity or expression**, marital status, age, lawful source of income, intellectual disability, mental disability, learning disability or physical disability, including, but not limited to, blindness or deafness. . . .*

Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §1681(a)

*No person in the United States shall, on the basis of **sex**,* be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance . . .*

* Pursuant to the United States Department of Education's Office for Civil Rights (OCR) June 16, 2021, "Notice of Interpretation," the prohibition against sex discrimination covers discrimination on the basis of gender identity or expression.

