



OREGON  
DEPARTMENT OF  
EDUCATION

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# Supporting Gender Expansive Students

## Guidance for Schools

January 5, 2023



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## Letter from the Director

Dear Colleagues,

The Oregon Department of Education (ODE) is proud to publish ***Supporting Gender Expansive Students: Guidance for Schools***. It is grounded in the recognition, respect, affirmation, friendship, joy, belonging, and safety every human deserves - including the students, staff, and families that make-up our school communities.

This update comes at the request of students and their families, educators and school staff, school district leaders, school boards, healthcare providers, and community partners across Oregon. ODE's 2016 *Guidance to School Districts: Creating a Safe and Supportive School Environment for Transgender Students* was one of the first statewide guidance documents in the nation to help K-12 schools synthesize state law, federal law, and best practice in order to support transgender students. This updated guidance clarifies new and evolving laws and policies in order to address the diverse needs of a broad range of gender expansive students and the school districts who serve them.

Developed in partnership with students, families, school districts, community-based organizations, and state agency partners, this updated guidance was written during a period of a year and a half where we saw record numbers of proposed and, sometimes, passed legislation, political vitriol, and dehumanizing media coverage against gender-affirming education and healthcare nationwide. We have seen instances of and heard growing concerns from families and communities surrounding the oppression and violence faced by gender expansive youth, families, and school staff here in our Oregon communities. National data demonstrates the [impact](#) of anti-transgender legislation on nonbinary youth, in addition to ongoing racist, transphobic, and homophobic harm experienced by [LGBTQ2SIA+ youth of color](#) in the United States.

Through these state and national challenges, ODE is committed to modeling statewide support for gender expansive students and clarifying the expectations of school districts in these efforts. By joining together and relying on the gender-affirming laws, policies, and community connections we already have in place, we can make school a place where all students and all educators can thrive and support each other every day.

Publishing this updated guidance — and offering ongoing technical support toward its implementation — demonstrates one way ODE is implementing the [LGBTQ2SIA+ Student Success Plan](#) as ODE proposed and is now directed by the State Legislature in 2021. Gender expansive youth need to see adults and educational spaces grow and transform, just as they do before our eyes each day. As one Southern Oregon [student](#) put it: “‘acceptance’ feels like a low bar, similar to tolerance.” It is our responsibility to move beyond mere tolerance and inclusion toward respectful, affirming, and celebratory school communities where all students belong and succeed.

Sincerely,  
Colt Gill



Director of the Oregon Department of Education and  
Deputy Superintendent of Public Instruction

## Introduction

The Oregon Department of Education (ODE) fosters excellence for every learner and recognizes that academic success depends on a safe school environment. As an organization, we value equity for every student. [Educational equity](#) requires an educational environment that is safe and free from discrimination and harassment as well as one that ensures every student has equitable access to educational programs and activities. This guidance is designed to support schools and districts<sup>1</sup> in meeting their responsibilities for creating safe and affirming school environments for every student, including gender expansive students. When used in this document, the term [gender expansive](#) is meant to represent the myriad of system-impacted gender identities, expressions, and assignments, including but not limited to transgender, nonbinary, Two Spirit, intersex, agender, genderqueer, and genderfluid identities. Relevant definitions used throughout this document can be found in the [terminology appendix](#).

This guidance is founded in the right of students to be free from protected class discrimination when pursuing their education. Gender identity is a protected class under both federal and state civil rights law. In Oregon, any public elementary or secondary school that receives state funding is prohibited from engaging in gender identity discrimination.<sup>2</sup> Under Oregon law, gender identity is defined generally as “an individual’s gender-related identity, appearance, expression or behavior, regardless of whether the identity, appearance, expression or behavior differs from that associated with the gender assigned to the individual at birth.”<sup>3</sup>

Federally, Title IX prohibits sex discrimination in any federally-funded education program, which includes discrimination based on gender identity.<sup>4</sup> A June 2021 Notice of Interpretation from the U.S. Department of Education’s Office for Civil Rights (OCR) stated that:

*OCR has long recognized that Title IX protects all students, including students who are lesbian, gay, bisexual, and transgender, from harassment and other forms of sex discrimination. OCR also has long recognized that Title IX prohibits harassment and other forms of discrimination against all students for not conforming to stereotypical notions of masculinity and femininity...*

*Consistent with the Supreme Court’s ruling and analysis in Bostock, the Department interprets Title IX’s prohibition on discrimination “on the basis of sex” to encompass discrimination on the basis of sexual orientation and gender identity.<sup>5</sup>*

In Oregon, all students are entitled to equal protection under the law. Students need the same benefits, opportunities, and services in schools regardless of their gender identity. Schools and school employees who engage in gender identity discrimination, or that allow others to engage in such discrimination, are violating students’ civil rights. This guidance acknowledges that

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<sup>1</sup> Oregon and federal civil rights laws apply to all publicly funded education programs including but not limited to school districts, public charter schools, education service districts, long term care facilities, the Youth Corrections Education Program, the Oregon School for the Deaf, and Juvenile Detention Education Programs.

<sup>2</sup> [ORS 659.850](#); [OAR 581-021-0045](#)

<sup>3</sup> [ORS 174.100](#)

<sup>4</sup> [20 USC 1681](#), [34 CFR 106](#)

<sup>5</sup> [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](#), U.S. Department of Education Office for Civil Rights

[anti-transgender stigma](#) causes harm to gender expansive students; it is not gender expansive students' identities that cause harm.

According to self-reported 6th, 8th, and 11th grade data from the 2020 Oregon Student Health Survey (SHS), 8% of Oregon's students are [transgender](#), [gender expansive](#), or [questioning](#).<sup>6</sup> In addition to being a legal responsibility, ensuring a safe and welcoming environment for gender expansive students is best practice to protect student mental health and well-being. The SHS also reports 43% of gender expansive students and 33% of students with marginalized sexual orientations reported seriously considering suicide in 2020. We must ensure students can not only survive in schools but can thrive. Accepting families and communities have a significant positive impact on the mental health of transgender and gender expansive youth. National research from 2022 indicates that [LGBTQ2SIA+](#) youth who live in a community that is accepting of LGBTQ2SIA+ people reported significantly lower rates of attempted suicide than those who do not.<sup>7</sup> Ensuring the implementation of policies, procedures, and practices that create a safe and welcoming school environment is the right thing to do, and doing so saves lives.

Ensuring young people are supported in their personal gender identity journey also supports increased academic access and success.<sup>8</sup> Oregon's LGBTQ2SIA+ students are twice as likely as their peers to experience bullying and harassment at school and are three times as likely to miss school because they fear for their safety.<sup>9</sup> Students who are absent due to fear, or who spend their school day feeling unsafe, are prevented from accessing their right to an education. Districts and schools have a responsibility to ensure that every student is accepted, supported, and safe in school every day. Gender-affirming policies and practices are opportunities for school communities to heal, grow, and thrive; when gender expansive students thrive, *all* students and staff benefit from having engaged students, classmates, teammates, and friends.

As a response to student, parent, and school district requests, ODE, working with community partners, developed this guidance document to provide assistance to districts in fostering an educational environment that is safe, free from discrimination, and aligned with state and federal laws. This guidance is designed to be used by school boards, administrators, and other members of the educational community to assist with the development of school procedures and district policies related to transgender and gender expansive students. It suggests best practices and provides a foundation for the educational community to build safe and supportive school cultures.

**This guidance is not legal advice, nor should it be relied on as legal advice. If you require legal advice regarding the issues discussed in this guidance, please consult an attorney.**

*In order to make this document as helpful as possible, illustrative examples that highlight frequently asked questions and best practices for addressing these questions appear throughout. While these scenarios and remedies are based on real-life examples, personally identifiable student information and*

<sup>6</sup> [2020 State Profile Report, Student Health Survey](#), Oregon Health Authority

<sup>7</sup> [2022 National Survey on LGBTQ2SIA Youth Mental Health](#), The Trevor Project

<sup>8</sup> [The 2021 National School Climate Survey](#), GLSEN

<sup>9</sup> [2020 State of Safe Schools Report](#), Oregon Safe Schools and Communities Coalition

*specific school information has been changed to protect the privacy of the students involved. These scenarios are also not meant to be exhaustive of all potential scenarios or remedies appropriate for each school community.*

Please note, in order to access all the hyperlinked resources and citations, ODE recommends readers access the digital version of this guidance, which can be found on [ODE's website](https://www.oregon.gov/ode/students-and-family/equity/civilrights/Pages/Gender-Identity-Guidance.aspx) at <https://www.oregon.gov/ode/students-and-family/equity/civilrights/Pages/Gender-Identity-Guidance.aspx>.

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## 1. Recommended Nondiscriminatory Practices

The following sections cover important policies and practices schools can implement to support [gender expansive](#)<sup>10</sup> students. In many cases Oregon or federal law guide these recommended practices. However, these suggestions do not constitute legal advice, nor should they be relied on as legal advice. If you require legal advice regarding the issues discussed in this guidance, please consult an attorney. For questions or assistance on any of the topics below, please [contact](#) ODE.

### 1.a. Equal Educational Access

Equal access to public education is a civil right rooted in both state and federal law. This foundational right exists through the Equal Protection Clause, the Due Process Clause, and the incorporation of other rights under the 14th Amendment to the United States Constitution. Under Oregon law, school districts are required to provide equitable admission and a free appropriate public education to all students residing within the district.<sup>11</sup> Students “may not be subjected to discrimination in any public elementary, secondary or community college education program or service, school or interschool activity or in any higher education program or service, school or interschool activity where the program, service, school or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly.”<sup>12</sup> Discrimination includes “any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on race, color, religion, sex, sexual orientation, national origin, marital status, age, gender identity, or disability.”<sup>13</sup>

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<sup>10</sup> When used in this document, the term “gender expansive” is meant to represent the myriad of system-impacted gender identities, expressions, and assignments, including but not limited to transgender, nonbinary, Two Spirit, intersex, agender, genderqueer, and genderfluid identities. These definitions and a full definition for “gender expansive” are outlined in the [terminology appendix](#) at the end of the guidance.

<sup>11</sup> [ORS 339.115](#)

<sup>12</sup> [ORS 659.850\(2\)](#)

<sup>13</sup> [ORS 659.850\(1\)\(a\)\(A\)](#)



## 1.b. Student Identity and Expression

The ability to determine a student's [gender identity](#) rests with that student. For some students, the request to respect and affirm a student's gender expansive identity may come from the student's parent or caregiver.<sup>14</sup> School districts should adopt a flexible approach that accounts for each student's unique identities, strengths, needs, and social and familial supports.

Some gender expansive students will assert their gender identity at the time of enrollment, while other students will assert their gender identity after attending a school for some time. Students should be able to openly discuss and convey their own gender identity and expression as well as decide when, with whom, and how much information to share. As soon as a student asserts their gender identity, the school should begin treating that student in alignment with their gender identity. This may involve discussing with the student, and possibly their parents or caregivers, any identity-affirming support that the student may need. Once the school has discussed supportive options with the student, the school should take immediate steps to implement the support plan. Districts may wish to reference the [Student Support and Safety Plans section](#) of the guidance or use the [Student Support and Safety Plan Template](#) resource document, which can also be viewed by clicking the blue button below.

[Student Support and Safety Plan Template](#)

### 1.b.i. Names and Pronouns

Gender expansive students may choose to change the name assigned to them at birth to an asserted name that affirms their gender identity. Gender expansive students may also ask to be referred to by the [pronouns](#) that affirm their gender identity. Even if a student does not update their records, they should be referred to by their asserted name and pronouns. Intentional or unintentional continuous [misgendering](#) of a student by refusing to use their asserted name and pronouns can potentially create a hostile environment.

Schools should engage in [student-led support planning](#) for name and pronoun changes. Once the school and student have decided on a supportive action plan, the school should immediately take action to implement the plan. Depending on the [privacy](#) and [safety](#) needs of the student, this may include instructing educators in the student's asserted name and pronouns, [updating student records](#), or updating school-issued materials that use the student's name, such as school IDs. There are no state laws which either require or prescribe requirements for school district issued student IDs. However, if your school district has chosen to issue student IDs, it is recommended that student IDs be issued in the name reflecting the student's gender identity consistently asserted at school. This may require issuing the student a new ID card.

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<sup>14</sup> When used in this document, the term "parent or caregiver" refers to a parent as well as legal guardian or "person in parental relationship" as defined in [ORS 339.133](#).



### Example: Affirming Student Names and Pronouns

*An elementary school student, Alicia (they/them), and their parents asked for a meeting with the school counselor immediately following winter break. The student told the counselor that they identified as [agender](#) and wanted to use they/them pronouns. With permission from Alicia, the school principal sent the following memorandum to the student's teachers: "Alicia, formerly known as John, will now be exclusively referred to as Alicia, a name that is consistent with their gender identity. Please be certain to use the student's asserted name Alicia and they/them pronouns in all contexts. It is my expectation that students will similarly refer to Alicia by their correct name and pronouns. Your role modeling will help make a smooth transition for all concerned. Continued, repeated, and intentional misuse of names and pronouns is called "misgendering" and has been shown to decrease feelings of safety, belonging, and overall mental health for gender expansive students. If you need any assistance to make sure that Alicia experiences a safe and supportive classroom atmosphere, please contact me for support." In addition to the memorandum, school staff were provided with training about supports for gender expansive students as well as school procedures related to discrimination, harassment, and bullying.*

## **1.b.ii. Self-Expression in Schools**

[Gender expression](#) refers to the way in which a person expresses their gender, often through their appearance, dress, and behavior. Freedom of expression, including expression of one's gender, is critical to the social and emotional development and well-being of students. The First Amendment protects the rights of students' freedom of expression.<sup>15</sup> Actions such as threatening to [out](#) students to their families, overlooking bullying, forcing students to wear clothing inconsistent with their gender identity, or barring LGBTQ2SIA+-based clubs or attire cause harm to gender-expansive students and may pose a legal risk to school districts.<sup>16</sup>

School dress codes that treat students differently based on their sex, sexual orientation, or gender identity may violate Oregon discrimination rules<sup>17</sup> or Title IX.<sup>18</sup> This may include self-expression through affirming messages on clothing, posters, or flags. Schools should review dress code policies to remove any gendered norms and requirements. The best policies are those that implement fair and even-handed dress code options that apply to all students equitably, while also allowing for some flexibility based on the safety and accessibility needs of students.

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<sup>15</sup> Various court cases have established how this right applies in schools. See, for example, [Tinker v. Des Moines](#), 393 US 503 (1969).

<sup>16</sup> Various court cases address similar situations. Schools may wish to consult with their legal counsel on individual application. For example, freedom of expression was discussed in 2000 in the case of a transgender student who experienced discrimination from her school when she expressed her gender identity by wearing what the school considered "girls clothing and accessories." The court held that the school violated her First Amendment right to freedom of expression. *Doe v. Yunits*, No. 001060A, 2000 WL 33162199, at \*3 (Mass. Super. Ct. Oct. 11, 2000).

<sup>17</sup> [OAR 581-021-0046](#)

<sup>18</sup> The Fourth Circuit ruled in June 2022 that "Title IX unambiguously encompasses sex-based dress codes promulgated by covered entities." Schools may wish to discuss this case with their legal counsel. [Peltier v. Charter Day School](#), No. 20-1001 (4th Cir 2022).

For an overview of support that should be available in schools, LGBTQ2SIA+ students and/or their families may wish to review the [Supporting LGBTQ2SIA+ Students in Oregon](#) supplemental resource document, which can also be viewed by clicking the blue button below.

## Supporting LGBTQ2SIA+ Students in Oregon

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### 1.c. Student Safety

Student safety is one of the highest priorities for a school district, which includes ensuring that students do not face discrimination, harassment, or other harm because of their identities. According to the 2019 Oregon Healthy Teens Survey,<sup>19</sup> 10.5% of gender expansive<sup>20</sup> 11th graders and 16.2% of gender expansive 8th graders missed one or more days of school in the past 30 days because they felt unsafe at school. In the 2020 Student Health Survey,<sup>21</sup> 35.6% of gender expansive 11th graders, 26.5% of gender expansive 8th graders, and 19% of gender expansive 6th graders reported that they had experienced bullying at school in the past 30 days.

Oregon and federal law prohibit discrimination based on gender identity and require schools to respond in specific ways outlined below when a student is experiencing discrimination or harassment because of their gender identity. Several court cases also establish schools' ability to regulate harassing and harmful student conduct, including student speech and online activities if those actions create a hostile environment at school.<sup>22</sup> Additionally, schools may take actions to proactively create safe and welcoming environments that reduce the likelihood of discrimination, harassment, or other harm occurring. For recommendations, please review the [Gender-Affirming Schools Action Plan](#) resource document, which can also be viewed by clicking the blue button below.

## Gender-Affirming Schools Action Plan

### 1.c.i. Creating Welcoming Environments

On September 16, 2021, the State Board of Education adopted the [Resolution Encouraging Solidarity and Support for Student Identities](#). Amongst other items, the resolution stated that the State Board of Education:

*Urgently requests that Oregon school districts, public charter schools, and education service districts both protect and encourage the proactive creation of safe spaces for*

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<sup>19</sup> [2019 Oregon Healthy Teens \(OHT\) Survey](#), Oregon Health Authority

<sup>20</sup> The 2019 OHT survey uses the term "non-binary/GNC," which they state "includes those who identify as Transgender/Trans Female or Male, gender non-conforming, genderfluid/genderqueer, agender or something else."

<sup>21</sup> [2020 State Profile Report, Student Health Survey](#), Oregon Health Authority

<sup>22</sup> [Tinker v. Des Moines](#), 393 US 503 (1969); [Mahanoy Area School Dist. v. B. L.](#), No. 20-255, 594 US \_\_\_\_ (2021).

*LGBTQ2SIA+ students, staff and families through use of symbolism of pride and affirmation across gender identities and sexual orientations, as well as additional supportive measures beyond symbolism; [and]*

*Urgently requests that Oregon school districts, public charter schools, and education service districts communicate to students, families, employees, and their communities their policies and practices and their commitment to providing all students with a high quality public education regardless of race, color, religion, sex, sexual orientation, gender identity or expression, national origin, marital status, age or disability[.]<sup>23</sup>*

ODE recommends that schools and districts create welcoming environments for gender expansive students through the use of inclusive and welcoming policies and practices. This includes training staff as well as proactively messaging to students and families those policies and practices.

## **1.c.ii. Discrimination and Harassment**

### ***1.c.ii.A. Discrimination and Harassment: Oregon Law***

Oregon law prohibits discrimination in all public elementary and secondary schools that receive state funding, including discrimination based on gender identity.<sup>24</sup> Under Oregon law, discrimination means “any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on age, disability, national origin, race, color, marital status, religion, sex, sexual orientation, or gender identity.”<sup>25</sup>

ODE recommends that schools and school districts respond to all reports of discrimination by acting to end the discrimination, remedy any impacts, and prevent discrimination from happening again. **Because discrimination may include both intended and unintended acts, schools should take care in their investigations to determine the effects and impact of any alleged discriminatory acts or conduct, not merely the intent behind them.** Likewise, schools should carefully consider their policies and procedures to ensure they are not engaging in any systemic discrimination through the implementation of a policy or practice that appears to evenly apply to all students, but that disproportionately impacts protected class students.<sup>26</sup> A policy that is applied to all students equally, but that has uneven and harmful effects on gender expansive students, could be considered discriminatory.

Oregon also requires schools to adopt policies prohibiting harassment, intimidation, bullying, and cyberbullying.<sup>27</sup> The definition of harassment, intimidation, and bullying includes behaviors that are based on any protected class, including gender identity. When an act of harassment, intimidation, bullying, or cyberbullying is based on a student’s gender identity, it must also be treated as discrimination. Schools should make sure they follow both policies when responding

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<sup>23</sup> [Resolution Encouraging Solidarity and Support for Student Identities](#), Oregon State Board of Education, September 2021

<sup>24</sup> [ORS 659.850](#); [OAR 581-021-0045](#)

<sup>25</sup> [OAR 581-021-0045\(1\)\(a\)](#)

<sup>26</sup> “any act that is fair in form but discriminatory in operation...” [OAR 581-021-0045\(1\)\(a\)](#)

<sup>27</sup> [ORS 339.351–339.364](#)

to these reports. Schools may wish to consult ODE’s August 2021 [Every Student Belongs Guidance on the Issue of Bullying](#), which addresses questions about Oregon’s harassment, intimidation, bullying, and cyberbullying law and policy.

Some incidents may implicate multiple forms of discrimination; for example, an incident of harassment may be both gender identity discrimination and racial discrimination. Schools are encouraged to analyze any reports of bullying, harassment, or discrimination carefully to ensure they are providing support and remedies to all elements of each incident.

### ***1.c.ii.B. Discrimination and Harassment: Federal Law***

Federal Law, including Title IX, requires schools to ensure that gender expansive students have equal access to all aspects of a school's programs and activities, including school processes for responding to discrimination.<sup>28</sup> Title IX also prohibits harassment or discrimination that is a result of sex stereotyping, or biased assumptions about a person’s sex or gender. A recent OCR case resolution found that sex discrimination predicated on sex stereotyping occurred when a gender expansive student was harassed because their name, pronouns, presentation, clothing, manner of speaking, and other behavior that did not align with traditional gender roles or expectations, and when the school failed to recognize the student’s reports of this behavior as sex discrimination and respond to it as such.<sup>29</sup>

Every school or district that receives federal funding must designate a Title IX Coordinator who is responsible for coordinating the school or district’s response to all sex discrimination, including discrimination based on gender identity.<sup>30</sup> All gender identity discrimination, including bullying and harassment based on gender identity, should be reported to the Title IX Coordinator or another school official authorized to carry out the school’s Title IX response. When a school becomes aware of possible discrimination, ODE recommends treating it as a complaint of discrimination and acting in accordance with the school’s relevant policies and with state and federal law.

For more information, please see the [Frequently Asked Questions about Discrimination Complaint Processes](#) resource, which can also be viewed by clicking the blue button below.

**FAQs about Discrimination Complaint Processes**

### **1.c.iii. Every Student Belongs**

The Every Student Belongs rule requires education program providers to prohibit symbols of hate as well as adopt policies and procedures for dealing with bias incidents.<sup>31</sup> Bias incident means “a person’s hostile expression of animus toward another person relating to the other person’s perceived race, color, religion, gender identity, sexual orientation, disability or national

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<sup>28</sup> [ORS 659.850; 34 CFR 106; 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](#), 2021

<sup>29</sup> [OCR Case Resolution of Tamalpais Union High School District](#), U.S. Department of Education Office for Civil Rights, June 23, 2022

<sup>30</sup> [34 CFR 106.8\(a\)](#)

<sup>31</sup> [OAR 581-022-2312](#)

origin, of which criminal investigation or prosecution is impossible or inappropriate.”<sup>32</sup> Bias incidents may include deliberate or unintentional derogatory language or behavior, microaggressions, insults, verbal assaults, and invalidations directed at or about gender expansive students.

Districts must have policies in place for the reporting of and responding to bias incidents.<sup>33</sup> Districts are encouraged to utilize the [Every Student Belongs Bias Incident Response Guide](#) when developing policies and procedures for responding to bias incidents.<sup>34</sup>

### 1.c.iv. Student Support and Safety Plans

Safety is essential for students to succeed in school. Gender expansive students face higher levels of harassment and bullying than cisgender students and may need structured safety plans to support their engagement at school. ODE encourages schools to work with students and their families, as appropriate, to create individualized support and safety plans. Schools and districts should designate one or more staff members on each campus who can assist students with obtaining a support and safety plan and communicate that information to all students on a regular basis.

If a written student support and safety plan is developed, it is considered part of a student’s educational record and may be subject to disclosure to parents and caregivers or other parties with a legitimate educational interest under FERPA. Districts may need to utilize policies to protect the privacy of student records if student safety may be compromised by the disclosure of those records. Districts may wish to use the [Student Support and Safety Plan Template](#) resource, which can also be viewed by clicking the blue button below.

[Student Support and Safety Plan Template](#)

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### 1.d. Student Privacy

For many gender expansive students, the process of [coming out](#) is a very personal experience. Some gender expansive students will be very open and public about their gender expansive identities, while some will not share their identities with anyone during their primary and secondary educational experiences. Research shows that family and community support is positively correlated with lower rates of suicidality and more positive mental health,<sup>35</sup> but no student should be forced to come out to anyone before they are ready. Regardless of how public a student chooses to be with their gender identity, student autonomy and privacy are of the utmost concern. It is common for students to confide in a few trusted friends, family members, or

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<sup>32</sup> [OAR 581-022-2312\(2\)\(a\)](#)

<sup>33</sup> [OAR 581-022-2312\(4\)](#)

<sup>34</sup> [Every Student Belongs Bias Incident Response Guide](#), Oregon Department of Education

<sup>35</sup> [2022 National Survey on LGBTQ Youth Mental Health](#), The Trevor Project

trusted adults before sharing their identity more publicly. If a student discloses their gender expansive identity to school staff, staff should respect the confidentiality needs expressed by the student. Federal and state law establishes privacy requirements for student records information,<sup>36</sup> but outside of general records considerations, gender expansive students may have privacy concerns that could severely impact their safety and well-being in the school environment.

Gender expansive students, including those who have socially, medically, and/or legally [transitioned](#), may have privacy concerns about information such as their legal name or gender/sex assigned at birth being revealed to other students or school staff. If a school employee outs a student by sharing any personally identifiable records information without the consent of the student or their parent or caregiver, such as legal name or gender/sex assigned at birth, those actions could constitute a violation of Oregon school records law or FERPA, and may also constitute discrimination. Outing can put gender expansive individuals at risk for bullying, harassment, and violence, and should be taken seriously by schools.

Students who are not publicly asserting their authentic gender identity may have privacy concerns about students, school staff, community members, or their families finding out before they are ready to share their identity more widely. Parent and family support is the goal when supporting gender expansive students, but may not be possible in all situations. Schools should refer to their current policies when there may be a safety concern. To the extent possible, schools should refrain from revealing information about a student's gender identity, even to parents, caregivers, or other school administrators, without permission from the student.<sup>37</sup> Each decision should be made on a case by case basis specific to the safety of a student. Districts may wish to consult legal counsel with individual questions.

When a student requests that their gender identity be kept private, the paramount concern should be the health and safety of the student, while also making sure that the student's gender identity is affirmed in a manner that maintains privacy and confidentiality. If a student wishes their gender identity to remain confidential, the school should discuss with the student the extent to which they are able to offer [supportive and affirming options](#), and whether specific supportive options might compromise the confidentiality the student has requested.

School districts should work closely with the student and, if appropriate, the student's parent or caregiver in devising a supportive plan regarding the confidentiality of the student's gender identity. It may also be appropriate for school districts to engage with [community resources](#) to assist with educational efforts.

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<sup>36</sup> [ORS 326.565](#); [OAR 581-021-0220–581-021-0440](#); [20 USC1232g](#); [34 CFR 99](#)

<sup>37</sup> Districts may wish to discuss the following cases regarding privacy rights of students with their legal counsel: A Maryland district reviewed a case involving the privacy rights of gender expansive students in [Parents v. Montgomery Cnty Bd of Educ.](#), No. 8:20-3552-PWG (D Md 2022). The case includes discussion of student privacy laws and court decisions from around the country. In [Planned Parenthood of Southern Arizona v Lawall](#), the Ninth Circuit reviewed informational privacy cases involving minors and utilized the same standards as exists for adults as set forth by the United States Supreme Court. 307 F3d 783, 789–90 (9th Cir 2002).



### 1.d.i. Harassment, Intimidation, and Bullying Notification

Oregon's laws on school harassment, intimidation, and bullying require schools to adopt policies on parental notification when a student either experiences or commits an act of harassment, intimidation, and/or bullying.<sup>38</sup> This notification is intended to provide support to all students involved, both students who engage in and students who experience harassment or bullying. However, if a gender expansive student is not yet out to their parent or caregiver and is being bullied or harassed about their gender identity, they may be concerned about being outed during this required notification.

Schools should review their existing policies in order to handle these notifications carefully. Carson's Law requires that, "[n]otification must occur with involvement and consideration of the needs and concerns of the student who was subjected to an act of harassment, intimidation or bullying or an act of cyberbullying."<sup>39</sup> The law allows schools to opt out of parental notification under the following conditions:

- (i) Notification is not required under this subparagraph if the school official reasonably believes notification could endanger the student who was subjected to an act of harassment, intimidation or bullying or an act of cyberbullying or if all of the following occur:*
  - (I) The student who was subjected to an act of harassment, intimidation or bullying or an act of cyberbullying requests that notification not be provided to the student's parents or guardians;*
  - (II) The school official determines that notification is not in the best interest of the student who was subjected to an act of harassment, intimidation or bullying or an act of cyberbullying; and*
  - (III) The school official informs the student that federal law may require the student's parents or guardians to have access to the student's education record, including any requests made as provided by this sub-subparagraph.<sup>40</sup>*

If a school opts not to notify a student's parent or caregiver for any of the above safety reasons, the school may wish to consider supporting the student by providing access to another supportive adult the student can rely on throughout the school's response process, such as a school counselor, school psychologist, or other licensed school based mental health professional, advocate, teacher, or administrator. If a school decides that they must notify a parent or caregiver against the wishes of the student, the school should carefully consider the extent to which the student's gender identity needs to be revealed in the notification. In alignment with the [LGBTQ2SIA+ Student Success Plan](#), the school should also offer the student additional support by referring them to supportive and affirming spaces they can access at school and in the larger community, and by assisting the student in any parental or caregiver conversations to the extent the student wishes.<sup>41</sup>

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<sup>38</sup> [ORS 339.356](#)

<sup>39</sup> [ORS 339.356\(2\)\(f\)\(C\)](#)

<sup>40</sup> [ORS 339.356\(2\)\(f\)\(C\)\(i\)](#)

<sup>41</sup> Domain 1, Objective 3, Strategy 1; Domain 2, Objective 1, Strategy 1-2, [LGBTQ2SIA+ Student Success Plan](#), Oregon Department of Education, June 2020



## 1.e. Gender-Affirming Care in Schools

Gender-affirming care is a form of supportive care that may include medical, surgical, mental health, or non-medical services.<sup>42</sup> Some services are more likely to occur in schools as outlined throughout this document (e.g., social affirmation through [gender marker, name](#), and pronoun use, access to [facilities, athletics, programs and activities, gender-inclusive health education](#), and mental health services and supports), while other services are more likely to occur within a school based health center (SBHC) or community health clinic (e.g., access to puberty blockers, hormone therapy, and gender-affirming surgeries). For gender expansive children and adolescents, early access to gender-affirming care is crucial to overall health and well-being as it allows the child or adolescent to focus on social transitions and can increase their confidence while navigating their healthcare and education. Research demonstrates that gender-affirming care improves the mental health and overall well-being of gender expansive children and adolescents.<sup>43</sup>

Districts and schools have responsibilities related to gender affirming care that may be fulfilled by a variety of personnel roles depending on district size and staffing capacity. Oregon law requires designated personnel to follow medication administration requirements to determine if the prescribed frequency or schedule of gender-affirming medication necessitates its administration within schools in order for the student to attend or remain in school, as they do with all medications.<sup>44</sup> When schools partner with external organizations to administer parts of their educational program, they must ensure that those partnerships comply with nondiscrimination practices as required by state or federal law.<sup>45</sup> Schools should consult with legal counsel if they have questions about nondiscrimination requirements of external partnerships. Mental health care or social health professionals who work in schools are reminded that Oregon law prohibits “conversion therapy” as defined in ORS 675.850 for any youth under the age of 18.<sup>46</sup> Conversion therapy has been denounced as harmful by dozens of

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<sup>42</sup> [Gender Affirming Care and Young People](#), U.S. Health and Human Services Office of Population Affairs

<sup>43</sup> [Association of Gender-Affirming Hormone Therapy With Depression, Thoughts of Suicide, and Attempted Suicide Among Transgender and Nonbinary Youth](#), Amy E. Green, Jonah P. DeChants, Myeshia N. Price, and Carrie K. Davis, *Journal of Adolescent Health*; [Gender-Affirming Policies Support Transgender and Gender Diverse Youth’s Health](#), Russell B. Toomey, Jenifer K. McGuire, Kristina R. Olson, Laura Baams, and Jessica N. Fish, *Society for Research in Child Development*

<sup>44</sup> [OAR 581-021-0037](#)

<sup>45</sup> [OAR 581-021-0046](#); [34 CFR 106.31\(d\)](#)

<sup>46</sup> Districts should note that for purposes of this guidance ODE has developed a broad definition of [conversion therapy](#). That definition is outlined in the [terminology appendix](#). ORS 675.850, which prohibits conversion therapy, has its own definition of conversion therapy and it is more narrow than the definition developed by ODE for this guidance. The definition of conversion therapy in [ORS 675.850\(2\)\(a\)](#) is provided here for your convenience:

(a)(A) “Conversion therapy” means providing professional services for the purpose of attempting to change a person’s sexual orientation or gender identity, including attempting to change behaviors or expressions of self or to reduce sexual or romantic attractions or feelings toward individuals of the same gender.

(B) “Conversion therapy” does not mean: (i) Counseling that assists a client who is seeking to undergo a gender transition or who is in the process of undergoing a gender transition; or (ii) Counseling that provides a client with acceptance, support and understanding, or counseling that facilitates a client’s coping, social support and identity exploration or development, including counseling in the form of sexual orientation-neutral or gender identity-neutral interventions provided for the purpose of preventing or

healthcare organizations.<sup>47</sup> Please refer to the [Student Health Records section](#) for more information on health record keeping, including parent or caregiver records access.

School-based mental health and social health professionals should be prepared to offer additional support to students, since recent national legislative efforts to restrict gender-affirming care and education have had a detrimental effect on gender expansive youth mental health.<sup>48</sup> SBHC staff, school nurses, and other school staff providing mental health services and supports<sup>49</sup> (e.g., school counselors, social workers, or psychologists) should seek additional training regarding gender-affirming care, in alignment with their licensure rules as well as FERPA and/or HIPAA (if applicable). School-based health professionals may encourage outreach to an external care provider or offer a student or family support with navigating their insurance provider’s gender expansive policies, practices, and coverage of services.

**Example: Access to Gender-Affirming Clothing**

*A middle school Gender and Sexuality Alliance (GSA) club surveyed student members at the beginning of the year about what areas of support the group should focus on for the upcoming school year. Many students named access to gender-affirming clothing (e.g., makeup, binders, clothing, packers, and menstrual products). After getting approval from the school administration in order to confirm a location in the school for a community closet, the GSA staff advisor and student leaders partnered with an LGBTQ2SIA+ community based organization and a local library to host a community fundraiser to stock the gender-affirming closet for youth.*

For more resources about gender-affirming care in Oregon including best practices, professional development, education materials, and crisis response information, please see the [Gender-Affirming Care Resources](#) supplemental resource document, which can also be viewed by clicking the blue button below.

**Gender-Affirming Care Resources**

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## 1.f. Student Records

Student records are governed by federal and state law, including Oregon student records law<sup>50</sup> and the Family Educational Rights and Privacy Act (FERPA).<sup>51</sup> Those laws impose on schools a variety of requirements to carefully manage and store all records. Under FERPA, generally only those school employees “determined to have legitimate educational interests” may have access

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addressing unlawful conduct or unsafe sexual practices, as long as the counseling is not provided for the purpose of attempting to change the client’s sexual orientation or gender identity.

<sup>47</sup> [Conversion Therapy](#), GLAAD

<sup>48</sup> [2022 National Survey on LGBTQ2SIA Youth Mental Health](#), The Trevor Project

<sup>49</sup> [Mental and Behavioral Health Services in Schools](#), Oregon Department of Education

<sup>50</sup> [ORS 326.565–326.580](#); [OAR 581-021-0220–581-021-0440](#)

<sup>51</sup> [20 USC 1232g](#); [34 CFR 99](#)

to a student's records or the information contained within those records.<sup>52</sup> In addition, FERPA allows for parents or guardians to access student records, request to amend or correct records, and consent to sharing records outside of the educational system.<sup>53</sup> In consideration of these requirements and as [student safety](#) allows, districts and schools should follow the student's lead and use accurate gender identifying language within school records, including student name and pronouns. Gender expansive students' asserted name and pronouns should be used in all communication and documentation, as agreed upon with the student.

Schools are required to collect and report data based on sex or gender for a variety of state and federal reporting requirements. However, nothing in Oregon law generally requires a school to keep a student's sex or gender as a part of the student's permanent record.<sup>54</sup> Schools should refrain from collecting information on sex or gender when it does not serve an explicit educational purpose or meet a requirement of state or federal law. For example, end of year class surveys and field trip permission forms generally do not require gender data collection.

### **1.f.i. Sex/Gender Markers in Student Records and State Data Collection**

Beginning with the 2018-19 school year, ODE was among the first states to offer students a nonbinary gender option<sup>55</sup> within student and staff data collections, in alignment with Oregon state law.<sup>56</sup> This applies to Unique Staff Identifier Number (USID) and Secure Student Identifier (SSID) collections. Therefore all student and staff level collections containing those core fields must allow for a nonbinary [sex/gender marker](#) option, represented by the marker "X" in the sex/gender field. All districts must offer students and new staff the ability to select from at least three sex/gender marker options (M, F, and X), as well as offer existing students and staff the ability to update their current records. When updating historic records, districts must follow the state's retention schedule<sup>57</sup> and any local retention policies and procedures. Schools should consult with legal counsel if they have questions about which historical records may be modified.

While recognizing and allowing for nonbinary gender options in data reporting is an important step toward gender inclusivity, it is important to note that ODE does not collect information on binary transgender students; as a result, conclusions cannot be drawn for all gender expansive students based on this data alone. According to the 2020 Oregon Student Health Survey, 8% of students are transgender, gender expansive, questioning, or list something else.<sup>58</sup> As with race/ethnicity data collection, districts may offer additional sex/gender options beyond M, F, and X, provided that they are able to collapse their reporting categories into M, F, and X for state reporting purposes, but are not permitted to offer fewer than these three options.

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<sup>52</sup> [34 CFR 99.31\(a\)\(1\)](#). You can find [more information on FERPA](#) on the U.S. Department of Education website.

<sup>53</sup> More information about [parents' rights](#) and [students' rights](#) may be found at the U.S. Department of Education's [Protecting Student Privacy website](#).

<sup>54</sup> [OAR 166-400-0060\(32\)](#) and [581-021-0220\(11\)](#)

<sup>55</sup> [ODE Executive Numbered Memo: 008-2017-18, New Gender Code for 2018-19](#), June 2018

<sup>56</sup> [Oregon HB 2673 \(2017\)](#)

<sup>57</sup> [OAR, Chapter 166, Division 400](#)

<sup>58</sup> [2020 State Profile Report, Student Health Survey](#), Oregon Health Authority

### **1.f.ii.A. Sex/Gender Marker Changes**

The school must accept a student's declaration of their sex or gender. For students who request a change in sex/gender marker, districts should change a student's sex/gender marker within the SSID, as well as the school's student information system (SIS). There is no need for the student to legally change or prove their sex/gender. Schools should inform the student of who will be able to view their sex/gender marker information, and should discuss with the student what options are available to preserve the student's privacy and safety. In order to prevent student [misgendering](#), sex/gender markers should not be added to documents outside the required SSID report to ODE.

For more information on how to change a student's sex/gender marker within the SSID, please review the [Affirming Gender, Names, and Pronouns in Student Information Systems \(SIS\)](#) resource document, which can also be viewed by clicking the blue button below.

[Sex/Gender Marker Change Process in SSID and SIS Systems](#)

### **1.f.ii. First Name Changes**

The administrative rules of the Secretary of State and State Board of Education require the documentation of a student's full legal name within the student's permanent record.<sup>59</sup> ODE requires districts to report a student's legal name within the SSID, and provides districts the opportunity to enter a student's asserted name in the "preferred name" field which will be used by default when ODE sends reports with individual student information, including assessment systems. When the "preferred name" field is empty, the legal name will be used by default. Outside of SSID required reporting, districts can support gender expansive students by securely storing the legal name and using the asserted name throughout the Student Information System, in consultation with the student.

When a student has legally changed their name, the school should replace previous information in their system to reflect the updated legal name of the student, using the legal documentation. The exception to this protocol is with legally required historical records, such as some [special education records](#). Schools should consult with legal counsel if they have questions about which historical records may be modified.

Many schools already have protocols to support students who go by a different name than their legal name without having made a legal name change (e.g., affirming nicknames or other asserted names). When a gender expansive student asserts a name that aligns with their gender identity and requests that their student record be updated to reflect that name, the school should [update the student's record](#). Schools should consult with the student about who may, under certain circumstances, have access to their updated asserted name in student records.

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<sup>59</sup> [OAR 166-400-0060\(32\)](#); [581-021-0220\(11\)](#)

For more information on how to add an asserted name or change a student's name within the SSID and the SIS, review the [Affirming Gender, Names, and Pronouns in Student Information Systems \(SIS\)](#) resource document, which can also be viewed by clicking the blue button below.

## Name Change Process in SSID and SIS Systems

**No documentation is necessary to support a student's requested change to their asserted first name (i.e., their "preferred name" field) in a student's record.**<sup>60</sup> The student's request for a name change is all that the school should require. However, in the case of a legal name change that would remove prior records of the student's legal name, the school may request documentation of the student's legal name change in order to ensure compliance with Oregon administrative rules and public records laws.<sup>61</sup> Schools should consult with legal counsel if they have questions about which historical records may be modified.

### Example: Student Electronic Record Name Change

*At registration, a ninth grade student (he/him) submits a form indicating that the name he currently uses is different from his legal name. The school's electronic records system allows for the legal name to be stored securely within the SIS, and the asserted name to be used on class rosters, report cards, assessments, and other communications. After consulting with the student, the school enters the student's asserted name into the "preferred name" field of the SIS to ensure that the student is referred to accurately in his classes. In order to ensure the student's asserted name is used consistently across other electronic or third-party platforms, the school also confirms that email accounts and virtual learning tools such as Google Classroom and Zoom use the correct name and offer the student the option of adding pronouns if desired. The school also adds the student's asserted name into the "preferred name" field of the SSID that is reported to ODE to ensure this name is reflected in statewide assessments.*

### 1.f.iii. Transferring Districts or Schools

When a gender expansive student transfers to a new district or school, that student's records must be shared with the school in compliance with Oregon administrative rules.<sup>62</sup> Prior to sharing a gender expansive student's record, the former school should contact the student (and their parent or caregiver, if appropriate) to discuss any privacy or other concerns related to the student's gender identity that may arise during the records transfer. Because some transfers happen with little or no prior notice, it is important to have a procedure in place for record transfers that centers student agency. If the student's former school has updated the student's record to reflect their asserted name, the former school should communicate to the new school how the record was updated to avoid confusion or data issues with the student's new school. Support plans that were in place for the student at their former school may be shared with the

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<sup>60</sup> This applies only to a student's first name change; last names may not be changed without a legal name change. [ODE Executive Numbered Memo: 008-2017-18, New Gender Code for 2018-19](#), June 2018

<sup>61</sup> [OAR Chapter 166, Division 400](#)

<sup>62</sup> [OAR 581-021-0255](#)

new school, if appropriate, which can assist the new school in understanding the needs of the student.<sup>63</sup>

**Example: Record Transfer Policy**

*A district reviewed their policy for record transfers to ensure it is affirming and supportive for gender expansive students. Through consultation with students, parents or caregivers, and staff who serve these students, the district revised their policy to require a consultation with a gender expansive student prior to a transfer. Students and parents or caregivers must be informed of Oregon's student record laws during this consultation. These consultations would be held prior to a transfer, preferably during [support and safety planning](#), or when a transfer is initiated. Consultations will include a discussion of the student's and parent or caregiver's needs related to the record transfer. Together, the team will determine the most supportive approach to transferring the student's records in alignment with records retention laws.*

#### **1.f.iv. Transcripts, Diplomas, and Graduation Ceremonies**

Gender expansive students may still be in transition at the time of graduation and may not have necessarily completed legal name changes and other documentation. In consultation with the graduating student, ODE recommends offering two diplomas and two sets of transcripts, one with the legal first name and one with the asserted first name, in order to support future transitions to postsecondary education, social supports, career, and other opportunities. When planning graduation ceremonies, schools should consult with gender expansive students to determine use of their asserted name, based on their [safety](#) and [privacy](#) needs.

Once a student has completed a legal name change, they can request that records be updated in their student education record to reflect their updated legal name. This may happen before or after graduation. Schools should consider that a records change can be an affirming and supportive practice that can increase safety for gender expansive students. Oregon law allows schools autonomy in determining whether to make records changes.<sup>64</sup> Students who have been denied a requested name change have a right to a hearing.<sup>65</sup> Schools should consult with legal counsel if they have questions about which historical records may be modified.

Although there are no state requirements relating to whether transcripts contain information about a student's gender, ODE recommends that student transcripts be gender neutral and contain no indicator of gender for any student.

#### **1.f.v. Student Health Records**

Schools and district staff must maintain accurate and reliable health records aligned with standards established by their licensing board, if licensed, and with their district's policies and procedures. School health records are part of the student's education record and are protected under FERPA. It is important to share with the student when records may be disclosed and that

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<sup>63</sup> [OAR 581-021-0255](#)

<sup>64</sup> [OAR 581-021-0300](#)

<sup>65</sup> [OAR 581-021-0310](#)



parents and caregivers may request and then be granted access to student records at any time, unless the student is an “eligible student” under FERPA.<sup>66</sup>

As outlined above, [student privacy](#) is an important consideration for gender expansive students in schools. School health records may include past documents (e.g., past student health records, doctor orders, and evaluations) that conflict with the student’s asserted gender identity. Disclosure of any record should only be provided when there is a legitimate educational interest for other staff, with signed consent by parent or eligible student, or when explicitly allowed or required by state or federal law.<sup>67</sup> Districts should consider how to ensure that records do not [out](#) a student in meetings with school staff or others when disclosure is not required.

FERPA and Oregon law allow the disclosure of personally identifiable information contained in student records during a health or safety emergency.<sup>68</sup> It is important to follow the student’s lead in determining what information is shared in school and with other healthcare providers (e.g., using asserted name and pronouns when meeting with students, providing direct services, communicating to other staff, and in documenting in the student’s health record).

**Example: Medication Administration Using Student Asserted Names**

*While reviewing a new medication ordered for a genderqueer 16-year-old student, a school nurse notices the name on the medication label differs from the student’s asserted name within the school’s Student Information System (SIS). The nurse takes the following steps to ensure that school health staff will verify they are giving the correct medication to the correct student in a manner that respects the student’s asserted name and gender (in alignment with Oregon regulations regarding the administration of medication<sup>69</sup> and school policy).*

*First, the nurse confirms the student’s identity by checking that the name on the medication label matches the legal name field in the SIS (or the name listed in care notes within the SIS) and by meeting with the student. Addressing the student by their asserted name and pronouns, the nurse confirms with the student that this is their medication.*

*Second, the nurse verifies the student’s confidentiality needs. The nurse consults available notes in the student’s [Support and Safety Plan](#). While meeting with the student, the nurse clarifies their preferences for sharing information with the ordering physician and with parents or caregivers. The nurse also discusses what information will be added to school health records, ensuring the student knows that their school records, including health records, could be requested by their parent or caregiver per FERPA regulations.*

*Third, the nurse ensures need-to-know staff have access to information necessary for safe and affirming ethical care. The nurse adds care notes in a place accessible to need-to-know staff, detailing how identity was verified, and clarifying the student’s confidentiality needs for medication administration.*

<sup>66</sup> Eligible students are those 18 or older or a student of any age who is attending a postsecondary institution, see the [U.S. Department of Education Glossary](#).

<sup>67</sup> You can find [more information on FERPA](#) on the U.S. Department of Education website.

<sup>68</sup> [OAR 581-021-0380](#)

<sup>69</sup> [OAR 581-021-0037](#)



*Then the nurse places a brief note on the medication container and the student's Medication Administration Record (MAR), directing staff to "use student's asserted name to verify identity; see care notes."*

*In addition to these steps, the nurse reinforces gender-affirming practices while conducting annual staff training on Medication Administration. The nurse instructs staff on how to find care notes for any student and emphasizes that asserted name, pronouns, and gender should be used as student identifiers each time a medication is administered.*

### **1.f.vi. Special Education/Section 504 Records**

Records required under federal law, including Individuals with Disabilities Education Act (IDEA) and Section 504 plan records, must meet legal requirements while balancing respect for student privacy. All IDEA and Section 504 plan records should reflect a student's accurate gender as asserted by the student, including in the sex or gender marker designation and in pronoun use throughout the documentation. Teams should take care to provide a respectful environment which honors a student's identity when updating records.

Both IDEA and Section 504 require the maintenance of historical documentation which may have the consequence of outing a student against their will. Districts must maintain historical records consistent with the requirements of state and federal law, which could include amending them to accurately reflect a student's gender identity when requested by a parent/guardian or eligible student. Districts are encouraged to consult with their legal counsel about the requirements for the retention of records that may out a student and their release under public records law. Federal regulations related to FERPA allow for parents and caretakers and eligible students to request the amendment of information in their education records when they believe that the information is inaccurate, misleading, or in violation of their privacy rights.<sup>70</sup> Districts and schools should carefully consider each student's individual context when considering amendment of records. ODE encourages districts to consult with their legal counsel on potential changes in retention schedules and practices in order to ensure the privacy needs of students are honored.

Districts as well as IEP and 504 plan teams should take care to ensure that historical records are stored in an appropriately confidential manner, that access is restricted to only those with a legitimate educational interest, and that, whenever possible, student permission is obtained prior to reviewing any records that out the student. In the event that the district cannot amend the prior document to reflect a student's asserted gender, districts should ensure that the IEP, Section 504 plan, and/or assessment documentation following a student's gender transition thoroughly and comprehensively reviews all prior information and is updated to reflect the accurate student gender.

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<sup>70</sup> [34 CFR 99.20](#)

For more information on the implementation of the nonbinary marker for Individual Education Programs, review the [Gender Expansive Individual Education Program](#) resource document, or click the blue button below.

## Gender Expansive Individual Education Program (IEP)

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### 1.g. Facilities Access

ODE centers the safety needs of transgender and gender-expansive students by encouraging districts to invest in safe and affirming facilities, including bathrooms and locker rooms. In Oregon, 22% of LGBTQ2SIA+ students and 44% of transgender students were unable to use the school bathroom aligned with their gender.<sup>71</sup> Oregon research shows that transgender and gender-expansive students are routinely harassed, bullied, and sexually assaulted at higher rates than [cisgender](#) students in schools.<sup>72</sup> Increasing access to gender-affirming facilities supports student safety at school.<sup>73</sup> Oregon state law affirms that students have the right to use school facilities such as restrooms, locker rooms, and showers in a manner consistent with their gender identity.

In 2020, the Ninth Circuit Court of Appeals upheld the right of a transgender Oregon student to access facilities consistent with their gender identity.<sup>74</sup> The court's decision affirmed that there is no violation of Title IX, privacy rights of other students, or parental rights when schools support transgender students in gender-affirming restroom, locker room, and other facility usage. Various other courts have affirmed similar protections for students in other regions of the country.<sup>75</sup>

If a school has single-user restrooms or locker rooms available these may be offered as an option for the privacy and safety of gender expansive students, but these should not be offered as the only option. Gender expansive students should not be prohibited from accessing other facilities that align with their asserted gender identity. Requiring gender expansive students to only utilize a single-user facility, and prohibiting them from using other facilities that align with their gender identity simply because of their gender identity, could constitute discrimination under Oregon law. As schools look to future building improvements, schools should consider adding widely available all-user and single-user spaces to allow increased safety and privacy for all students, as outlined in the LGBTQ2SIA+ Student Success Plan.<sup>76</sup>

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<sup>71</sup> [2019 State Snapshot: School Climate for LGBTQ Students in Oregon](#), GLSEN

<sup>72</sup> [2020 Student Health Survey](#), Oregon Health Authority

<sup>73</sup> [School Restroom and Locker Room Restrictions and Sexual Assault Risk Among Transgender Youth](#), Gabriel R. Murchison, Madina Agénor, Sari L. Reisner, Ryan J. Watson, Pediatrics

<sup>74</sup> [Parents for Privacy v. Barr](#), 949 F3d 1210 (9th Cir 2020)

<sup>75</sup> [Grimm v. Gloucester Cnty Sch Bd](#), 972 F3d 586 (4th Cir 2020); [Adams v. Sch. Bd. of St. Johns Cnty](#), 968 F3d 1286 (11th Cir 2020); [Doe v. Boyertown Area Sch Dist](#), 897 F3d 518 (3rd Cir 2018); [Whitaker v. Kenosha Unified Sch Dist](#), (7th Cir 2017)

<sup>76</sup> Domain 2, Objective 1, Strategy 1, Action 1a, [LGBTQ2SIA+ Student Success Plan](#), Oregon Department of Education, June 2020

The Menstrual Dignity for Students program requires that school districts provide free menstrual products within all student bathrooms in order to serve elementary, middle, high school and postsecondary students who menstruate.<sup>77</sup> Through these rules, education providers are required to “consider all-gender access to menstrual products and student privacy” when making installation and dispenser location decisions.<sup>78</sup> Student bathroom is defined as “a bathroom that is accessible by students, including a gender-neutral bathroom, a bathroom designated for females and a bathroom designated for males.”<sup>79</sup> Research shows that one in four teens have missed class due to a lack of access to menstrual products, which impacts not only their attendance but also their academic success.<sup>80</sup> These laws affirm the right to menstrual dignity for gender expansive students by addressing the specific challenges that some students have in managing menstruation while minimizing negative attention, which research shows may put them at risk of harm and navigating experiences of [gender dysphoria](#) during menstruation.<sup>81</sup>

Schools may need to make individualized support plans or accommodations for gender expansive students, especially those who do not identify with the sex or [gender binary](#) such as [Two Spirit](#), [transgender](#), [nonbinary](#), [intersex](#), [genderfluid](#), [genderqueer](#), or [agender](#) students. Affirming plans may include allowing a student to access all facilities, allowing them access to the facilities that most closely align with their gender identity or that make them feel the most safe and comfortable, or any other individualized plan that provides the student with facility access options and that does not discriminate against the student based on their gender identity.

Example: Genderfluid Facilities Access

*A high school student (she/they/he) who had recently asserted his [genderfluid](#) identity asked for a meeting with the school to talk about facility access and safety concerns. The student stated that she felt safe using both the boys and girls restrooms during the school day in alignment with their fluid gender identity, but that they would feel more comfortable using the girls locker room during physical education and athletics because of previous bullying and harassment she had experienced in the boys locker room as a student-athlete. The school supported the student in his access needs by developing a facilities access plan they shared with all staff who needed to be informed. They also reminded the student about reporting options for bullying and harassment, decided to increase privacy options in all locker rooms, and met with coaches to discuss proactive responses to prevent bullying and harassment on athletic teams.*

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<sup>77</sup> [Oregon HB 3294 \(2021\)](#), [OAR 581-021-0587](#), [OAR 581-021-0590](#), [OAR 581-021-0593](#), [OAR 581-021-0596](#)

<sup>78</sup> [OAR 581-021-0590\(2\)](#)

<sup>79</sup> [OAR 581-021-0587\(5\)](#)

<sup>80</sup> [State of the Period 2021: The Widespread Impact of Period Poverty on US Students](#), Thinx & PERIOD, October 2021

<sup>81</sup> [Queering Menstruation: Trans and Non-Binary Identity and Body Politics](#), Sarah E. Frank, February 2020, Sociological Inquiry

Example: Private Changing Space

*In one middle school, a transgender girl (she/her) was given access to the girls changing facility as part of her transition process. However, the student was uncomfortable using the female changing facility with other students, since 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 side of a row of benches near the group 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, and it became a space for all students to self-determine their privacy needs within the facility.*

For more recommendations about gender-affirming practices relating to facilities, please review the [Gender-Affirming Schools Action Plan](#) resource document, which can be viewed by clicking the blue button below.

[Gender-Affirming Schools Action Plan](#)

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## 1.h. Instructional Materials, Education Standards, and Opt-Out

The [LGBTQ2SIA+ Student Success Plan](#) outlines objectives, strategies, and actions that uplift the need for students to experience LGBTQ2SIA+ inclusive, culturally-sustaining instructional materials and pedagogy across grades and subjects. The LGBTQ2SIA+ Student Success Plan is an official statewide plan designed to support districts in the adoption and investment in recommended strategies over time. According to the LGBTQ2SIA+ Student Success Plan student focus groups, “a majority of students we heard from believe that their curriculum is not sufficiently inclusive of LGBTQ2SIA+ people or issues.”<sup>82</sup> Only 3 out of 10 Oregon LGBTQ2SIA+ students said they were taught positive representations of LGBTQ2SIA+ figures, history, or events with inclusive instructional materials, and fewer than 2 out of 10 reported receiving inclusive sex education in school.<sup>83</sup>

Subject- and grade-specific education standards are adopted by the State of Oregon’s State Board of Education. School districts (through their school boards) must provide students with instructional materials that align with the state standards set out in Oregon Administrative Rules Chapter 581, Division 22.<sup>84</sup> Instructional materials include curricula, lessons, activities, and assessments that teachers use in their classes. This section outlines the requirements and opportunities to affirm transgender, nonbinary, and gender-expansive students through instructional materials, standards, instructional practices, and opt-out policies.

<sup>82</sup> Youth Insight #2a, [LGBTQ2SIA+ Student Success Plan](#), Oregon Department of Education, June 2020

<sup>83</sup> [School Climate for LGBTQ Students in Oregon \(2019 State Snapshot\)](#), GLSEN

<sup>84</sup> [Division 22 Assurance of Compliance](#), Oregon Department of Education

### 1.h.i. Equity in Instructional Materials

Evaluation and adoption of instructional materials is on a cycle established by the State Board of Education.<sup>85</sup> ODE's vision of [Educational Equity](#) is reflected in evaluation criteria development<sup>86</sup> as well as the instructional materials evaluation, training, and adoption process.<sup>87</sup> Oregon administrative rules detail the need for non-discriminatory instructional materials for LGBTQ2SIA+ students.<sup>88</sup> The evaluation criteria for each content area requires that all adopted instructional materials, whether evaluated by ODE or by school districts within an independent review, promote respect for all identities covered by the protected classes defined in Oregon law, including gender identity.<sup>89</sup>

### 1.h.ii. Health Education: Comprehensive Sexuality Education Standards, Materials, and Instruction

Oregon's human sexuality education administrative rule requires that districts provide comprehensive, medically accurate, not fear- or shame-based, and culturally inclusive [sexuality education](#) every year from kindergarten through twelfth grade as one part of the core content area of [Health Education](#).<sup>90</sup> The rules mandate that sexuality education use "inclusive materials, language, and strategies that recogniz[e] different sexual orientations, gender identities and gender expression."<sup>91</sup>

These requirements are mirrored in the grade-specific Oregon Health Education Standards and Performance Indicators.<sup>92</sup> These content standards form the foundation for school districts to design their required sexuality plan of instruction.<sup>93</sup> A district must develop and approve a comprehensive plan of instruction that demonstrates how critical sexuality education topics, including positive identity development and respect of differences, are scaffolded and connected throughout K-12 in order to develop student skills and knowledge related to personal and community health and safety.<sup>94</sup> There is growing evidence that rates of child abuse, bullying, harassment, and sexual violence decrease when students receive comprehensive sexuality education instruction on how to advocate for oneself, others, and safe environments; how to think critically about how culture and media impact healthy relationships and gender norms; and why respecting a variety of personal and cultural identities (including gender identity) is important.<sup>95</sup>

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<sup>85</sup> [OAR 581-022-2355](#)

<sup>86</sup> [ORS 337.035](#); [OAR 581-011-0060](#)

<sup>87</sup> [OAR 581-011-0066](#)

<sup>88</sup> [OAR 581-021-0046\(6\)](#)

<sup>89</sup> [ORS 337.035](#); [OAR 581-011-0060](#); [ORS 659.850](#); [OAR 581-021-0045](#)

<sup>90</sup> [OAR 581-022-2050\(6\)\(q\)](#)

<sup>91</sup> [OAR 581-022-2050\(6\)\(q\)](#)

<sup>92</sup> [Oregon Health Education Standards and Performance Indicators \(Grades K-12\)](#), Oregon Department of Education, October 2021

<sup>93</sup> [OAR 581-022-2050\(2\)](#)

<sup>94</sup> [OAR 581-022-2050\(2\)](#)

<sup>95</sup> [Three Decades of Research: The Case for Comprehensive Sex Education](#), Eva S. Goldfarb, Lisa D. Lieberman, October 2020, *Journal of Adolescent Health*; [Comprehensive Sexuality Education as a Primary Prevention Strategy for Sexual Violence Perpetration](#), Madeline Schneider, Jennifer S. Hirsch, May 2018, *Trauma, Violence, & Abuse*

### **1.h.ii.A. Considerations for Sexuality Education All-Gender Instruction**

As stated above, the rules for human sexuality education require districts to use gender-inclusive instructional strategies, which may include strategies such as separating students by gender or offering all-gender spaces for sexuality education instruction.<sup>96</sup> Separating students and lesson content based on gender may cause gender expansive students distress for a number of reasons. All-gender classrooms provide an opportunity for students to learn about, and to empathize with, one another's experiences which may reduce the shame and stigma associated with sexual and reproductive health topics. Research shows that when students learn about health, bodies, relationships, and identities alongside their peers and as a community, shared norms are built around safety, empathy, and gender-based violence and schools see lower levels of bullying.<sup>97</sup>

In the event that gender-separated spaces are necessary in order to ensure student safety and well-being, schools should follow state and federal regulations related to separating students by gender. The current Title IX regulations allow schools to offer the same required instructional content to gender-separated groups for "human sexuality classes," which may not include all lessons within the required sexuality plan of instruction.<sup>98</sup> In cases where students are separated, gender expansive students must be permitted to participate in accordance with the student's asserted gender identity, or within whichever section they are most comfortable. As a trauma-informed best practice, all students should be informed ahead of time that they will need to decide which group to attend so that gender expansive students have ample time to ask for support if needed. Schools should also be aware that some gender expansive students may not feel comfortable participating in either gender-specific group, and schools should be prepared to accommodate all students who do not feel safe or comfortable within gender-specific sexuality education lessons.

#### **Example: Gender-Segregated Lesson Complaint**

*An elementary school receives a complaint about their schools practice of separating puberty classes and content based on assigned gender from the parent of a 5th grade transgender girl in the school, named Ana (she/her). During her 4th grade puberty lessons, Ana was forced to choose between feeling safe and supported by her same-gender peers and getting the information she needed about upcoming puberty for her body and development. Ana's parent also noted there was no mention of puberty blockers or transgender-specific puberty information included in the class. A teacher involved in responding to the complaint makes a note that an [intersex](#) boy and a [nonbinary](#) child would also be excluded from this gender-specific lesson format. The district works with the health teacher to draft and adopt a new policy that promotes all-gender classroom instruction, to begin this school year. The school principal shares back the policy with the parent and student, and works with the teacher to adapt their health lessons to include gender-affirming language and transgender-specific information for the following school year.*

<sup>96</sup> [OAR 581-022-2050\(6\)\(q\)](#)

<sup>97</sup> [Three Decades of Research: The Case for Comprehensive Sex Education](#), Eva S. Goldfarb, Lisa D. Lieberman, October 2020, Journal of Adolescent Health

<sup>98</sup> [34 CFR 106.34](#)



Please note that the content in this section pertains specifically to recommendations related to comprehensive sexuality education. For information about separating students by sex or gender in other school programs, refer to the [Gender-Based Activities and Single-Sex Programs section](#).

### **1.h.iii. Physical Education: Gender-Specific Participation**

Physical education is a required content area and an important part of many students' lives. Gender expansive students are to be provided the same opportunities to participate in physical education as all other students. While most physical education activities should be coeducational and gender inclusive, Title IX and Oregon law allows schools to separate students by sex during contact sports in physical education classes.<sup>99</sup> In cases where students are separated, gender expansive students should be permitted to participate in accordance with the student's asserted gender identity. Schools should be prepared to accommodate all students who do not feel safe or comfortable playing contact sports on either gender-separated team. For more information on sports outside of physical education, please see the [Athletics](#) sub-section.

### **1.h.iv. Social Science: Ethnic Studies Standards**

With the passage of the Ethnic Studies and Inclusive Education law in 2017, ODE was required to develop and adopt through the State Board of Education new social science standards and instruction that includes the study of "ethnic and social minorities," which encompasses LGBTQ2SIA+ individuals. In 2019, HB 2023 required the identification of instructional materials supportive of the new standards. These laws require ODE to create standards, offer professional development, and ensure that instructional materials adequately address the contributions of LGBTQ2SIA+ communities.<sup>100</sup> The [Ethnic Studies Integrated Social Science Standards](#), adopted in 2021, include content standards that address LGBTQ2SIA+ identities, histories, and perspectives, for grades K-12.<sup>101</sup> For additional information please visit the [ODE Social Sciences webpage](#).

### **1.h.v. Social Emotional Learning Framework and Standards**

With the passage of HB 2166 (2021), ODE is required to oversee the development of a social emotional learning framework and education standards for K-12 schools in alignment with [ODE's Integrated Model of Mental Health](#) that "promote[s] self-awareness, awareness of others, critical thinking, and understanding regarding the interaction between systemic social structures and histories, contributions and perspectives of individuals," naming LGBTQ2SIA+ youth as one required student population to support.<sup>102</sup> The final framework and standards, including implementation requirements, will be posted to the ODE website when they are completed.

### **1.h.vi. Opt-Out and Exemption**

Gender identity, gender expression, and sexual orientation are topics that may come up in multiple classes and school contexts, including in the required [Health Education Standards and](#)

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<sup>99</sup> [34 CFR 106.34\(a\)](#); [581-021-0046 \(1\)\(c\)](#)

<sup>100</sup> [Oregon HB 2845 \(2017\)](#); [Oregon HB 2023 \(2019\)](#); [ORS 329.045](#), [ORS 326.051](#), [ORS 329.451](#)

<sup>101</sup> [2021 Social Science Standards Integrated with Ethnic Studies](#), Oregon Department of Education

<sup>102</sup> [Oregon HB 2166 \(2021\)](#), Section 4(2)(e)(E)



[Performance Indicators](#).<sup>103</sup> Oregon law provides for two types of “opt outs” from a state required curriculum, program, or learning activity, both of which are outlined below:

#### ***1.h.vi.A. Comprehensive Sexuality Education Plan of Instruction Opt-Out***

A parent or guardian may opt their student out of any portion of the comprehensive sexuality education plan of instruction and any portion of a course education concerning sexually transmitted infections including recognition of causes, sources, and symptoms, and the availability of diagnostic and treatment centers by simply making a request to the district in writing, as set out in [ORS 336.035](#), [ORS 336.435](#), and [OAR 581-022-2050](#).

#### ***1.h.vi.B. Students' Disabilities or Religious Beliefs Accommodation Exemption***

For all other state required curriculum, program, or learning activity, the parent or guardian may request an exemption by following the process set out in [OAR 581-021-0009](#). Under that rule, parents may request that their student be excused from a state required program or learning activity, where necessary, to accommodate a student’s disability or religious beliefs. To request an exemption, the parent must submit a written request listing the reasons for the request and setting forth a proposed alternative for an individualized learning activity that substitutes for the period of time exempt from the program and meets the goals of the learning activity or course being exempted. School district personnel must evaluate and approve the request. The request is then put to the local school board for approval. If approved by the local school board, the district may approve the request and grant credit for the alternative learning activity.

Schools should note that opt-out and exemption rules generally apply to individual students and are not a process schools should use to eliminate an entire program of instruction, curriculum, student club, or activity. Individuals requesting the removal or elimination of school programs or activities should be directed to the correct school policies and procedures for those requests.

It is important to note that different treatment on the basis of gender identity or any other protected class in schools may be discriminatory under civil rights laws.<sup>104</sup> This could include making special rules for school curricula or other programs.

#### **Example: Opt-Out Based on Gender Identity**

*As part of a planned school response to incidents of gender identity-based bullying in several middle schools, a school district leads all middle school students in the district through an instructional activity on gender identity and expression. A few days after the activity was held in student homerooms, a parent requests that their child be opted out of all future school activities related to gender identity and expression. The district invites the parent for an in-person conversation to discuss their concerns and better understand whether the request qualifies for an exemption to accommodate the student’s disabilities or religious beliefs. The district and school administrator determine the request is not applicable for exemption under [OAR 581-021-0009](#)*

<sup>103</sup> [Oregon Health Education Standards and Performance Indicators \(Grades K-12\)](#), Oregon Department of Education, October 2021

<sup>104</sup> [20 USC 1681](#), [34 CFR 106](#); [ORS 659.850](#); [OAR 581-021-0045](#)

*because the request is not made to accommodate the student's disability or religious beliefs. The district and school administrator also determine the opt-out under [OAR 581-022-2050](#) does not apply because [OAR 581-022-2050](#) narrows opt-out rights to only pertain to material included within the comprehensive sexuality education plan of instruction. Lastly, the district offers the parent an opportunity to review the district's adopted sexuality education instructional materials.*

For examples of gender-affirming instructional materials, please visit the ODE LGBTQ2SIA+ Student Success [resources webpage](#). For more recommendations about gender-affirming language and practices, please review the [Gender-Affirming Schools Action Plan](#) resource document, which can be viewed by clicking the blue button below.

## Gender-Affirming Schools Action Plan

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### 1.i. School Programs and Activities

The [LGBTQ2SIA+ Student Success Plan](#) highlights that school clubs and activities help many LGBTQ2SIA+ students find a sense of safety and belonging. Research has demonstrated that school co-curricular activities, such as athletics and clubs, help students thrive academically, find a sense of belonging in their communities, and retain their commitment to their education.<sup>105</sup>

The same Oregon law that prohibits discrimination in public education also applies to school activities, including clubs, athletics, and other co-curricular programs. Title IX similarly prohibits sex discrimination, including gender identity discrimination, in any part of a school's educational programs or activities. Schools should ensure that all their programs and activities are free from discrimination based on gender identity and that gender expansive students are able to access the full spectrum of the school's programmatic offerings.

#### 1.i.i. Gender-Based Activities and Single-Sex Programs

Because discrimination based on sex is prohibited by state and federal law, sex-segregated activities should be rare in public education programs. Single-sex programs are only allowed by Title IX in specific, limited circumstances, such as in [specific human sexuality education lessons](#) and in contact sports.<sup>106</sup> Other single-sex programs may be allowed on a limited basis if they are linked to an important educational objective of the school, are voluntary, and if a substantially equal program is available for any excluded students.<sup>107</sup> These provisions apply to all parts of the school's educational programs and activities, including programs run by outside

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<sup>105</sup> [Motivation Towards Extracurricular Activities and Motivation at School: A Test of the Generalization Effect Hypothesis](#), Anne-Sophie Denault, Frédéric Guay, December 2016, Journal of Adolescence; [An Initial Investigation of Sexual Minority Youth Involvement in School-Based Extracurricular Activities](#), Russell B. Toomey, Stephen T. Russell, September 2012, Journal of Research on Adolescence

<sup>106</sup> [34 CFR 106.34](#)

<sup>107</sup> [Q&A on Single-Sex Programs](#), U.S. Department of Education Office for Civil Rights, December 2014

organizations to which the school is providing significant assistance.<sup>108</sup> School districts should consult with their Title IX Coordinator or legal counsel to review any gender-based or single-sex programs, policies, and practices (including informal practices in the classroom or during the school day), and should eliminate any that do not comply with state and federal civil rights law and that do not serve a clear pedagogical purpose.

When single-sex or gender-based activities are offered, schools should allow gender expansive students to participate in accordance with their asserted gender identity. Schools should be aware that some gender expansive students, such as Two Spirit, transgender, nonbinary, intersex, genderfluid, genderqueer, or agender students, may not feel comfortable participating in programs or activities for either boys or girls. The most inclusive option is to eliminate or limit gender-based and single-sex programs in order to avoid creating uncomfortable or unwelcoming environments.

**Example: Gender-Based Classroom Management Strategies**

*An elementary school observed that many teachers were in the habit of dividing students up by gender. Some teachers would ask “girls to line up on the wall, boys on the fence” when students were coming back inside from recess or outdoor time; in some classes, teachers would divide students up in “boys versus girls” teams for academic practice or classroom games. Because these divisions served no clear pedagogical purpose the school asked all instructors to eliminate this practice and utilize other division methods. The school suggested that instructors could divide students up by birthday (Jan-Jun, Jul-Dec), by first letter of name (A-M, N-Z), or any other division that did not identify students by a protected class identity.*

### 1.i.ii. Student Organizations and GSAs

In many schools across Oregon, LGBTQ2SIA+ students have come together to form Gender and Sexuality Alliances (GSAs), Pride Clubs, or similar organizations. These organizations are designed to provide a safe and supportive environment for LGBTQ2SIA+ students to discuss topics related to gender identity and sexual orientation. Various research has shown the benefits of these organizations for students; the CDC states that GSAs serve as a protective factor that promotes positive health outcomes for gender expansive youth,<sup>109</sup> and a report from GLSEN shows that students in schools with GSAs tend to hear fewer negative remarks about the LGBTQ2SIA+ community and are less likely to experience bullying and harassment.<sup>110</sup> The [LGBTQ2SIA+ Student Success Plan](#) identifies GSAs or similar clubs as important safe and affirming spaces for LGBTQ2SIA+ students in Oregon.<sup>111</sup>

GSAs or similar organizations must be allowed to form in any Oregon school under the same rules as any other student organization. It could be considered discriminatory to create a policy

<sup>108</sup> [Dear Colleague Letter on Voluntary Youth Service Organizations](#), U.S. Department of Education Office for Civil Rights, December 2015

<sup>109</sup> [Protective Factors for LGBTQ Youth: Information for Health and Education Professionals](#), Centers for Disease Control, December 2019

<sup>110</sup> [From Teasing to Torment: School Climate Revisited. A Survey of U.S. Secondary School Students and Teachers](#), GLSEN, 2016

<sup>111</sup> Youth Insight #2b, [LGBTQ2SIA+ Student Success Plan](#), Oregon Department of Education, June 2020

that is applied to all student organizations equally, but disproportionately impacts groups or clubs for gender expansive students.

### 1.i.iii. Athletics

In Oregon, the Oregon School Activities Association's (OSAA) policies allow gender expansive students to participate in school athletics and activities in accordance with their consistently asserted gender identity.<sup>112</sup> Not allowing students to participate in athletics in alignment with their gender identity may violate Oregon nondiscrimination rules.<sup>113</sup> Schools should regularly review their athletics policies to ensure that they do not engage in discrimination against gender expansive students.

The United States Department of Education may also consider the exclusion of students from athletic participation based on their gender identity to violate Title IX. The U.S. Department of Education and the U.S. Department of Justice filed a joint statement of interest in *B.P.J. v. West Virginia State Board of Education* stating that "Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., and the Equal Protection Clause of the Fourteenth Amendment do not permit West Virginia to categorically exclude transgender girls from participating in single-sex sports restricted to girls."<sup>114</sup>

OSAA's 2022-2023 handbook states that nonbinary, intersex, genderfluid, Two Spirit, and other students who do not consistently identify with the gender binary must be allowed to play on athletic teams of either gender, provided that if the student has tried out or participated in athletics or an activity that is gender-specific or gender-segregated, the student may not participate during that same season on a team of another gender.<sup>115</sup> However, that student may also participate in any non-gendered sports or activities (e.g., football, dance), and may try out for/participate on teams of another gender in subsequent seasons.

Athletic participation may require school-specific uniforms for each sport. Often these uniforms are designed based on historical practices containing assumptions about gender or anatomy (e.g., swimwear styles, athletic short length, etc.). Schools should develop any athletic uniform policies with consideration of the needs of gender expansive students. It is best practice for formal or informal athletic uniform policies to allow for flexibility related to student comfort and safety needs, while adhering to organizational and sport safety regulations.<sup>116</sup> Schools may wish to consult with legal counsel or OSAA about individual student concerns. For questions regarding non-uniform athletic dress codes (e.g., game day dress, travel dress), schools should refer to the guidance under the [Student Identity and Expression section](#).

#### Example: Athletic Access and Support

*A nonbinary intersex student (they/them), whose school records note their sex as X, participates in girls volleyball in the fall and boys swimming in the winter in alignment with state law and OSAA's regulations. The school meets*

<sup>112</sup> [Gender Identity Participation Policy](#), Oregon School Activities Association, Winter 2019

<sup>113</sup> [OAR 581-021-0045](#)

<sup>114</sup> [Statement of Interest, B.P.J. v. W. Va. State Bd of Educ.](#), 550 F Supp 3d 347 (SDW Va 2021)

<sup>115</sup> [Gender Identity Participation Policy](#), Oregon School Activities Association, Winter 2019

<sup>116</sup> The [National Federation of State High School Associations](#) (NFHS) provides uniform rules for some high school sports. Contact [OSAA](#) with questions.

*with the student to discuss comfort and safety needs, and the student requests a slight uniform modification for swimming. The school reviews NFHS uniform rules and consults with OSAA, and provides a swim uniform that covers the student's torso.*

#### 1.i.iv. Travel

Gender expansive students should be treated consistent with their gender identity on any school trips, including in assignment of overnight accommodations. Schools should consult with the gender expansive student to proactively address any safety and access concerns the student has, which can include room assignments or roommates, booking additional accommodations, and ensuring facilities access at all travel destinations. Schools should also take the safety of gender expansive students into account when planning travel locations.

For more recommendations about gender-affirming practices relating to School Programs and Activities, please review the [Gender-Affirming Schools Action Plan](#) resource document, which can also be viewed by clicking the blue button below.

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#### 1.j. Staff Training and Support

State and federal law require districts to have a process for the prompt resolution of complaints of discrimination.<sup>117</sup> It is important for all employees of school districts to understand these processes and any obligations they have for responding to and reporting incidents.<sup>118</sup> This could include [reporting sex discrimination to the school's Title IX Coordinator](#) or any other designated official. At a minimum, ODE and the [LGBTQ2SIA+ Student Success Plan](#) recommend school staff receive training or information on what constitutes gender identity discrimination and how to report it. School staff may also need training on how to step in and intervene on any discrimination they witness from students or other staff, including gender identity discrimination.

Districts may wish to consider how to support individual employees in a manner specific to their roles in order to help create safe and welcoming environments for gender expansive students. Classroom teachers, for example, may benefit from specific training on inclusive curriculum, while coaches and athletic staff may need more in-depth information about the school's policies and procedures related to athletics and travel. For training recommendations, please review the [Gender-Affirming Schools Action Plan](#) resource document, which can also be viewed by clicking the blue button below.

[Gender-Affirming Schools Action Plan](#)

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<sup>117</sup> [OAR 581-022-2370](#)

<sup>118</sup> [34 CFR 106.8](#)

## 2. Complaint Processes

Oregon law requires schools to have complaint processes that are readily accessible to students, families, and other community members for filing complaints.<sup>119</sup> Individuals with complaints related to gender identity may follow one or more of the processes described below when filing such a complaint.

### 2.a. Discrimination Complaints

All schools and districts<sup>120</sup> in Oregon are required to have nondiscrimination policies and procedures that cover discrimination, including gender identity discrimination.<sup>121</sup> Any school that receives federal funds (including all K-12 public and charter schools) is subject to federal civil rights laws and must comply with Title IX, which prohibits discrimination based on sex, sexual orientation, and gender identity. If a student is experiencing discrimination based on gender identity, they may [submit a complaint to their district, to the U.S. Department of Education's Office for Civil Rights \(OCR\), or may appeal a complaint originally made to their district up to the Oregon Department of Education \(ODE\)](#).

Oregon also requires schools to adopt policies prohibiting harassment, intimidation, bullying, and cyberbullying, which are separate policies from discrimination.<sup>122</sup> However, when an act of harassment, intimidation, bullying, or cyberbullying is based on a student's gender identity or other protected class identity, it may also meet the definition of discrimination.<sup>123</sup> If a student experiences bullying or harassment that is based on their gender identity, then they may submit a complaint of discrimination.

For more information about filing complaints for students, parents or caregivers, or community members, please see the [Frequently Asked Questions about Discrimination Complaint Processes](#) resource document, which can also be viewed by clicking the blue button below.

[FAQs about Discrimination Complaint Processes](#)

#### 2.a.i. District Discrimination Complaints

All state-funded schools and districts in Oregon are required to prohibit discrimination based on protected class identities, including gender identity, and to have published complaint processes

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<sup>119</sup> [OAR 581-022-2370](#)

<sup>120</sup> In general, Oregon and federal civil rights laws apply to all publicly funded education programs including but not limited to school districts, public charter schools, education service districts, long term care facilities, the Youth Corrections Education Program, the Oregon School for the Deaf, and Juvenile Detention Education Programs. See [OAR 581-021-0045](#) for more information.

<sup>121</sup> [ORS 659.850](#); [OAR 581-022-2370](#)

<sup>122</sup> [ORS 339.351–339.364](#)

<sup>123</sup> [OAR 581-021-0045](#); [ORS 339.351–339.364](#)



for handling complaints of discrimination.<sup>124</sup> When a school becomes aware of possible discrimination, ODE recommends treating it as a complaint of discrimination and acting in accordance with the school's relevant policies and with state and federal law.

Schools and districts must be prepared to accept complaints of discrimination from any student, parent or caregiver, or district community member. Some schools provide discrimination complaint forms as a part of their policies or procedures for students, parents or caregivers, or district community members to use to submit a complaint. However, Title IX requires schools to accept complaints made either verbally or in writing, and schools must recognize and respond to complaints of sex discrimination regardless of whether a specific form is used.<sup>125</sup> In accordance with federal regulations, non-discrimination policies should be posted on the school and district website or at the school and district administrative office if the school does not have a website.<sup>126</sup>

All recipients of federal funds are required to designate a Title IX Coordinator who is responsible for ensuring the district's compliance with Title IX.<sup>127</sup> It may be helpful to connect complainants who report gender identity discrimination to the district (or school) Title IX Coordinator directly, since Title IX Coordinators are responsible for ensuring the district's compliance with Title IX, which includes gender identity discrimination. Contact information for the district's Title IX Coordinator is required to be posted on the district's website.<sup>128</sup>

Schools' and districts' discrimination complaint procedures must comply with state and federal discrimination laws, including Oregon's discrimination laws and federal civil rights laws. Schools must then follow their policies and procedures when responding to discrimination complaints, including adhering to the timelines, investigation steps, and notification steps outlined in the policy. Schools should make these procedures as clear and accessible as possible to ensure complainants understand what to expect from the complaint process. Schools can make their policies most accessible by ensuring they are written in plain language, available in the languages of the community, and available in accessible formats for individuals with disabilities.

If the school's investigation finds that discrimination did occur, the school should follow their discrimination policies with regards to stopping the discrimination and remedying its effects. Actions designed to remedy the harm caused by the harassment may include providing counseling or other mental health supports, academic tutoring or make-ups, specific safety measures for the harmed student (e.g., an escort in a parking lot or between classes), flexibility on school policies such as transfer policies or absence policies, or other actions specific to the school community or needs of the student.<sup>129</sup> Actions designed to stop the discrimination and prevent it from recurring in the future may include restorative processes, discipline of the

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<sup>124</sup> [ORS 659.850](#), [34 CFR 106](#); [OAR 581-022-2370](#)

<sup>125</sup> [34 CFR 106.8](#)

<sup>126</sup> Federal regulations require schools to post a statement of non-discrimination that covers federal protected classes. See [Notice of Non-Discrimination](#) on the Office for Civil Rights website for more information.

<sup>127</sup> [34 CFR 106.8](#)

<sup>128</sup> [34 CFR 106.8](#)

<sup>129</sup> [34 CFR 106.30\(a\)](#); [34 CFR 106.45\(b\)\(1\)\(i\)](#); schools and districts are also encouraged to explore [OCR's case resolution database](#), which provides recent investigation documents and resolution agreements related to complaints of discrimination made to OCR, and which may provide districts with example remedies or sanctions.



harassing party, education or counseling for the harassing party, education for the broader school community, or other actions specific to the school community or situation.<sup>130</sup>

Schools and districts may also wish to inform complainants of any ability to file an appeal under the school's policies and procedures. In Oregon, complainants can also file reports or appeals of discrimination to ODE or OCR (for more information see [Federal Discrimination Complaints](#) and [State Discrimination Appeals](#)); schools may also wish to make these external options clear to complainants.

**Example: Gender Identity Discrimination**

*A Two Spirit student (they/he/she) confides in a trusted teacher that another student has been bullying them about their clothing, makeup, and hair. The other student harasses him in the locker rooms before and after PE, and encourages other students to make fun of them for wearing makeup.*

*The teacher recognizes that this bullying is actually discrimination, because it is based on the student's gender identity and expression. The teacher tells the student that this kind of behavior is not ok, and informs her that they can file a discrimination complaint. The teacher then calls the building Title IX Coordinator to report the discrimination, and connects the student with the Title IX Coordinator.*

*The Title IX Coordinator meets with the Two Spirit student later that day to learn more about the situation, and with the student's permission, calls their parents. Together, the Two Spirit student and his parents fill out the complaint form provided by the district. The Title IX Coordinator walks them through what to expect during the complaint processes, and provides them with contact information in case they have any questions. The Title IX Coordinator also assesses what kind of safety and support options the student will need during the investigation, and what the student will need to safely access their PE class going forward.*

## 2.a.ii. Federal Discrimination Complaints

Individuals may file complaints alleging violations of Title IX, including discrimination on the basis of gender identity, with [OCR](#) with or without first filing a complaint with the school or district, according to OCR policies and federal regulations.<sup>131</sup> Anyone can file a complaint alleging discrimination with OCR.<sup>132</sup>

Complaints must generally be filed within 180 days of the discrimination, but that requirement may be waived.<sup>133</sup> If a complaint is filed after 180 days, the complainant may be asked to show

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<sup>130</sup> [34 CFR 106.45\(b\)\(1\)\(i\); Questions and Answers on the Title IX Regulations on Sexual Harassment \(July 2021\) \(Updated June 28, 2022\)](#) schools and districts are also encouraged to explore [OCR's case resolution database](#), which provides recent investigation documents and resolution agreements related to complaints of discrimination made to OCR, and which may provide districts with example remedies or sanctions.

<sup>131</sup> [34 CFR 106.81](#)

<sup>132</sup> [34 CFR 100.7\(b\)](#)

<sup>133</sup> [34 CFR 100.7\(b\); OCR Case Processing Manual](#), Sections 106–107, U.S. Department of Education Office for Civil Rights

good cause as to why the filing was delayed.<sup>134</sup> If the complainant has already filed a complaint with their school or district, they can file a complaint with OCR up to 60 days after the conclusion of the school/district's grievance process.<sup>135</sup>

OCR will process accepted complaints in accordance with their [Case Processing Manual](#). For more information, [contact OCR](#) or [visit their website to learn more about how to file a complaint](#).

### **2.a.iii. State Discrimination Appeals**

ODE can accept protected class discrimination complaints, including complaints about gender identity discrimination, on appeal.<sup>136</sup> Generally, an appeal can be submitted to ODE once a district has either failed to respond to a complaint or issued a final decision.<sup>137</sup> Under Oregon rule, this means that a complainant can submit a discrimination appeal to ODE once the complaint has met one of the following qualifications:<sup>138</sup>

- “The complainant has exhausted the district’s complaint process except as otherwise allowed by state statute” (i.e., by submitting their complaint to the district and appealing the result up to the final level of appeal outlined in the district’s policies and procedures), OR
- In a complaint process with more than one step (i.e., a process that has an appeal option at the school or district level), the district does not provide the complainant with a written decision regarding their complaint within 30 days at any one step of the process, OR
- The district does not issue a final response within 90 days of the initial filing of the complaint, regardless of how many steps are in the district’s process.

ODE must receive the discrimination appeal either:<sup>139</sup>

- One year after the date that a district issues a final decision, OR
- If a district has failed to resolve the complaint, no later than two years after the date the complainant first filed the complaint with the district.

Once ODE receives an appeal, the report is analyzed to ensure the complaint falls under ODE’s jurisdiction and authority and that all proper timelines and procedural requirements have been followed.<sup>140</sup> If an appeal is accepted based on the preceding assessment, ODE will follow the investigation procedures outlined in [Oregon Administrative Rules Chapter 581, Division 2](#).

If ODE finds that a district likely engaged in discrimination in their handling of the complaint, the school or district and the complainant will have the opportunity to engage in conciliation.<sup>141</sup> Conciliation is a voluntary process similar to mediation in which both parties work together to attempt to resolve the issues outlined in ODE’s findings. ODE provides free conciliation services to parties during the appeal process, or parties may choose to use an external conciliator by

<sup>134</sup> [OCR Case Processing Manual](#), Sections 106–107, U.S. Department of Education Office for Civil Rights

<sup>135</sup> [OCR Case Processing Manual](#), Sections 106–107, U.S. Department of Education Office for Civil Rights

<sup>136</sup> [OAR Chapter 581, Division 2](#)

<sup>137</sup> [OAR 581-002-0005](#)

<sup>138</sup> [OAR 581-002-0005\(1\)](#)

<sup>139</sup> [OAR 581-002-0005\(2\)](#)

<sup>140</sup> [OAR 581-002-0007](#)

<sup>141</sup> [OAR 581-002-0011](#)

mutual agreement. If conciliation fails, ODE will issue a final order outlining the corrective action required of the school or district to come back into compliance with state and federal law.<sup>142</sup>

For more information on ODE's discrimination appeals process, visit the [ODE Complaints and Appeals webpage](#).

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## 2.b. Division 22 Complaints

The rules contained in Division 22 of the Oregon Administrative Rules (OARs) are the educational standards that the Oregon Legislature or the State Board has determined must be met in order to be a standard school district. Compliance with the Division 22 Standards ensures every student in Oregon public schools is provided with a baseline level of service. The Division 22 Standards can be found on the [Secretary of State's OAR Database](#). A number of rules within Division 22 require districts to teach to specific curricular standards, including many of the standards described in the [Instructional Materials, Education Standards, and Opt-Out](#) section of this guidance.

Any student, parent or caregiver, or community member who believes that the district is not fulfilling its obligation to adhere to these rules may file a complaint.<sup>143</sup> The complaint must be made first to the district, following the district's public complaint policy.<sup>144</sup> A district's public complaint policy may be found on the home page of the district's website or by contacting a district employee such as a principal, district administrator, or other school official.

If the district's decision is unsatisfactory, the decision may then be appealed to ODE.<sup>145</sup> Appeals are subject to specific timelines outlined in administrative rule.<sup>146</sup> More information about the appeals process can be found on ODE's [Complaints and Appeals webpage](#).

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## 2.c. Student Records Change Hearings

Parents or eligible students have the ability to request that a school or educational agency update or remove information in a student's record that is inaccurate, misleading, or in violation of a student's privacy rights.<sup>147</sup> Families may use this process to request gender-affirming updates of a student's [education records](#), such as reflecting the student's asserted name, sex, and pronouns as applicable, or requesting that a student's legal name or [deadname](#) be stored confidentially.

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<sup>142</sup> [OAR 581-002-0019](#)

<sup>143</sup> [OAR 581-022-2370](#)

<sup>144</sup> [OAR 581-022-2370](#)

<sup>145</sup> [OAR Chapter 581, Division 2](#)

<sup>146</sup> [OAR Chapter 581, Division 2](#)

<sup>147</sup> [OAR 581-021-0300](#)

When a school or district receives an amendment request, Oregon law gives that school or district the right to decide whether or not to amend the educational record.<sup>148</sup> If the education provider decides not to amend the record, they must inform the party and explain to them that they have a right to a hearing. The hearing allows the party to challenge the record through statements and evidence.<sup>149</sup> If the education provider still decides to reject the change after the hearing, the party may submit a statement commenting on the contested information.<sup>150</sup> The education provider must then maintain this statement along with the record for as long as they are legally required to maintain it, and must provide this statement whenever they are required to disclose the contested information in the record.<sup>151</sup>

If the parent or eligible student believes that the district's decision not to update the student record is discriminatory, they can file a discrimination complaint following the steps outlined in the [Discrimination Complaint Process](#) section of this guidance.

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**Questions or comments concerning this guidance can be addressed to:**

Oregon Department of Education, [LGBTQ2SIA.Success@ode.oregon.gov](mailto:LGBTQ2SIA.Success@ode.oregon.gov).

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<sup>148</sup> [OAR 581-021-0300](#)

<sup>149</sup> [OAR 581-021-0310](#)

<sup>150</sup> [OAR 581-021-0310](#)

<sup>151</sup> [OAR 581-021-0310](#)

# Supporting Gender Expansive Students: Guidance for Schools

## Supplemental Resources

At the request of students, families, and school community members, the below resource documents are designed to assist districts to implement gender-affirming practices each day. In addition to the strategies and recommendations outlined in the [LGBTQ2SIA+ Student Success Plan](#), these documents include practical recommendations, best practices, and resources for districts to consider as they develop policies and programming to support gender expansive students in alignment with the state and federal requirements listed throughout the guidance. Students, families, and community partners may also reference the resource documents in order to understand the potential for support available in public schools.



*The information within the following resource documents is not legal advice, nor should it be relied on as legal advice. If you require legal advice regarding the issues discussed in these documents, please consult an attorney.*

### [Gender-Affirming Schools Action Plan \(Word Version\)](#)

An **action planning tool** outlining specific resources for gender-affirming schools, aligned to the strategies outlined in the LGBTQ2SIA+ Student Success Plan (for administrators, educators, and all school staff).

### [Student Support and Safety Plan Template](#)

A student support and safety planning **template** which outlines potential support needs (for administrators, school health providers, educators, students, families).

### [Affirming Gender, Names, and Pronouns in Student Information Systems](#)

A document that outlines options for affirming gender, names, and pronouns within **student information systems (SIS)** (for administrators and registrars).

### [Gender Expansive Individual Education Program](#)

A document that explains the expanded options for gender markers on the standard **Individual Education Program (IEP) template** and provides support for updating the gender marker (for administrators, IEP teams, and families).

### [Gender-Affirming Care Resources](#)

A **list of gender-affirming care**, mental health, and crisis response resources in Oregon (for school health providers, health educators, students, and families).

### [Oregon K-12 Discrimination Complaint Process FAQ](#)

Answers to frequently asked questions about **filing a discrimination complaint** (for students and families).

### [Supporting LGBTQ2SIA+ Students in Oregon](#)

A one-pager outlining **supportive options available to LGBTQ2SIA+ students** in Oregon (for students and families).

## Appendix A: Terminology

The Oregon Department of Education (ODE) honors and respects the cultural, regional, and intersectional diversity of gender expansive identities and the endless ways to self-identify in Oregon. ODE recognizes that state-sanctioned, universal, shared definitions of gender, sexual orientation, and system-impacted identities continue to be tools of inclusion and exclusion in access to resources. The following definitions are offered as a starting place for the purposes of this guidance document, in order to better understand and support the needs of gender expansive students in Oregon.

### **Asserted Name**

A term to describe an individual's accurate name, as asserted by the individual themselves. An individual may assert an updated accurate name at more than one point in their life. Someone's asserted name may be conditional based on safety or privacy needs or may be fluid depending on identity or contextual factors. This may also be referred to as a chosen or preferred name.

*(See also Gender)*

### **Coming Out**

A term to describe the process of self-identifying and self-acceptance that entails the sharing of a person's gender identity and/or sexual or romantic orientation with others. There are many different degrees of being out, and coming out is a lifelong process. Coming out can be an incredibly personal and transformative experience. It is critical to respect where each person is within their process of self-identification, and it is up to each person, individually, to decide if and when, and to whom to come out to. Also referred to as "disclosure" or "letting in," which both acknowledge the right each person has to share or not share their LGBTQ2SIA+ identity on their own terms.

### **Educational Equity**

ODE defines Educational Equity as the equitable implementation of policy, practices, procedures, and legislation that translates into resource allocation, education rigor, and opportunities for historically and currently marginalized youth, students, and families including civil rights protected classes. This means the restructuring and dismantling of systems and institutions that create the dichotomy of beneficiaries and the oppressed and marginalized.

### **Gender**

A socially constructed system that gives meaning to masculinity and femininity and which unevenly distributes power and opportunity according to cultural interpretations of sex. As an element of personal identity, a person's gender is developed through the interaction of social roles and expectations, one's response to those expectations, one's physiology, and one's internal sense of self. *(See also Gender Binary)*

### **Gender Binary**

A socially constructed system of viewing gender as consisting solely of two opposite categories, termed "male and female", in which no other possibilities for gender or anatomy are believed to



exist. Historically and currently used by systems in power to assert that gender is biologically determined, in order to deny the existence and rights of gender expansive people (*see also Two Spirit*). This concept denies natural occurrences of intersex variations in people, as well as nonbinary and gender expansive animals and plants. This concept reinforces the idea that men and women are opposites and must have different roles in society. (*See also Gender*)

### **Gender Attribution**

A term to describe the act of assuming an individual's gender, often based on their assigned sex/gender as well as apparent societal gender markers and expectations, such as physical attributes and expressed characteristics. Examples of assuming a person's gender include using pronouns for a person before learning what pronouns they use, or calling a person a man or a woman without knowing their gender. (*See also Misgendering*)

### **Gender Dysphoria**

A term to describe the distress or discomfort an individual feels due to discontinuity between their gender and the sex/gender they were assigned at birth, their physical body, and/or the way their gender is perceived by others. Evidence of gender dysphoria is required by many medical professionals to assist a person in their medical transition; as a result, it has been controversial in gender expansive communities. (*See also Gender Euphoria*)

### **Gender Euphoria**

A term to describe the joyous feeling often experienced when one's gender is recognized and respected by others, when one's body aligns with one's gender, or when one expresses themselves in accordance with their gender. Focusing on gender euphoria instead of gender dysphoria shifts focus towards the positive aspects of being transgender and/or gender expansive. (*See also Gender Dysphoria*)

### **Gender Expression**

A term to describe a person's gender presentation, usually consisting of personal style, clothing, hairstyle, makeup, jewelry, vocal inflection, and body language. Gender expression is typically categorized and attributed as masculine or feminine, or less commonly as androgynous. Gender expression can be congruent with a person's gender identity, but it can also be incongruent if a person does not feel safe or supported, or does not have the resources needed to engage in gender expression that authentically reflects their gender identity. (*See also Gender Attribution*)

### **Gender Identity**

A term to describe a person's deeply held knowledge of their own authentic gender, which can include being a man, woman, another gender, or no gender. A person's gender identity can be the same or different than the sex/gender assigned to them at birth. The responsibility and right to self-determine and assert one's own authentic gender identity rests within each person, and should be free from the force or manipulation of another person. (*See also Anti-Transgender Bias*)

## **Gender Expansive**

An umbrella term used to describe people whose gender expression and identity expand beyond perceived or expected societal gender norms. Some gender-expansive individuals identify as multiple genders, some identify along the binary a man or a woman, and some identify as no gender. Gender-expansive people might feel that they exist among genders, as on a spectrum, or beyond the notion of the man/woman binary entirely. This term is meant to represent the myriad of system-impacted gender identities, expressions, and assignments, including but not limited to transgender, nonbinary, Two Spirit, intersex, agender, genderqueer, and genderfluid identities, whose definitions are outlined below.

### **Agender**

A term used to describe a person who does not identify with a specific gender or feels neutral when it comes to their gender identity.

### **Cisgender**

A term to describe a person whose gender identity and expression align with the sex/gender they were assigned at birth or by society, through the enforcement of the gender binary. *(See also Gender Binary)*

### **Dyadic**

A term to describe a person who is born with the sexual anatomy, reproductive system, and chromosomes associated with their assigned sex/gender. In other words, a person who is not intersex. Also referred to as endosex and perisex. *(See also Intersex)*

### **Genderfluid**

A term used to describe a gender identity that changes and fluctuates based on someone's current understanding of themselves. People who are genderfluid may not identify with the gender binary and may move within genders, gender expressions, or use flexible or context-dependent names or pronouns.

### **Genderqueer**

A term used to describe a person who does not identify or express their gender within the gender binary. Those who identify as genderqueer may identify as neither men nor women, may see themselves as outside of or in between the gender binary, or may simply feel restricted by gender labels. Genderqueer may be considered a subset of transgender, a distinct identity, or an umbrella term to describe a range of gender expansive identities.

### **Intersex**

An umbrella term for variations in sex traits or reproductive anatomy. Intersex people are born with these traits or develop them in childhood. There are many possible variations in genitalia, hormones, internal anatomy, or chromosomes, compared to the two typical ways that society enforces human development. Some intersex traits are noticed at birth. Others do not show up until puberty or later in life. Intersex people often face shame or are forced or coerced into changing their bodies, usually at a very young age. Most

surgeries to change intersex traits happen in infancy. Intersex may be an important part of someone’s identity, but is not often used as a gender identity itself. (*See also Dyadic*)

### **Nonbinary**

A term used to refer to people whose gender identity is not exclusively man or woman, including those who identify with a different gender, a combination of genders, or no gender. Nonbinary may be considered a subset of transgender, a distinct identity, or an umbrella term to describe a range of gender expansive identities. (*See also Gender Expansive*)

### **Queer**

An umbrella term used to describe system-impacted sexual and gender identities and/or individuals of non-normative identities and politics that eschews binaries and fixed definitions. Queer is often used to describe an individual’s oppositional relationship to power or the dominant culture. While it is used as a neutral, or even a positive term among many LGBTQ2SIA+ youth today, historically “queer” has been used as a derogatory slur and may be more sensitive or harmful for older LGBTQ2SIA+ individuals. For this reason, schools and districts should be responsive to the language used by LGBTQ2SIA+ students and communities.

### **Transgender**

A term describing a person’s gender identity that does not necessarily match their assigned sex/gender at birth or gender attribution by society. Also used as an umbrella term to describe groups of people who transcend conventional expectations of gender identity or expression. Often shortened to trans, from the Latin prefix for “on a different side as.”

### **Two Spirit<sup>152</sup>**

A term used within some American Indian (AI) and Alaska Native (AN) communities to refer to a person who identifies as having both a male and a female essence or spirit. The term, created in 1990 by a group of AI/AN activists at an annual Native LGBTQ conference in response to exclusion from White LGBTQ spaces, encompasses sexual, cultural, gender, and spiritual identities, and provides unifying, positive, and encouraging language that emphasizes reconnecting to tribal traditions and history. Non-Indigenous people should not use this term. Individual terms and roles for Two Spirit people are specific to each nation and/or language. Additional umbrella terms such as Indigiqueer or Native LGBTQ may be used by some Native people who do not use or identify with the term Two Spirit.

## **Gender/Sex Assigned at Birth**

A term to describe the assignment and classification of people as male, female, intersex, or another sex assigned at birth often based on physical anatomy at birth and/or karyotyping,

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<sup>152</sup> Adapted from [Northwest Portland Area Indian Health Board \(NPAIHB\)](#) and PFLAG

followed by the continuation of gender attribution aligning with the sex assignment. (See also *Gender Attribution*)

## **Legal Sex/Gender Marker**

A legal and medical designation of assigned sex/gender, most often as male (M) or female (F) based on the gender binary, leaving out or misrepresenting intersex (X) and gender expansive individuals. In Oregon, all students and school staff have the right to designate Male (M), Female (F), or Nonbinary (X) on their records, which recognizes some identities beyond the binary and correlates with the sex designations allowable on Oregon birth certificates and driver's licenses. Legal gender/sex markers can be changed in Oregon but may not be recognized federally in the United States or internationally. Not all gender expansive individuals change their legal gender/sex marker to align with their gender identities for various reasons including personal safety and social or familial support. (See *Gender/Sex Assigned at Birth*)

## **LGBTQ2SIA+**

An acronym that encompasses multiple gender identities and sexual orientations including lesbian, gay, bisexual, pansexual, transgender, nonbinary, queer, questioning, Two Spirit, intersex, and asexual. The plus sign (“+”) recognizes and includes the myriad ways to describe system-impacted gender identities and sexual orientations. It is also important to recognize that the challenges and barriers for students who identify as lesbian, gay, bisexual, pansexual, asexual, and queer can be different from the challenges and barriers faced by students with gender-expansive identities and expressions. This definition recognizes every individual who identifies as a member of a LGBTQ2SIA+ community has a unique lived experience, and LGBTQ2SIA+ communities are not a homogeneous group with a single identity.

## **Pronouns**

Gender pronouns are public parts of speech that replace a person's name when they are discussed in the third person. Examples include binary pronouns “she/her/hers” and “he/him/his,” gender neutral “they/them/theirs,” as well as neopronouns such as “ze/hir/hirs,” “fae/faer/faers,” or “e/em/eir.” Some people use no pronouns at all, or some combination such as “she/they.” The pronoun or set of pronouns that a person asserts may or may not align with their gender identity or expression. Someone's pronouns may be conditional based on safety or privacy needs, fluid, or non-conforming in their use. In many languages, words are gendered in the binary and gender expansive people will identify ways to make words more neutral (e.g., “elle” in Spanish or “iel/iels” in French), which may be represented in the pronoun set that a multilingual person shares. (See also *Neopronouns*)

### **Neopronouns**

Neopronouns are a category of neologistic English third-person personal pronouns beyond 'he', 'she', 'they', 'one', and 'it'. Neopronouns are asserted by some nonbinary individuals who feel that neopronouns provide options to reflect their gender identity more accurately.

## Questioning

A term used to describe the process of discovery and exploration about their sexual or romantic orientation, gender identity, gender expression, or a combination thereof. Questioning is a profoundly important process to better understand and represent one's authentic self, and does not imply that someone can change or choose who they are through outside forces. Questioning can happen at any age across the lifespan, and can be dependent on many factors such as awareness, feelings of safety, and social or familial support.

## Transition

A term used to refer to the process—social, legal, and/or medical—a person goes through to affirm their own gender identity. This may, but does not always, include changing names or pronouns on identification documents, taking puberty blockers or affirming hormones, or adjusting gender expression. Many individuals choose not to or are unable to transition for a wide range of reasons both within and beyond their control. The validity of an individual's gender identity does not depend on any social, legal, and/or medical transition; the self-identification itself is what validates the gender identity.

## Anti-Transgender Stigma

A term used to describe the antagonism or disgust directed toward transgender and gender expansive individuals due to their actual or perceived gender identity and/or expression. This stigma can be structural (e.g., societal conditions, policies, and institutional practices that restrict the opportunities, resources, and well-being of gender expansive people) or social (e.g., negative stereotypes or perceived social status that separates a person or group from other members of society). Anti-transgender stigma can often result in active hostility toward gender expansive people, such as microaggressions, discrimination, bullying, verbal harassment, or sexual and physical violence. Anti-transgender stigma can also be internalized by gender expansive people and result in gender dysphoria and/or other negative mental health outcomes such as suicidal ideation or death by suicide. Related terms are cissexism or transphobia.

The following definitions are specific actions that can result from anti-transgender stigma which can harm LGBTQ2SIA+ students and create hostile school communities:

### Conversion Therapy

A term used to describe any attempt to change a person's sexual orientation, gender identity, or gender expression. Conversion therapists and supporters may use a variety of shaming, emotionally traumatic, or physically painful stimuli to make the person associate those stimuli with their LGBTQ2SIA+ identities. Conversion therapy is prohibited in Oregon<sup>153</sup> and has been denounced as harmful by dozens of professional healthcare organizations, including the American Psychological Association and the World Health Organization.<sup>154</sup> According to a study published by the American Public Health Association, individuals between the ages of 13-24 who have undergone conversion therapy were more than twice as likely to report having attempted suicide

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<sup>153</sup> [ORS 675.850](#)

<sup>154</sup> See [Conversion Therapy](#), GLAAD

and having multiple suicide attempts as those in the same age range who did not undergo conversion therapy.<sup>155</sup> Sometimes referred to as “reparative therapy.”

### **Deadnaming**

A term used to describe the act of referring to the name that a transgender or gender-expansive person used previously. Deadnaming can cause trauma, stress, embarrassment, and even danger. Other related terms that may be used in place of deadname are birth name, given name, or old name.

### **Misgendering**

A term used to describe the act of referring to someone outwardly in a way that does not correctly reflect their asserted gender (e.g., using incorrect name or pronouns). This may be subconscious and unintentional or can be a maliciously employed expression of anti-transgender bias. Regardless of intent, misgendering has a harmful impact and can result in hostile and unsupportive school communities for gender expansive students. *(See also Gender Attribution)*

### **Outing**

A term to describe the deliberate or accidental sharing of another person’s sexual orientation or gender identity without their explicit consent. Outing may put LGBTQ2SIA+ people at risk for harm, depending on the level of familial and social support as well as access to health services needed. *(See also Gender Attribution)*

For more terms and definitions relating to gender identity and sexual orientation, please see the [LGBTQ2SIA+ Student Success Plan](#).

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<sup>155</sup> [Self-Reported Conversion Efforts and Suicidality Among US LGBTQ Youths and Young Adults. 2018](#), Amy E. Green, Myeshia Price-Feeney, Samuel H. Dorison, and Casey J. Pick, American Journal of Public Health, 2020