

Insights, News & Events

TRANSCENDING GENDER IN SCHOOLS: IS GENDER NEUTRAL THE NEW NORMAL?

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In Missouri, a 17-year-old student who was born male, but has identified as female since he was 13, chose to use the girls' locker room during gym class. That decision sparked outrage in the school community and led to student-body protests.

In Florida, parents of a biologically female six-year-old student asked personnel at a religious school to refer to their daughter as "John" and allow her to follow the boys' dress code and use the boys' bathroom. The school denied the request.

In California, a San Francisco elementary school recently announced that it will eliminate all gender designations from its bathrooms, so that all students will feel comfortable using the bathroom without having to self-identify as male or female.

These examples, all reaching national headlines over the past month, represent the newest and evolving area of transgender issues. They can result in potential discrimination, harassment, and bullying within our educational environments if not handled properly.

Transgender Students May Be Legally Protected
Depending on your educational institution's state, city, county, or school district, there may already be a law,

Industry Focus

Education

Higher Education

guideline, or policy which protects transgender persons from discrimination and requires accommodations to be made for such individuals. Eighteen states, the District of Columbia, and more than 150 counties and cities have laws or ordinances addressing gender identity.

Not all of these laws, however, extend to educational institutions. Further, some independent schools may be exempt from such laws based on, among other things, their religious nature. For these reasons, it is important for educational institutions to confer with legal counsel to determine the protections that apply in your jurisdiction and to your particular circumstances.

If no state law or local ordinance requires educational institutions to accommodate transgendered students, you have the discretion to decide how to handle the situation based on your school's needs, values, and mission. However, if there is a law requiring accommodation and no exemptions apply, you need to determine the best way to accommodate such students. This may include providing private areas for changing, allowing transgendered students to use the facilities of the sex they identify with, and instructing school personnel to refer to transgendered students by their identified gender.

Even if not legally required to do so, many educational institutions have chosen to accommodate transgender students. In these cases, the institution typically negotiates arrangements with parents, making clear that they are undertaking the accommodation voluntarily and that if it does not work out, the parties may have to revisit the situation.

Practical First Steps To Stay Ahead Of The Game

Regardless of how you approach transgender student issues, some common sense considerations are key:

Consult counsel with relevant experience. The legal considerations inherent in a policy of this type can be exceptionally complex. Knowledge of privacy issues and constitutional law is key, and experienced legal

counsel will be instrumental in drafting policies that can be well-defended, as well as advising administration on potential risks.

Discuss the issues with your board (or other relevant decision-makers). Having a clear understanding of the administration's position on transgender student issues and achieving buy-in from those decision-makers on the course of action is imperative to providing a unified institutional position, regardless of what that position may be.

Create a response team. If you accommodate transgender students, you should consider designating a Response Team (usually the Head of School, the Guidance Counselor, possibly the School Nurse, some teachers, and some top level Administrators) to be the group to whom accommodation requests and issues are referred. This group can educate itself on the law, check with other institutions to determine how they handle issues, and assess your facilities, resources, and community for planning purposes.

Provide training for students, staff, faculty, and parents. If your decision is to create a policy that would be a significant departure from your current stance, there must be training on the key elements of the policy and the expectations you will have of each of these groups.

Plan for fallout. Regardless of the policy, there will be segments of your community that will be unhappy about it. Negative public relations campaigns, increases in student harassment and bullying, and vocal objection at school board meetings are just a few examples. Any plan to address transgender issues must include a strategy for addressing these situations.

Conclusion

Transgender student issues are making their way into mainstream media outlets and more governmental bodies are beginning to legislate changes that may or may not sit well with the educative goals of your institution. Regardless of how you choose to address

these issues, you should be informed, equipped, and ready to defend your position. A clear, concise, and well-developed policy is essential to doing the right thing.

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