

## Gender Inclusive Schools Procedure<sup>1</sup>

The purpose of this procedural directive is to foster an educational environment that is safe, welcoming, and free from discrimination for all students, regardless of sex, sexual orientation, gender identity, or gender expression, and to facilitate compliance with state and federal laws concerning bullying, harassment and discrimination.

### Definitions

The definitions provided below are not intended to label students, but rather should be used to assist in understanding and implementing the protocols in working with transgender and gender nonconforming students, and their peers. This list is not intended to be exhaustive as terminology and understanding are continually developing. Students may use these terms to describe themselves, but they also may choose not to, and that is acceptable.

- “**Ally**” is a person who supports and stands up for the rights of LGBT+ individuals.
- “**LGBTQ+**” stands for lesbian, gay, bisexual, transgender, queer (or sometimes questioning), and others. The “*plus*” represents other sexual identities.
- “**Gender binary**” A system in which gender is constructed into two strict categories of male or female. Gender identity is expected to align with the sex assigned at birth and gender expressions and roles fit traditional expectations.
- “**Gender expression**” refers to external cues that one uses to represent or communicate one’s gender to others, such as behavior, clothing, hairstyles, activities, voice, mannerisms, or body characteristics.
- “**Gender identity**” refers to one’s internal sense of gender, which may be different from one’s assigned sex at birth, and which is consistently asserted, or for which there is other evidence that the gender identity is sincerely held as part of the student’s core identity.
- “**Gender non-conforming**” refers to one’s gender expression, gender characteristics, or gender identity that does not conform to gender stereotypes or roles.
- “**Gender stereotypes**” refers to stereotypical notions of masculinity and femininity, including expectations of how boys or girls represent or communicate one’s gender to others, such as behavior, clothing, hairstyles, activities, voice,

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<sup>1</sup>Adapted from Reducing LGBTQ Adolescent Suicide ([RLAS](#)) policy template.

mannerisms, or body characteristics (e.g., only males wear ties or only females play with dolls).

- “**Gender transition**” refers to the experience by which a transgender person goes from living and identifying as one’s assigned sex to living and identifying as the sex consistent with one’s gender identity. A gender transition often includes a “*social transition*,” during which an individual begins to live and identify as the gender consistent with the individual’s gender identity, with or without certain medical treatments or procedures.
- “**Gender-based discrimination**” is a form of sex discrimination, and refers to differential treatment or harassment of a student based on the student’s sex, including gender identity, gender expression, and gender nonconformity with gender stereotypes, that results in the denial or limitation of education services, benefits, or opportunities. Conduct may constitute gender-based discrimination regardless of the actual or perceived sex, gender identity, or sexual orientation of the persons experiencing or engaging in the conduct.
- “**Gender-specific facilities**” refers to facilities and accommodations used by students at school or during school-sponsored activities and trips, and include, but are not limited to, restrooms, locker rooms, and overnight facilities.
- “**Outing**” Exposing someone’s lesbian, gay, bisexual, transgender, or gender non-binary identity to others without their permission.
- “**Sex assigned at birth**” or “*assigned sex*” refer to the gender designation listed on one’s original birth certificate.
- “**Transgender**” An umbrella term for people whose gender identity and/or expression is different from cultural expectations based on the sex they were assigned at birth. Being transgender does not imply any specific sexual orientation. Therefore, transgender people may identify as straight, gay, lesbian, bisexual, etc.
- “**TGNB**” is an acronym for “*Transgender and gender non-binary*,” often interchangeable with TGNC “*Transgender and gender non-conforming*” within literature.
- “**Cis-gender**” denotes or relates to a person whose sense of personal identity and gender corresponds with their birth sex.

## Prohibition on Gender-Based Discrimination and Harassment

According to U.S. Department of Education guidance, transgender students shall be protected from discrimination and harassment under Title IX (see U.S. Department of

Education [Notice of Interpretation](#), 2021; and U.S. Department of Education [press release](#), 2021). The Office of Civil Rights (OCR) has been directed to “*enforce Title IX's prohibition on discrimination on the basis of sex to include: (1) discrimination based on sexual orientation; and (2) discrimination based on gender identity*” in alignment with the landmark U.S. Supreme Court Decision [Bostock v. Clayton County](#) (see press release). This procedure is based also on agency guidance and case law.<sup>2</sup>

- *Note 1*: Currently, Bernalillo Public Schools Policy A-250 “*Non-Discrimination/Equal Opportunity*” (Adopted August 13, 2020) is committed to nondiscrimination and equal opportunity as it relates to color, religion, sex, sexual orientation, age, national origin, and disability, but does not make mention of gender identity and gender expression.
- *Note 2*: Currently, Bernalillo Public Schools Policy A-0300 “*Non-Discrimination on the Basis of Sex*” (Adopted August 13, 2020) prohibits discrimination as it relates to sex, but does not make mention of sexual orientation, gender identity, and gender expression.

Each school and the district shall ensure that students who are transgender and gender nonconforming have a safe school environment. This includes ensuring that any incident of discrimination, harassment, or violence is given immediate attention, including investigating the incident, taking appropriate corrective action, and providing students and staff with appropriate resources. Complaints alleging discrimination or harassment based on a person’s actual or perceived transgender status or gender nonconformity shall be handled in the same manner as other discrimination or harassment complaints.

## Names, Pronouns and Official Records

### Names/Pronouns

Students shall have the right to be addressed by a name and pronoun corresponding to their gender identity that is asserted at school. Students shall not be required to obtain a court ordered name, a gender change or to change their official records before they may be addressed by the name and pronoun that corresponds to their gender identity. This

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<sup>2</sup> [Bostock vs. Clayton County](#) (U.S. Supreme Court, June 15, 2020); [Dodds vs. U.S. Department of Education](#); (6th Circuit Court of Appeals, December 16, 2016); [Whitaker vs. Kenosha Unified School District](#) (7th Circuit Court of Appeals, May 30, 2017); [Grimm vs. Gloucester County School Board](#) (4th Circuit Court of Appeals, August 26, 2020); [Adams vs. School Board of St. John’s County](#) (11th Circuit Court of Appeals, August 7, 2020); [Executive Order 13988](#) “*Preventing and Combating Discrimination on the Bias of Gender identity or Sexual Orientation*” (January 20, 2021).

procedural directive may not prohibit inadvertent slips or honest mistakes, but it shall apply to an intentional and persistent refusal to respect a student's gender identity.

The requested name and pronoun shall be included in the student information system (e.g., PowerSchool), in addition to the student's legal name and sex assigned at birth, in order to inform administration and staff of the preferred name and pronoun to use when addressing the student.

Transgender and gender non-conforming students shall have the right to discuss and express their gender identity and expression openly and to decide when, with whom, and how much to share private information. The fact that a student chooses to disclose his or her transgender status to staff or other students shall not authorize school staff to disclose other medical information about the student. When contacting the parent/legal guardian of a transgender student, school staff shall use the student's legal name and the pronoun corresponding to the student's gender assigned at birth unless the student or parent/ legal guardian has specified otherwise.

## Official Records

Pursuant to state statute and regulation, Bernalillo Public Schools is required to maintain a mandatory permanent student record that includes the name of the student, as well as the student's sex.

School staff or administrators are required by law to use students' legal name and gender in state academic records, such as standardized testing, but school staff and administrators shall use students' preferred name and gender in all internal records, documents, and interactions.

Bernalillo Public Schools shall change a student's official records to reflect a change in legal name or gender only upon receipt of documentation such as court order or birth certificate that such legal name and/or gender have been changed pursuant to New Mexico legal requirements.

Bernalillo Public Schools shall ensure that any school records containing the student's birth name or reflecting the student's assigned sex, if any, are treated as confidential, personally identifiable information; are maintained separately from the student's records; and are not disclosed to any district employee, students, or others without the express

written consent of the student's parent/legal guardian or the student after the student turns eighteen (18) or is emancipated.

In situations where school staff or administrators are required by law to use or to report the legal name or biological sex of a student who is transgender but whose official record has not been amended, such as for purposes of standardized testing, school staff and administrators shall adopt practices to avoid the inadvertent disclosure of such confidential information.

## Access to Gender-Segregated Activities and Areas

### General Statement on Facilities

The student shall be provided access to designated gender-specific facilities at school, at all district-sponsored activities, including overnight events and extracurricular activities on and off campus, consistent with the student's gender identity. **Any student, however, may request access to private facilities based on privacy, safety, or other concerns.**

### Restroom Accessibility

Students shall have access to the restroom that corresponds to their gender identity at school. Where available, a single stall bathroom may be used by any student who desires increased privacy, regardless of the underlying reason. The use of such a single stall bathroom shall be a matter of choice for a student, and no student shall be compelled to use such bathroom.

### Locker Room Accessibility

Any student, including those who are transgender, shall have access to the locker room of their gender identity. In locker rooms that involve undressing in front of others, transgender students who want to use the locker room corresponding to their gender identity shall be provided with the best possible available accommodation. Based on availability and appropriateness to address privacy concerns, such accommodations for any student could include, but are not limited to:

- Use of a private area in the public area (e.g., a bathroom stall with a door, an area separated by a curtain, a PE instructor's office in the locker room);
- A separate changing schedule (either utilizing the locker room before or after the other students);
- Use of a nearby private area (e.g., a nearby restroom, a nurse's office).

## Physical Education Classes and New Mexico Athletic Association (NMAA) Sponsored Activities

All students shall be permitted to participate in physical education classes consistent with their gender identity. Students who are transgender or gender nonconforming and wish to participate in New Mexico Athletic Association (NMAA) sponsored activities must follow NMAA Bylaw 6.1 and are subject to the rules and regulations of the NMAA.

## Overnight Trips and Other Gender Segregated Activities

As a general rule, in circumstances where students are separated by gender for athletics or school activities, students should be permitted to participate in accordance with their gender or gender identity consistently asserted at school. The needs of all students shall be assessed on a case-by-case basis. Any student who expresses the need or desire for increased privacy should be provided with a reasonable accommodation, which may require a private room. If applicable, any alternative arrangements must be conducted in such a manner which does not disclose a transgender student's confidential status. A transgender student shall not be required to share a hotel/motel room with students who do not share the student's gender identity.

## Dress Codes

Schools may enforce dress codes pursuant to administrative procedural directive. Students shall have the right to dress in accordance with their gender identity within the constraints of the dress codes adopted by the district and the school. School staff shall not enforce a school's dress code more strictly against transgender and gender non-conforming students than other students.

## Professional Development

Bernalillo Public Schools shall provide training to administrators and staff regarding the district's obligations to prevent and address gender-based discrimination as well as implementation of all policies and procedures that promote nondiscrimination of transgender and gender non-conforming students.

## Support Plan

School staff will notify the student and her/his parents that they may request an individual support plan meeting to ensure the student has access and opportunity to participate in all programs and activities, and is otherwise protected from gender-based discrimination at school (See Appendix A at the end of this document). If the district receives such a request, it will convene a support team that will:

- Include, at a minimum, the student, her/his parents, the principal or her/his designee, and school counselor. A school social worker may take the place of the school counselor if the former is not available;
- Develop a student-specific support plan (See Appendix A), if requested, to provide the student with safe and equitable access to all school and Bernalillo Public Schools facilities and activities, addressing any particular issues raised by the student or her/his parents;
- Maintain confidentiality of support plan and share only on a need-to-know basis;
- Maintain copy of plan with school principal and school counselor.

### References:

Legal Cross Ref.: §28-1-7 NMSA 1978

Board Policy Cross Ref.: A-0250 Nondiscrimination/Equal Opportunity  
A-0300 Nondiscrimination Based on Sex

## Appendix A Support Plan

The purpose of this document is to create shared understanding about the ways in which the student’s gender identity will be accounted for and supported at school. School staff, families, and the student should work together to complete this document. Participation in developing this support plan is **not** required. This plan contains confidential information and will only be shared with staff on a *need-to-know* basis with input from the student and parent/guardian. These records will transfer with the student such as from elementary to middle and middle to high school. If a student or parent/guardian does not wish for the shared understandings to be formally documented, the questions in the student support plan may instead be used as a guide for discussion.

**Preferred First Name:**

**Preferred Gender:**

**Preferred Pronouns:**

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*Last name will not be changed unless Parent/Guardian provides legal documentation.*

**Legal Name:**

**Legal Gender:**

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**PowerSchool Note on Preferred Name/Pronoun:**

- Change Name Only
- Change Gender Only
- Change Both Name and Gender
- Do not make any changes in PowerSchool

*\*\*A copy must be provided to the school registrar if changes will be made in PowerSchool.*

**Restroom Usage:**

- Gender-specific restroom according to gender identity

Gender-neutral restroom (identify locations) \_\_\_\_\_

Other

**Locker Room Usage:**

Gender-specific locker room according to gender identity with privacy accommodation, as needed

Alternate area (identify location)

Other

**School personnel allowed to receive confidential information about legal name/legal gender:**

- 1.
- 2.
- 3.

**Athletics/Sports** (participate based on gender identity except where New Mexico Activities Association governs)

Indicate sport(s) student may be interested in joining. Make sure everyone is clear whether or not the sport is governed by NMAA. NMAA does NOT govern locker room use, rather, it governs eligibility and participation in the sport.

**School Records:**

On the written request of a parent or student who has reached the age of majority, the District will take reasonable measures to include the student's name and gender identity in those educational records that can be modified.

**School contact name, email, and phone number for any issues related to name/gender identity:**

**Follow-Up Meeting Date/Time**

# DRAFT

Review annually or as requested.

Please PRINT then INITIAL:

_____	_____	_____
Student	Parent	Other (role/responsibility)

_____	_____	_____
Principal	Counselor	Other (role/responsibility)