TRANSGENDER COLLEGE STUDENTS

This fact sheet is a joint publication of Lambda Legal and the Consortium of Higher Education LGBT Resource Professionals.

Everyone deserves to receive an education free from harassment, discrimination and violence. Yet these problems commonly plague transgender students pursuing a university degree, sometimes even before they set foot on campus.

It all starts with the application. Transgender students' applications can be subject to extra scrutiny, especially at single-sex or religiously affiliated institutions. Transgender students are often denied admission altogether when the institutions fail to have systems in place that recognize students' identity, particularly non-binary identities.

For transgender students who are admitted, campuses routinely fail to affirm their identities and deny them appropriate housing, restrooms and locker rooms. Changing the legal name and gender marker on one's student ID card, class rosters, transcript, diploma and other educational records is unnecessarily complex and time-consuming at some institutions—and expressly prohibited on most campuses.

The effect of such policies is to block equal access to education.

All this persists amid a general climate of hostility. Nineteen percent of respondents to the National Transgender Discrimination Survey (available at thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf) who identified as transgender or gender-nonconforming (TGNC) while in higher education were refused gender-appropriate housing, and 5% were refused campus housing altogether.

Some of that mistreatment comes from the very campus security officers appointed to protect students. In a 2012 Lambda Legal survey, *Protected and Served?* (lambdalegal.org/protected-and-served), 20% of TGNC respondents ages 18-24 described the attitude of campus security officers toward them as "hostile."

These obstacles add up, often to the point where transgender students feel unable to complete their education. In the survey *2010 State of Higher Education for LGBT People* (campuspride.org/store/products/2010-state-of-higher-education-for-lgbt-people/), more than a third of TGNC students said that they seriously considered leaving their institution because of the challenging climate. While some campuses have become safer and more welcoming for transgender students, it can't be said that they enjoy equal educational opportunities.

This fact sheet is intended to inform transgender students of their rights on campus and to show what advocates are doing to help make colleges and universities more affirming of, and welcoming to, transgender students. It is also designed to help students navigate campus challenges and advocate for better policies.

MY STORY MY ALMA MATER LET ME DOWN

Landon "LJ" Woolston

"I went to my alma mater to change my gender marker in their system from female to male. After seeing my new ID, they thought my gender was just a mistake in their system. They quickly updated it and I left.

"They chased me down in the parking lot and said they'd made a mistake. They asked me to come back. I provided my ID again, but was told I needed a court order. They kept looking at their records, then back at me, just trying to figure me out. I felt like I was naked.

"The supervisor threatened to invalidate my degree if I didn't comply with procedures. They even asked what gender my birth certificate showed. I told them this felt like they were asking me to drop my pants! A campus police officer was then called to escort me out of the office.

"I emailed everyone, including the university president. The following day, I got a call that my file was being updated. They were 'making an exception' for me."

Lambda Legal
making the case for equality

CONSORTIUM OF HIGHER EDUCATION LGBT RESOURCE PROFESSIONALS

FAQ

Answers to Common Questions about Transgender Students at Colleges and Universities

Q: Does federal law protect me as a transgender college student?

A: Yes, Title IX of the 1964 Civil Rights Act prohibits discrimination on the basis of sex. The U.S. Department of Education (DOE) has stated that Title IX's prohibition of sex discrimination encompasses gender identity. The U.S. Department of Justice (DOJ) and the DOE affirmed that transgender students should not be singled out to use a separate, designated restroom or made to room separately (see "The Federal Government Protects Trans Students" on page 4). They must be treated in accordance with the student's gender identity for all purposes. That means transgender women should be treated like cisgender women, and transgender men must be treated like cisgender men.

This applies to transgender students in K-12 as well as at colleges and universities.

Also, the Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the privacy of student educational records and also gives current and former students the right to amend those records to match their legal documents if they are "inaccurate, misleading, or in violation of the student's rights of privacy." Once a student reaches 18, their parents do not have access to these records unless the student grants permission. (For more information, see "A Transgender Advocate's Guide To Updating and Amending School Records" at lambdalegal.org/know-your-rights/transgender/ferpa-faq and also see www2.ed.gov/policy/gen/guid/fpco/faq.html.)

Q: What state or local laws protect me?

A: Some jurisdictions outlaw discrimination on the basis of sex and/or gender identity in public accommodations, which includes public schools and other educational institutions. Many states also have anti-bullying laws, such as the Dignity for All Students Act (DASA) in New York and California's School Success and Opportunities Act. These laws state that a student's gender identity must always be respected, which is especially important in single-sex restrooms and single-sex sports.

Two recent K-12 school victories in Maine and Colorado have set the stage for how students at all levels should be treated at all educational institutions. These involved transgender girls who were initially denied access to girls' bathrooms; both states have prohibitions on such discrimination, but the schools argued that these didn't apply.

In January 2014, the Maine Supreme Court found that singling out a transgender student and forcing her to use a restroom separate from cisgender girls was discrimination under Maine state law. The Colorado ruling came in 2013, when that state's Department of Civil Rights found that forcing a six-year-old student to use the nurse's restroom was discrimination on the basis of gender identity—and that telling her to "disregard her identity while performing one of the most essential human functions constitutes severe and pervasive treatment, and creates an environment that is objectively and subjectively hostile, intimidating or offensive."

Q: Can a religious institution discriminate against me because I am transgender?

A: Educational institutions that receive federal funding are prohibited by Title IX from discriminating on the basis of sex, which includes gender identity. The law does, however, include a loophole for religious-based schools to claim exemption. In 2014, the DOE granted such exemptions to three colleges: George Fox University in Oregon, Spring Arbor University in Michigan and Simpson University in California.

Advocates are very concerned about the increasing use of religious exemptions to avoid antidiscrimination protections for LGBT people and other marginalized groups—a tactic highlighted in June 2014 in the Supreme Court's *Hobby Lobby* ruling targeting reproductive rights.

DEFINITIONS "Transgender," "cisgender" and "GNC"

Transgender refers to people whose gender identity, one's inner sense of being male, female or something else, differs from their assigned or presumed sex at birth; **cisgender** refers to people whose gender identity is the same as their assigned or presumed sex at birth. **Gender-nonconforming** or GNC people don't meet society's expectations of gender roles.

> **They kept looking at their records, then back at me, just trying to figure me out. I felt like I was naked. —LANDON "LJ" WOOLSTON**

Q: Can a single-sex college reject my application based on the fact that I'm transgender?

A: Title IX allows certain kinds of educational institutions to admit students of only one "sex," including all-women's colleges. In December 2014, the DOE issued its third official guidance on this issue, this time affirming that "All students, including transgender students and students who do not conform to sex stereotypes, are protected from sex-based discrimination under Title IX. Under Title IX, a recipient generally must treat transgender students consistent with their gender identity in all aspects of the planning, implementation, enrollment, operation, and evaluation of single-sex classes." This applies to single-sex institutions, as well. Some colleges, including Mills, Mount Holyoke and Simmons, have created policies that are specifically inclusive of transgender students. If you or someone you know has been rejected on the basis of gender identity, please contact Lambda Legal's Help Desk at lambdalegal.org/help or (866) 542-8336.

Q: As a transgender student, do I have the right to be placed in campus housing according to my gender identity?

A: Yes, you have that right as long as your college or university is subject to Title IX and hasn't specifically exempted itself from this requirement. You should know that institutions frequently use the gender marker on the application to inform campus records and practices. Find out if your college or university offers gender-inclusive housing as an option; this is particularly important for gender-nonconforming (GNC) students. Some state nondiscrimination laws also protect this right. If you or someone you know has been denied gender-appropriate housing, please contact Lambda Legal's Help Desk at lambdalegal.org/help or (866) 542-8336.

Q: As a transgender student, do I have the right to use restrooms and locker rooms on campus in accordance with my gender identity?

A: Yes, your restroom and locker-room rights are much like your housing rights: You are protected if your college or university is subject to Title IX and hasn't specifically exempted itself. You might also be protected under state or local nondiscrimination laws. Find out if your institution has gender-inclusive (not single-sex) restrooms; these can be particularly important for GNC students. (For more information, see the Trans Policy Clearinghouse (TPC) at campuspride.org/tpc/.) If you or someone you know has been denied gender-appropriate restroom use, please contact Lambda Legal's Help Desk at lambdalegal.org/help or (866) 542-8336.

Q: What should I do to change the name or gender marker on my student ID, transcript or diploma?

A: First, check to see if your college or university already has a procedure in place for allowing name and gender marker changes on student records. More than a hundred institutions now allow students to indicate their chosen name on school records regardless of whether they have legally changed their name. Others require you to legally change your name and gender marker on other documents, such as your state ID, passport or birth certificate, before they will amend certain educational records. (For more information, visit the website of the Trans Policy Clearinghouse (TPC) at campuspride.org/tpc/.)

If your campus does not have a stated procedure for allowing name and gender marker changes, or if you do not or cannot meet the requirements of existing policy, the Registrar's Office may be willing to work with you to change your educational records. In approaching the Registrar, you may want to enlist the support of an ally such as a staff member, faculty or ideally an LGBT resource professional. You may also want to bring some helpful materials, including Lambda Legal's Transgender Rights Toolkit (lambdalegal.org/publications/trans-toolkit), in order to help your school understand how important it is to be able to update your educational records.

If an informal approach is unsuccessful, we recommend sending administrators a letter (such as this one: lambdalegal.org/sites/default/files/ferpa_generic_redacted_letter.docx) that outlines the legal and practical reasons why your educational documents should be amended.

Whether you visit in person or send a letter, consider citing FERPA, the federal law that protects the privacy of student educational records and also gives current and former students the right to amend those records to match their legal documents.

IN THE NEWS

THE FEDERAL GOVERNMENT PROTECTS TRANS STUDENTS

Even before the U.S. Department of Education (DOE) clarified for the third time in 2014 that discrimination based on gender identity in schools violates Title IX of the 1964 Civil Rights Act, transgender students were successfully making that argument.

On July 24, 2013, the U.S. Department of Justice (DOJ) resolved a settlement with a California school on behalf of a twelve-year-old transgender boy who was told to use a restroom in the nurse's office instead of the boy's restroom and locker room, and told he could not room with the cisgender boys on a field trip. The settlement required the school district to take a number of steps to ensure that the student will be treated similarly to cisgender boys, including using the multi-stall restroom and locker room.

The student had returned to middle school after transitioning from female to male and was forced to use a separate bathroom than other students. District officials also separated him for other activities. This treatment made the student the target of awkward questions and teasing that interfered with his ability to focus at school.

The 2013 settlement requires the Arcadia Unified School District to grant the student access to the same facilities as any other male student; develop transgender-inclusive nondiscrimination policies; put its staff through antidiscrimination trainings; and undergo monitoring and reporting. The agreement also involved a clarification from the DOE and the DOJ that sex discrimination in schools includes discrimination based on "gender identity, gender expression, and nonconformity with gender stereotypes."

Then, on October 14, 2014, the federal Office of Civil Rights (OCR) approved a resolution agreement in another California case involving a transgender girl who had complained of gender-based peer harassment. Her settlement with the Downey Unified School District affirmed the student's right to use sex-designated facilities "for female students at school… consistent with her gender identity."

Both settlements are great examples of how transgender students, whether K-12 or in college, can exercise their rights under Title IX to prevent their schools from discriminating against them. They also show that the government is receptive to these kinds of complaints.

BEST PRACTICES FOR SUPPORTING TRANSGENDER STUDENTS

ADAPTED FROM THE TRANS* POLICY WORKING GROUP OF THE CONSORTIUM OF HIGHER EDUCATION LGBT RESOURCE PROFESSIONALS (HTTP://TINYURL.COM/BESTPRAC4TRANS)

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While schools vary in their ability to implement all of these recommendations and in the resources that they can offer, these practices are what institutions should strive for in addressing the needs of transgender students.

GENERAL POLICIES

DEVELOP AND PUBLICIZE A TRANS-SUPPORTIVE POLICY THAT RECOGNIZES AND RESPECTS THE GENDER IDENTITY OF THE STUDENT. In addition to a general policy, each department (including, but not limited to: Admissions, Registrar, Residential Life, Campus Facilities, Health Center and Fraternities and Sororities) should adopt a trans-supportive policy. The policy should be easily accessible on the school's website. The school and each department should designate an administrator as a point person responsible for enforcing these policies.

Include "gender identity and expression" explicitly in the institution's general nondiscrimination policy. Or clarify existing protections on the basis of sex to include gender identity just as the federal government has done. (For example, the Office of Personnel Management has clarified that its existing nondiscrimination protections because of sex include gender identity; see "Workplace Rights and Wrongs," another fact sheet in this Transgender Rights Toolkit series, at lambdalegal.org/publications/trans-toolkit.) Include anti-trans acts in harassment and bias incident policies in accordance with campus judicial enforcement.

Before asking for gender identity, critically examine if a student's gender is really needed on a document. For example, is gender identity relevant to a student's participation in a career center event?

Allow students to designate their chosen name (even if distinct from their legal name) on all electronic and hard copy documents (i.e., admissions and matriculation records, medical records, class rosters, transcripts, ID cards and diplomas). In accordance with FERPA, students should be allowed to change their legal name and gender marker upon request (i.e., without a letter from a therapist or doctor and without the need to change other documents).

Policies and procedures related to changing names and gender markers should be easily accessible on the school's website.

Suggested format for requesting student
SELF-IDENTIFICATION:

GENDER _____

Or, when multiple-choice format is necessary:

GENDER (CHOOSE ALL THAT APPLY)
__ WOMAN
__ MAN
__ TRANS OR TRANSGENDER (PLEASE SPECIFY):
_____
__ ANOTHER IDENTITY (PLEASE SPECIFY):
_____

Each department should adopt an equitable process for hiring, training and maintaining trans-identified and trans-knowledgeable staff members. Staff diversity efforts should explicitly include transgender people.

Staff training for all departments should require cultural competency on transgender policies and issues to ensure workplace equality and fair treatment of students and staff.

HOUSING POLICIES

DEVELOP AND PUBLICIZE A TRANS-SUPPORTIVE HOUSING POLICY, WHICH STATES THAT:

1. Students who inform the college that they are trans in a timely manner will be housed in keeping with their gender identity; and
2. Every attempt will be made to give trans students safe and comfortable housing assignments.

Trans* is often (but not universally) used to include people who identify as non-binary trans as well as transgender, transsexual, trans men, trans women and other identities not itemized.

ESTABLISH A GENDER-INCLUSIVE HOUSING (GIH) OPTION THAT:

1. is available for both new and returning students;
2. is separate from an LGBTQ-themed floor;
3. is open to all students, not just to trans students;
4. is offered in different parts of campus and, if possible, in different types of housing (doubles, suites, apartments); and
5. includes gender-inclusive bathrooms/showers (see below).

BATHROOM/LOCKER ROOM

HAVE A CAMPUS BATHROOM AND LOCKER ROOM POLICY THAT APPLIES TO ALL BUILDINGS (INCLUDING HOUSING), WHICH ALLOWS INDIVIDUALS TO:

1. use facilities that correspond to their gender identity; or
2. utilize bathrooms that are designated gender-neutral/gender-inclusive (see below).
3. Create gender-inclusive bathrooms (e.g., single-user, lockable bathrooms that are labeled as "all gender bathrooms" or simply as "bathrooms") and private showers in all renovated and newly constructed residence halls. Offer more privacy in locker rooms for all students where possible.
4. Have an online list/map of all gender-inclusive restrooms across campus.
5. For gender-inclusive bathrooms, use a sign that avoids the male and female stick figures.

HEALTH CARE POLICIES

If applicable to your college or university, remove discriminatory exclusions for transgender health care in student and staff insurance plans to ensure equal coverage for medically necessary care.

Regularly train physicians so that they can provide trans-specific health care including: initiating hormone treatment, writing prescriptions for hormones and monitoring hormone levels for transitioning students.

Have at least one Counseling Center therapist who has the training and experience to be able to write letters for transitioning students to access hormones. Develop and publicize a list of area therapists who can provide trans-supportive gender therapy for students who are transitioning or who are struggling with their gender identity.

Offer a support group for trans and gender-nonconforming students.

Have prescriptions and lab orders written in such a way that the name a student uses is called out at the pharmacy and lab.

Appoint a patient advocate or have a visible procedure for trans students (as well as other students) to report concerns and instances of poor treatment.

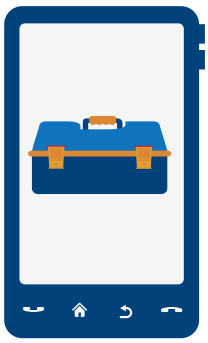
FRATERNITY/SORORITY POLICIES

If applicable to your college or university, develop and publicize a fraternity and sorority policy that includes transgender students by clarifying that sex is defined as a person's gender identity. This policy should state that the college will always recognize and respect the stated gender identity of the student.

SPORTS POLICIES

DEVELOP POLICIES THAT ALLOW TRANSGENDER STUDENTS TO PARTICIPATE IN SINGLE-SEX SPORTS IN ACCORDANCE WITH THEIR GENDER IDENTITY.

Model policy from U Mass Amherst: *"When an activity makes a gender designation, an individual who has transitioned to a different gender can participate in the division of the individual's current gender. If an individual is in the process of transitioning to a different gender, participation in a particular gender designated activity will be handled on a case-by-case basis."*



FOR MORE INFORMATION:
Contact Lambda Legal at 212-809-8585, 120 Wall Street, 19th Floor, New York, NY 10005-3904. If you feel you have experienced discrimination, call our Legal Help Desk toll-free at 866-542-8336 or go to ***www.lambdalegal.org/help.***

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