Which Way to the Restroom? Respecting the Rights of Transgender Youth in the School System

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Abstract: This article addresses some of the legal issues school districts may encounter with respect to transgender students, including access to restrooms, use of locker rooms, dress codes, bullying and harassment, curriculum, and name and gender changes on school records.
WHICH WAY TO THE RESTROOM? RESPECTING THE RIGHTS OF TRANSGENDER YOUTHS IN THE SCHOOL SYSTEM

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Freedom from discrimination based on sex is a right. However, when a person whose gender identity, gender expression, or behavior does not conform to that typically associated with the sex to which they were assigned at birth, respecting this right can become complicated, especially at school. Such a person is usually referred to as “transgender,” or simply “trans.” A recent example gained national attention when a transgender girl (born male) who had been identifying as a girl since age two was admitted at age nine to a Girl Scout troop in Denver Colorado.¹

This issue is problematic because it places school boards in a position of balancing the rights of transgender students to freedom from discrimination and expression with the rights of other students and parents to freedom of religion and expression, among others. The problem is further complicated because the rights of transgender students found in legislation are fairly new and evolving, and there is limited case law interpretation by tribunals, commissions and courts.

DEFINITIONS

To deal effectively with gender equality issues, a knowledge of the terminology is essential. Gender identity relates to a person’s inner sense of being male, female or something on a continuum between—or even beyond—these two concepts. Gender expression relates to the way in which a person communicates gender identity through clothing, hairstyle, grooming or voice. When a trans person surgically alters their body, it is often called “sex/gender reassignment” or “affirmation.”² Gender identity does not equate to sexual preference or orientation. For example, a trans girl (born as a boy by sex) who is attracted to males is heterosexual, not gay.³ Trans persons can have the same spectrum of orientation as anyone else, and they can be straight, gay, bi-sexual or asexual.

People who experience intense, persistent gender incongruence may be diagnosed with gender identity disorder (GID).⁴ However this “diagnosis” is highly controversial among some mental health

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professionals and transgender communities. Some contend that the diagnosis inappropriately pathologizes gender incongruence and should be eliminated.\(^5\)

**TRANSGENDER CHILD – STAGES OF DEVELOPMENT**

It is generally understood that gender identity develops in the brain and is most likely determined before a child is born. It is a misconception that children choose to feel like a girl or a boy.\(^6\)

Children can manifest their identity at pre-school age levels by the choice of toys and clothing. Thus a “boy” may wish to wear a dress to attend kindergarten. Stephanie Brill and Rachel Pepper, authors of *The Transgender Child*, state, “four to six year olds associate gender with specific behaviours...girls wear make-up, so anyone with make-up is a girl. Boys lift weights and play with trucks, so anyone lifting weights and playing with trucks is a boy . . . school has a great influence on children of this age so it is essential that pre-schools and grade schools incorporate gender differences and tolerances of such differences in their programs...it is normal for four to six year olds to think they can grow up to be the opposite sex.”\(^7\) When such children are frustrated and cannot express their felt identity, behavioral problems can surface and in some cases suicide ideation occurs.\(^8\)

Sometimes gender identity can emerge in the period just before or during early stages of puberty, ages nine to fourteen. At this age, it is not unusual for a transgender child to simply announce to parents that they have a new name, reflective of gender identity; “Jack” becomes “Jill,” for example. In other cases, post-pubescent adolescents may “try on” different sexualities to see what fits best, only slowly realizing that they are transgender.\(^9\) At this stage, the underlying contradiction between the sex of pubertal changes and the underlying gender identity can in some individuals cause depression, self-neglect and self-destructive behaviors.\(^10\)

Post-puberty is where gender identity generally becomes fully developed. According to Brill and Pepper, “…the hormonal and concurrent physical changes of puberty clarify for the child that they are going through the ‘wrong’ puberty.”\(^11\) This can cause an increased urgency to communicate, greater anxiety and exploration of options such as transitioning to the “proper” sex. This is also the age when differences between sexual orientation and gender identity can also develop. For example, remember that if a

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\(^5\) Id.

\(^6\) Brill & Pepper, *supra* note 3 at 14.

\(^7\) Id. at 63.

\(^8\) Id. at 64.

\(^9\) Id. at 16-22.

\(^10\) Id. at 65.

\(^11\) Id. at 66.
transgender child identifies as a male and is attracted to females, “he” is straight, not gay and vice versa. On the other hand, a trans teen may in fact be gay when they are attracted to persons of the opposite sex.

THE LAW

At the federal level, there are no explicit legal protections for transgender students.

Title IX of the Education Amendments of 1972 (Title IX) addresses discrimination on the basis of sex in schools receiving federal funding. Although Title IX does not specifically prohibit discrimination on the basis of sexual orientation, gender identity or gender expression, this federal law has been invoked to address sexual or gender-based harassment in schools based on gender stereotypes. The Office for Civil Rights (OCR) of the U.S. Department of Education’s Revised Sexual Harassment Guidance states, “gender-based harassment....is also a form of sex discrimination to which a school must respond.”

Claims under the First Amendment as well as the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment have been raised in cases involving gender identity. The Massachusetts Superior Court, in 2000 held that a transgender student had the First Amendment right to wear clothes consistent with her gender identity and a due process liberty interest in her personal appearance. In several cases involving harassment and discrimination against lesbian, gay, bisexual, and transgender (LGBT) students, the Equal Protection Clause has been used to impose a duty on schools to protect transgender students from harassment on an equal basis with other students.

In addition, sixteen states and the District of Columbia have some form of protection for

15 U.S. Const. amend I.
16 U.S. Const. amend. XIV, § 1.
18 See id.; Montgomery, supra note 13; Flores v Morgan High Sch., 324 F.3d 1130 (9th Cir. 2003); Nabozny v. Podlesny, 92 F.3d 446 (7th Cir. 1996).
19 D.C. Code §§ 2-1401.01, 4-754.21 (10), 16-914, 31-2231-11(c), 31-2231.13(d), 31-1603, 43-1507 (2011).
transgender persons on the basis of gender identity or expression. They are as follows: California, Colorado, Connecticut, Hawaii, Illinois, Iowa, Maine, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington. With the exception of Nevada and Hawaii, all the states listed above and North Carolina have enacted specific gender identity and gender expression anti-discrimination legislation relating to education.

Consequently, transgender people in most cities and states have no specific legal protections

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29 A.B. 211, AN ACT relating to employment practices; prohibiting discriminatory employment practices based upon the gender identity or expression of a person; authorizing the Nevada Equal Rights Commission to investigate certain acts of prejudice against a person with regard to employment based on gender identity or expression and sexual orientation; and providing other matters properly relating thereto, 2011, Reg. Sess. Nev., 2011 (enacted).
against discrimination based on their gender identity. The United States National Center for Transgender Equality and the National Gay and Lesbian Task Force released a report in 2011 titled, *Injustice at Every Turn*, which confirmed the pervasive and severe discrimination faced by transgender people. The report found that transgender people experience high levels of discrimination in employment, housing, health care, education, legal systems, and even in their families.37

Interestingly, prior to 2003, courts or administrative agencies had already found that transgender people were protected under state civil rights laws that prohibit discrimination based on disability.38 Some advocates for transgender rights would object to such a categorization.

**SCHOOLS AND TRANSGENDER STUDENTS**

**The Bathroom**

The public bathroom can be a major source of anxiety for transgender youth. Using a public restroom may result in their status being discovered. If they identify as transgender and have not yet revealed their identity, they may feel like an imposter. Worse yet, trans teens may be subject to ridicule, abuse or assault, physical or sexual, in public lavatories. Issues concerning use of the restroom may be the first notice that a school receives that a child is transgender.

As a general rule, Brill and Pepper recommend that transgender students at any age should have access to the restroom that corresponds to their gender identity, particularly if it aligns with their gender presentation. Where a student desires privacy, they advise that a single stall bathroom should be made available. They believe that it is important that the use of a single stall facility be the personal choice of the student and not forced or mandated in any way.39

The issue of bathroom selection has been the subject of litigation and legislative initiative in Maine. In 2009 the Maine Human Rights Commission (MHRC) ruled that the Orono School District discriminated against a fifth grade student, “Susan Doe,” at Asa Adams Elementary School, who was biologically male but presented as female. This case attracted considerable public attention when the parent of the male student who had assaulted the trans student brought the situation to the attention of their church and the local

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The parents of the child had met with the school administration prior to the beginning of the school year and had agreed that the student would use the girls’ restroom unless other girls or parents objected. However, when a male student followed Susan into the bathroom and assaulted her, the school terminated her access to the female restrooms and told Susan that she was to use the staff restroom for her own safety. On June 29, 2009, the MHRC found reasonable grounds to believe that the Orono School District had engaged in unlawful education and public accommodations discrimination by denying Susan access and use of the girls’ restroom facilities based on “sexual orientation.”

The difficult issue of balancing of rights does not only exist between the transgender student and other members of the school community, but there is also a careful balancing act that must be struck between the competing rights of the transgender student. As exemplified in this case, the school attempted to balance the right of the transgender student to attend school and be free from harassment and bullying with her right to access to public restroom facilities.

In addition, the family and the MHRC commenced new proceedings in Superior Court on substantially the same facts as the original complaint to the MHRC, alleging unlawful discrimination in education on the basis of sexual orientation, unlawful discrimination in public accommodations on the basis of sexual orientation and the intentional infliction of emotional distress. On April 1, 2011, the court ruled on the defendants’ motion to dismiss and stated that the claim of unlawful discrimination in public accommodations on the basis of sexual orientation may proceed to the extent that that the Orono School District may have unlawfully discriminated against the student by forcing her to use a staff bathroom. However, the claim that the Orono School District had an affirmative obligation to accommodate the student’s transgender status by allowing her to continue using the girls’ bathroom facilities was dismissed. Therefore, the courts do not appear willing to go as far as the transgender advocacy recommendations and seem to be somewhere in the middle of the bathroom debate.

As a result of this case, Representative Ken Freddette of Newport, in an attempt to resolve the bathroom issue, tendered a bill in the Maine legislature that would have effectively overturned the MHRC’s original decision and allowed the operators of restrooms to decide who could use each gender’s restroom. The proposed amendment stated: “It is not unlawful public accommodations discrimination, in violation of this Act, for a public or private entity to restrict restroom or shower facilities that are part of a

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41 Id.


public accommodation to the use of single-sex facilities to members of a biological sex regardless of sexual orientation. Unless otherwise indicated, a restroom or shower facility designated for one biological sex is presumed to be restricted to that biological sex.” In June 2011, the bill proposed by Representative Freddette failed to pass.

**Sports/Locker Rooms**

School boards may also have to deal with the issues related to transgender athletes. These issues could include an attempt to balance competitive equality, access to sports in accordance with gender identity, and shared athletic facilities.

These issues gained attention when the International Olympic Committee (IOC) in 2003 adopted a policy that allowed transgender athletes to compete in the sport of their corresponding gender identity if they had undergone genital reconstruction surgery. The USA Track & Field (USATF) followed suit and adopted the same policy in 2005.

In 2007, the Washington Interscholastic Activities Association (WIAA), the state’s governing body for high school and middle/junior school athletics, departed from the focus on surgery when it adopted a policy and procedures for the transgender student athlete who wishes to participate in athletics pursuant to their gender identity. The student must first give notice to the school and then to the WIAA via the school. Once notice has been given, a hearing is scheduled to consider the submissions of the student and review any supporting documentation. In contrast to the IOC policy, the student must provide documentation that affirms the student’s gender identification, which can be statements from the student, parent or health care provider. The procedures permit an appeal to a committee comprised of a physician or psychiatrist versed in gender identity health care, a school administrator from another school, a WIAA staff member and an advocate familiar with gender identity and expression issues. Another level of appeal is provided should the student not agree with the decision of the Appeal Committee. The Colorado High School Activities Association has also adopted a similar policy.

In September 2011, the National Collegiate Athletic Association (NCAA), in an attempt to maintain

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45 Id.


49 Id. at 49 – 50.

competitive equality and allow the student athlete to compete in accordance with their gender identity, took a slightly different approach when they approved a transgender policy. The NCAA policy states as follows:

- A trans male (female to male) student athlete who has received a medical exception for treatment with testosterone for gender transition may compete on a men’s team but is no longer eligible to compete on a women’s team without changing the team status to a mixed team. A mixed team is eligible only for men’s championships.

- A trans female (male to female) student athlete being treated with testosterone suppression medication for gender transition may continue to compete on a men’s team but may not compete on a women’s team without changing it to a mixed team status until completing one calendar year of documented testosterone-suppression treatment.  

Most recently, in January 2012, California introduced a bill that would permit students to participate on athletic teams consistent with their gender identity irrespective of the gender listed on the student’s record. However, the bill was quickly withdrawn from the California Legislature.

The issue of the transgender athlete is evolving. Attorneys may wish to refer to the National Center for Lesbian Rights (NCLR) guide on the transgender athlete published in 2010. The guide contains a discussion on the use of locker room facilities during physical education activities. It recommends that transgender student athletes should be able to use the locker room, shower and toilet facilities in accordance with the student’s gender identity. It further recommends that every locker room should have some private enclosed changing areas, shower areas and toilets. The guide suggests that when requested by a transgender athlete, schools should provide private separate facilities, but transgender youth should not be required to use these separate facilities.

The complexity of this issue is illustrated in a recent incident at the University of Pittsburgh-Johnstown. A transgender male born female had been using the male locker facilities for a weight training course for almost two semesters. In September, 2011, the university advised him that he could no longer do so because of student complaints, and he was offered a private shower. The student continued to use

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55 Id. at 31.
the facilities which resulted in a complete ban from the locker room. As a result, the campus police charged him with disorderly conduct pursuant to the student code of conduct. The transgender student has stated his intention to commence proceedings against the university and its employees.56

**Dress Codes**

The issue of a student’s right to dress in accordance with their gender identity will arise in the context of the school setting. Often, schools have dress codes that prohibit certain clothing as inappropriate. In Massachusetts, a student “Pat Doe” was granted an injunction allowing her to wear any clothing or accessories that any other male or female student could wear in the school without being disciplined.57

In this case, the student, Pat who is biologically male began to express her female gender identity by wearing girls’ clothing and accessories. The principal would often send the student home if she arrived at school wearing girls’ clothing. Furthermore, when the student began the eighth grade, the principal instructed the student to come to his office every day so that he could approve the student’s appearance. The student would be then be sent home to change. At the beginning of the student’s ninth grade year, the school informed the student that she would not be allowed to enroll at the school if she continued to wear girls’ clothing or accessories. The school relied on a provision in the school’s dress code that prohibits “clothing which would be disruptive or distractive to the educational process or which could affect the safety of students.”58 The court ruled that the school may not prohibit the student from expressing her female gender identity as it violates the student’s right to freedom of expression.59 In addition, it found that disciplining a biologically male student for wearing girls’ clothing constitutes sex discrimination.60 The Superior Court decision confirms that a school may not exert its authority over a student simply to enforce stereotyped ideas of how boys and girls should look. The court’s decision to issue an injunction was affirmed on appeal.61

Presumably while a student may dress in the school uniform consistent with gender identity the student would be subject to the application of the dress code provisions for that gender such as skirt length or shoe selection.

It should also be noted that freedom of expression claims regarding clothing are stronger if based


57 Yunits, *supra* note 17.

58 *Id.* at para. 1.

59 *Id.* at para. 4.

60 *Id.* at para. 7.

on gender identity as opposed to gender expression alone. In a Florida case, for example, it was decided that a girl identifying as a girl who did not conform to gender norms, wishing to wear a shirt and tie in a graduation photograph, absent a gender identity rationale did not have freedom of expression protection.\footnote{Complaint for Damages and Demand for Jury Trial, Youngblood, v. School Dist. of Hillsborough County (M.D. Fla. filed June 2, 2002).}

**Bullying and Harassment**

Recent studies have shown that transgender students suffer a high rate of discrimination and harassment. In the United States, students who expressed a transgender identity or gender non-conformity while in grades K-12 reported alarming rates of harassment (78%), physical assault (35%) and sexual violence (12%); harassment was so severe that it led almost one-sixth (15%) to leave a school in K-12 settings or in higher education.\footnote{Grant, \textit{supra} note 37 at 3. Similarly, in Canada, a study by Egale Canada and the University of Winnipeg showed that 95% of transgender students felt unsafe at school, compared to 20% of straight students. Taylor, C., Peter, T., Schachter, K., Paquin, S., Beldom, S., Gross, Z., & McMinn, TL. (2008). \textit{Youth Speak Up about Homophobia and Transphobia: The First National Climate Survey on Homophobia in Canadian Schools. Phase One Report.} (Toronto, Ontario: Egale Canada Human Rights Trust, 2009).}

In many states anti-bullying initiatives have been undertaken. In California, the California Education Code, for example, provides that “no person shall be subject to discrimination on the basis of... gender, gender identity, gender expression...in any program or activity conducted by an educational institution that receives or benefits from state financial assistance.”\footnote{Cal. Educ. Code § 220 (2011).} The California Code of Regulations defines gender as a person’s actual or perceived sex and includes a person’s perceived identity, appearance or behaviour whether or not that identity, appearance or behaviour is different from that traditionally associated with a person’s sex at birth”\footnote{5 Cal. Code Regs. § 4910(k).} It is noteworthy that both the Los Angeles County School District and San Francisco Unified School District have developed detailed guidelines for school employees on transgender issues and the prevention of transgender violence and harassment.\footnote{Los Angeles Unified School District, Office of the General Counsel, Transgender and Gender Nonconforming Students— Ensuring Equity and Nondiscrimination (Feb. 15, 2005), \url{http://www.lausd.net/lausd/offices/eec/pdfs/TransgGuide.pdf}; San Francisco Unified School District, In Support that the San Francisco Unified School District (SFUSD) Strengthen the Anti-Discrimination Program in Schools in Order to Effect a Healthier Learning Environment for Lesbian Gay Bisexual Transgender and Questioning (LGBTQ) Students (Feb. 9, 2010), \url{http://www.sfusd.edu/assets/sfusd-staff/board-archive/memberresso/FEWER%20%20LGBTQ%20WTH%20AMENDS%20INCORPORATED%202%20105.pdf}.}

However, there has been some legislative backlash to protection of transgender students from bullying. For example, a bill currently in the Tennessee Senate proposes that school anti-bullying and
harassment policies “may not be construed or interpreted to infringe upon the First Amendment rights of students and may not prohibit their expression of religious, philosophical or political views as long as such expression does not include a threat of physical harm to a student or of damage to a student’s property.”

In 2009 a student sued a New York school board, alleging the failure to protect the student from bullying based on gender stereotypes and his sexual orientation was a violation of the Fourteenth Amendment and Title IX. The U.S. Department of Justice filed a motion to intervene on behalf of the student, but the case was ultimately settled when the school district agreed to reform its policies and report on its responses to future complaints. Similarly, in another case in California, the parent of a student who had committed suicide after severe and persistent bullying by other students made a complaint to the OCR. The OCR investigation revealed that the student dressed in stereotypically female clothing and shoes, and there was a perception that he was gay. The OCR reached a Resolution Agreement in 2011 with the school district to develop a policy, train its employees and employ an outside consultant to implement the reforms.

**Curriculum**

Given the complexities of this issue, gender education in the classroom is growing. For example, the American School Health Association and several other agencies recommend national sexuality education standards for kindergarten to grade twelve (K-12) that include sexual identity education as early as kindergarten and that children should be able to differentiate between gender identity, gender expression and sexual orientation by the end of grade eight. Recently, in California, the governor signed the Fair, Accurate, Inclusive and Respectful (FAIR) Education Act which requires California public schools to provide instruction in the “social sciences to include a study of the role and contributions of LGBT Americans . . . to the development of California and the United States.”

This particular bill has created some controversy and debate. Therefore, school boards should also be aware of any parental rights regarding public school curricula. For example, in California, parents have the right to receive written notice and opt-out of comprehensive sexual health education, and HIV/AIDS

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68 J.L. v. Mohawk Central Sch. Dist., Index No.:09-CV-943 (N.D.N.Y 2009).


72 Id.
prevention education. In fact, the California Education Code specifically states that the opt-out laws do not apply to instruction or materials that discuss gender, sexual orientation, or family life and do not discuss human reproductive organs and their functions.  

**Name and Gender in School Records**

Transgender students may seek to change their name to reflect their gender identity.

Change of name laws vary from state to state. The federal Family Educational Rights and Privacy Act (FERPA) allows parents or eligible students to correct school records when they are inaccurate or misleading. By inference, this would permit a school district to make a discretionary name change. Most states require that a student have a court-ordered name change in order to amend student records. Until October 2011, the California Health and Safety Code required documentation by a physician confirming sex change surgery and allowed for the filing of objections by any person. Under new legislation, a person who has undergone treatment for the purpose of gender transition may file for a name change, and no objections are permitted. Some schools have acceded to requests to refer to a child by their chosen name for day-to-day activities without altering the official record.

When former students who have undergone a gender transition request a retroactive change to school records, the situation is even less clear. From the point of view of a person who has transitioned, having to present records that reveal the gender change is a violation of privacy. On the other hand, school districts have an interest in maintaining the integrity of records. A 1991 opinion letter of the Family Policy Compliance Office concluded that the FERPA provisions allowing name changes to school records would not apply to former students. While school districts would appear to have considerable freedom to develop policy in this area, districts should bear in mind that a refusal to change records could result in a claim under Title IX or state anti-discrimination laws although there is no case law to date.

**A FINAL NOTE**

As can be seen from this brief review, the issues related to transgender student rights are emergent and complex. School attorneys would be wise to advise their clients that there is not a one-size-fits all

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77 20 U.S.C. § 1232g (2).

solution in terms of policy development. As with many school issues, the exercise of discretion by principals and school officials must be informed, not just by the wishes of individual students to exercise their civil rights but by the need to protect the safety of students and an awareness of the political ramifications of their decisions in the broader school community. “Doing the right thing” may not be enough. Respecting the individual needs of transgender students will remain a delicate balancing act for school districts.

Nevertheless, best practices may include asking parents to immediately advise the principal and the child’s teacher of the child’s status. Education of the school staff and broader school community about transgender issues may be in order. Lawyers for school boards when informed that a transgender child is entering a school should caution staff about expressing in the classroom any religious objections or personal beliefs about transgender students. Since children have the right to be free from harassment and bullying, school employees should be trained to respond appropriately to help prevent and eliminate such misconduct. In some instances, it may be appropriate to advise all the parents of the school by letter of the presence of a transgender student.

The issue of gender identity and gender expression are rapidly evolving issues. As awareness and advocacy increase, definitions and political perspectives may change. Clearly, some jurisdictions are taking a lead but for the majority of jurisdictions, there continues to be confusion and uncertainty.

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79 See discussion of Clenchy, supra at note 40-43 and accompanying text.
APPENDIX—THE CANADIAN EXPERIENCE

Canadian Laws

In Canada, at the federal level, there is no explicit legal protection for transgender persons although there is both implicit and policy support for such protection. The federal Charter of Rights and Freedoms creates equality before the law by prohibiting discrimination based on sex.\(^{80}\) Similarly, the Canadian Human Rights Act enumerates prohibited grounds of discrimination and includes sex.\(^ {81}\) Neither includes gender identity or expression. A bill that would have amended the Canadian Human Rights Act and the Criminal Code passed in the House of Commons in February 2011 but stalled in the Senate.\(^ {82}\) The bill would have added gender identity and gender expression as prohibited grounds of discrimination and increased penal sanctions for crimes committed against an individual’s gender identity or gender expression.\(^ {83}\) A new bill\(^ {84}\) with the same content was reintroduced on September 21, 2011 and currently awaits its first vote in the House of Commons.\(^ {85}\)

In Canada, since school boards are a provincial responsibility, it currently falls to the human rights legislation of every province to deal with gender discrimination as it would impact school districts. Similar to the American experience, only a small percentage of provinces and/or territories have taken initiatives related to gender identity or expression. In 1998 the Quebec Human Rights Commission decided that transsexuality is included in the prohibition of “sex” discrimination in a case where an employee was terminated for undertaking a sex change.\(^ {86}\) In British Columbia, a human rights tribunal similarly found that gender identity discrimination was prohibited under the enumerated proscription of sex discrimination. In this case, a transgender woman who identified as lesbian was denied the services of the lesbian support group because she had been raised as a boy.\(^ {87}\)


\(^{81}\) Canada Human Rights Act, R.S.C. 1985, c. H-6, s. 3(1).


\(^{83}\) Bill C-389, An Act to amend the Canadian Human Rights Act and the Criminal Code (gender identity and gender expression), 3d Sess, 40th Parl., 2010-2011 (as passed by the House of Commons Feb. 9, 2011).


In Ontario, the Human Rights Code specifically lists enumerated grounds of prohibited discrimination,\(^{88}\) including both sex and sexual orientation, but not gender identity. In March 2000, the Ontario Human Rights Commission (OHRC), which is authorized to interpret the Code,\(^{89}\) issued a “Policy on Discrimination and Harassment Because of Gender Identity.” This policy extends the protection of the code to individuals who are denied equal treatment because of gender identity.\(^{90}\) In 2006, the Ontario Human Rights Tribunal applied the policy and determined that transsexuality was included in sex in a case where a pre-operative transsexual woman was subjected to repeated strip searches by police.\(^{91}\)

Only the Northwest Territories has included gender identity as a prohibited ground of discrimination in its human rights legislation.\(^{92}\) In December 2011, a complaint was filed alleging that a trans woman was asked to leave a college classroom because Canada’s Governor General was touring the facility and would allegedly “be spooked” by her presence.\(^{93}\)

**Bullying and Harassment**

In Ontario, there are currently two anti-bullying initiatives proposed in the legislature that would extend anti-bullying protection to gender identity specifically.\(^{94}\) The Preamble to the government’s proposed bill states “the people of Ontario and the Legislative Assembly ...believe that students need to be equipped with the knowledge skills attitudes and values to engage the world and others critically, which means developing a critical consciousness that allows them to take action on making their schools and communities more equitable and inclusive for all people, including LGBTTIQ (lesbian, gay, bisexual, transgender, transsexual, two spirited, intersexed queer and questioning) people.

One of the proposed changes in Ontario is greater consequences for students who have engaged in bullying. A student may now also be expelled for bullying another student where there has been a record of bullying. The current legislation lists bullying as an enumerated ground for suspension only and not expulsion. In addition, there are additional requirements to train staff and students regarding bullying and

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\(^{88}\) Human Rights Code, R.S.O. 1990, c. H.19, s. 1.

\(^{89}\) Id. at s. 30.


\(^{91}\) *Forrester, supra* note 38.

\(^{92}\) Human Rights Act, S.N.W.T. 2002, c. 18, s. 5.


\(^{94}\) Bill 13, An Act to amend the Education Act with respect to bullying and other matters, 1st Sess, 40th Leg, Ontario, 2011 
& Bill 14, An Act to designate Bullying Awareness and Prevention Week in Schools and to provide for bullying prevention curricula, policies and administrative accountability in schools, 1st Sess., 40th Leg., Ontario, 2011.
harassment. Furthermore, one of the most controversial legislative initiatives is to mandate the creation by students of gay-straight alliances (GSAs).  

In British Columbia, a student who did not identify as homosexual suffered repeated homophobic harassment at school that was both physical and verbal. In 2005 the student brought a complaint before the British Columbia Human Rights Tribunal on the basis of sexual orientation discrimination. The Tribunal found that 1) the students did discriminate against the other student on the ground of sexual orientation, and 2) the school board was liable for the discriminatory conduct of the students and had failed to provide an educational environment free from discriminatory harassment.

Curriculum

In 2010, when the Ontario government attempted to revamp the sex education curriculum, Catholic and other religious communities reacted strongly. The proposed changes called for third graders (eight year old students) to learn about homosexuality and gender identity. The proposal was abandoned after harsh criticism from several interest groups.

School boards may also face litigation from parents when attempting to inject LGBT content into the curriculum. In 2010 a group of lesbian, bisexual and transgender parents filed an application with the British Columbia Human Rights Tribunal to enforce an agreement to expand the social justice curriculum to include sexual orientation and gender identity. In this case, the complainants had previously entered into an agreement with the Abbotsford School District to add LGBT topics to school curricula. The parties had agreed that the school board would create an elective course that would include discussion of sexual orientation and gender identity. While the course was under review by the school board and the Ministry of Education, one school in the district offered the course. Although several students signed up for the course, it was ultimately withdrawn. The complainants argued that the course had been withdrawn due to objections by other parents in the district and therefore this amounted to discrimination. The respondent school district argued that it had done so because the course was still under review. The respondent moved for summary judgment but was unsuccessful, and the case is proceeding.

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95 Id.

96 School District No. 44 (North Vancouver) v. Jubran, 2005 BCCA 201.


99 Id., at paras. 8 – 24.

100 Id., at para. 7.
**Name Change**

In Ontario, the Ministry of Education has promulgated the *Ontario Student Record (OSR) Guideline* which permits a principal to revise the student’s school record to reflect the name of “repute”. Under this provision transgender youth can have report cards and transcripts reflect their chosen name. However there is no specific provision for changing the gender designation of the student. It is assumed that such a change would require a revised birth certificate. In Ontario, the student record guidelines do not apply to former students. As in the United States however, failure to make a requested change may constitute discrimination.

In Ontario, it is not a requirement to have undergone any medical procedures in order to request a name change. Similarly, changing the gender designation on a driver’s license does not require sex reassignment surgery. To change the sex designation of an individual, he or she must supply a letter from a licensed physician which states that the physician has examined or treated the individual and that in the opinion of the physician that the change in sex designation on the driver’s license is appropriate. In contrast, to change the gender designation on a birth certificate, a medical letter from a licensed physician is necessary to verify that sex reassignment surgery has resulted in the sex of the applicant having changed.

101 *Id.*


August 24, 2010

Parents of Minor Student o/b/o Minor Student (formerly of Orono)

v.

Regional School Unit #26 a/k/a Riverside Regional School Unit, individually and as a successor to the Orono School Department and School Union 87
Orono School Department
School Union 87
Kelly Clenchy, individually and in his official capacity as the Superintendent of School Union 87 and RSU 26 (Glenburn)

I. COMPLAINANT’S CHARGE:

Complainants, Parents of Minor Student, alleged that Respondents, Regional School Unit #26 a/k/a Riverside Regional School Unit (hereafter “RSU 26”), individually and as successor to the Orono School Department and School Union 87; Orono School Department; School Union 87 (“SU 87”); and Kelly Clenchy, individually and in his official capacity as the Superintendent of School Union 87 and RSU 26 (hereafter collectively referred to as “Respondents”),1 unlawfully discriminated against their child, Minor Student, because of her transgender status when she was subjected to a continuing hostile environment while she was a fifth-grade student at the Asa Adams Elementary School (2007-2008 school year) and a sixth-grade student at the Orono Middle School (2008-2009 school year) and denied access to common bathrooms at the Orono Middle School that were consistent with her gender identity.2

II. RESPONDENTS’ ANSWER:

Respondents deny the allegations of unlawful discrimination.

1 There is a dispute among the parties concerning who is the properly named respondents. Respondents assert that the Orono School Department is the only proper respondent. As a result of statutory statewide school reorganization, RSU 26 came into partial existence in May 2009 and full existence on July 1, 2009, at which latter time it assumed full control of the Asa Adams Elementary School and the Orono Middle School. Previously, the Orono School Department operated the Asa Adams Elementary School and the Orono Middle School. Complainants allege that RSU 26 is liable both as a successor to the Orono School Department and SU 87, as well as individually for its own actions during the period of its preliminary existence (May 2009 through June 16, 2009). Complainants allege that School Union 87 is liable because the Orono School Department delegated decisionmaking authority to SU 87 or that SU 87 acted as the Orono School Department’s agent. Mother of Minor Student Clenchy was the Superintendent of both SU 87 and RSU 26. This preliminary investigation has focused on the issue of whether unlawful discrimination occurred, and Complainants’ allegations concerning the properly named respondents are being credited.

2 The Commission has already investigated the related complaint, PAED-08-0239, in which it found (on June 29, 2009) reasonable grounds to believe that Minor Student was denied access to common bathrooms that are consistent with her gender identity while she was a student at the Asa Adams Elementary School in Orono.
III. JURISDICTIONAL DATA:

1) Date(s) of alleged discrimination: October 2007 and continuing through July 31, 2009.


3) Respondent, RSU 26 was formed pursuant to Maine's school consolidation laws, 20-A M.R.S. § 1451, et seq to include the school departments of the towns of Orono, Veazie and Glenburn. From May 2009 until July 1, 2009, RSU 26 existed on an interim basis. RSU 26 assumed full operational control of the Asa Adams Elementary School and the Orono Middle School on July 1, 2009. Prior to that time, School Union 87 provided joint administrative services to the school administrative units in the towns of Orono and Veazie, including the Orono School Department. Kelly Clenchy was the superintendent of School Union 87 and RSU 26. The Orono School Department was a school administrative unit that operated the Asa Adams School in Orono prior to RSU 26 assuming control. All are subject to the "public accommodations" provisions of the Maine Human Rights Act.

4) Respondents are represented by Melissa Hewey, Esq. Complainant is represented by Jodi Nofsinger, Esq.

5) Investigative methods used: A thorough review of the written materials provided by the parties.

IV. DEVELOPMENT OF FACTS:

1) The parties and issues in this case are as follows:

   a) The Complainants, Parents of Minor Student, have filed on behalf of their child, Minor Student, a male-to-female transgender student. Minor Student was a fifth-grade student at the Asa Adams Elementary School during the 2007-2008 school year and a sixth-grade student at the Orono Middle School during the 2008-2009 school year. Minor Student moved to a different school system for the start of her seventh-grade, 2009-2010 school year.

   b) Important third parties: Asa Special Ed Teacher, MD; Minor Student's Teacher, SK; School Resource Officer/Orono Police, AW; Asa student, JM; Step-grandfather, PM; Assistant Attorney General, TH; Expert, PR; Maine Gender Resource and Support Service Director, JV; Asa Guidance Counselor, LE; Guidance Counselor 2, CM; Special Ed Teacher; 504 Case Manager, CS; Special Ed Director, SB; Interested Dad 2, MW; Interested Dad 3, ACL; Principal, SO; Middle School Principal, BL; Guidance Counselor, MM; Physical Education Teacher, CK; Middle School Athletic Director, MA.

   c) Minor Student alleges that she was subjected to a hostile educational environment on the basis of her gender identity while she was a fifth-grade student at the Asa Adams Elementary School (2007-2008 school year) and a sixth-grade student the Orono Middle School (2008-2009 school year), and that she was denied continued use of the girls' bathroom, shared female facilities, while a student at the Orono Middle School.
d) Respondents deny that any unlawful discrimination occurred.

2) Complainants assert that they have been struggling with Respondents over the treatment of their daughter, Minor Student, since October 2007. This Amended complaint before the Maine Human Rights Commission details continuing difficulties that Complainants family has faced in their dealings with Respondents:

a. “Prior to the 2007 to 2008 school year, the Orono School Department had worked well with us to establish a strong and supportive environment for our children at the Asa Adams Elementary School. This state of harmony was shattered when the school department made decisions to discriminate against Minor Student in response to the harassing behavior of another student. The school department chose to deny Minor Student access to the girls’ bathroom at the school and took very little action against the boy who had harassed her at the beginning of the 2007 school year.”

b. “When the school department failed to make appropriate accommodations for Minor Student, we filed the underlying complaint. In the meantime, Minor Student was scheduled to move from the Asa Adams Elementary School to the Orono Middle School for the following academic year. In spite of the dispute with the Orono School Department, we chose to be proactive and to attempt to work closely with middle school officials, faculty and staff to ensure that Minor Student’s experience at the middle school would be a positive one. We had good cause to be concerned for Minor Student’s safety and well-being at the middle school. Our concerns were not limited to Minor Student’s use of gendered facilities while at school and at school functions. There had also been further incidents of harassment at Asa Adams Elementary School and there were continuing episodes of harassment at the Orono Middle School.”

3) Complainants discuss examples of incidents in which their daughter, Minor Student, was harassed based upon her transgender status:

a. “The Commission is well aware of the incident in September and October 2007 regarding harassment by student ‘JM.’ In December of 2007, we raised the question of whether this male student could be moved to a different class, so as to avoid contact with Minor Student. Principal indicated that Superintendent did not feel that there was enough reason to move the male student, JM, so, Principal was attempting to meet with the grandparents of JM, to see if they would voluntarily move him. Two days later, Principal reported that JM would be moved to another class. Finally, Principal reported to us that there were complications in moving JM. Even in the face of JM’s clear animosity towards Minor Student, Superintendent could not force the separation of JM and Minor Student.”

b. “On March 8, 2008, JM was observed to be watching Minor Student at the National Guard base on a school-related function. On March 10, 2008, JM again harassed Minor Student in a bathroom setting. Apparently, JM had also assaulted another student, and the school suspended him for that assault.”

c. “On May 1, 2008, Minor Student was harassed by students at the middle school library. Communications surrounding this incident were reported to school officials, and Guidance
Counselor 2, in discussions with us about the incident, indicated that we should be fearful about Minor Student’s graduation to the middle school. Middle School Principal responded to our concerns about the library incident by stating, “it was really after hours and not my jurisdiction.” We were told that School Resource Officer did not feel that the event warranted his talking to the children involved.”

d. “There were also instances where field trips involved Minor Student being required to use gender-neutral bathrooms at off-site locations. This occurred when she was on the field trip in March to the National Guard base, and occurred again on June 7, 2008, on a field trip to the Maine State Museum. Unfortunately for Minor Student, the gender-neutral bathroom was in an area of the museum that was closed to the public.”

4) Complainants allege the following, which prevented them from keeping Minor Student in the Orono School Department:

a. “On or about February 8, 2008, as part of the Orono School Department curriculum, Minor Student attended “Starbase” – an off-campus experience. Due to safety concerns, one of us had to attend Starbase every day. While we were there, we observed the same student who had followed Minor Student into the girls’ bathroom standing in the hallway by the Starbase bathrooms watching which bathroom Minor Student used. This confirmed our fears that this boy was stalking Minor Student. We were also very upset that the Starbase staff was informed by the school of Minor Student’s transgender status. We informed the school that this was not school property and any discussion regarding bathrooms should not have occurred without permission.”

b. “During 2008, the same student who had harassed Minor Student, in October of 2007 and in February of 2008, harassed her again as Minor Student attempted to use the bathroom. When we asked, we were told that he was suspended for physically assaulting another child. Since 2007, we had continued to express our concerns that this student was a threat and that he was stalking Minor Student.” During this time, her anxiety level was very high and she exhibited concerning behavior.”

c. “On April 14, 2008, I, Mother of Minor Student, requested that the Orono School Department create a “Diversity Club” which allows students to come together for a shared sense of community and mutual support. I volunteered to take the responsibilities associated with the formation and supervision of the “Diversity Club.” The Orono School Department never created the club.”

d. “On May 5, 2008, we again sought to meet with the Superintendent to discuss what we believe was a climate of intolerance and prejudice. We did not receive a response to our request and no significant action was taken to change the climate.”

e. “On June 11, 2008, we attended a 504 meeting. The meeting was stressful, at best, with little progress. We asked about personal safety, safety in the bathroom, is fag an illegal term, is it bullying or harassment and field trips. The school had no concrete plans for resolutions.”

f. “On July 8, 2008, I, Father of Minor Student, and two other interested Dads presented a request to the Orono School Committee for a formal review, revision and assessment of the
Orono School System Anti-bullying and Anti-harassment programs. Title 20-A MRSA 1010(15)(H) requires school boards, with input from educators, administrators, parents, students and community members to adopt a student code of conduct that must ‘Establish policies and procedures to address bullying, harassment and sexual harassment.’ The presentation and the 58 signatures from parents and concerned community members indicated that parents and community members were very concerned that they did not have input regarding these policies and procedures.”

g. “While the school was receptive to discussions on an Anti-bullying Policy and a committee formed, no significant or specific action was taken to implement policies and procedures that changed the school environment for Minor Student or any other students. The Orono School Department refused to adopt any policies concerning transgendered youth.”

h. “In order to provide some measure of safety for Minor Student, the Orono School Department provided an ‘eyes on’ policy for Minor Student. The policy was designed to ensure that someone was always watching Minor Student to protect her from attack. We objected to the policy as a long-term measure because it failed to deal with the root causes of our fear: the intolerance for and prejudice against transgendered youth.”

i. “In September of 2008, Minor Student began her 6th grade year at the Orono Middle School. Minor Student was advised that she could not use the bathroom with which she gender identified and must instead use a segregated bathroom. She experienced significant stress and anxiety; she suffered and her counselors and teachers expressed concern. There was still no change in policy.”

j. “As the year progressed, the school took no action to curb the bullying/harassment climate at school as it related to transgender youth and advised us that discontinuing ‘eyes on’ was unwavilable because they feared Minor Student would not be safe.”

k. “In October of 2008, the student who had stalked Minor Student into the bathroom in October of 2007 began following her around Orono Middle School’s Family Fun night. We reported the incident to the school, but were never notified if any action was taken.”

l. “On October 14, 2008, Minor Student was attending an Orono School system sponsored Young Americans program. This is an excellent program designed to promote high self-esteem through acting, music and dance. It was a special occasion for all of the children. Minor Student was again harassed by middle school and high school girls who told her that she could not use the girls’ bathroom. We requested a formal inquiry into the situation.”

m. “On December 15, 2008, Minor Student was scheduled to go on a field trip to Owl’s Head. I, Mother of Minor Student, inquired as to whether Minor Student would be allowed to use the girl’s bathroom if I went on the trip as a chaperone. I was advised that ‘school policy’ prohibited Minor Student from using the girls’ bathroom. Minor Student did not attend the event.”

n. “On March 6, 2009, I again advised that I would help in structuring a ‘Diversity Club.’ The ‘Diversity Club’ was never created. I was informed that Superintendent would not allow the
club to be called a GLBT group. I never requested any specific name; I simply asked for a ‘Diversity Club.’

q. “On March 11, 2009, a student walking behind Minor Student on the way to lunch said, ‘hi lesbian.’ No effort was made to contact us to let us know that Minor Student might be upset, nor was any effort made to help Minor Student feel better.”

r. “In March of 2009, during a meeting of the Orono Middle School Drama Club, another student ridiculed Minor Student about her gender and sexuality.”

s. “On April 3, 2009, Minor Student was walking down the hall with her friends and when they turned to go to the bathroom and in front of her friends, an administrator gestured to Minor Student that it was not acceptable. She was very upset and humiliated.”

t. “On April 7, 2009, Father of Minor Student received an e-mail from Minor Student’s counselor expressing concern about her high level of depression.”

u. “On April 17, 2009, Father of Minor Student chaired the first Grant-Writing Committee meeting of the Orono School System. The Committee was designed to help raise funding for bullying and harassment programs and other school needs.”

v. “On May 5, 2009, a child approached Minor Student in gym class and said, ‘I didn’t know that girls could grow a mustache.”

w. “On May 5, 2009, we were notified that during an Outing Club’s whitewater rafting trip, Minor Student would not be allowed to stay in a tent with her female friends, with whom she gender identified, even though their parents approved and would not be allowed to use the girls’ bathroom. This was the biggest school-sponsored trip of the year. Minor Student’s twin brother was scheduled to attend. We could not punish him for the school’s behavior, we were in a lose/lose situation. Minor Student was very upset and noticeably shaken when Father of Minor Student and her brother left for the trip.”

x. “On or about May 5, 2009, the Riverside Regional School Unit (RSU #26) was created to assume administrative responsibilities for the School Departments in Orono, Veazie and Glenburn.”

w. “After the Riverside Regional School Unit (RSU #26) was duly constituted and took over all administrative responsibilities for the Orono School System, it continued to prohibit Minor Student from utilizing the girls’ bathroom at the Orono Schools.”

x. “The school informed Mother of Minor Student that the Riverside School Unit (RSU #26) would continue to implement the Orono School Department’s policy of not allowing Minor Student to use the girls’ bathroom on any Orono School property or at any off-campus school function.”

5) Complainants family made preparations for Minor Student’s move into the sixth grade.
APPENDIX A

Investigator's Report  PAED... 0239-A

a. “We again sought an accommodation from the Superintendent and the Orono School Department to allow Minor Student to use the bathroom with which she gender identifies, namely, the girls’ bathroom. That request was refused and, instead, a separate bathroom was constructed for Minor Student’s use, across from the Superintendent’s office because the school advised Complainants that the school could not guarantee Minor Student’s safety. As expected, that statement caused Complainants’ family great concerns about the upcoming school year. In choosing to disallow Minor Student to use the girls’ bathroom facilities, the school was implicitly isolating and alienating her from the other students. We determined that we needed to modify our actions to do the best we could to ensure our childrens’ safety. For that reason, our children avoided riding the school bus. We attended every school function or local event related to the school. I, Mother of Minor Student, was also at the school at the end of each school day to be sure to protect our children.”

b. “We believed that the Orono School Department had failed to comply with state mandates concerning anti-bullying policies. We also felt that the Orono School Department had not apprised itself of issues around transgendered youth. For that reason, Father of Minor Student sought to work with the school to draft anti-bullying policies. Mother of Minor Student pressured the school system to keep Minor Student safe and to form a Diversity Club to work with students on tolerance of differences. The school’s solution to handling these issues for the sixth-grade year consisted essentially of assigning staff to keep an eye on Minor Student and providing her with a gender-neutral bathroom.”

c. “Although steps were taken to educate the faculty and staff regarding diversity issues, little to nothing was done about the student body. It appeared that the school chose to take an ad hoc approach to protecting Minor Student, in the sense that they would wait until something happened and then decide how to deal with it. On May 5, 2008, I, Mother of Minor Student, sent an e-mail to various school officials, detailing our concerns about the school’s lack of a proactive approach. Over the course of the summer, the school decided on the discriminatory bathroom plan and the “eyes on” policy for Minor Student. Contrary to the school’s assertion, we were not in agreement with these decisions and were not given a choice in the matter. Following the June 11, 2008 504 meeting, I, Mother of Minor Student, voiced my concerns with the proposed plan and requested an additional school meeting be scheduled to resolve any outstanding issues. The school did not schedule an additional meeting.”

d. “Minor Student was subjected to harassment in the sixth grade. At the beginning of the school year, Minor Student learned that her locker was in such a location that she was required to walk by JM every day. This caused her significant anxiety, which was reported to Guidance Counselor 2. In October, 2008, at the Orono Middle School’s Family Fun Night, JM chased Minor Student down a long back hallway at the Orono/Old Town YMCA. Minor Student was alone at the time. Fortunately, I, Mother of Minor Student, witnessed this event and intervened. Although the school’s position is that JM was not stalking Minor Student, they were basing that upon the observations of their own staff and discounted my report. As a result, the school did not intervene and deal with the threat of JM’s conduct towards Minor Student.”

e. “As we alleged in our complaint, on October 14, 2008, Minor Student was harassed by middle school and high school girls who told her that she could not use the girls’ bathroom.
The school seems to report this incident as the girls merely telling Minor Student that she was not allowed to use the girls' bathroom. The striking thing about this incident is it is unclear why these girls would know what Minor Student’s bathroom status was. The decision that was imposed by the school that Minor Student could not use the girls’ bathroom was not public information. The school chose to take no action with regard to these students intercepting Minor Student. Apparently, the school was comfortable in relying upon the students to enforce their own discriminatory policy. Whether the school believes that Minor Student was in the wrong for attempting to use the girls’ bathroom is not the issue here. It is not appropriate for the school to allow its students to point out to Minor Student that she is different from them. Allowing the students to police the school’s discriminatory policy was to condone the notion that students have the right to believe that Minor Student should be subject to discrimination.

f. “In December, the class was scheduled to go on a field trip to Owl’s Head. According to the school’s response to the complaint, a faculty member went to the location of the field trip to ascertain whether there was a unisex bathroom that Minor Student could use. The school was again enforcing its discriminatory policy even on off-site locations.”

g. “On March 10, 2009, a female student yelled toward Minor Student, ‘hey, lesbian.’ Although the school maintains that the remark was not aimed at Minor Student, Minor Student believed that it was directed at her and, in any event, it was an entirely inappropriate comment to be directed at another student.”

h. “As the school year came to an end, the class was scheduled to go on an overnight whitewater rafting trip. Leading up to that event, we tried to work out arrangements so that Minor Student could sleep in the same tent as her female friends. Suggestions were made that there could be a female chaperone in the tent, that the approval of the other girls’ parents could be sought, and, as Father of Minor Student pointed out, all of the girls in question had slept over at Complainants’ house in the past. The school ultimately determined that they would not permit Minor Student to sleep in a tent with other girls. Because she could not sleep in a tent with other boys, this effectively eliminated the option for attending the event, unless she were to sleep in a tent with her father, essentially being forced to isolate herself from the rest of the students.”

i. “Again, on May 5, 2009, JM walked up to Minor Student at the school and said, ‘I didn’t know that girls had mustaches.’ The school chose to handle that event by merely giving JM a detention. Principal informed us that the school’s response to that would be to keep a closer eye on Minor Student rather than to do anything further with regard to JM’s behavior.”

j. “As of May 2009, we had despaired of the school properly protecting Minor Student by dealing directly with the student body. The approach of merely keeping an eye on her and responding after the fact in an anemic way to student misconduct was clearly only going to set Minor Student up for an ongoing series of confrontations with other students. Based upon that, we realized that Minor Student would not be able to be emotionally healthy and academically productive in the Orono school system. For that reason only, we engaged in the huge expense of relocating myself, Mother of Minor Student, and the two children to [another school system] in June / July, 2009 to attend a different school system. It was a
decision that evolved over the late spring and early summer, 2009. Minor Student began school [the other system] in September.

k. “The Orono School Department, through its actions of segregating Minor Student from the rest of the student body, has promoted an environment where other students are implicitly allowed to discriminate against and harass Minor Student. In addition to the implied approval of such discrimination, the school system has repeatedly failed to take appropriate steps to educate the student body, to develop an effective anti-bullying policy, to allow the formation of a diversity club and to take appropriate action when students harassed or confronted Minor Student.”

6) Respondents offer the following regarding the allegations:

a) “The Orono School Department is the proper respondent in this case, as it was in the first. It is the entity which operated the schools in which minor complainant was enrolled and it is the entity that was responsible for providing her with an education. RSU #26 did not assume Complainants’ claims as a liability and its school board was not involved in making any decisions regarding the minor complainant as she was already enrolled in another school District by the time RSU #26 came into existence. In short, RSU #26 knows nothing about the events alleged in this complaint. In order to provide the Commission with full information as to the background facts of this matter, this response is therefore provided on behalf of the Orono School Department, not RSU #26.”

b) “In this, their second complaint against the Orono School Department, in addition to reasserting the allegations contained in their prior complaint, Complainants family includes new allegations concerning Minor Student’s experience at the Orono Middle School. In particular, Complainants allege that personnel at the Orono Middle School did not prepare adequately for Minor Student’s entrance into Middle School, that they did not accommodate her while she was there and that she was subject to unlawful harassment on the basis of her gender identity while she was at the Orono Middle School. In fact, as detailed here, the administration and staff at the Orono Middle School went to great lengths to ensure that Minor Student’s middle school experience was a positive one and while Minor Student was at the Orono Middle School, her parents often acknowledged the efforts of these dedicated educators.”

7) Orono School Department discusses the preparation which preceded Minor Student’s entering middle school:

a. “Because Minor Student was a student at the Asa Adams Elementary School for grades 1 – 5, and her transgender status was known to the Orono School Department, preparations for her arrival in the middle school began well before she entered school in the fall of 2008. Those preparations included: a) staff training; b) student education; c) meeting with Minor Student’s parents; and d) facilities preparation.”

b. Staff training: Contrary to the allegations in the complaint, training on transgender issues began at the Orono Middle School during the 2007-2008 school year in preparation for Minor Student’s arrival in 6th grade for the 2008-2009 school year and continued throughout the 2008 – 2009 school year. Staff training included the following: February 6, 2008 –
presentation to entire Middle School staff on transgender issue by the Director of the Maine Gender Resource and Support Service. April 16, 2008 – meeting of entire 6th grade staff with Expert and Asa Adams Counselor. December 10, 2008 – Middle School faculty meeting presentation regarding Caring, Safe and Responsive School Information by Minor Student’s Advisor and study of book, Keep Cliques and Bullies from Invading your School. January 14, 2009 – Middle School faculty meeting presentation regarding Caring, Safe and Responsive School Information by Minor Student’s Advisor and continued book study. March 11, 2009 – Middle School faculty meeting presentation on ‘Safe Zones’ by Expert.

c. In addition to training involving the full middle school staff, certain people at the Middle School attended conferences off-site and brought what they learned back to the staff. Those included: October 1-2, 2007 – Guidance Counselor 2 and two other Orono Middle School staff members attended a conference at Colby College entitled Creating Fair, Safe and Responsive Schools Training. March 18, 2008 – Guidance Counselor 2 attended a class at the University of Maine on transgender issues presented by Colby College professor Jenny Boylan and read Professor Boylan’s book, She’s not There. March 30 – April 1, 2008 – Guidance Counselor 2 attended a MECA conference on transgendered issues. October 27, 2008, Minor Student’s Advisor and Physical Education teacher, attended a conference co-sponsored by the Maine Principal’s Association for the Center for Prevention of Hate Violence entitled ‘Guiding Principles: Creating Safe Schools for Gay, Lesbian, Bisexual and Transgender Students.’ April 28, 2009, Guidance Counselor 2 attended a conference presented by the Maine Department of Education entitled Bullying: Defining and Intervening.”

8) Orono School Department describes the student education done in preparation for Minor Student’s arrival:

a. “In the spring of 2008, Guidance Counselor 2 met with every 6th and 7th grade class (students who would be in 7th and 8th grades when Minor Student joined the school as a 6th grader) and taught them a unit on accepting differences (including not only sexual orientation and gender identity, but also other protected classes such as race, gender, nationality and disability). Guidance Counselor 2 repeated this unit for all incoming 6th graders in the fall of 2008.”

9) Meetings with Complainants took place on an almost daily basis:

a. “During the course of Minor Student’s attendance at schools in the Orono system, staff and administration met informally with Mr. and/or Mother of Minor Student on an almost daily basis and corresponded frequently by e-mail. Formal ‘504 Meetings’ took place in preparation for Minor Student’s transition to Middle School on December 7, 2007 and June 11, 2008.”

b. “Copies of the minutes of the ‘504 meeting’ which took place on December 7, 2007 were mailed to Complainants on January 22, 2008. They did not object to these minutes. Both Complainants were present at this meeting, as were two of Minor Student’s teachers from elementary school, a teacher at the Middle School, Minor Student’s Advisor, the Asa School Guidance Counselor, the Middle School Athletic Director and two consultant experts on transgender issues. At that meeting, among other things, the Athletic Director specifically
asked what accommodations would need to be made for Minor Student to be able to participate in athletics in middle school. The team reached consensus on the following determination: a) Minor Student will have the use of a single-use bathroom in the middle school and high school; b) Staff training will take place with middle school and high school personnel regarding topic: ‘Understanding and Respecting Transgendered People’ and the broader issue of how we tolerate differences that might result in ‘bullying of any child who is different; c) Team agreed next step would be to set up functional considerations with smaller group that would help define the 504 accommodations.”

c. “June 11, 2008, 205 Meeting at which the 504 accommodations were agreed to by the team. The following was agreed upon: a) If a student brings questions to staff regarding Minor Student, staff are asked to direct students to take their questions to Guidance Counselor 2; b) The team agreed that the gender-neutral bathrooms would be designated for Minor Student’s use and also for changing for sports and for off school-ground activities; c) Each team coach will be responsible for the after-school supervision. Middle School Principal and the coach will be responsible to make arrangements for the bathroom accommodations for away games; d) In lieu of a locker in the gym, a second locker will be provided in another location; e) Safety People at the Middle School are Minor Student’s Advisor and Guidance Counselor 2. Minor Student’s Advisor will encourage Minor Student to keep a daily log or journal of on-going communication. It will be stressed to Minor Student that nothing is too small to talk about. Special Ed Teacher; 504 Case Manager may also be a point person for parents to share Minor Student’s worries and Special Ed Teacher; 504 Case Manager can share the school’s concerns to parents; f) A designated staff member who is aware of the accommodations and provides a safety net for Minor Student will be designated on field trips. Guidance Counselor 2 or her designee will be designated on field trips. The general supervisory staff are appropriate for away sports games; g) No accommodations were made to the arrival point for the start of the school day.”

10) Orono School Department describes the facilities preparations which were made for Minor Student’s arrival:

a. “A room in the 6th grade wing of the school which had previously been a restroom was refurbished into a gender-neutral restroom. A locker was installed in the outer portion of the room. This room was not labeled in any way to make use of it as unobtrusive as possible.”

11) Respondents assert that, from the school’s perspective, Minor Student’s 6th-grade year was successful:

a. “From the School’s perspective, Minor Student’s 6th-grade year at the middle school was a successful one. For the most part, she appeared to be happy and involved in the school community. Although she did not choose to participate in any extracurricular athletic activities, she did participate in other extracurricular activities and was particularly involved in the drama club. She appeared to connect well with Guidance Counselor 2 and Special Ed Teacher; 504 Case Manager and was a strong advocate for herself.”

b. “During Minor Student’s entire 6th-grade year, the School is aware of only two incidents involving comments made by other students related to Minor Student’s gender identity.
One occurred on October 14, 2008 at an event at the High School on a weekend, when, contrary to the agreed-upon procedure, Minor Student entered the girls’ restroom and was reminded by three other students that she should not be in that restroom. The second incident occurred on May 5, 2008, in the gym, when a male student made a comment to Minor Student about her gender identity. Both incidents were dealt with swiftly and effectively by the School and none of the students involved repeated the conduct.

V. ANALYSIS:

1) The Maine Human Rights Act provides that the Commission or its delegated investigator “shall conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred.” 5 M.R.S.A. § 4612(1)(B). The Commission interprets the “reasonable grounds” standard to mean that there is at least an even chance of Complainant prevailing in a civil action.

2) Here, Complainants, Parents of Minor Student o/b/o Minor Student, alleged that Respondents unlawfully discriminated against their child, Minor Student, because of her transgender status when she was subjected to a continuing hostile environment while she was a fifth-grade student at the Asa Adams Elementary School (2007-2008 school year) and a sixth-grade student at the Orono Middle School (2008-2009 school year) and denied access to common bathrooms at the Orono Middle School that were consistent with her gender identity.

3) Respondents denied the allegations of unlawful discrimination.

4) The Maine Human Rights Act defines unlawful educational discrimination, in part, as “on the basis of sexual orientation, to . . . [e]xclude a person from participation in, deny a person the benefits of or subject a person to discrimination in any academic, extracurricular, research, occupational training or other program or activity.” 5 M.R.S.A. § 4602(4)(A).

5) It is unlawful public accommodations discrimination under the Act:

For any public accommodation or any person who is the owner, lessor, lessee, proprietor, operator, manager, superintendent, agent or employee of any place of public accommodation to directly or indirectly refuse, discriminate against or in any manner withhold from or deny the full and equal enjoyment to any person, on account of . . . sexual orientation, . . . any of the accommodations, advantages, facilities, goods, services or privileges of public accommodation, or in any manner discriminate against any person in the price, terms or conditions upon which access to accommodation, advantages, facilities, goods, services and privileges may depend. 5 M.R.S.A. § 4592(1).

6) The Act defines “discriminate” to include, “without limitation, segregate or separate.” 5 M.R.S.A. § 4553(2).

7) The term “sexual orientation” means “a person’s actual or perceived heterosexuality, bisexuality, homosexuality or gender identity or expression.” 5 M.R.S.A. § 4553(9-C).
8) The Maine Human Rights Commission employment regulations (used here for guidance) define the term “gender identity,” in part, as “an individual’s an individual’s gender-related identity, whether or not that identity is different from that traditionally associated with that individual’s assigned sex at birth, including, but not limited to, a gender identity that is transgender.” Me. Hum. Rights Comm’n Reg. § 3.02(C) (2) (September 15, 2007).

BATHROOM ACCESS

9) With respect to Minor Student’s bathroom use at the Orono Middle School, as was found in PAED-08-0239 relating to the Asa Adams School, Respondents here have unlawfully discriminated against Minor Student in education and public accommodations by denying her the equal enjoyment of school facilities on account of and on the basis of her gender identity. Minor Student’s gender identity is female. She not only identifies herself as a girl, but she dresses as a girl and behaves as a girl. With the exception of Minor Student, the students at the Asa Adams school are allowed to use common bathrooms that are consistent with their gender identities. Yet Respondents have not allowed Minor Student to use the common bathroom that is consistent with her gender identity. The consequence of Respondents’ refusal was to ostracize a vulnerable child from her peers, amplifying her feelings of being “different.”

10) Respondents assert that they did not deny Complainant access to the girls’ bathroom “because of” her gender identity. Rather, Respondents state that Complainant was treated the same as all students, meaning all biological boys must use the boys’ bathroom, and all biological girls must use the girls’ bathroom. In essence, Respondents argue that they did not deny Minor Student the use of the girls’ bathroom because she is transgender; they denied her access because she is a biological boy.

11) The Maine Human Rights Act, however, protects more than just actions that are motivated by a person’s protected-class status—it protects consequences as well. Cf. Maine Human Rights Comm’n v. United Paperworkers Int’l Union, 383 A.2d at 375 (employment case). The Act defines “discriminate” to include, “without limitation, segregate or separate.” 5 M.R.S.A. § 4553(2) (emphasis added). See also 5 M.R.S.A. § 4592(1) (prohibiting discrimination “directly or indirectly”). The focus is on whether in fact the disputed practice results in unlawful discrimination, not whether respondent intends to discriminate. Maine Human Rights Comm’n v. United Paperworkers Int’l Union, 383 A.2d at 375. Here, the result of Respondents’ refusal to allow Minor Student to use the girls’ bathroom was that she was segregated from her peers and denied the same privilege that other students had to use a bathroom that is consistent with her gender identity.

12) Moreover, Respondents had an obligation to provide Complainant with a reasonable accommodation that would enable her equal access and enjoyment of its facilities. Although the Act does not explicitly require the provision of a reasonable accommodation for one’s gender identity, it is appropriate to interpret the Act to require one if a student would otherwise be subjected to unequal treatment. The Law Court has previously upheld the Commission’s authority to interpret the Act to require employers to accommodate the religious beliefs of employees despite the absence of such an explicit requirement in the Act itself. See United Paperworkers, 383 A.2d at 378 (“One of the purposes of [the Commission’s regulation] is to breathe flexibility into an otherwise airtight prohibition against religious
discrimination, by providing that a reasonable accommodation need not be made if it would amount to undue hardship. We find nothing unreasonable in such an interpretation.

13) The fact that the Commission has not adopted a regulation in this context does not prevent the Commission or a court from interpreting the Act to require schools or public accommodations to provide “reasonable accommodations.” A valid regulation is simply a permissible interpretation of a statute that attains the force of law. Even in the absence of controlling regulations, several courts have interpreted state human rights laws that are silent on the issue to require the provision of a reasonable accommodation in other contexts. See Curry v. Allan S. Goodman, Inc., 944 A.2d 925, 939 (Conn. 2008) (employment and disability); Moody-Herrera v. State, Dept. of Natural Resources, 967 P.2d 79, 87 (Alaska 1998) (employment and disability); Yeager v. Ohio Civ. Rights Comm., 773 N.E.2d 1097, 1101 (Ohio App. 11 Dist. 2002).(public accommodations and religion).

14) The Commission has adopted regulations that require reasonable accommodation of gender identity in employment, which offer appropriate guidance on the applicable standards here. The Commission’s employment regulation provides, in part, as follows:

It is an unlawful employment practice for an employer, employment agency, or labor organization to fail or refuse to make reasonable accommodations in rules, policies, practices, or services that apply directly or indirectly to gender identity or gender expression, unless the covered entity can demonstrate that the accommodations would impose an undue hardship on the conduct of the business of the covered entity.

[T]he burden of proof on the issue of whether the accommodations would impose an undue hardship is on the employer, employment agency, or labor organization. Resolution of such cases depends on the specific factual circumstances and involves balancing of the needs of the applicant, employee, or labor organization member with the degree of hardship imposed on the covered entity’s business operation.

Me. Human Rights Comm’n Reg. § 3.12(F)(1,3).

15) Minor Student has a female gender identity, and as such, should be allowed to use the bathroom which is consistent with her gender identity. Although Minor Student was born biologically male, she considers herself fully transitioned to female and consistently presents herself as such. Gender identity includes having an identity that is different from your assigned sex at birth. Unfortunately, Respondents reacted to outside pressure, and in so doing, violated Minor Student’s rights.

16) The Commission has already determined, in PAED-08-0239, that Respondents unlawfully denied Minor Student access to bathrooms that were consistent with her gender identity while she was a student at the Asa Adams Elementary School. Respondents also denied Minor Student access to bathrooms that were consistent with her gender identity while she was a student at the Orono Middle School.

HOSTILE ENVIRONMENT
21) “Hostile environment claims involve repeated or intense harassment sufficiently severe or pervasive to create an abusive [educational] environment.” *Doyle v. Dep’t of Human Servs.*, 2003 ME 61, ¶ 23, 824 A.2d 48, 57 (employment case); *L.W. ex rel. L.G.*, 915 A.2d at 547. In determining whether an actionable hostile environment claim exists, it is necessary to view “all the circumstances, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an [individual’s enjoyment of an educational environment].” *Doyle*, 2003 ME 61, ¶ 23 (citations omitted). It is not necessary that the inappropriate conduct occur more than once so long as it is severe enough to cause the environment to become hostile or abusive. *See id.; Nadeau v. Rainbow Rugs*, 675 A.2d 973, 976 (Me. 1996) (employment). “The standard requires an objectively hostile or abusive environment—one that a reasonable person would find hostile or abusive—as well as the victim’s subjective perception that the environment is abusive.” *Nadeau*, 675 A.2d at 976. In the school context, the alleged harassment must be such that “a reasonable student of the same age, maturity level, and protected characteristic would consider sufficiently severe or pervasive enough to create an intimidating, hostile, or offensive school environment.” *L.W. ex rel. L.G.*, 915 A.2d 535 at 547.

22) To establish liability on the part of a school for a hostile environment, *Complainants* must demonstrate that *Respondents* knew or should have known of the harassment and failed to implement prompt and appropriate action. *See Crowley v. L.L. Bean, Inc.*, 303 F.3d 387, 401 (1st Cir. 2002) (Title VII); *L.W. ex rel. L.G.*, 915 A.2d at 550 (applying negligence standard to New Jersey Law Against Discrimination applicable to schools notwithstanding “deliberate indifference” standard under federal Title IX in *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274 (1998)).

23) Here, incidents narrated by Complainants describe the family’s struggle which motivated them to file an amendment to their original complaint with the Commission. Apart from the issue involving the gender-neutral bathroom, Complainants allege the following, which prevented them from keeping Minor Student in the Orono School System:

a. Minor Student was allegedly watched at an after-hours school function and harassed in a bathroom setting by the very same student who had initially followed her into the bathroom.

b. In the spring of 2008, she was harassed at the Middle School Library in a situation which the School Resource Officer didn’t feel warranted his intervention.

c. Field trips were particularly stressful for Minor Student because she was segregated from others and required to use gender-neutral bathrooms. In one instance, the gender-neutral bathroom was in an area which was closed off to the public.

d. Minor Student’s parents felt compelled to attend off-campus programs, such as ‘Starbase’ to ensure Minor Student’s safety. They allegedly saw her being watched by the same student who had previously followed her into the girls’ bathroom. The incident substantiated their fears that this boy was stalking Minor Student. In addition to this boy watching Minor Student, her parents were distressed when they learned that the ‘Starbase’ staff had been informed about Minor Student’s transgender status.
APPENDIX A

...continued to be harassed by the student who initially followed her into the girls’ bathroom. Her anxiety level was very high during this time, coupled with behavior which concerned her parents.

g. Minor Student’s mother requested that the Orono School Department create a Diversity Club to nurture students and create a sense of community. The club was never created.

h. During a very stressful 504 meeting, in the spring of 2008, at which little progress was made, personal safety, safety in the bathroom and general harassment concerns were met with no plan for resolution, according to Minor Student’s parents.

i. Minor Student’s Dad and two other concerned dads met with the Orono School Committee for a formal review, revision and assessment of the Anti-bullying and Anti-harassment programs required by statute. According to Minor Student’s Dad, Orono School Department refused to adopt any policies concerning transgendered youth.

j. To bolster Minor Student’s safety, Orono School Department provided an ‘eyes on’ policy for her. Her parents objected to the policy as a long-term measure because it failed to deal with the root causes: intolerance and prejudice.

k. When she began 6th grade and was told that she could only use a segregated bathroom, Minor Student was distressed and exhibited significant stress and anxiety, but there was no change in policy.

l. During her 6th grade year, the school took no action to curb the bullying / harassment, from Minor Student’s parents point of view. The male student who had initially followed her into the girls’ bathroom, allegedly began to follow her around Orono Middle School, according to her parents.

m. Minor Student was told by Middle and High School girls that she couldn’t use the girls’ bathroom during a Young American program.

n. Minor Student was prohibited from using the girls’ bathroom on a field trip to Owl’s Head.

o. Minor Student’s mother continued to express interest in developing a ‘Diversity Club’ and was informed that the Superintendent would not allow the club to be called a GLBT group, although she never requested any specific name.

p. Minor Student was ridiculed about her gender and sexuality during an Orono Middle School Drama Club meeting.
q. A student approached her in gym class and said that he didn’t know that girls could grow a mustache.

r. She was unable to attend a whitewater rafting trip because she couldn’t stay in a tent with her friends.

s. Minor Student was isolated and alienated from her classmates when a separate bathroom was constructed, across from the Superintendent’s office, for her use.

t. Minor Student’s parents complain that, although steps were taken to educate the faculty and staff regarding diversity issues, little to nothing was done about the student body.

24) Respondents have asserted that because Minor Student was a student at the Asa Adams Elementary School for grades 1 – 5, and her transgender status was known to the Orono School Department, preparations for her arrival in the middle school began well before she entered school in the fall of 2008. Those preparations included: a) staff training; b) student education; c) meeting with Minor Student’s parents; and d) facilities preparation.”

25) Respondent put forth a great deal of effort to train and educate faculty, to facilitate greater understanding of Minor Student’s challenges and anxieties in the Orono school setting. Indeed, Complainants expressed their appreciation in this regard. The hostile school environment of which Minor Student’s family complains has, at its root, the confusion and fear that the other students struggled with in understanding the concept of a transgender schoolmate. These students are pubescent youth trying to understand their own sexuality, often ill at ease about the changes which they themselves are experiencing. Education and training in this area are in dire need, both for students and parents. As an example, the overnight in the tent may have been fine for most of the parents, yet a school is often directed by a minority in these matters. The bathroom issue has been addressed in the original complaint. Respondent asserts that during Minor Student’s entire 6th-grade year, the School is aware of only two incidents involving comments made by other students related to Minor Student’s gender identity. One occurred on October 14, 2008 at an event at the High School on a weekend, when Minor Student entered the girls’ restroom and was reminded by three other students that she should not be in that restroom. The second incident occurred on May 5, 2008, in the gym, when a male student made a comment to Minor Student about her gender identity. Both incidents were dealt with swiftly and effectively by the School and none of the students involved repeated the conduct.

26) Hostile educational environment discrimination is not found.

VI. RECOMMENDATION:

For the reasons stated above, it is recommended that the Maine Human Rights Commission issue the following finding:

1) There are Reasonable Grounds to believe Respondents, RSU 26, individually and as successor to the Orono School Department and School Union 87; Orono School Department; School
Union 87; and Kelly Clenchy, individually an in his official capacity as the Superintendent of School Union 87 and RSU 26, unlawfully discriminated against Complainants in education and access to a place of public accommodations because of Minor Student's sexual orientation when she was denied access to the common bathrooms while a student at the Orono Middle School that were consistent with her gender identity.

2) Conciliation should be attempted in accordance with 5 M.R.S.A. § 4612(3).

3) There are **No Reasonable Grounds** to believe that Respondents subjected Complainants to a hostile educational environment on the basis of sexual orientation.

4) That aspect of the case should be dismissed in accordance with 5 M.R.S.A. § 4612 (2).

Patricia E. Ryan, Executive Director

Michele Dion, Investigator
TDSB Guidelines for the Accommodation of Transgender and Gender Non-Conforming Students and Staff

An Administrative Guideline of the Toronto District School Board Human Rights Policy P031
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   • Trans-positive Medical Care in Toronto

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1. INTRODUCTION
All school boards exist within a broader context of law and public policy that protects and defends human rights.

The Ontario Human Rights Code (the Code) provides for equal rights and opportunities, and freedom from discrimination. The Code recognizes the dignity and worth of every person in Ontario, in employment, housing, facilities and services, contracts, and membership in unions, trade or professional associations.

People who are discriminated against or harassed because of gender identity are legally protected under the ground of sex. This includes transsexual, transgender and intersex persons, cross-dressers, and other people whose gender identity or expression is, or is seen to be, different from their birth-identified sex. (www.ohrc.on.ca/en/issues/gender_identity)

At the Toronto District School Board, a number of policy statements have been developed that both reinforce federal and provincial legislation, and help ensure that the freedoms they name are protected within the school system. The TDSB –through its Equity Foundation Statement, Commitments to Equity Policy Implementation documents (CEPI), the Human Rights Policy and Procedures, Gender-Based Violence Policy, and Safe and Caring Schools Policy—makes clear both its commitment to upholding the dignity and worth of all persons, and the high value it places on protecting all members of its community from discrimination and harassment.

Related Policy Documents:

Policy P029 - Employment Equity
Policy P031 - Human Rights
Policy P034 - Workplace Harassment
Policy P037 - Equity Foundation
Policy P051 - Safe Schools
Policy P065 - Bullying Prevention and Intervention
Policy P071 - Gender-based Violence
Policy P072 - Workplace Violence Prevention
2. PURPOSES AND APPLICATION OF THE GUIDELINES

These guidelines set out the TDSB’s best practices related to accommodation based on gender identity and gender expression. They have been designed to raise awareness and help protect against discrimination and harassment. It is intended that this document will support members of the wider TDSB community fulfill our shared obligation to promote the dignity and equality of those whose gender identity and or gender expression does not conform to traditional social norms.

It is expected that the guidelines will be adhered to in general; however, it is also recognized that specific accommodations sought are to be fulfilled on case-by-case basis and individualized to best meet the needs of a student or employee who is making an accommodation request.

Accommodation Based on Request. The Toronto District School Board will take reasonable steps to provide accommodation to staff or students who state that the Board’s operations or requirements interfere with their right to free gender expression and or gender identity. The Board will balance its decision to accommodate on several factors, such as undue hardship, including: the cost of the accommodation to the Board; health and safety risks to the person requesting accommodation and to others; and the effect of accommodation on the Board’s ability to fulfill its duties under Board policies and the Education Act.

Unresolved Requests. Despite the Board’s commitment to accommodate, an individual may feel that discrimination has occurred. The Board will, through its Human Rights Policy and Procedures, take reasonable steps to address the unresolved issues raised by the affected person.

3. DEFINITIONS

The definitions provided below are not meant to label an individual but are intended as sometimes helpful functional descriptors. These words, like all words, are social constructs developed over time. (New language is constantly formed to unite community members as well as divide groups by experience, politics, and other group memberships.)

These terms and definitions are NOT standardized and may be used differently by different people, and in different regions. Labels and identities should only be self-selected by individuals, not assumed by others. Biology does not imply identity. Nor do behaviour and expression alone constitute identity.
**Biological Sex:** generally refers to the sex assigned at birth based on external genitalia but also includes internal reproductive structures, chromosomes, hormone levels, and secondary sex characteristics such as breasts, facial and body hair, and fat distribution.

**Cisgendered:** having a gender-identity that is congruent with one's biological sex (e.g. both biological sex and gender-identity are female)

**Gender Identity:** is linked to an individual’s intrinsic sense of self and their sense of being female, male, a combination of both, or neither regardless of their biological sex.

**Gender Expression:** refers to the way an individual expresses their gender identity (e.g. in the way they dress, the length and style of their hair, the way they act or speak, the volume of their voice, and in their choice of whether or not to wear make-up.)

**Gender Non-Conforming:** refers to individuals who do not follow other people’s ideas or stereotypes about how they should look or act based on the female or male sex they were assigned at birth (also called Gender Variance and/or Gender Independence). For example, this includes “feminine boys,” “masculine girls,” and individuals who are androgynous. Another example might be a male who comes to school in clothing that some might perceive as “girls’ clothing,” or the girl who plays games on the playground that might be perceived as “boys’ games.”

**Intersex:** a person who has male and female genetic and/or physical sex characteristics.

**Transgender:** refers to individuals whose gender identity is different from their biological sex at birth, and/or whose gender expression is different from the way males or females are stereotypically expected to look or behave.

**Transition:** the process (which for some people may also be referred to as the “gender reassignment process”) whereby people change their appearance and bodies to match their internal (gender) identity, while living their lives full-time in their preferred gender role.

**Transsexual:** a term for a person who undergoes a medical gender reassignment process to change their birth-assigned sex.

**Two-spirit:** an English term coined to reflect specific cultural words used by First Nation and other indigenous peoples for those in their cultures who are gay or lesbian, are transgendered or transsexual, or have multiple gender identities.
4. GUIDELINES FOR STUDENTS
If you are a transgender or gender non-conforming individual, you have the right to be who you are openly. This includes expressing your gender identity without fear of unwanted consequences. You have the right to be treated with dignity and respect.

**Individual Procedures.** Board and school staff must consider each student’s needs and concerns separately. Each transgender and gender non-conforming student is unique with different needs. An accommodation that works for one student cannot simply be assumed to work for another.

**Privacy.** All students have a right to privacy; schools must keep a student’s transgender/gender non-conforming status confidential. Therefore, school staff should not disclose a student’s transgender/gender non-conforming status to others unless there is a specific “need to know” (e.g., to fulfill a specific accommodation request).

Some transgender and gender non-conforming students are not openly so at home because of safety and or other reasons. A school should never disclose a student’s gender non-conformity or transgender status to the student’s parent(s)/guardian(s)/caregiver(s) without the student’s explicit prior consent.

When school staff contact the home of a transgender or gender non-conforming student, the student should be consulted first to determine an appropriate way to reference the student’s gender identity. It is strongly suggested that staff privately ask transgender or gender non-conforming students at the beginning of the school year how they want to be addressed in correspondence to the home or at meetings with the student’s parent(s)/guardian(s)/caregiver(s).

**Official Records.** The school will change a student’s official records to reflect a change in legal name or gender upon receipt of documentation that such legal name or gender has been changed pursuant to a court order.
**Names/Pronouns.** Transgender and gender non-conforming students have the right to be addressed by a name and pronoun corresponding to their gender identity. This is true regardless of whether the student has obtained a court ordered name or gender change. For example, under the Ontario Trillium school identification system, a student’s “preferred or chosen name” and a change of gender can be used on class lists, timetables, etc.

Intentionally addressing a student by the incorrect name or pronoun is a form of discrimination. This directive does not prohibit inadvertent slips or honest mistakes, but it does apply to the intentional and persistent refusal to acknowledge or use a student’s gender identity.

Students who wish to use pronouns other than the masculine or the feminine (such as ‘zhe’ and ‘hir’) need to be accommodated equally.

**NOTE:** Students and employees who wish to use gender-neutral and gender inclusive language in TDSB schools and workplaces should be supported to do so. For example, some people do not feel included in the generic binary of “he or she”. Students and staff may wish to write in such a way as to avoid it. An increasingly common and accepted strategy is to use “they” as a gender-neutral singular pronoun, as this document often does. (For a useful legally-oriented source on this, please see [www.editorscanberra.org/a-singular-use-of-they/](http://www.editorscanberra.org/a-singular-use-of-they/))

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**Standardized Forms and Documentation**

Board staff will send an annual advisory to all schools to ensure standardized forms are appropriately amended to reflect these guidelines. The advisory will reinforce the expectation that schools use gender-neutral language and offer gender-inclusive choices. (E.g., “Select the gender identity that best fits you: Female, Male, Trans.”)

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**Washroom Access.** All students have a right to safe restroom facilities and the right to use a washroom that corresponds to the student’s gender identity, regardless of the student’s sex assigned at birth. Requiring students to ‘prove’ their gender (by requiring a doctor’s letter, identity documents, etc.) is not acceptable. A student’s self-identification is the sole measure of the student’s gender.
Where possible, schools will also provide an easily accessible all-gender single stall washroom for use by any student who desires increased privacy, regardless of the underlying reason. However, use of an all-gender single stall washroom should always be a matter of choice for a student. No student should be compelled to use one due to continuing harassment in a gender-appropriate facility. If possible, more than one all-gender washroom is encouraged.

**Dress Codes.** Schools’ dress codes must be flexible and gender-neutral. Students should not have to choose between ‘male’ and ‘female’ clothing. Some students are most comfortable in and most themselves in clothing that is not clearly male-identified or female-identified, but rather a combination of the two.

**Sports Activities, Gym Classes, and Change Rooms.** School staff must ensure students can exercise their right to participate in gender-segregated sports and physical education (P.E.) class activities in accordance with each student’s gender identity.

Students have the right to a safe change-room that corresponds to their gender identity. Transgender or gender non-conforming students have the right to an accommodation that best meets the individual student’s particular needs. Such accommodations can include: (A) use of a private area within the public area (a bathroom stall with a door; an area separated by a curtain; a P.E. instructor’s office in the change-room); (B) a separate changing schedule in the private area (either utilizing the change room before or after the other students); (C) use of a nearby private area (a nearby washroom; a nurse’s office); (D) access to the change room corresponding to the student’s assigned sex at birth, or (E) satisfaction of the P.E. requirement by independent study outside of gym class.

It is not an acceptable accommodation to deny a student the opportunity for physical education either by *not allowing* the student to have P.E., or by *forcing* the student to choose independent study. *Requiring* a transgender or gender non-conforming student to use the change room corresponding to the student’s sex assigned at birth is likewise prohibited.
**Curriculum Integration and Access to Accurate Information.**

School board and school staff shall challenge gender stereotypes and integrate trans-positive content into the teaching of all subject areas. Too often, the existence of transgender people is erased or only included in a highly stigmatized way in classrooms, as well as in the media and popular culture. The lack of any positive acknowledgment of transgender issues or transgender history makes it difficult for transgender, gender nonconforming, or questioning young people to feel that they have a place in the world. Unless it is corrected, the omission of transgender and gender non-conforming people from the curriculum creates a misconception among many students that transgender people do not exist or are an object of scorn.

School board and school–based curriculum leaders must integrate trans-awareness and trans-positive advocacy training into staff professional development curricula. Librarians must acquire trans-positive fiction and non-fiction books for school libraries and encourage the circulation of books that teach about gender non-conforming people.

**Professional Learning, Advocacy Support, and Role Models.**

School board leaders must ensure staff are educated in anti-transphobia education, in challenging gender stereotypes, and in using gender neutral and inclusive language. School and board-based leaders should designate a staff person within the school, or school district, who can act in an extended advocacy role for trans students (e.g., the Positive Space representative).

Often, transgender and gender non-conforming students feel like they are alone in the world. There are very few transgender role models in schools. School leaders should make an effort to hire and retain transgender and gender non-conforming staff.

**Student Engagement and Student Leadership.** Schools should support the development of a trans-inclusive GSA (Gay-Straight Alliance).

School board and school staff should encourage and support scholarships and awards that recognize the unique strength and resilience that transgender and gender non-conforming youth possess. They should support actions, activities and campaigns that are trans-positive and create awareness about transphobia, gender stereotypes, and gender-based violence.
**Gender Segregation in Other Areas.** As a general rule, in any other circumstances where students are separated by gender in school activities (e.g., class discussions, field trips), students shall be permitted to participate in accordance with their gender identity.

Activities that may involve the need for housing accommodations in order to address student privacy concerns will be addressed on a case-by-case basis. In such circumstances, staff shall make every reasonable effort to provide an accommodation that is acceptable to the student. If transgender or gender non-conforming students object to standard gender-separated housing accommodations or shared accommodations for reasons of privacy or safety, private accommodations should be made available at no additional cost to the student.
5. GUIDELINES FOR EMPLOYEES

If you are a transgender or gender non-conforming individual, you have the right to be who you are openly. This includes expressing your gender identity without fear of unwanted consequences. You have the right to be treated with dignity and respect.

**Gender Expression.** All employees have the right to dress consistently with their gender expression. For transitioning employees, the decision as to when and how to begin the real-life experience remains the individual’s choice.

**Washroom Access.** Employees have the right to use a washroom that corresponds to their gender identity, regardless of their sex assigned at birth. Requiring employees to ‘prove’ their gender (by requiring a doctor’s letter, identity documents, etc.) is not acceptable. The employee’s self-identification is the sole measure of their gender.

Where possible, schools will also provide an easily accessible all-gender single stall washroom for use by any employee who desires increased privacy, regardless of the underlying reason. However, use of an all-gender single stall washroom should always be a matter of choice for an employee. No individual should be compelled to use one due to continuing harassment in a gender appropriate facility. If possible, the provision of more than one all-gender washroom is encouraged.

**Notification of Transition.** An individual employee beginning the transition process should contact their immediate supervisor and the Human Rights Office, and be prepared to speak about their intentions, needs, and concerns. Individual employees should make these contacts well before a planned transition date.

If the initial contact is made with Human Rights Office, it is important at some point that the individual’s immediate supervisor join their support team. Transitioning individuals should be prepared to help inform and educate their manager and others in order to clarify their needs for accommodation.

Internal and external resources to assist transitioning individuals in this educational effort are listed at the end of this document.
**Statement of Confidentiality.** The transgender status of an employee is considered confidential and should only be disclosed on a need-to-know basis, and only with the consent of the employee. However, transitioning employees are encouraged to participate in the necessary education of their coworkers at whatever level they are comfortable.

In addition, current and prospective transgender and gender non-conforming employees who encounter problems concerning identification documentation, such as payroll and insurance forms, are encouraged to raise those concerns with the Human Rights Office directly.

**Special Advice for Management & Employee Services.** If an employee informs a manager of their intention to transition, or if an employee is currently in the transitioning process, the manager’s support is critical.

If you are the transitioning employee’s manager, recognize that your actions will decisively impact the outcome of the transition.

It may be frightening to a employee to be vulnerable to a person upon whom their job depends. Allow the transgender or gender non-conforming employee to educate you, or seek information from the resources listed at the end of this document. Show that you are open-minded and discuss with the employee their needs and concerns.

The Human Rights Office will provide advice and assistance for supervisors working with a transitioning employee.

Managers and supervisors should be careful of voicing personal opinions regarding an employee’s appearance. If an employee dresses or behaves in a manner inappropriate for the workplace, this issue should be dealt with in the same manner it would with any other employee. Contact the Human Rights Office if you have any questions or concerns.

**Further Advice for Managers Regarding the Initial Conversation with a Transitioning Employee.** Begin by reassuring the employee that you will be as supportive as possible. Assure the employee that they are covered by the TDSB Human Rights Policy and the Ontario Human Rights Code, both of which recognize the individual’s inherent dignity and worth, provide for equal rights and opportunities without
discrimination, and aim to create a climate of understanding and mutual respect.

Make it clear to the employee that your conversation will be held in confidence and inform the employee that you want to discuss how you and the Human Rights Office can assist them during their transition. Ask the employee for their suggestions on what you can do to help.

Confirm who will be the organization’s main point of contact (manager or Human Rights Office) to manage the transition. Schedule a meeting with the employee to discuss and agree upon an action plan to assist the employee in their transition.

Ask the employee if they wish to inform their manager, co-workers, (and students) themselves, or prefer that this to be done for them. Then determine the best timing for that process.

Ask the employee if they expect to change their name. If yes, ask what name and pronoun the employee will use and when the employee will want you to begin referring to them using the new name and/or pronoun.

Discuss the expected timeline and anticipated time off required for any potential medical treatment, if known. Explain that normal sick pay and leave policies will apply.

**Accommodation-based Requests For Transfer.** An employee may feel more comfortable working in a different position during and or after their transition. Managers should be prepared to discuss whether the employee prefers to remain in their current position or be redeployed.

*In such instances, employees are encouraged to contact the Human Rights Office in order to facilitate discussions with Elementary, Secondary or Support Staff Employee Services Office, and if required with the appropriate bargaining unit.*

**Addressing Concerns of Co-workers and Community.** A lack of knowledge about transgender issues has the potential for creating misunderstanding and tension in the workplace. Managers should remind all employees that they are expected to conduct themselves in accordance with TDSB Human Rights Policies and Procedures.
In addition to the initial workgroup meeting at which the employee’s manager announces the transition (see Appendix B), managers should arrange trainings or briefing sessions for employees on transgender issues; this will help promote a positive work environment for all employees.

Trainings or briefing sessions should be completed prior to the employee’s transition. This provides important information to co-workers, managers, and clients on what to expect when the individual begins his or her transition. Establishing some level of comfort as to what the transition is and why it is happening is important for preventing future misunderstandings or issues.

Employees who raise concerns about a transgender co-worker should be referred to the Ontario Human Rights Code, the TDSB Human Rights policies and procedures, and the TDSB’s harassment policy and other related policies. They should be informed that they must work co-operatively and respectfully with their co-workers regardless of their gender identity, and that failure to do so could result in corrective action, including termination of their employment.

**Pronoun and Name Changes.** Employee records and work-related documents should be retained under the individual’s legal name (as reflected on identification documents verified at the start of employment) unless and until the individual makes a legal change. Where a person’s legal name does not match their new name, the new name should be used on all documentation, such as e-mail, phone directory, company identification card or access badge, name plate, class lists etc., except where records must match the legal name, such as insurance documents.

In everyday written and oral speech, the new name and pronouns should be used when the employee indicates he or she (or possibly another gender pronoun variant, see below) is ready.

Intentionally addressing an employee by an incorrect name or pronoun is a form of discrimination. This directive does not prohibit inadvertent slips or honest mistakes, but it does apply to the intentional and persistent refusal to respect an individual’s gender identity.

Employees who wish to use pronouns other than the masculine or the feminine (such as ‘zhe’ and ‘hir’) need to be accommodated equally.
NOTE: Students and employees who wish to use gender-neutral and gender inclusive language in TDSB schools and workplaces should be supported to do so. For example, some people do not feel included in the generic binary of “he or she”. Students and staff may wish to write in such a way as to avoid it. An increasingly common and accepted strategy is to use “they” as a gender-neutral singular pronoun, as this document often does. (For a useful legally-oriented source on this, please see www.editorscanberra.org/a-singular-use-of-they/ )

**Surgeries.** The process of transitioning may include one or more surgeries. In addition to genital surgery, surgeries can include facial feminization or other feminizing procedures for those transitioning from male to female, or chest reconstruction or other surgeries for those transitioning from female to male. Recognize that a transitioning employee may or may not have these surgeries for any number of personal reasons and, furthermore, that surgery in and of itself is not the goal or purpose of a gender transition.

Medical information, including surgery plans communicated by an employee, must be treated confidentially.
APPENDIX A:
Human Rights in Ontario – Gender Identity

Excerpt from The Ontario Human Rights Commission’s Policy on
Discrimination and Harassment Because of Gender Identity

Ontario’s Human Rights Code
The Ontario Human Rights Code (the Code) provides for equal rights and opportunities, and freedom from discrimination. The Code recognizes the dignity and worth of every person in Ontario, in employment, housing, facilities and services, contracts, and membership in unions, trade or professional associations.

People who are discriminated against or harassed because of gender identity are legally protected under the ground of sex. This includes transsexual, transgender and intersex persons, cross-dressers, and other people whose gender identity or expression is, or is seen to be, different from their birth-identified sex.

Discrimination and harassment
Discrimination because of gender identity is any action based on a person’s sex or gender, intentional or not, that imposes burdens on a person or group and not on others, or that withholds or limits access to benefits available to other members of society. This can be obvious or subtle. Discrimination can also happen on a bigger, systemic level, such as when a rule or policy may appear to be neutral, but is not designed in an inclusive way. This may harm the rights of people because of their gender identity.

Harassment is a form of discrimination. It includes comments, jokes, name-calling, or behaviour or display of pictures that insult or demean you because of your gender identity.

No person should be treated differently while at work, at school, trying to rent an apartment, eating a meal in a restaurant, or at any other time, because of their gender identity.

Example: A transgender person answers an ad for an apartment. The superintendent says there are no units available, even through there are.
Example: An employee tells his manager that he cross-dresses. His manager says he will no longer qualify for promotions or job training, because customers and co-workers will not be comfortable with him.

Example: A transgender woman is not allowed to use the women’s washroom at her place of work. Her manager defends this by explaining that other staff have expressed discomfort. This workplace needs a policy that clearly states that a transgender employee has the right to use this washroom, while providing education to resolve staff concerns and to prevent future harassment and discrimination.

Organizations cannot discriminate, must deal with harassment complaints, and must provide a non-discriminatory environment for transgender people. This also applies to “third parties,” such as people doing contract work or who regularly come into contact with the organization. Individuals should be recognized as the gender they live in, and be given access to washrooms and change facilities on this basis, unless they specifically ask for other accommodation (such as for safety or privacy reasons).

The duty to accommodate
Under the Code, employers, unions, landlords and service providers have a legal duty to accommodate people because of their gender identity. The goal of accommodation is to allow people to equally benefit from and take part in services, housing or the workplace. Accommodation is a shared responsibility. Everyone involved, including the person asking for accommodation, should cooperate in the process, share information, and jointly explore accommodation solutions.

Example: A transgender man raises safety concerns due to threats in the men’s locker room at his gym. The gym manager takes steps against the harassers, and explores possible solutions with the client, such as privacy partitions for all shower and change stalls in the men’s locker room, or a single-occupancy shower and change room. They provide him with access to the staff facilities until a final solution is found.

Example: A transgender woman is strip-searched by male police, even though she has asked to have female officers do this type of search. The police service says that a male officer must be involved in the search because the person has not had sex reassignment surgery. The Human Rights Tribunal of Ontario has ordered that a trans person who is going
to be strip-searched must be given three options: the use of male officers only; the use of female officers only; or a search involving both male and female officers.

**Keeping information private**
An employer or service provider must have a valid reason for collecting and using personal information, such as from a driver’s licence or birth certificate, that either directly or indirectly lists a person’s sex as different from his or her lived gender identity. They must also ensure the maximum degree of privacy and confidentiality. This applies in all cases, including employment records and files, insurance company records, medical information, etc.

**For more information**
The Ontario Human Rights Commission’s [Policy on Discrimination and Harassment Because of Gender Identity](http://www.ohrc.on.ca) and other publications are available at www.ohrc.on.ca.

To make a human rights complaint – called an application – contact the Human Rights Tribunal of Ontario at:
Toll Free: 1-866-598-0322 begin
TTY Toll Free: 1-866-607-1240
Website: [www.hrto.ca](http://www.hrto.ca)

To talk about your rights or if you need legal help, contact the Human Rights Legal Support Centre at:
Toll Free: 1-866-625-5179
TTY Toll Free: 1-866-612-8627
Website: [www.hrlsc.on.ca](http://www.hrlsc.on.ca)
APPENDIX B: Job-Related Planning for a Gender Transition

These are the recommended steps in an on-the-job transition for a transgender employee. It may be appropriate to adapt this generic process to fit an individual person’s needs.

Advance Preparation

1. The transgender employee meets with Human Rights Office. The employee shares their transgender status and intent to transition.

2. The same Human Rights Office person and the employee meet with the employee’s immediate manager to share the individual’s intent to transition.

3. The appropriate set of stakeholders should be identified to plan the transition. This will include the employee, their manager and the Human Rights Office representative. If necessary, involve others such as the Gender-Based Violence Prevention Office.
   • Consider which people in the company you may need to have engaged at some point during the transition and when they need to be engaged.
   • Consider any specific issues that need to be addressed sooner rather than later.

4. Plan the transition. Include ways to address or resolve the issues listed here:
   a. The date of the transition, i.e., the first day of the change of gender expression, pronoun usage, and name. Recognize that the date of the transition will be driven primarily by the employee’s situation and concerns.
   b. How employee’s clients or students will be informed of the change. Before the general announcement, the employee may choose to talk to some of their co-workers to disclose plans on a one-on-one basis.
   c. The need to book an educational workshop. “Transgender 101” with the Gender-Based Violence Prevention Office is provided to all staff.
   d. What changes will be made to records and systems, and when.
   e. How current benefits and policies against discrimination and harassment will protect this employee.
   f. That all employees have the right to dress in accordance with their gender expression.
   g. That all employees have the right to use a washroom that corresponds to their gender identity.
h. Any time off that may be required for medical treatment, if known.

5. Make advance arrangements for name changes to be effective on the day of transition, so that nameplates, badges, etc., will be available on the first day.

Communication Plan and Professional Development
1. Hold a workgroup meeting, or include this in an already-scheduled face-to-face meeting. Everyone in the workgroup whom the employee interacts with often should be included. Do not do this by e-mail. A handout is optional in conjunction with the face-to-face meeting. The employee should choose whether to be personally present at this meeting, depending on the employee’s comfort level.

2. The manager of the workgroup (the department head, for example) should make the announcement, in conjunction with the highest level manager in the group, to show support. The manager should:
   a. Make it clear that the transitioning employee is a valued employee and has management’s full support in making the transition.
   b. Explain the Board’s policy and recommendations.
   c. Stress that on the transition day the employee will present him- or herself consistently with their gender identity and should be treated as such; for example, he or she (or possibly another gender pronoun variant, see above) should be called by the new name and new pronouns.
   d. Lead by example. Use the new name and pronouns in all official and unofficial communication.
   e. Make it clear that the transition is “no big deal” and that work will continue as before.
   f. Answer people’s questions.
   g. Announce the timing of a mandatory “Transgender 101” to take place before the transition.

The First Day of Full-Time Workplace Gender Transition
On the first day of transition, the employee’s manager should take these steps, much as they would for a new or transferred employee:
1. Issue a new company identification badge with a new name and photo.

2. Place a new nameplate on door/desk/cubicle/workstation.
3. Update any organization charts, mailing lists and other references to the new name.

4. Issue paperwork for the Employee services employee database, effective the first day of transition, to change the following:
   a. New name.
   b. Change the gender marker (“M” or “F” or “trans”, as requested).
   c. Update the e-mail address if it contains the old name.

5. The manager should plan to be on site with the worker the first day to make introductions, support the worker, ensure respectful and inclusive treatment and make sure that work returns to normal after a few hours.
APPENDIX C:

Ways a school can be made a safer and gender-affirming place for transgender and gender non-conforming youth

If a student talks to you about their gender identity, listen in a respectful and non-judgmental way. Do not brush them off, react with scepticism or disapproval, or pressure them into any particular category. Support them in developing their own understanding of their gender and direct them to resources for transgender, gender non-conforming and questioning youth. Do not “out” a young person or disclose their gender identity to another without permission.

Avoid perpetuating gender stereotypes. Many of us enforce gender norms without even realizing it, but these stereotypes hurt everyone, especially transgender young people, gender non-conforming young people, and young women. Think carefully about the messages in everything you say, do, teach, or communicate about gender. Are you complimenting girls more often on their appearance but boys more often on their athleticism? Do you ever imply there is something wrong with men who behave in stereotypically feminine ways? Do you discipline girls more harshly than you would otherwise if they seem “masculine” or “butch” to you? Does your language ever equate gender (the way people view themselves and express their genders) with genitals (a person’s birth sex and anatomical designation) or otherwise imply that the gender identities of transgender people are not “real”?

Intervene and take action when students use gender-specific terminology to make fun of each other. When students make fun of each other with terms like “sissy,” “pussy,” “faggot,” “dyke,” “homo,” “freak,” “it,” “he-she,” “bitch,” or “gay” and faculty fail to intervene, these words are perceived as acceptable. The use of such language further alienates transgender and gender non-conforming in schools and perpetuates discriminatory stereotypes about gender, gender identity and sexual orientation.

Create gender-neutral and / or mixed gender spaces. Be mindful about the ways in which single-gender teams and/ or groups (like girls-only groups and boys-only groups) can alienate transgender and gender non-conforming students. Proactively create spaces for transgender and gender non-conforming students within these groups and/or create additional spaces for transgender and gender non-conforming students.
Ensure that employment opportunities at your school are open to transgender and gender non-conforming people. ● Recruit at transgender focused events, job fairs, locations, and web sites. Ensure that current and prospective employees are not discriminated against or harassed on the basis of gender identity or any other non-job related characteristic.

Listen to criticism from transgender, gender non-conforming, and questioning students. ● Take such criticism seriously without becoming defensive; such feedback is an important opportunity to learn and grow.
Appendix D:
ANNOTATED RESOURCE LISTS

TDSB Resources

Gender-Based Violence Prevention Office, TDSB
Contact: Kenneth.Jeffers@tdsb.on.ca
http://www.tdsb.on.ca/GBVP

Human Rights Office, Toronto District School Board,
5050 Yonge Street, Toronto, M2N 5N8
Contact: Patricia.Hayes@tdsb.on.ca
Phone: 416-393-1028

Live Support for Trans Youth and their Families in Toronto

PFLAG Toronto chapter:
115 Simpson Ave, Suite 105
Toronto, ON M4K 1A1
Support line: (416) 406-6378
Administrative line: (416) 406-1727
(Tuesday, Wednesday, Thursday only)
Email: toronto@pflag.ca
Web: www.pflagcanada.ca/chapters/Toronto/html/home.htm

Transceptance: a Toronto-based peer support group for parents of transsexual and transgendered children. The group currently meets monthly at the Sherbourne Health Center to provide support, reduce isolation and stress, share information, and among other things aid with disclosure strategies. For more information, email transceptance_group@yahoo.ca or visit www.sherbourne.on.ca/PDFs/Broch- Transceptance-06.pdf.

Annual Events: Sherbourne Health Centre’s Trans Pride Day, usually held the 2nd Thursday in May, and Trans Day of Remembrance, November 20, put on by Trans Programmes at the 519 Church Street Community Centre to “mark various forms of oppression that increase violence and limit protections” for trans community members.

Ontario Rainbow Health Resource Centre: A Sherbourne Health Centre and Rainbow Health Network partnership that will offer information and consultation to the public on issues of sexual and gender minority communities.
On-line Resources for Trans Youth and their Families
(* denotes availability of on-line communication among parents)


• Callender, D.R. (2005). When Matt became Jade: An experience in working with a youth who made a gender transition change in a high school environment. Toronto: Delisle Youth Services. A story and manual that assist in providing a foundation to educators, parents, students, and professionals about how a sensitive transition was successfully managed in a high school setting. Available on line: www.delisleyouth.org/service/wmbjmanuscript


• Families in TRANSition: a Yahoo group for parents, and also grandparents, siblings, family members, friends, supporters and allies of youth and young people who are transgender, transsexual, transitioning or transitioned: http://groups.yahoo.com/group/familiesintransition/

• Live Journal: an on-line community of parents with trans children; offers support and information: http://community.livejournal.com/parents_of_tg/profile*


• PFLAG’s Transgender Network (TNET): provides support, education and advocacy for trans people and their families and loved
The Children’s National Medical Center: offers multiple resources and puts out A Guide for Parents (2003), with a focus on young children, downloadable at www.dcchildrens.com/dcchildrens/about/subclinical/subneuroscience/subgender/guide.aspx

Trans Alliance Society: A BC alliance that provides forums and resources to help with the personal development of transgendered members, promotes knowledge and understanding of trans culture, and works toward removing barriers affecting the transgendered community: www.transalliancesociety.org

TransFamily: American support group for transgendered and transsexual people, their parents, partners, children, other family members, friends, and supportive others. Referrals, literature, over-the-phone information on trans issues, and discussion list-serve for parents: www.transfamily.org


TransProud: OutProud’s website for transgender youth. Headline news, links to other sites for trans youth, resources and information, stories of other transgender teens, message boards, as well as resources for parents of transgender children: www.transproud.com

Reading Material for Families of Trans Youth


• Stephanie. (2006). *The agony of nurturing the spirit: A mother’s recount of raising a transgendered child.* One mother’s story, 10 frequently asked questions, and The Parent Process to Acceptance. Booklets can be ordered online for $2 through PFLAG-Philadelphia. [www.pflagphila.org/orderform3.html](http://www.pflagphila.org/orderform3.html)


• (Just) Evelyn *Mom, I need to be a girl* (online versions available in Arabic, English, French, German, Portuguese and Spanish: [http://ai.eecs.umich.edu/people/conway/TS/Evelyn/Evelyn.html](http://ai.eecs.umich.edu/people/conway/TS/Evelyn/Evelyn.html)

• *The Pride Library:* a unique collection of books, journals, and videos covering key issues affecting families with LGBT kids. Housed at the University of Western Ontario in London, (519) 661-2111, ext. 85828: [www.uwo.ca/pridelib/familypride.html](http://www.uwo.ca/pridelib/familypride.html)

• *The Toronto Women’s Bookstore:* a Toronto bookstore that carries many trans resources, 73 Harbord St., (416) 922-8744 or 1-800-861-8233: [www.womensbookstore.com](http://www.womensbookstore.com)

• *Transgender Issues in Books for Youth, Children and Their Allies* (multi-page listing), compiled by Nancy Silverrod, Librarian, San Francisco Public Library, [nsilverrod@sfpl.org](mailto:nsilverrod@sfpl.org)
Films and Documentaries about Trans Youth or Young Adults and their Families

• **Girl Inside** (2007), a Canadian documentary directed by Maya Gallus that follows Madison, a 26-year-old trans woman, over her three-year transition. Focuses on family relationships. 78 mins.

• **Just Call me Kade** (2002), a documentary directed by Sam Zolten about 14-year-old Kade Farlow Collins, a trans boy living with his understanding family in Tucson, Arizona. 26 mins.

• **Ma Vie en Rose** (1997), directed by Alain Berliner. A fictional story of 7-year-old Ludovic, born a boy, who is convinced she was meant to be a girl. Wide-release.

• **Middle C** (2007), produced by Carma Jolly and Tristan Whiston for CBC Radio One (Outfront). A multiple award-winning two-part radio documentary of Tristan Whiston’s story of female-to-male transition, including family discussion and perspectives.

• **Red Without Blue** (2007), a multiple award winning American documentary directed by Brooke Sebold, Benita Sills and Todd Sills. Shot over 3 years, this is a poignant and compelling story of 20-something Mark and Clair, born identical twins, coming out as a gay man and a trans woman, respectively. Featuring candid interview material with family members, the film examines a family’s transformation over time. 77 minutes. [www.redwithoutblue.com](http://www.redwithoutblue.com)

• **The Day I Decided…to be Nina** (2000), a documentary directed by Ingeborg Jansen from the Netherlands, featuring 11 year old Guido, born male, who, with family support, is now living part-time as the girl she’s always wanted to be. English subtitles, 15 mins.

Supportive External Organizations for Trans Youth in Toronto

• **Central Toronto Youth Services (CTYS):**
  Pride & Prejudice Program (for queer and trans youth aged 25 and under), 65 Wellesley St. East, Suite 300 in Toronto. (416) 924- 2100 x245. Offers free individual and group counselling, [www.ctys.org/programs/prideprejudice.htm](http://www.ctys.org/programs/prideprejudice.htm).

• **Lesbian Gay Bi Trans Youth Line:**
(416) 962-9688 GTA, or Toll Free (Ontario-wide) 1-800-268-9688. TTY services available. A free peer support phone line for lesbian, gay, bisexual, transgender, transsexual, two-spirit, queer and questioning youth. Sunday to Friday, 4:00to 9:30 p.m. www.youthline.ca/.

• **Supporting Our Youth** (SOY) of Sherbourne Health Services: houses many youth groups, all of which welcome trans and 2-spirit youth. Trans_Fusion_Crew (TFC) is a social space dedicated for TG/TS/genderqueer/gender-questioning youth. Every other Thursday 6:00-9:00 p.m., Contact: (416) 324-5078, tfc@sherbourne.on.ca.

• **Trans Youth Toronto!**: one of the many offerings through Trans Programmes at the 519 Church St. Community Center. TYT is a drop-in for transsexual and transgendered youth aged 26 and under. Social space, access resources, information and referrals. Wednesdays 5:00-9:00 p.m. Contact: (416) 392-6878, x331, www.the519.org/programs/trans/tyt.shtml

• **The Triangle Program**: a safe, harassment-free, equity-based environment where Lesbian, Gay, Bisexual and Trans (LGBT) youth can learn and earn academic credits. Contact: (416) 406-6228 x169, http://schools.tdsb.on.ca/triangle

**Reading Material for Trans Youth**

• **Bending the mold: An action kit for transgender youth.** A joint publication by Lambda Legal and the National Youth Advocacy Coalition (NYAC), available online: www.nyacyouth.org/nyac/Bending%20the%20Mold-final.pdf

• **I think I might be transgender, now what do I do?** A 2004 brochure by and for transgender youth by Advocates for Youth. Available online: www.advocatesforyouth.org/youth/health/pamphlets/transgender.pdf

Trans-positive Medical Care in Toronto

• **Hassle Free:** 66 Gerrard St. East, 2nd floor— offers free STI and anonymous HIV testing, and sexual health counselling. TG and TS folks welcome at both the women’s (416) 922-0566 and men’s clinics (416) 922-0603. No one refused services without a health card. Wheelchair accessible. [www.hasslefreeclinic.org](http://www.hasslefreeclinic.org)

• **Health Centre at 410 (St. Michael’s Hospital):** 410 Sherbourne Street, (416)867-3728—has been working well with trans people for years. [www.stmichaelshospital.com](http://www.stmichaelshospital.com)

• **Sherbourne Health Centre:** 333 Sherbourne Street, (416) 324-4180—has worked hard to consult with trans communities, and has several trans people on staff, including receptionists, counsellors, and doctors. Wheelchair accessible. [www.sherbourne.on.ca](http://www.sherbourne.on.ca)

• **The House (Planned Parenthood of Toronto):** 36B Prince Arthur Avenue. (416) 961-0113—offers interdisciplinary health care to youth ages 29 and under. [www.ppt.on.ca](http://www.ppt.on.ca)

• **The SHOUT Clinic:** 467 Jarvis St. (416) 927-8553—a trans-positive medical drop-in, catering to (but not exclusively for) street involved and homeless youth ages 25 and under where you can get services, even if you are undocumented and/or don’t have a health card. Lift to the main floor, barrier-free bathrooms. [www.ctchc.com](http://www.ctchc.com)