



Special Education and Gender Identity



Meet your hosts

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AGENDA

- **Background**
- **General legal protections based on gender identity**
- **Gender Identity and Special Education**
- **Summary and Conclusion**

Why is this topic important?

MMWR TRANSGENDER TEENS NEED SAFE & SUPPORTIVE SCHOOLS

TRANSGENDER STUDENTS IN SCHOOL
ALMOST **2%** OF HIGH SCHOOL STUDENTS IDENTIFY AS **TRANSGENDER**

TRANSGENDER STUDENTS FACE HEALTH RISKS
 27% FEEL UNSAFE AT OR GOING TO OR FROM SCHOOL
 35% ARE BULLIED AT SCHOOL
 35% ATTEMPT SUICIDE

SAFE AND SUPPORTIVE SCHOOLS CAN HELP!

- CREATE AND ENFORCE ANTI-BULLYING POLICIES
- IDENTIFY AND TRAIN SUPPORTIVE SCHOOL STAFF

From 2017 Youth Risk Behavior Survey of U.S. high school students in 10 states and 9 urban school districts (n=131,901 students) as published in Johns, et al. JMMWR 2019 68(4):CC0421.

WWW.CDC.GOV

2019 CDC Study

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- 131,901 students surveyed in 10 states.
- Findings highlight a need for understanding and supporting gender non-conforming students.

Statistics (cont'd)

- More than 66% of transgender students avoid bathrooms at school.
- 71.5% of LGBTQ students avoid school functions.
- 31.8% of LGBTQ students missed school because of feeling unsafe.
- 63.5% of LGBTQ students reporting bullying claimed they received no response from school.

Gender Identity and Special Education

Americans With Disabilities Act

- “Gender identity disorders not resulting from physical impairments” excluded from consideration as disability
- But recent decision in Blatt v. Cabela’s Retail (E.D. Pa. 2017) is noteworthy
 - “Gender identity” can reasonably be interpreted as substantially limiting major life activities
 - Expansive interpretation likely to result in increase in transgender-related ADA claims

Section 504

- Physical or mental impairment that impacts major life activity
- Major life activities include learning
- Gender identity is not disability in and of itself
- But 504 plan might be appropriate if mental health associated with gender identity impacts education

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IDEA

- Increasing requests for eligibility under “emotional disturbance” category
- Often seek funding for day treatment, wilderness programs or residential placement
- Must review mental health status within context of developmental history

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IDEA (cont'd)

- Gender dysphoria is recognized psychological diagnosis
- Discomfort with incongruity between gender assigned at birth and perceived gender or incongruity between desired gender and gender allowed to be expressed
- Range of gender dysphoria and its impact on ability to access education will determine whether student qualifies for special education

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IDEA (cont'd)

- Two due process cases in California
 - Both involve students transitioning from female to male and who are placed in out-of-state RTCs
 - Both students making educational progress
 - School psychologist recommended no eligibility (depression/anxiety was not of marked degree and could be related to gender dysphoria)

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Practical considerations

- 1 IEP/504 documentation**
- 2 Parental involvement**
- 3 Accommodations**
- 4 Student privacy concerns/requests**
- 5 Post-secondary transition**

Legal Protections

Federal Protections-Still Evolving

- Title IX
- 2016 Dear Colleague Letter (withdrawn 2017)
- 2017 Dear Colleague Letter

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State Law:
The Illinois Human Rights Act

Important Federal Cases

- *Whitaker v. Kenosha Unif. Sch. Dist. No. 1*, 858 F.3d 1034 (7th Cir. 2017)
- *Gavin Grimm v. Gloucester Cty. Sch. Bd.*, ___ F.Supp.3d ___, 2019 WL 3774118 (E.D. Va. Aug. 9, 2019)(latest ruling)

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Important State Cases

- *Maday v. Township High School District 211* (2018)
- *Doe v. Lake Park High School* (2019)

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Summary and Conclusions