

# Students' Rights

## Gender Expression and Gender Identity

**Civil rights laws** prohibit discrimination and discriminatory harassment on the basis of gender expression and gender identity in K–12 public schools.

**Discrimination** is the unfair or unequal treatment or harassment of a person or group because they are part of a defined group, known as a protected class. **Gender expression and gender identity** are protected classes under Washington State law.<sup>1</sup>

**Discriminatory harassment** is harassment based on a **protected class**. It can take many forms, such as threats, name-calling, derogatory jokes, physical assault, or other conduct that is physically threatening, harmful, or humiliating.

### Common Terms and Definitions

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People use many different words to describe their gendered experiences. Terminology can differ based on region, language, age, culture, and other factors.

Here are some commonly used terms:

**Gender Expression** describes the ways in which a person expresses their gender. Behavior, emotions, mannerisms, dress, grooming habits, interests, and activities are some of the ways people express gender.

**Gender Identity** refers to a deeply felt internal sense of being female, or male, or both, or neither—regardless of their gender assigned at birth.

**Gender Non-conforming** describes a person whose gender expression differs from stereotypical expectations about how they should look or act based on the gender they were assigned at birth. People who identify outside traditional gender categories or identify as both genders or as gender neutral are examples of gender non-conforming.

**Biological Sex/Sex** refers to a person's internal and external anatomy, chromosomes, and hormones.

**Transgender** is a general term often used to describe a person whose gender identity or expression, or both, are different from those traditionally associated with their gender assigned at birth.

**Transitioning** refers to the process in which a person goes from living and identifying as one gender to living and identifying as another.

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<sup>1</sup> Chapter 28A.642 RCW, <http://app.leg.wa.gov/rcw/default.aspx?cite=28A.642>. Chapter 49.60 RCW, <http://app.leg.wa.gov/rcw/default.aspx?cite=49.60>. Chapter 392-190 WAC, <http://app.leg.wa.gov/WAC/default.aspx?cite=392-190>.



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### Preferred Names, Personal Pronouns, and School Records

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**Preferred Name, Personal Pronoun.** Students who attend Washington public schools have the right to be addressed by their preferred name and personal pronouns—*he* and *him*, or *she* and *her*. Schools should not require a legal name change for staff to use the student's preferred name. During class, on seating charts, during roll call, on tests and assignments, and on other school records, staff should use a student's preferred name and gender pronoun.

**School Records.** The record of a student's K–12 educational experience comprises two types of documents; each requires a different response from schools relative to gender expression and gender identity.

**Non-official records** that document a student's education should refer to a student by their preferred name and gender. For example, school identification cards, which are not legal documents, should display the student's preferred name.

**Official education records** that are mandated by law could require a school to use a student's legal name and gender. For example, the documents related to state tests must report the student's legal name. Schools should change the student's name on official school records if the student provides documentation of a legal name change. Schools should change a student's gender designation if a parent or student requests the change.

Public school records should use the student's preferred name and gender designation unless there is a legal reason not to do so.

### Dress Codes and Gender Expression

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Clothing and hairstyle are two ways in which students often express gender. Students have the right to express their gender at school—within the constraints of the school's dress code—without discrimination or harassment. School dress codes should be gender-neutral and should not restrict a student's clothing choices on the basis of gender.

### Restrooms and Locker Rooms

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**Restrooms.** Public schools must allow students to use the restroom that corresponds to their gender identity. Any student—transgender or not—who requests greater privacy for any reason should be given access to an alternative restroom, such as a staff restroom or health office restroom. However, school staff cannot require a student to use an alternative restroom because of their transgender or gender non-conforming status.

**Locker Rooms.** Public schools should provide access to the locker room that corresponds to a student's gender identity unless the situation demands that a student's privacy be protected. A separate changing schedule or use of a private area, such as a nearby restroom stall with a door or an area separated by a curtain, are some ways public schools protect physical privacy.

Schools should determine a student's use of locker rooms on a case-by-case basis. The goals are to maximize social integration and provide equal opportunity to participate in physical education classes and athletic opportunities.



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### Sports and Physical Education Classes

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Schools must allow all students to participate in physical education and athletics that correspond to their gender identity.

The Washington Interscholastic Activities Association (WIAA), [www.wiaa.com](http://www.wiaa.com), determines eligibility for interscholastic athletics. Students should contact the WIAA or review the **Gender Identity Participation Policy** in the eligibility section of the WIAA Handbook, [www.wiaa.com/subcontent.aspx?SecID=350](http://www.wiaa.com/subcontent.aspx?SecID=350).

### Confidential Educational and Health Information

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Privacy laws protect the safety and well-being of the student. This right to privacy is protected by state and federal laws, such as the federal Family Education Rights and Privacy Act (FERPA).<sup>2</sup>

School staff can only share confidential educational and health information if they are permitted by law. In general, school staff should not share a student's transgender or gender nonconforming status, legal name, or gender assigned at birth with others, who could include other students, school staff, and non-school staff.

### Discriminatory Harassment

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Harassment based on gender expression or gender identity is a form of discrimination prohibited in Washington public schools. Schools must take steps to protect students from discriminatory harassment.

School staff must investigate possible discriminatory harassment—as soon as they know or reasonably should know—even if a parent or student does not file a formal complaint.

If an investigation reveals that harassing conduct created a hostile environment, staff must act quickly to stop the behavior and put an end to the hostile environment.

The school must:

1. Address any effects discriminatory harassment had on the student at school, **AND**
2. Make sure that harassing conduct does not happen again.

Find more information about discriminatory harassment, guidelines for district policy and practice, and related resources, [www.k12.wa.us/equity](http://www.k12.wa.us/equity).

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<sup>2</sup> Family Educational Rights and Privacy (FERPA), 20 U.S.C. §1232; 34 C.F.R. Part 99, [http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title34/34cfr99\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title34/34cfr99_main_02.tpl).



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### Resolve Concerns or Disagreements

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A discussion with your school principal, or civil rights compliance coordinator at the school district, is often the best first step to address your concerns or disagreements about discrimination and work toward a solution.

- **Focus on the facts** related to discrimination and harassment, as you understand them, AND
- Let the principal or coordinator know **what you want them to do to resolve the problem.**

Find contact information for your district's civil rights compliance coordinator here, [www.k12.wa.us/Equity/ContactList.aspx](http://www.k12.wa.us/Equity/ContactList.aspx). You also have the option to file a formal complaint.

### Formal Complaints – Discrimination and Discriminatory Harassment

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If you believe your child is experiencing discrimination or discriminatory harassment based on gender expression or gender identity, you can file a formal complaint.

- On the Equity and Civil Rights website, [www.k12.wa.us/Equity/Families](http://www.k12.wa.us/Equity/Families), find information about how to file a formal complaint and follow the steps.
- Contact the U.S. Department of Education, Office for Civil Rights at 206-607-1600 (TDD: 1-800-877-8339), or visit the website, [www.ed.gov/ocr](http://www.ed.gov/ocr).
- Contact the Washington State Human Rights Commission at 1-800-233-3247 (TTY: 1-800-300-7525), or visit the website, [www.hum.wa.gov](http://www.hum.wa.gov).

### Learn More. Ask Questions. Get Help.

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#### Equity and Civil Rights Office at the Office of Superintendent of Public Instruction

360-725-6162 | TTY: 360-664-3631 | [equity@k12.wa.us](mailto:equity@k12.wa.us) | [www.k12.wa.us/equity](http://www.k12.wa.us/equity)

#### For the Civil Rights Compliance Coordinator in your district, visit:

[www.k12.wa.us/Equity/ContactList.aspx](http://www.k12.wa.us/Equity/ContactList.aspx)

Find more information about discrimination and harassment, guidelines for district policy and practice, and related resources, [www.k12.wa.us/equity](http://www.k12.wa.us/equity).

This document outlines rights and responsibilities under state and federal civil rights laws. You may have additional rights under other laws. This information is for informational purposes only—not to provide legal advice. For legal advice specific to the facts and circumstances of your individual situation, please contact an attorney.

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