

Selected Legislation Impacting Gender Diverse Children

Federal Legislation

Title IX of the Education Amendments of 1972 (also known as the Patsy T. Mink Equal Opportunity in Education Act)

Title IX prohibits discrimination based on sex in any educational program or activity that receives federal money. Courts have upheld that Title IX includes protections against discrimination and harassment due to “failure to conform to sex stereotypes and gender identity.”

<https://www.transequality.org/sites/default/files/ED-DCL-Fact-Sheet.pdf>

The Obama Administration’s 2016 “Dear Colleague” letter extended Title IX protections to students who are gender diverse.

The Trump Administration has made significant efforts to rollback and remove protections for transgender students, including by rescinding Obama’s Dear Colleague letter. Here is one example of guidance related to the Trump administration’s policies:

<https://transequality.org/issues/resources/faq-on-the-withdrawal-of-federal-guidance-on-transgender-students>

In June 2021, the Biden Administration extended protections to students who are LGBTQIA+, including students who are gender diverse and transgender.

Family Educational Rights and Privacy Act (FERPA)

Protects the privacy of student educational records, including information related to sexual orientation and gender identity.

States with Human Rights Acts

Most states have civil rights laws or agencies that govern civil protections and anti-discrimination in some form or another. Several states also have human-rights acts in the books, all of which prohibit discrimination on the basis of a variety of protected classes, including gender identity. These states include education among the protected areas in their human-rights acts:

District of Columbia <https://ohr.dc.gov/page/local-human-rights-laws>

Illinois <https://www2.illinois.gov/dhr/Pages/default.aspx>

Maine <https://www.mainelegislature.org/legis/statutes/5/title5ch337sec0.html>

Minnesota <https://mn.gov/mdhr/yourrights/mhra/>

New York <https://dhr.ny.gov/law>

Human Rights Campaign State Scorecards

<https://www.hrc.org/resources/state-scorecards>

In 2020, the Human Rights Campaign published the State Equality Index: A Review of State Legislation Affecting the LGBTQ Community and a Look Ahead in 2021. The state scorecards portion of the report provides a quick overview of the protections and legislation in each state. California, Colorado, Connecticut, District of Columbia, Hawaii, Illinois, Maine, Massachusetts, Nevada, New Jersey, New York, Oregon, Washington achieve the highest levels of legislative

equality, with laws on the books protecting the LGBTQ+ community in housing, public accommodations, transgender healthcare, marriage equality/relationship recognition, employment, school anti-bullying, gender marker updates on identification documents, hate crimes, education, and anti-conversion therapy.

This report is a helpful resource to easily find legislation in each state and understand the protections in place and the priorities of each state's government.

For More Information

Lambda Legal <https://www.lambdalegal.org/know-your-rights#lgbtq-teens-amp-young-adults>

This website has extensive information for teens and young adults related to their legal protections as LGBTQ+ youth. Sections with resources and information include bullying, speech, schools, and more.

Transgender Law Center <https://transgenderlawcenter.org/>

National organization working to change legislation and policy for those who are transgender, including children. Website additionally provides information about various advocacy and support opportunities, as well as case summaries of relevant and noteworthy legal cases.

National Center for Transgender Equality <https://transequality.org/>

Clearinghouse for advocacy and issues related to transgender rights. Specific issues such as aging, disability, voting rights, and more are highlighted, as well as calls for action. Legal advice related to educational rights for children who are transgender are also included. A wealth of resources and up-to-date information.

Gender Spectrum Transgender Students and School Bathrooms: Frequently Asked Questions

<https://www.genderspectrum.org/articles/bathroom-faq>

This publication illustrates the rights of students and the issues that arise for students and schools related to bathroom usage. Endorsed by multiple professional organizations, including the National Association of School Psychologists, this report offers guidance for school officials and provides a wealth of information.

Welcoming Schools Supportive Laws and Policies

<https://www.welcomingschools.org/resources/research/supporting-laws-policies/>

Provides overviews, downloads, and FAQs related to legislation and policies that help protect and support LGBTQ+ students.

Child-Care Licensing Guidelines

Most, if not all states, include language in their childcare licensing guidelines and regulations that prohibit childcare providers from disciplining children physically or humiliating them.

Most states prohibit childcare providers from sharing information about any child with anyone other than the child's parent/guardian.

Most states do not require gender to be marked in the child's records.

Anti-discrimination and diversity regulations including gender:

California <https://www.cdss.ca.gov/inforesources/child-care-licensing/resources-for-providers/laws-and-regulations>

While California's Community Care Licensing does not have specific guidance for childcare and preschools related to best practices for caring for gender diverse children in an early childhood setting, they do have specific guidance for residential and foster care providers. This guidance provides a glimpse into CCL's position on caring for children who are LGBTQ+ and is worth reading.

Sexual Orientation, Gender Identity, and Expression Guide for Children's Residential Providers and Caregivers

https://www.cdss.ca.gov/Portals/9/CCLD/Resource%20Guide/CRP_%20SOGIE%20Guide_%20FINAL.pdf

Transgender and Gender Non-conforming Children in Foster Care

<https://www.ccl.dss.ca.gov/res/pdf/TGNCChildrenCAFosterCare.pdf>

Raising Healthy and Happy LGBT and Gender Non-conforming Children

<https://www.ccl.dss.ca.gov/res/pdf/LGBTGNCChildren.pdf>

Community Care Licensing guidelines for licensed child care programs includes sections related to the personal rights of children:

Personal Rights: Section 101223 (Title 22 Programs)

"Each child receiving services from a Child Care Center shall have rights which include, but are not limited to, the following: (1) To be accorded dignity in his/her personal relationships with staff and other persons. (2) To be accorded safe, healthful and comfortable accommodations, furnishings and equipment to meet his/her needs. (3) To be free from corporal or unusual punishment, infliction of pain, humiliation, intimidation, ridicule, coercion, threat, mental abuse, or other actions of a punitive nature, including but not limited to: interference with daily

living functions, including eating, sleeping, or toileting; or withholding of shelter, clothing, medication or aids to physical functioning.” (excerpt)

Section 101223 continues, but the first three items are directly related to gender identity and expression.

Colorado

https://dcfs.my.salesforce.com/sfc/p/#410000012srR/a/4N000000AH3R/QivWO_Zrj34IijJcahAY_6_JDWstkles6aCHMAn48H4

Oklahoma

<https://oklahoma.gov/content/dam/ok/en/okdhs/documents/okdhs-publication-library/14-05.pdf>

340:110–3-288. Personnel are prohibited from using or threatening to use inappropriate discipline, including “making derogatory or sarcastic remarks about a child’s family, race, gender, religion, or cultural background”

Oregon

<https://oregonearlylearning.com/wp-content/uploads/2017/03/OCC-0084-Rules-for-Certified-Child-Care-Centers-EN.pdf>

414–300–0040. “the center shall not discriminate against any child on the basis of race, religion, color, national origin, gender, marital status of parent, or because of a need for special care”

Maryland

<https://marylandpublicschools.org/about/Pages/Regulations/COMAR.aspx>

Massachusetts

<https://www.mass.gov/doc/606-cmr-7-standards-for-the-licensure-or-approval-of-family-child-care-small-group-and-school-age-and-large-group-and-school-age-child-care-programs/download>

7.06 (1b10). Program activities must provide “opportunities to explore issues of cultural, social and individual diversity while developing awareness, acceptance and appreciation of differences; such as gender, language, culture, ethnicity, family composition and differing abilities”

Nevada

<https://www.leg.state.nv.us/nac/nac-432a.html>

NAC 432A.430 (5b) The written plan of curriculum must “Reflect the diversity of the children in our society with regard to the gender, age, native language, ethnicity, culture and abilities of the children enrolled in the facility”

Vermont

https://dcf.vermont.gov/sites/dcf/files/CDD/Docs/Licensing/CBCCPP_Regulations_FINAL.pdf

3.5 Non-discriminatory enrollment “The licensee shall not deny a child’s entry into the program because of race, creed, color, national origin, religion, disability, gender or the parents’ marital status or gender identification”

6.1.4.3.2 “Materials and experiences provided to children shall reflect the diversity found in society including gender, family composition, age, language, and abilities.”

Washington

<https://app.leg.wa.gov/wac/default.aspx?cite=110-300&full=true>

110-300-0030 Nondiscrimination in employment practices or client services

110–300–0160 Promoting acceptance of diversity. Providers must use equipment and materials that include “a balance of different ethnic and cultural groups, ages, abilities, family styles, and genders”

110–300–0325 Creating a climate for healthy child development. “Representing the diversity found in the early learning program and society, including gender, age, language, and abilities, while being respectful of cultural traditions, values, religion and beliefs of enrolled families”

West Virginia

https://dhhr.wv.gov/bcf/Childcare/Documents/78%20CSR%201%20Final%20File_2018.pdf

7.3 Basic Rights “A center shall ensure that the child and the child’s family have equal access to programs regardless of race, religion, ethnicity, gender, ability or sexual orientation.”

11.4d Adults at a center shall not handle behavior problems by “Subjecting a child to psychological punishment of any kind, including, but not limited to, ridicule, humiliation, or negative remarks about the child or the child’s family, including remarks about race, gender, religion, or cultural background”

13.5d Equipment and materials must “represent diverse cultures, ethnic groups, gender roles and abilities in ways that do not reinforce stereotypes”

23.8n “Offer activities without bias to gender”

Direct mention of gender/gender identity:

Delaware

https://education.delaware.gov/wp-content/uploads/2020/11/occl_delacare-regulations-center_2020.pdf

Section 23: requires that the Parent/Guardian Handbook include “Assurances of nondiscrimination based on race, color, national origin, gender, age, sex, pregnancy, marital status, sexual orientation, gender identity or expression, religion, creed, disability, veteran’s status, or any other category protected by state and/or federal laws”

No specific licensing guidelines related to gender and no specific protections:

Alabama

Alaska

Arizona

Arkansas

Connecticut

Florida

Georgia

Hawaii

Idaho

Illinois

Indiana

Iowa

Kansas

Kentucky

Louisiana

Maine

Michigan

Minnesota

Mississippi

Missouri

Montana

Nebraska

New Hampshire

New Jersey

New Mexico

New York

North Carolina

North Dakota

Ohio

Pennsylvania

Rhode Island

South Carolina

South Dakota

Tennessee

Texas

Utah

Virginia

Washington, DC

Wisconsin

Wyoming

State Department of Education/K-12 Guidance on Working with Gender Diverse Students

The following states have official guidance from the Departments of Education related to best practices for supporting students who are gender diverse:

Alaska

Anchorage School District Office of Equity- Administrative Guidelines: Working With Transgender and Gender Nonconforming Students and Employees

<https://www.asdk12.org/cms/lib/AK02207157/Centricity/Domain/1208/Guidelines%20for%20Working%20with%20Transgender%20Students%20and%20Employees%20EEO%20054%20%20update%208202020.pdf>

Arizona

Resources for LGBTQ+ Students, Educators, and Families

<https://www.azed.gov/resources-lgbtq-students-educators-and-families>

California

School Success and Opportunity Act (AB 1266) FAQ

<https://www.cde.ca.gov/re/di/eo/faqs.asp>

Colorado

Guidance for Educators Working with Transgender and Gender Nonconforming Students (2016)

https://one-colorado.org/wp-content/uploads/2017/06/TransResourceGuide_2016.pdf

Connecticut

Guidance on Civil Rights Protections and Supports for Transgender Students (September 2017)

https://portal.ct.gov/-/media/SDE/Title-IX/transgender_guidance.pdf?la=en

District of Columbia

Transgender and Gender Nonconforming Policy Guidance (June 2015)

<https://dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/DCPS%20Transgender%20Gender%20Non%20Conforming%20Policy%20Guidance.pdf>

Hawaii

Guidance on Supports for Transgender Students (July 2016)

<https://www.hawaiipublicschools.org/DOE%20Forms/Civil%20Rights/TransgenderSupports.pdf>

Idaho

Policy #3281: Gender Identity and Sexual Orientation (October 2015)

<http://www.idahoednews.org/wp-content/uploads/2016/05/ISBA-gender-identity-policy.pdf>

Illinois

Supporting Transgender, Nonbinary, and Gender Nonconforming Students

<https://www.isbe.net/supportallstudents>

Iowa

Equality for Transgender Students (October 2017)

<https://educateiowa.gov/resources/legal-resources/legal-lessons/equality-transgender-students>

Kentucky

Considerations for Using Student Preferred Names (November 2020)

[https://education.ky.gov/educational/compschcouns/Documents/Considerations for Using Student Preferred Names.pdf](https://education.ky.gov/educational/compschcouns/Documents/Considerations_for_Using_Student_PREFERRED_Names.pdf)

Maine

LGBTQ+ and Gender Expansive Resources

<https://www.maine.gov/does/LGBTQ>

Maryland

Providing Safe Spaces for Transgender and Gender Non-Conforming Youth: Guidelines for Gender Identity Non-Discrimination (October 2015)

<https://www.marylandpublicschools.org/about/Documents/DSFSS/SSSP/ProvidingSafeSpacesTransgenderGenderNonConformingYouth012016.pdf>

Massachusetts

Guidance for Massachusetts Public Schools Creating a Safe and Supportive School Environment- Nondiscrimination on the Basis of Gender Identity

<https://www.doe.mass.edu/sfs/lgbtq/genderidentity.html>

Michigan

State Board of Education Statement and Guidance on Safe and Supportive Learning Environments for LGBTQ Students (2016)

https://www.michigan.gov/documents/mde/SBEStatementonLGBTQYouth_534576_7.pdf

Minnesota

Toolkit for Ensuring Safe and Supportive Schools for Transgender and Gender Nonconforming Students (September 2017)

<https://education.mn.gov/MDE/dse/safe/index.htm>

Nevada

Supporting Sex/Gender Diverse Students

https://doe.nv.gov/SafeRespectfulLearning/Supporting_Sex_Gender_Diverse_Students/

New Jersey

Keeping Our Kids Safe, Healthy, and In School: Transgender Guidance for School Districts

<https://nj.gov/education/students/safety/sandp/transgender/>

New Mexico

Resource and Referral Guide for LGBTQ Students (August 2017) (focused on middle and high school students)

https://webnew.ped.state.nm.us/wp-content/uploads/2018/03/NM_LGBTQ_Student_Services_Directory_FINAL.pdf

New York

Guidelines to Support Transgender and Gender Expansive Students

<https://www.schools.nyc.gov/school-life/school-environment/guidelines-on-gender/guidelines-to-support-transgender-and-gender-expansive-students>

Oregon

LGBTQ2SIA+ Student Success Plan (June 2020)

https://www.oregon.gov/ode/students-and-family/equity/Documents/LGBTQ2SIA+%20Student%20Success%20Plan.pdf?utm_medium=email&utm_source=govdelivery

Pennsylvania

Creating Gender-Inclusive Schools and Classrooms

<https://www.education.pa.gov/Schools/safeschools/equityandinclusion/Pages/Gender.aspx>

Rhode Island

Guidance for Rhode Island Schools on Transgender and Gender Nonconforming Students (June 2016)

<http://www.thriveri.org/documents/Guidance.for.RhodeIsland.Schools.on.Transgender.and.Gender.Nonconforming.Students-2016.pdf>

Vermont

Best Practices for Schools Regarding Transgender and Gender Nonconforming Students
(February 2017)

<https://education.vermont.gov/documents/best-practices-schools-regarding-transgender-and-gender-nonconforming-students>

Virginia

Gender Diversity Resources (includes Model Policies for the Treatment of Transgender Students in Public Elementary and Secondary Schools)

<https://www.doe.virginia.gov/support/gender-diversity/index.shtml>

Washington

Gender-Inclusive Schools

<https://www.k12.wa.us/policy-funding/equity-and-civil-rights/information-families-civil-rights-washington-schools/gender-inclusive-schools>

Wisconsin

Safe Schools for Lesbian, Gay, Bisexual, and Transgender Students

<https://dpi.wi.gov/sspw/safe-schools/lgbt>

The following states either have no official Department of Education guidance, or have state education laws or policies that are discriminatory or exclusionary for students who are gender diverse:

Alabama

Arkansas

Delaware

Florida

Georgia

Indiana

Kansas

Louisiana

Mississippi

Missouri

Montana

Nebraska

New Hampshire

North Carolina

North Dakota

Ohio

Oklahoma

South Carolina

South Dakota

Tennessee

Texas

Utah

West Virginia

Wyoming