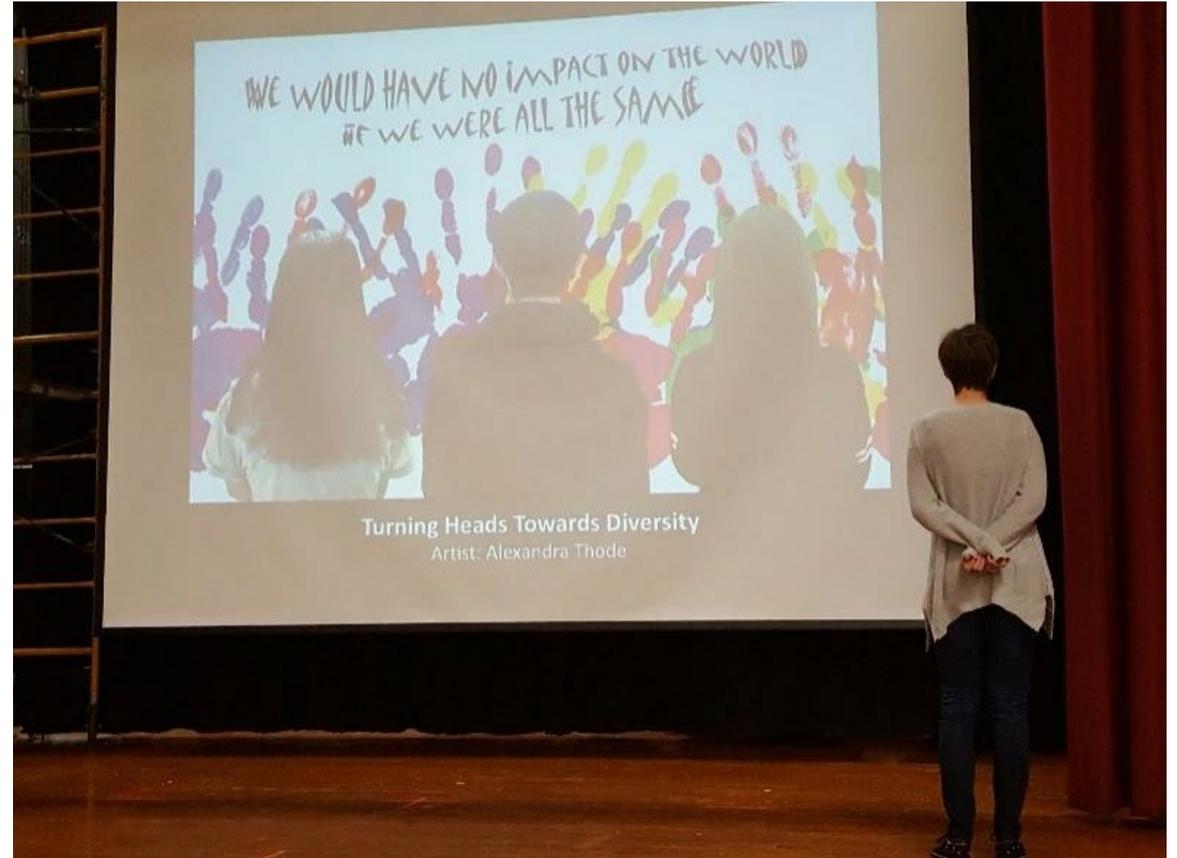




NADC – Denver – Session #4 – Workshop #39

Transgender, Equality, and Related Legal Issues

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A Picture Says A Thousand Words





The Story of Noah





Our Story





Our Family Legacy



JONAHS



MISSION

Jeremy
Olivia
Noah
Alexandra
Hannah
Stephanie



My Hero





A College Essay

YOU WILL NOT



WALK ALONE



Legal Disclaimer

**The Information Provided In This Seminar
Is NOT A Substitute For Legal Advice.**

**There May Be Nuances Of State Or Local
Law That Could Affect Implementation Of
Strategies Or Policies Discussed In The Course.**

**Participants Are Strongly Encouraged To Seek The Advice Of Their State
Association Or School District Legal Counsel.**



Issues ADs Need To Be Familiar With

- Terminology Regarding LGBTQ Categories/Distinctions
- Properly Addressing Transgender Students (Pronoun Usage)
- Fact Versus Fiction & Avoiding Blatantly False Stereotypes
- Sources of Law related to Transgender Students in School
- Participation of Transgender Students in School Athletics Programs
- Participation of Transgender Students in P.E. Course Activities
- Participation of Transgender Students in other School Extracurriculars
- Access of Transgender Students to Restrooms, Locker Rooms & Showers
- Issues During Sports Road Trips & other School Field Trips
- Dress Codes & Applicability to Sports Teams & School Mandates
- Student Privacy Rights & Transgender FERPA/HIPAA Issues
- Training On Transgender Issues For Athletics/School Personnel



Duties of Care for ADs

- Provide a positive sports-participation experience for all students
- **Follow best practices**
- Treat all students with dignity and respect
- **Protect students from harassment**
- Ensure students are not discriminated against in any way, shape, or form
- **Remain current with evolving legal standards**
- Stay connected with school district legal counsel
- **Educate staff**



Best Practices

FERPA/Confidentiality

- Protecting transgender students' privacy is critical to ensuring they are treated consistent with their gender identity.
- A Title IX violation may exist when a school fails to take reasonable steps to protect students' privacy related to their transgender status, including their birth name or sex assigned at birth.
- Nonconsensual disclosure of personally identifiable information (PII), such as a student's birth name or sex assigned at birth, could invade the privacy of transgender students and may also violate FERPA.
- A school may maintain records with this information, but such records should be kept confidential.



Best Practices

FERPA/Confidentiality

- One exception is that records may be disclosed to individual school personnel who have been determined to have a legitimate educational interest in the information.
- Even when a student has disclosed the student's transgender status to some members of the school community, schools may not rely on this FERPA exception to disclose PII from educational records to other school personnel who do not have a legitimate educational interest in the information.
- The need for confidentiality in the presence of media to protect the privacy of transgender students must be a first priority for all sports personnel and affiliated school personnel.



Best Practices

Sex-Segregated Activities

- Title IX regulations permit a school to operate or sponsor sex-segregated athletics teams when selection for such teams is **based upon competitive skill**.
- A school **may not** adopt or adhere to requirements that rely on overly broad generalizations or stereotypes about the differences between transgender students and other students of the same sex (*i.e.*, the same gender identity) or others' discomfort with transgender students.
- Title IX does not prohibit age-appropriate, tailored requirements based on sound, current, and research-based medical knowledge about the impact of the students' participation on the competitive fairness or **physical safety** of the sport.



Best Practices

Sex-Segregated Activities

- A school may not discipline students or exclude them from participating in activities for appearing or behaving in a manner that is consistent with their gender identity or that does not conform to stereotypical notions of masculinity or femininity.
- *ie: in yearbook photographs, at school dances, or at graduation ceremonies.*



Best Practices

Changing Areas, Toilets, and Showers

- Transgender student-athletes should be able to use the locker room, shower, and toilet facilities in accordance with the student's *gender identity*.
- Concern about privacy in the locker room is a legitimate issue that should be addressed whether transgender students are present or not.
- *All students* should have access to some privacy in school locker room and bathrooms.
- Some students need privacy for religious reasons, personal modesty, bodily scars, disabilities, a personal history of sexual abuse or a variety of other reasons.



Best Practices

Changing Areas, Toilets, and Showers

- Every school should evaluate their locker rooms and bathrooms and make accommodations to provide access to some private, enclosed changing areas, showers, and toilets for use by *any athlete* who desires them.
- These provisions can be as simple as installing privacy screens or curtains that provide privacy for any student who prefers or needs it.
- When requested by a transgender student-athlete, schools should provide private, separate changing, showering, and toilet facilities for the student's use, but *transgender students should not be required to use separate facilities.*



Best Practices

Hotel Rooms

- Transgender student-athletes should be assigned to share hotel rooms based on their *gender identity*, with a recognition that any student who needs extra privacy should be accommodated whenever possible.
- A school may not require transgender students to stay in single-occupancy accommodations or to disclose personal information when not required of other students.
- Nothing in Title IX prohibits a school from honoring a student's voluntary request for single-occupancy accommodations if it so chooses.



Best Practices

Language: Preferred names and pronouns

- A transgender student may have a preferred name and gender pronouns that are **different** from what may be indicated by the student's school records.
- Coaches, administrators, and officials shall make every reasonable effort to honor that student's preferred name and pronoun and to ensure that the student's name and pronoun preferences are respected by others including teammates, opponents, fans, volunteers, announcers, etc.
- This guideline applies not only for transgender students who seek to participate in activities in a manner **consistent with their gender identity, but also to those whose participation is consistent with the sex on their school records and not their gender identity.**



Best Practices

Dress Codes and Team Uniforms

- All team members should have access to uniforms that are appropriate for their sport and that they feel comfortable wearing.
- **No student should be required to wear a gendered uniform that conflicts with the student's gender identity.**
- Dress codes for athletic teams when traveling or during a game day at school should be gender-neutral. (Instead of requiring a girls' or women's team to wear dresses or skirts, for example, ask that team members wear dresses or slacks that are clean, neat, well cared for and appropriately "dressy" for representing their school and team.)



Best Practices

Competition at Another School

- *Without violating a transgender student's confidentiality or privacy,* school leaders, athletic directors, and coaches should communicate with their counterparts at other schools prior to competitions in which a transgender athlete is participating about expectations for treatment of transgender student-athletes on and off the field, including:
 - **to ensure access to appropriate changing, showering, or bathroom facilities**
 - to request the use of preferred names and pronouns by coaches, opponents, officials, announcers, fans, and media.



Common Barriers

Lack of Knowledge

- Some people do not understand gender identity and, as a result, harbor stereotypes and misconceptions about what it means to be transgender.
- These misconceptions can lead to the adoption of policies and practices that are based on unwarranted fears and concerns rather than on the accurate information that should guide policy development.
- Education and factual information is the key.
- All members of the school community should receive information and education about gender identities, school or district non-discrimination policies, the use of preferred names and pronouns, and expectations for creating a respectful school climate for all students.



Common Barriers

Community Opposition

- Legislators and outside community groups in some states have objected to schools adopting inclusive transgender student-participation policies.
- These groups base their objections on fears about the participation of transgender students that are rooted in misinformation and, in some cases, political controversy.
- These fears include claims that transgender girls pose a threat to the safety of non-transgender girls in the locker room, or that transgender girls on a team will always upset a competitive balance that disadvantages non-transgender girls.



Common Barriers

Lack of Preparation/Education

- Even when schools adopt an inclusive policy that is consistent with Title IX and based on accurate information, failing to provide education about transgender identity and those policies and practices can sabotage enforcement.
- Educating parents and community members, as well as coaches and other school staff responsible for enacting policies and practices, is essential to effective implementation of inclusive policies and practices.



Common Barriers

Key Points

- Laws surrounding transgender students and adults are ever evolving. They may vary from city to state to federal, as we have noted of late.
- **Factual information that underscores safety and dignity for all individuals is again paramount to policy decisions.**
- Schools may wish to consider information sessions during a “parent night” or sending home educational materials in a school newsletter as an option.
- **Identify and enlist parent allies.**



Sources of Law: Federal & State

14th Amendment Equal Protection Clause

- Guarantees equal protection under the law and prohibits arbitrary discrimination against certain protected classes of persons.
- Clear trend is the use of Equal Protection to protect LGBTQ persons against discrimination based on sexual orientation and gender identity.

Title IX of the Education Amendments of 1972

- Broad-based law prohibiting gender discrimination in schools.
- Trend is the use of Title IX to provide legal recourse for LGBTQ students.

Executive Order 13988 – Preventing and Combating Discrimination on the Basis of Gender Identity and Sexual Orientation (January 20, 2021)

- **Stated gender identity, not gender at birth, is the controlling factor.**
- Reinstates protections against discrimination for LGBTQ students and student-athletes.

The U.S. Dept of Justice Civil Rights Division Memorandum on Applicability to Title IX of Supreme Court's Decision in LGBTQ Case Bostock V. Clayton County (March 26, 2021)

- Extends to Title IX the concept that **gender identity is controlling factor.**
- Explicitly references rights of students and student athletes.



Sources of Law: Federal & State

The U.S. Department of Education's OCR Notice of Interpretation on Applicability to Title IX of Supreme Court's Decision in Bostock Case (June 16, 2021)

- Extends to Title IX concept that gender identity is controlling factor.

The Equality Act of 2021

- Not yet enacted; pending legislation that if passed would amend the Civil Rights Act of 1964 to prohibit discrimination against LGBTQ persons in employment, education, sports, housing, health care, etc.
- Passed the House (117th Congress) in February of 2021; moved on to consideration by the Senate beginning with the Judiciary Committee.

U.S. Dept. of Ed OCR & Dept. of Justice Civil Rights Division Dear Colleague Letter of May 13, 2016.

- Requires that students be allowed to participate in school activities and use school facilities consistent with gender identity.
- Withdrawn by Presidential Administration in 2017; now reinstated.

U.S. Dept. of Ed Policy Guidance of May 2016

- Provides examples of model policies and best practices for protecting and supporting transgender students in schools and sports programs.



Sources of Law: Federal & State

Soule v. CIAC ET AL – OCR Complaint & Federal Lawsuit

- Actions by cisgender track athletes against Connecticut Association.
- EO 13988/DOJ Memo/DOEd Notice: likely dismissal of OCR complaint.
- Federal lawsuit dismissed by U.S. District Court on April 25, 2021.

State Laws Banning Transgender Women/Girls From College/H.S. Women's/Girls' Sports Teams

- Several state legislatures have enacted such laws; some vetoed by governors and all others are currently being challenged in court (Equal Protection-Title IX).

Hecox v. Little Decision on Idaho's Transgender Law

- August 17, 2020 U.S. District Court blocked Idaho's state law banning transgender females from college and high school women's/girls' sports teams.

G.G. v. Gloucester County School Board (VA)

- Aug 26, 2020 U.S. 4th Circuit ruled gender = gender identity.
- June 30, 2021 U.S. Supreme Court refused appeal, thus G.G. wins case.

Adams v. St. Johns County School Board (FL)

- Aug 7, 2020 U.S. 11th Circuit ruled gender = gender identity.

Doe v. Boyertown Area School District (PA)

- May 15, 2019 U.S. Sup Ct refused appeal of U.S. 3rd Circuit's July 2018 ruling that gender = gender identity.



Resources

- ***“All 50”: The Transgender Inclusive High School Sports And Activities Policy and Education Project***
May 2016 - sets forth a model high school policy for addressing transgender issues.
https://docs.wixstatic.com/ugd/2bc3fc_c8eeefb073a8421396f6520a4cca9f3b.pdf
- ***On The Team: Equal Opportunity for Transgender Student-Athletes***
October 2010 - provides a detailed examination of all of the issues associated with the development and implementation of strategies and policies for supporting transgender student-athletes; endorsed by the NFHS.
<https://www.nclrights.org/get-help/resource/on-the-team-equal-opportunities-for-transgender-student-athletes/>



Resources

<https://www.shapeamerica.org/standards/guidelines/Transgender/default.aspx>

https://www.shapeamerica.org/standards/guidelines/Transgender/federal_state_law.aspx

https://www.shapeamerica.org/standards/guidelines/Transgender/best_practice.aspx

<https://www.shapeamerica.org/standards/guidelines/Transgender/model-policy.aspx>

<https://www.shapeamerica.org/standards/guidelines/Transgender/common-barriers.aspx>

<https://www.shapeamerica.org/standards/guidelines/Transgender/terminology.aspx>

<https://www.shapeamerica.org/standards/guidelines/Transgender/faqs.aspx>



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Discussion?



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