2023 Transgender Update

Presented by:
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October 19, 2023
2023
Transgender Update

Emma J. Darling, Senior Associate

Agenda

01 STUDENT UPDATE
02 EDUCATOR UPDATE
03 MISC. CASELAW AND LAWS
Student Update

In 2021, 2 out of 5 students experienced emotional distress. LGBQ students were 5X more likely to attempt suicide during the pandemic. (Sources: Adolescent Behavior and Experiences Survey, 2021)

OCR Toolkit
Updated June 2023

HATE CRIME THREAT GUIDE

A Hate Crime is a serious communication of an intention to commit an act of unlawful violence against a particular individual or group of individuals. A hate crime is not protected by the First Amendment and can be prosecuted as a hate crime.

Physical Threat

A verbal threat is a threat to use physical force or harm against the person who is threatened. A threat to use verbal force is a form of communication that is not protected by the First Amendment.

Guidelines:

1. Ask the individual who is threatened if they are willing to have you report the threat.
2. Provide the person with your contact information.
3. Inform the person that you are willing to report the threat.
4. Report the threat to the appropriate authorities.
5. Provide the person with any assistance they may require.

Electronic Threat

An electronic threat is a threat to use an electronic communication device to cause harm.

Guidelines:

1. Inform the person who is threatened that you have reported the threat to the appropriate authorities.
2. Provide the person with your contact information.
3. Provide the person with any assistance they may require.
4. Report the threat to the appropriate authorities.
5. Provide the person with any assistance they may require.

Anonymous Threat

An anonymous threat is a threat that is not signed or otherwise identified with the person who is threatened.

Guidelines:

1. Inform the person who is threatened that you have reported the threat to the appropriate authorities.
2. Provide the person with your contact information.
3. Provide the person with any assistance they may require.
4. Report the threat to the appropriate authorities.
5. Provide the person with any assistance they may require.

Remedies:

If the person who is threatened feels threatened, they may seek remedies through the courts.

Guidelines:

1. Inform the person who is threatened that you have reported the threat to the appropriate authorities.
2. Provide the person with your contact information.
3. Provide the person with any assistance they may require.
4. Report the threat to the appropriate authorities.
5. Provide the person with any assistance they may require.

Legal Assistance:

If the person who is threatened feels threatened, they may seek legal assistance through the courts.

Guidelines:

1. Inform the person who is threatened that you have reported the threat to the appropriate authorities.
2. Provide the person with your contact information.
3. Provide the person with any assistance they may require.
4. Report the threat to the appropriate authorities.
5. Provide the person with any assistance they may require.

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OCR Toolkit on GSAs

• GSAs now refer to “Gender and Sexuality Alliances” and sometimes antiquatedly called “Gay-Straight Alliances”

• “A public secondary school that allows at least one noncurricular student group to meet on its premises during noninstructional time (e.g., at lunch, before or after school) must allow students to have a fair opportunity to conduct group activities, such as forming a GSA or other similar groups.” 20 U.S.C. § 4071

• School officials are permitted under the Equal Access Act to have rules for student groups that maintain order and discipline on school premises, protect the well-being of students and faculty, and assure that attendance of students at meetings is voluntary. Courts have made clear that those rules must be applied to all student groups and school officials cannot censor groups because they express unpopular viewpoints.
Attire

- A legal right exists to the extent that a court is likely to conclude that dressing in accordance with a student’s expression of gender or sexual orientation is a form of protected expression.

- Courts in the Fifth Circuit* have found that wearing gender-nonconforming clothing may be protected by the First Amendment as free speech, by the Fourteenth Amendment with regard to equal protection, and by Title IX.

- *While not in Texas, this case is widely cited and is regarding a lesbian student wearing a tuxedo to prom.

Circuits on Student Bathroom usage at a Glance:

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<td>May use bathroom consistent with gender identity</td>
<td>May use bathroom consistent with gender identity</td>
<td>No caselaw</td>
<td>May use bathroom consistent with gender identity</td>
<td>Transgender students may bring claims of sex discrimination under Title IX</td>
<td>May use bathroom, locker room, and showers consistent with gender identity</td>
<td>May NOT use bathroom consistent with gender identity</td>
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The New Hot Topic: Privacy

Circuits on Name Changes and Privacy

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<td>Pending: Court currently upheld practice of sharing information on a student's identity with their parents only if the student consents</td>
<td>Parents cannot challenge district policies against telling parents if a child identifies as transgender or gender non-conforming</td>
<td>Schools cannot keep information regarding their children from parents, including gender identity</td>
<td>Case pending</td>
<td>Can't make up their mind</td>
<td>District employee shall respond to any minor student's parent's inquiry regarding their requested name or pronoun</td>
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• Stephen Foote and Marissa Silvestri (“Plaintiffs”) have alleged that during the 2020-2021 school year, staff employed by Ludlow Public Schools:

  (1) spoke about gender identity with two of their children, who were then eleven and twelve years old and students at Baird Middle School;
  (2) complied with the children’s requests to use alternative names and pronouns; and
  (3) did not share information with Plaintiffs about the children’s expressed preferences regarding their names and pronouns.

• Plaintiffs allege these actions, and inactions, violated their fundamental, parental rights protected by the Fourteenth Amendment to the United States Constitution. They filed this action pursuant to 42 U.S.C. § 1983 to seek redress for their alleged injuries.

• Early in the 20-21 school year, school librarian Jordan Funke gave students in B.F.’s sixth grade class an assignment to make biographical videos. Funke invited students to include their gender identity and preferred pronouns in their videos. The students also received instruction about language that is inclusive of students with different gender identities.

• In December 2020, B.F. spoke with a teacher and asked for help talking to Plaintiffs about concerns about depression, low self-esteem, poor self-image, and possible same-sex attraction. The teacher emailed Mom, who replied that they were seeking help for their child and not to speak with their child about this anymore.
On February 28, 2021, B.F. sent an email to several teachers, identifying as genderqueer and announced a new preferred name, one typically used by members of the opposite sex, and a list of preferred pronouns.

Foley met with B.F. and, after their meeting, sent an email stating that B.F. was “still in the process of telling” Plaintiffs about B.F.'s gender identity and instructed school staff that they should not use B.F.'s new preferred name and pronouns when communicating with B.F.'s parents.

Foley's position was consistent with a policy sanctioned by the School Committee, pursuant to which school personnel would only share information about a student's expressed gender identity with the student's parents if the student consented to such communication.

After Foley sent her email, teachers at Baird Middle School began using B.F.'s new preferred name and pronouns.

On March 18, 2021, Principal met with Plaintiffs. During their meeting, Plaintiffs asserted that Defendants had disregarded their parental rights by not complying with the December 2020 request that staff not engage with B.F. regarding mental health issues and by failing to notify them about their children's use of alternate names and pronouns.

Plaintiffs also conveyed their belief that school staff were acting improperly by affirming B.F.'s and G.F.'s self-asserted gender identities. Monette refused to discuss the issues raised by Plaintiffs and ended the meeting abruptly.
COUNT II: the right to make medical and mental health decisions for their children

“Plaintiffs have not alleged Defendants’ actions were undertaken as part of a treatment plan for gender dysphoria or explained how referring to a person by their preferred name and pronouns, which requires no special training or skill, has clinical significance when there is no treatment plan or diagnosis in place. Similarly, there are no non-conclusory allegations that social transitioning was actually occurring or includes supportive actions taken by third parties, as opposed to actions a person takes to understand or align their external gender presentation with their gender identity. Addressing a person using their preferred name and pronouns simply accords the person the basic level of respect expected in a civil society generally, and, more specifically, in Massachusetts public schools where discrimination on the basis of gender identity is not permitted.”

- Plaintiffs did not provide medical evidence of an in-place medically-recognized diagnosis and treatment plan
- Count II was dismissed

COUNT I: the right to direct the education and upbringing of their children

COUNT III: the right to family integrity

- Plaintiffs assert the Ludlow Public Schools adopted and implemented a policy that went beyond the DESE Guidance and rigidly prohibited any communication with parents about a student’s gender identity unless the student consented and this policy shocked the conscience, at least when applied to students in middle school.
- However, even if Defendants' policy was imperfect and contrary to the non-binding Guidance, the alleged policy was consistent with MA law and the goal of providing transgender and gender nonconforming students with a safe school environment.
This case involves a difficult and developing issue; schools, and society as a whole, are currently grappling with this issue, especially as it relates to children and parents. See *Martinez*, 608 F.3d at 66 (“[W]hether behavior is conscience-shocking may be informed ... by the nature of the right violated.”). While the court is apprehensive about the alleged policy and actions of the Ludlow Public Schools with regard to parental notification, it cannot conclude the decision to withhold information about B.F. and G.F. from Plaintiffs was “so extreme, egregious, or outrageously offensive as to shock the contemporary conscience,” given the difficulties this issue presents and the competing interests involved. *DePoutot*, 424 F.3d at 119. As conscience-shocking conduct is a necessary element for a substantive due process claim, the court ends its analysis here, without assessing whether Plaintiffs have adequately identified their protected rights and established they were offended under these facts.

John and Jane Parents 1, et. al v. Montgomery Cty Board of Education, et. al
4th Cir., August 14, 2023

- The Montgomery County Board of Education adopted Guidelines for Gender Identity for 2020–2021 that permit schools to develop gender support plans for students.
- The Guidelines allow implementation of these plans without the knowledge or consent of the students’ parents. They even authorize the schools to withhold information about the plans from parents if the school deems the parents to be unsupportive.
- Parents sued under the 14th Amendment, however the Court decided the case under standing grounds
The guidelines provided that “all students should feel comfortable expressing their gender identity, including students who identify as transgender or gender nonconforming.”

They called for “gender support plans,” in which, “The principal (or designee), in collaboration with the student and the student’s family (if the family is supportive of the student), should develop a plan to ensure that the student has equal access and equal opportunity to participate in all programs and activities at school and is otherwise protected from gender-based discrimination at school.”

“Each plan should address identified name; pronouns; athletics; extracurricular activities; locker rooms; bathrooms; safe spaces, safe zones, and other safety supports; and formal events such as graduation.”

“Prior to contacting a student’s parent/guardian, the principal or identified staff member should speak with the student to ascertain the level of support the student either receives or anticipates receiving from home.”

Schools are to “support the development of a student-led plan that works toward inclusion of the family.”

But the school may withhold information about a student’s gender support plan “when the family is nonsupportive.”
The Fourth Circuit held the Parents did not have standing because, “[t]he parents have not alleged that their children have gender support plans, are transgender or are even struggling with issues of gender identity.”

“allegations of possible future injury are not sufficient” to support standing.

“The parents’ claims likewise depend on a speculative fear, the occurrence of which requires guesswork as to actions of others.” Regardless of whether the District “hides this information” plaintiffs must allege imminent or substantially likely harm.

Simply put, the parents may think the Parental Preclusion Policy is a horrible idea. They may think it represents an overreach into areas that parents should handle. They may think that the Board’s views on gender identity conflict with the values they wish to instill in their children. And in all those areas, they may be right. But even so, they have alleged neither a current injury, nor an impending injury or a substantial risk of a future injury. As such, these parents have failed to establish an injury that permits this Court to act. Or, to use Douglass’ language, the jury box is not available to them. These parents must find their remedy at the ballot box.
B.F. et al v. Kettle Moraine School District
Circuit Court, WI

• Two sets of Wisconsin parents filed suit against the Kettle Moraine School District to challenge its policy that allows minor students to change their name and gender pronouns at school without parental consent.

• In December of 2020, T.F. and B.F.’s daughter, then twelve years old, began questioning her gender identity. After some counseling, she expressed to her parents and District staff that she wanted to adopt a new male name and male pronouns when she returned to school. Her parents disagreed.

• The parents requested that the District refer to their child with a female name and pronoun, and the District replied that they would not under policy.

• After withdrawing the student, the student told her parents she no longer wanted to go by different pronouns.

• Case is still pending
On July 20, 2023, Chino Valley USD adopted a policy which mandates that District employees to tell parents whenever the student asks to be identified or treated as a gender “other than the student’s biological sex or gender listed on the student’s birth certificate or any other official records.”

The policy also requires forced disclosure whenever a student requests to use a different name than their legal name or to use pronouns “that do not align with the student’s biological sex or gender listed on the student’s birth certificate or other official records.”

And requires staff members to notify parents or guardians whenever the student requests to access “sex-segregated school programs and activities,” including asking to join a sports team or use a different bathroom.

California Attorney General, Rob Bonta, filed a temporary restraining order and lawsuit against the District under the California constitution.
Escondido Union School District created a policy that a teacher ordinarily may not disclose to a parent that a student identifies as a new gender, or wants to be addressed by a new name, gender, or pronouns that are different from the birth name and birth gender of the student during the school day.

Under the policy at issue, accurate communication with parents is permitted only if the child first gives its consent to the school.

A teacher who knowingly fails to comply is considered to have engaged in discriminatory harassment and is subject to adverse employment actions.

Mirabelli and West, Plaintiffs, are longtime teachers. Olson is the board president.

The school’s policy is a trifecta of harm: it harms the child who needs parental guidance and possibly mental health intervention to determine if the incongruence is organic or whether it is the result of bullying, peer pressure, or a fleeting impulse. It harms the parents by depriving them of the long recognized Fourteenth Amendment right to care, guide, and make health care decisions for their children. And finally, it harms plaintiffs who are compelled to violate the parent’s rights by forcing plaintiffs to conceal information they feel is critical for the welfare of their students -- violating plaintiffs’ religious beliefs.
Mirabelli v. Olson  
2023 WL 5976992, at *2 (S.D. Cal. Sept. 14, 2023)

- Mirabelli and West’s injunction against EUSD’s policy was granted
- EUSD’s motion to dismiss was denied
- This litigation will likely continue

Willey v. Sweetwater Cnty. Sch. Dist. No. 1 Bd. of Trustees  
2023 WL 4297186, at *26 (D. Wyo. June 30, 2023)

- The district created a policy which provides that district personnel “must use a student’s preferred/chosen name or pronoun in verbal, written, and electronic communications. Staff must respect the privacy of all students regarding such choice.
- District personnel are advised that violations of this procedure may constitute discrimination based on sex, and may result in discipline.
At the beginning of the 21-22 school year, despite being born biologically female, the Student told teachers that the Student wanted to be treated as a male and be referred to by male pronouns.

The Willeys were unaware of the Student's request at that time, and were not informed or advised of the Student's request.

On March 29, 2022, while participating in a district-wide training, Mrs. Willey asserts that for the first time she discovered—when two of the Student's teachers at Black Butte disclosed—that the Student was being referred to by a male name and male pronouns at school, and had been for the entire school year.

Upon learning this Mrs. Willey informed the Student that they were “too young to make such decisions” and the conduct at school needed to stop.

That same day, Mrs. Willey sent emails to staff at the High School and to Principal Blake, reflecting her position that the Student was too young to make such life changing decisions

Mrs. Willey's emails directed staff to refer to the Student by her given birth name and female pronouns only, and threatened to take the issue to central admin should anyone defy her instructions.

In response Principal Blake advised that he had reached out to HR concerning her request for further clarification and would be in touch.
Following Mrs. Willey's email directive, the Student changed course and requested to be called by the Student's given name and female pronouns.

The District both respected the Student's initial wishes to be called by a male name and pronoun, and the Student's subsequent request to be referred to by the Student's given female name and pronoun.

Mrs. Willey alleges that in a meeting in 04/22, Ms. Bolton told Mrs. Willey that if the Student came back to and requested to be called by a male name and pronoun the staff would do as the Student requested, regardless of Mrs. Willey's directions. In addition, Ms. Bolton stated they would not tell Mrs. Willey of the Student's request.

The Willeys allege as applied this policy violates: (1) their Fourteenth Amendment fundamental substantive due process right to direct the upbringing of their children; (2) their Fourteenth Amendment fundamental substantive due process right to familial privacy; and (3) their First Amendment right to free exercise of religion

Additionally, in her capacity as a teacher for the District, Plaintiff Ashley Willey (“Mrs. Willey”) alleges the Policy violates: (1) her First Amendment right to free exercise of religion; and (2) her First Amendment right to free speech
Willey v. Sweetwater Cnty. SD No. 1 Bd. of Trustees

As set forth above, absent a reasonable concern of physical harm or abuse, to the extent the Student Privacy Policy would prevent a school district employee from responding to a minor student’s parent inquiry or require the school district employee to lie about the student’s request to be called by a different name or pronoun, this Court finds that the factors weigh in support of a preliminary injunction as to this aspect of the Policy only. The Court finds as to the Preferred Names Policy, a consideration of the factors does not support the granting of a preliminary injunction and it will be denied.

[A]bsent a reasonable concern of physical abuse or harm, the District is hereby enjoined from precluding a school district employee from responding to any minor student's parent’s inquiry regarding their requested name or pronoun or from requiring a school district employee to lie about a student's request to be called by a different name or pronoun.

Texas AG Opinion

• In 2016, Ken Paxton opined on whether Ft. Worth ISD’s Transgender Guidelines were an “effort to keep student information from parents.”

• “Far from creating a partnership between parents, educators, and administrators regarding their children's education, the Guidelines relegate parents to a subordinate status, receiving information only on a “need-to-know basis.” Limiting parents' access to information in this way impairs their ability to “actively participate” in the children's education, contrary to state law. See TEX. EDUC. CODE § 26.001(a).
Texas AG Opinion

• Furthermore, the provision requiring school personnel to “work closely with the student” to determine to what extent, if any, a parent will be involved in the student’s transitioning suggests that employees could, pursuant to these restrictions, encourage some children to withhold information from a parent. See Guidelines at 6.

• Such action is both against state law and grounds for discipline under the Education Code. See TEX. EDUC. CODE §§ 26.001(c), 26.008(a)-(b). Thus, to the extent that the Guidelines limit parental access to information about a parent’s child and operate to encourage students to withhold information from their parents, they violate chapter 26 of the Education Code.”

• Attempts to encourage a child to withhold information from his or her parents may be grounds for discipline. To the extent that the Transgender Student Guidelines adopted by the FWISD superintendent limit parental access to information about their child and operate to encourage students to withhold information from parents contrary to the provisions in chapter 26, they violate state law.

Current Parent’s Rights Laws

EDUCATION CODE
TITLE 2. PUBLIC EDUCATION
SUBTITLE E. STUDENTS AND PARENTS
CHAPTER 26. PARENTAL RIGHTS AND RESPONSIBILITIES

Sec. 26.001. PURPOSE. (a) Parents are partners with educators, administrators, and school district boards of trustees in their children’s education. Parents shall be encouraged to actively participate in creating and implementing educational programs for their children.
(b) The rights listed in this chapter are not exclusive. This chapter does not limit a parent’s rights under other law.
(c) Unless statutes provided by law, a board of trustees, administrator, educator, or other person may not limit parental rights.
(d) Each board of trustees shall provide for procedures to consider complaints that a parent’s right has been denied.
(e) Each board of trustees shall cooperate in the establishment of ongoing operations of at least one parent-teacher organization at each school in the district to promote parental involvement in school activities.

Amended by Acts 1979, 76th Leg., ch. 240, Sec. 1, eff. May 31, 1979.
Current Parent’s Rights Laws

Sec. 26.005. ACCESS TO STUDENT RECORDS. (a) In this section, “intervention strategy” means a strategy in a multi-tiered system of supports that is above the level of intervention generally used in that system with all children. The term includes response to intervention and other early intervening strategies.

(b) A parent is entitled to access to all written records of a school district concerning the parent’s child, including:

1. Attendance record;
2. Test scores;
3. Grades;
4. Disciplinary records;
5. Counseling records;
6. Psychological records;
7. Application for admission;
8. Health and immunization information;
9. Teacher and school counselor evaluations;
10. Reports of behavioral patterns; and
11. Records relating to assistance provided for learning difficulties, including information collected regarding any intervention strategies used with the child.

Sec. 26.006. ACCESS TO STUDENT RECORDS. (a) A parent is entitled to:

1. Petition the board of trustees designating the school in the district that the parent’s child will attend, as provided by section 26.005;
2. Reasonable access to the school principal, or to a designated administrator with the authority to assign a student, to request a change in the class or teacher to which the parent’s child has been assigned, if the reassignment or change would not affect the assignment or reassignment of another student;
3. Request, with the expectation that the request will not be unreasonably denied, the addition of a specific academic class in the course of study of the parent’s child in keeping with the required curriculum if sufficient interest is shown in the addition of the class to make it economically practical to offer the class;
4. Petition the board of trustees to attend a school for credit above the child’s grade level, whether in the child’s school or another school, unless the board or its designated representative asserts that the child cannot perform satisfactorily in the class;
5. Petition the board of trustees to graduate from high school earlier than the child would normally graduate, if the child completes each course required for graduation; and
6. The decision of the board of trustees concerning a request described by subsection (a)(1) or (2) is final and may not be appealed.

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Current Parent’s Rights Laws

Sec. 26.008. RIGHT TO FULL INFORMATION CONCERNING STUDENT. (a) A parent is entitled to full information regarding the school activities of a parent’s child except as provided by Section 26.004.
(b) An attempt by any school district employee to encourage or coerce a child to withhold information from the child’s parent is grounds for discipline under Section 21.104, 21.106, or 21.121, as applicable.

CHANGING STUDENT RECORDS

In contrast to permanent school records, however, teachers and other school district employees often informally address students by, and have non-permanent school records that reflect, preferred names or nicknames that are not a student’s legal first name. A school district should apply this practice equally with transgender students. For example, the transgender student’s preferred first name and gender should be used in speaking with the student and for class rosters, identification badges, awards, and any other similar purpose. OCR and DOJ’s 2021 guidance cites a failure to address a transgender student by the student’s chosen name and pronouns as an example of sex-based discrimination within the agencies’ enforcement authority under Title IX.17
CHANGING STUDENT RECORDS

Texas Education Code section 25.0021 requires that a student be identified by his or her legal surname, or last name, as that name appears (1) on the student’s birth certificate or other document suitable as proof for the student’s identity, or (2) in a court order changing the student’s name. However, Section 25.0021 does not address students’ first names or genders.

CHANGING STUDENT RECORDS

In general, a student’s legal name is used on permanent records, especially when required by state or federal laws and regulations. For example, Texas school districts are required to complete and maintain permanently the academic achievement record, or “AAR” of high school students (often referred to as a “transcript”), including full legal name and gender. Following guidelines developed by the Texas commissioner of education, the AAR must have the complete name from the student’s birth certificate or other legal document, without use of nicknames or abbreviations. The student’s legal name, the name submitted to Public Education Information Management System (PEIMS) at the Texas Education Agency (TEA), and the name recorded on the AAR must be identical. Any changes in the AAR must be dated, explained and kept as part of the student’s permanent file. TEA has informally stated that it will accept the student gender that a district reports through PEIMS, including a report that changes the student’s gender following a student and/or parent request to alter the record.
As of 2021-2022, the Education Department’s Civil Rights Data Collection includes a non-binary option to the male/female data categories. The DOE has stated this change is to ensure that the data, “captures accurate and inclusive information about all student identities and student experiences, where the data are available.” The department defines “nonbinary students” as those “who do not identify exclusively as male or female,” and said this definition does not apply to transgender students who identify exclusively as either male or female.

The DOE has issued guidance specifically to students regarding how to handle harassment.

1. **Notify a teacher or school leader** (for example, a principal or student affairs staff) immediately. If you don’t get the help you need, file a formal complaint with the school, school district, college, or university. Keep records of your complaint(s) and responses you receive.

2. **Write down the details** about what happened, where and when the incident happened, who was involved, and the names of any witnesses. Do this for every incident of discrimination, and keep copies of any related documents or other information.

3. **If you are not proficient in English, you have the right to ask the school to translate or interpret information** into a language you understand. If you have communication needs because of a disability, you have the right to receive accommodations or aids and services that provide you with effective communication.

4. **Counseling and other mental health support** can sometimes be helpful for a student who has been harassed or bullied. **Consider seeking mental health resources** if needed.

5. **Consider filing a complaint** with the Civil Rights Division of the U.S. Department of Justice at [civilrights.justice.gov](http://civilrights.justice.gov) (available in several different languages), or with the Office for Civil Rights at the U.S. Department of Education at [www.ed.gov/ocr/complaintintro.html](http://www.ed.gov/ocr/complaintintro.html) (to file a complaint in English) or [www.ed.gov/ocr/docs/howto.html](http://www.ed.gov/ocr/docs/howto.html) (to file a complaint in multiple languages).
Over the summer, John came back as Jane…

Are we required to change their name?
  – In their contract
  – On our website
  – In the yearbook

Do we tell parents?
Preferred Names and Pronouns

In its decision in *Lusardi v. Dep’t of the Army*, the EEOC explained that although accidental misuse of a transgender employee’s preferred name and pronouns does not violate Title VII, intentionally and repeatedly using the wrong name and pronouns to refer to a transgender employee could contribute to an unlawful hostile work environment.

Over the summer, John came back as Jane...

Would we get in trouble for changing their assignment?
- Removing coaching duties?
The EEOC has taken the position that employers may not deny an employee equal access to a bathroom, locker room, or shower that corresponds to the employee’s gender identity.

Judge Matthew Kacsmaryk, a Trump-appointed district court judge for the Northern District of Texas, on October 1, 2022, found that Title VII prohibits employment discrimination against an individual for being gay or transgender, “but not necessarily all correlated conduct,” including use of pronouns, dress and bathrooms. He struck down the EEOC guidance in Texas v. EEOC.

_Bostock v. Judge Kacsmaryk_
According to the EEOC, T.C. Wheelers, Inc., which operates T.C. Wheelers Bar & Pizzeria in Tonawanda, New York, violated federal law when management and employees harassed an employee because of his gender identity.

Beginning in January 2021, one of T.C. Wheelers’ owners repeatedly harassed Quinn J. Gambino, a transgender male, including telling Gambino that he “wasn’t a real man,” asking invasive questions about his transition, and asking, “Does she have female parts?”

T.C. Wheelers’ owners also intentionally misgendered Gambino by using female pronouns (such as “she” or “her”) and stood by as employees and customers did the same.

Gambino, who worked as a cook at T.C. Wheelers, complained repeatedly to management.

TC Wheelers failed to protect Gambino by not addressing the almost daily harassment from all levels of staff, including owners, managers, and line employees.

Eventually, Gambino had no choice but to resign to escape the harassment, the EEOC charged.
EEOC v. T C Wheelers, Inc. (1:23-cv-00286)  
District Court, W.D. New York, March 2023

- The EEOC attempted to use their reconciliation process before filing suit
- EEOC sued under Title VII

John M. Kluge v.  
Brownsburg Community School Corp.,

- Hired by BCSC in August 2014 to serve as a Music and Orchestra Teacher at BHS.
- BCSC implemented a policy (“Name Policy”) for all their teachers to address transgender students with their chosen names and pronouns
- Mr. Kluge and three other teachers requested meeting with the Principal, during which they presented a signed letter expressing their religious objections to transgenderism and other information supporting their position that BHS should not "promote transgenderism."
On July 31, 2023, the Seventh Circuit Court of Appeals revived the case thanks to the SCOTUS ruling in Groff v. DeJoy, which raised the burden on employers to claim that a religious accommodation causes an undue hardship under Title VII.

The Seventh Circuit vacated the decision granting summary judgment to the school on the teacher’s claim the school failed to accommodate his religious beliefs/practices, agreeing the school was unable to accommodate the teacher’s religious beliefs and practices without imposing an undue hardship.

A college professor, who taught theology, refused to refer to a transgender student in their class by their preferred pronouns. Instead he used only the student’s last name with no Mr. or Ms. before it to address them. Sixth Circuit held that under the First Amendment the professor may refuse to use student’s preferred pronouns for religious reasons.
Other Unique Cases and Laws

Tatel v. Mt. Lebanon Sch. Dist.,
637 F. Supp. 3d 295 (W.D. Pa. 2022),

Parents of first grade children brought § 1983 action against teacher, principal, school district, and members of school board, alleging that teacher taught children about gender dysphoria and transgender transitioning without giving them opportunity to opt children out of instruction in violation of their constitutional rights.
Tatel v. Mt. Lebanon Sch. Dist.

- The Third Circuit has recognized that the fundamental right of parents to raise and nurture their children may sometimes conflict with a public school's policies, but explained: “when such collisions occur, the primacy of the parents’ authority must be recognized and should yield only where the school's action is tied to a compelling interest.” Gruenke v. Seip, 225 F.3d 290, 305 (3d Cir. 2000).
- The parents have been allowed to continue their claim, as the Court denied the district’s MTD.

Senate Bill 14

Texas healthcare workers may not:
- Perform any surgery on a child (under 18) for purposes of gender transition which by result sterilizes them, or perform a mastectomy
- Provide, prescribe, administer, or dispense certain prescription drugs that induce transient or permanent infertility

These laws do not apply to those born as intersex, or the prescription is part of a continuing course of treatment that the child began before June 1, 2023, and the child attended 12 or more sessions of mental health counseling or psychotherapy during a period of at least six months before the date the course of treatment described by began
The information in this handout was prepared by Eichelbaum Wardell Hansen Powell & Muñoz, P.C. It is intended to be used for general information only and is not to be considered specific legal advice. If special legal advice is sought, consult an attorney.