



DELRAN TOWNSHIP SCHOOL DISTRICT

52 Hartford Rd., Delran NJ, 08075

"dedicated to nurturing a supportive, student-centered environment where all people are treated with dignity and respect"

New Jersey Law Against Discrimination (NJLAD): Law and Application in Delran Township Public Schools



A Presentation to the Board of Education Regular
Public Meeting

September 23, 2019

Gender Equity: Definition of Terms

Gender identity refers to an individual's internal sense of gender. A person's gender identity may be different from or the same as the person's sex assigned at birth.

Gender expression refers to the manner in which an individual expresses gender to others through behavior, dress, etc.

Sex assigned at birth refers to the sex designation recorded on an infant's birth certificate should such a record be provided at birth.

Gender Equity: Definition of Terms

Transgender describes those individuals whose gender identity is different from the sex they were assigned at birth.

A transgender male is someone who identifies as male but was assigned the sex of female at birth; a transgender female is someone who identifies as female but was assigned the sex of male at birth.

The term “transgender” does not address sexual orientation. Under New Jersey state anti-discrimination laws, sexual orientation and gender identity or expression are viewed as entirely separate and distinct protected classes of individuals.

Gender Equity: Definition of Terms

Gender transition refers to the process in which transgender individuals begin asserting the sex that corresponds to their gender identity instead of the sex they were assigned at birth.

During gender transition, individuals begin to live and identify as the sex consistent with their gender identity and may dress differently, adopt a new name, and use pronouns consistent with their gender identity. Transgender individuals may undergo gender transition at any stage of their lives, and gender transition can happen swiftly or over a long duration of time.

N.J. Law Relevant to Gender Equity in Public Schools

The New Jersey Law Against Discrimination (“LAD”) prohibits acts of discrimination based on a person’s sex, including pregnancy, their affectional or sexual orientation, and their gender identity or expression. N.J.S.A. 10:5-12.

N.J. Law Relevant to Gender Equity in Public Schools

“The Legislature finds and declares that practices of discrimination against any of its inhabitants, because of...gender identity or expression, affectional or sexual orientation...are matters of concern to the government of the State, and that such discrimination threatens not only the rights and proper privileges of the inhabitants of the State but menaces the institutions and foundation of a free democratic State..”

N.J.S.A. 10:5-3.

N.J. Law Relevant to Gender Equity in Public Schools

“All persons shall have the opportunity to obtain employment, and to obtain all the accommodations, advantages, facilities, and privileges of any place of public accommodation, publicly assisted housing accommodation, and other real property without discrimination because of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, disability, nationality, sex, gender identity or expression or source of lawful income used for rental or mortgage payments, subject only to conditions and limitations applicable alike to all persons.” N.J.S.A. 10:5-4.

N.J. Law Relevant to Gender Equity in Public Schools

“This opportunity is recognized as and declared to be a civil right.” N.J.S.A. 10:5-4.

The State Legislature passed an amendment to this section of the statute, N.J.S.A. 10:5-4, in 2006 in order to explicitly include “gender identity or expression” as a protected class.

As a result, acts of discrimination motivated by an individual’s gender identity or expression are now unlawful in New Jersey.

N.J. Law Relevant to Gender Equity in Public Schools

N.J.S.A. 10:5-5(rr), a section of the LAD, defines the phrase “gender identity or expression” as “having or being perceived as having a gender-related identity or expression whether or not stereotypically associated with a person’s assigned sex at birth.”

The LAD also prohibits discrimination in places of public accommodation. Pursuant to the statute, in sex-segregated public accommodations, such as bathrooms or locker rooms, a person must be permitted to use the facility consistent with their gender identity or expression.

Public schools are included within the definition of places of public accommodation set forth in the LAD.

N.J. Law Relevant to Gender Equity in Public Schools

Therefore, students and staff members in public schools must be allowed to use any sex-segregated facilities, such as bathrooms and locker rooms, consistent with their gender identity or expression.

The same applies to visitors who may be present in public schools as well, to the extent that visitors and members of the public in general are permitted to be on school grounds as a place of public accommodation.

Directive of the United States Department of Education and Department of Justice regarding Transgender Students

On May 13, 2016, the U.S. Department of Education and the Department of Justice issued a directive that public school districts must permit transgender students to use bathrooms and locker rooms according to their chosen gender identity.

Under Title IX of the Education Amendments of 1972, schools that receive federal funding cannot discriminate against students on the basis of sex in their educational programs, events, activities, and school facilities. The directive makes it clear that as far as the Departments of Justice and Education are concerned, that word "sex" includes gender identity.

Directive of the United States Department of Education and Department of Justice regarding Transgender Students

The USDOE has directed that public schools are obligated to treat transgender students in accordance with their chosen gender identity upon notification by a parent or guardian that the student's gender identity "differs from previous representations or records."

Students have the right to dress, use school restrooms and locker rooms, and participate in activities in a way that matches their gender identity.

Schools must use the correct names and pronouns for transgender students and protect students' privacy by keeping information about their transgender status confidential.

Directive of the United States Department of Education and Department of Justice regarding Transgender Students

A school may not require a parent or student to submit a specific medical diagnosis or identification documents that reflect his or her gender identity.

The school district must ensure that it provides equal access to school activities, events, and facilities to transgender students, even in instances when it makes others uncomfortable.

Directive of the United States Department of Education and Department of Justice regarding Transgender Students

On February 22, 2017, the United States Department of Justice and Education issued a guidance document that effectively rescinded all of the provisions contained in the federal directive regarding transgender students issued under the prior administration on May 13, 2016.

Directive of the United States Department of Education and Department of Justice regarding Transgender Students

The February 2017 guidance document noted that recent federal court decisions had questioned whether the May 13, 2016 directive was consistent with federal law, and further stated as follows:

“[T]he Departments believe that, in this context, there must be due regard for the primary role of the States and local school districts in establishing educational policy.

Directive of the United States Department of Education and Department of Justice regarding Transgender Students

In these circumstances, the Department of Education and the Department of Justice have decided to withdraw and rescind the guidance documents in order to further and more completely consider the legal issues involved. The Departments thus will not rely on the views expressed within them. . . .

[T]his withdrawal of these guidance documents does not leave students without protections from discrimination, bullying, or harassment. All schools must ensure that all students, including LGBT students, are able to learn and thrive in a safe environment.”

Directive of the United States Department of Education and Department of Justice regarding Transgender Students

As a result of the February 2017 guidance, transgender students are entitled to continue to receive generally applicable civil rights that have traditionally been provided under federal law, but the federal government now allows each individual state to make its own determinations as to how to protect those civil rights in practice and apply them to the various day-to-day issues impacting transgender students.

Because gender identity is protected in New Jersey by our state Law Against Discrimination, and is also addressed by existing case law, it is expected that the February 2017 federal guidance will not significantly change the protections provided to transgender students in this State.

Federal Case Law Regarding the Rights of Transgender Students

Gloucester County School Board v. G.G., United States Court of Appeals for the Fourth Circuit (Filed 2015)

Court found that the Gloucester County School Board violated Gavin's rights under Title IX and the Equal Protection Clause of the Fourteenth Amendment. The amended complaint also seeks to permanent injunction preventing the Board from excluding him from the restrooms when he on school grounds for alumni activities.

Federal Case Law Regarding the Rights of Transgender Students

Carcaño v. Cooper, United States District Court for the Middle District of North Carolina (filed March 2016)

Executive order that provides nondiscrimination protections for LGBT state employees and affirms equal rights for transgender North Carolinians.

The plaintiffs continue to challenge the legality of HB 142, which is commonly referred to as “HB 2 lite” and allegedly does not offer any protections for LGBT individuals, since it prohibits the “regulation” of access to restrooms and other facilities in schools and other state or local government buildings in North Carolina, permitting discrimination.

New Jersey Takes Action Designed to Protect Transgender Students Following Federal Guidance Issued in February 2017

On July 21, 2017, Governor Christie signed into law P.L.2017, c.137, legislation which required the Commissioner of Education to develop guidelines for schools regarding transgender students.

Specifically, the new law prohibits school districts from mandating that a transgender student “use a restroom or locker room that conflicts with the student’s gender identity.

New Jersey Takes Action Designed to Protect Transgender Students Following Federal Guidance Issued in February 2017

Schools must provide “reasonable alternative arrangements if needed to ensure a student’s safety and comfort.”

School staff are also required to refer to transgender students by their preferred pronouns consistent with their gender identity, “regardless of whether a legal name change or change in official school records has occurred.”

Must refer using preferred pronouns

Gender equality applies to both students and staff members

NJLAD: Practical Application in Delran Township

Delran High School: Fully Implemented

Delran Middle School: Pre-Implementation Phase

September 27, 2019: Staff Development

September 30, 2019: Letter to Parents: Advisement and Education

October 7 - October 11 (NJDOE Week of Respect): Schoolwide Small Group Discussions with family opt-out provisions

Delran Middle School: Implementation Phase Begins Cycle 2: Bathroom and Locker Room

NJLAD: Practical Application in Delran Township

Board Discussion