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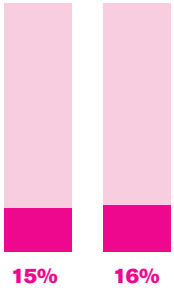
ADVOCATING FOR LGBTQ STUDENTS WITH DISABILITIES

A GUIDE FOR EDUCATORS AND PARENTS/GUARDIANS ON SUPPORTING LGBTQ STUDENTS WITH AN IEP OR 504 PLAN

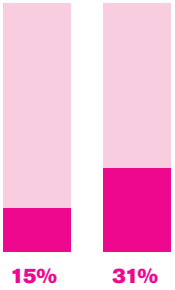
Lesbian, gay, bisexual, transgender and queer (LGBTQ) students with disabilities face unique challenges as a result of their disability status and potential bias related to their sexual orientation, gender identity and/or gender expression. Educators, counselors, parents/guardians and other adult allies play an important role in ensuring the safety, inclusion and well-being of these students, all of which are essential to academic and social-emotional growth in the classroom and school communities. Individualized Education Programs (IEPs) and 504 plans for these students should account for the unique needs and experiences of LGBTQ students with disabilities to ensure that they can learn and participate in school programs and activities in a nondiscriminatory environment. This resource provides an overview of the rights of LGBTQ students with disabilities as well as actionable recommendations on how to best support them.

BACKGROUND

According to HRC's 2017 LGBTQ youth survey, **15%** of LGBTQ teens indicated they have a disability, and **16%** were unsure.



Additionally, only **15%** of LGBTQ teens with a disability reported that they always feel safe in the classroom as compared to **31%** of LGBTQ teenagers without a disability.



SAFETY AND INCLUSION

Both LGBTQ students and students with disabilities experience disproportionate levels of discrimination and harassment that may impede their ability to achieve their full potential in school.[1,2] Research shows that these students feel less safe overall in school compared to their non-disabled and non-LGBTQ peers. Affected students are more likely to fare worse academically, experience higher rates of depression and loneliness, have worse relationships with their peers and miss more school.[3] LGBTQ students alone are up to 140% more likely to miss school because they are concerned for their safety.[2,5]

Bathroom safety can be especially concerning for transgender and non-binary students, including those with disabilities. These students may be unable to access facilities that align with their gender identity due to an absence of school policies protecting them. Schools may also inadequately enforce existing policies designed to include LGBTQ students and students with disabilities. For these reasons, transgender and non-binary students may avoid using restrooms and locker rooms. This has even led to some students avoiding eating and drinking during the school day.[6] These behaviors can have serious impacts on their mental and physical health (i.e., anxiety, increased risk of bladder and kidney infection) and their ability to focus in school.[7-10] Further, many facilities that are gender inclusive do not follow the Americans with Disabilities Act (ADA) accessibility guidelines, making them inaccessible to students with disabilities.

"When gender-expansive youth can't use the restroom that aligns with their gender identity, 66% avoid using the restroom at school altogether."

When exploring how to best support LGBTQ students with disabilities, it is crucial to consider how their unique experience in school can affect their academic performance. Supportive adults should consider developing IEPs and 504 plans that address safety while ensuring access.

"I've been bullied in the last couple of months by kids at school for needing extra help in class and for wearing 'boy clothes' to school. It's been really hard because they tease me for my disability and because I'm non-binary."
– LGBTQ student

BEING LGBTQ IS NOT A DISABILITY

As defined by the Individuals with Disabilities Education Act (IDEA), a student with a disability is entitled to a Free Appropriate Public Education (FAPE) with an appropriately developed and implemented Individualized Education Program (IEP).[11] The IEP must enable the student to make academic progress. While an LGBTQ student with a disability may face particular challenges and difficulties as a result of their sexual orientation, gender identity and/or gender expression, it is important to note that being LGBTQ is not a disability. While IEPs and 504 plans should not be used for LGBTQ students who have not been identified as having a disability, students may have health conditions (i.e., gender dysphoria, depression, anxiety) related to their identity and/or orientation. In these cases, those conditions *may* warrant consideration as an educational disability or impairment.

LAWS TO KNOW

When supporting LGBTQ students with disabilities, it can be helpful to know and understand the laws that provide protection on the basis of sexual orientation, gender identity, gender expression and disability. The Equal Protection Clause of the U.S. Constitution and Title IX of the Education Amendments Act protects students, including LGBTQ students, from discrimination based on sex, which courts have applied to include protections for transgender and gender non-conforming students.[12]

LGBTQ students with disabilities are also protected from harassment and bullying at school under Section 504 of the Rehabilitation Act, Title II of the Americans with Disabilities Act, and Title IX .[12-19] Further, the bullying of a student with a disability on any basis may constitute a denial of a Free Appropriate Public Education (FAPE) under both IDEA and Section 504.[20,21] These laws are particularly pertinent to LGBTQ students with disabilities who are not only vulnerable to harassment on the basis of their disability status but also because of their LGBTQ identities.

Additionally, families and educators should be aware that schools are bound to maintain the privacy of students under various federal and state laws.[22] This is especially important given the considerable risks to a student's safety if their LGBTQ identity is disclosed.

A NOTE ON CONFIDENTIALITY

Educators should take care to maintain student confidentiality, working with the student to determine how public or private they want their identities to be. Never assume that a student's family is aware of their child's LGBTQ identity. Given the research on the importance of family acceptance to the short- and long-term wellbeing of LGBTQ youth, school personnel should provide LGBTQ students with the resources and assistance they need to build family acceptance and make that disclosure. In order to safeguard the student's wellbeing throughout that process, school personnel should be careful not to disclose the student's LGBTQ identity to the student's family members either directly (e.g. phone conversation with the parents/guardians) or indirectly (e.g. in school records) without the student's explicit consent.

STRATEGIES FOR SUPPORTING AN LGBTQ STUDENT WITH A DISABILITY

> "The IEP team at my daughter's school understood that being misgendered by school staff would only hinder her ability to meet the IEP goals. Therefore, one of the accommodations agreed to was that all staff call my daughter by her chosen name and to refer to her using the pronouns she, her, and hers. As a result, my daughter feels safer, her attendance improved and we anticipate she is on schedule to meet or exceed all academic goals." – **Parent of a transgender child with disabilities**

In order to ensure that an LGBTQ student with a disability receives FAPE, educators should develop student-centered IEPs and 504 plans that address each student's unique needs and challenges. Listed below are some specific strategies educators can use to support an LGBTQ student with a disability in meeting their goals:

- **RESPECT** the sexual orientation, gender identity and/or expression of the student and protect them from bullying and discrimination. For example, if a student's chosen name differs from their legal name, refer to the student by their chosen name in interactions. In order to maintain rapport and ensure the student understands what can and can't be maintained in confidence, it will be important to have an open discussion regarding school policy and/or state and local laws. For example, a student's chosen names and pronouns can be used within the classroom and all interactions, but anything included in the student's educational record can be subject to review by parents/guardians until the student turns 18. Additionally, some states may require that a student's legal name be used on all legal documents, although the records can be changed retroactively after a legal name change has been processed. A shared understanding that you support them completely but that there will be times you are restricted in how you may do so will help to maintain the student's trust.

- **ADVOCATE** for school information systems to add categories for capturing chosen names and pronouns. Another way to advocate for a transgender or non-binary student is by securing access to bathrooms and locker rooms that match the student's gender identity. Updating systems and policies to address the needs of transgender and non-binary students is critical to meeting their unique needs and creating an educational environment where those students can thrive.

- **VALUE** and encourage the student's input, while understanding the power imbalance between students and their adult allies. This imbalance may make it difficult for students to communicate for themselves, but you can work with them to improve their self-advocacy skills and create opportunities for them to give input. This could include developing self-advocacy goals in the student's IEP or 504 plan, or setting up a one-on-one, confidential meeting with the student and an affirming educator where the student can communicate freely about the student's current challenges. If supporting a transgender or non-binary student, the Gender Support Checklist from Welcoming Schools is a helpful tool to reference. When creating a checklist, do not document any identifying information and do not include this in the student's file, unless they have authorized you to do so. It is critical to check-in with the student and center their needs, particularly if they have non-affirming family. Great care must be taken to protect the student's privacy. Documents that disclose a student's confidential transgender status should be maintained separately to ensure confidentiality and safety. For example, the documents can be stored in a locked safe in the office of the school administrator, counselor, nurse, etc.

> "It was so helpful when the school counselor met with me and the teacher who sponsors the school GSA. I was able to tell them about how I didn't feel safe using the girls' bathroom. I had been so scared to tell anyone else about it before. They talked about how this could be addressed through my IEP so I could start using the boys' bathrooms since that's how I identify."
> **– Transgender student with disabilities**

- **IMPLEMENT** schoolwide, multi-tiered behavioral frameworks that instruct students and school staff how to behave respectfully and specify how to address problem behavior. Two examples of such frameworks are the Positive Behavioral Interventions and Supports (PBIS) approach and the Restorative Justice approach. These frameworks are constructive alternatives to zero-tolerance policies. Zero-tolerance anti-bullying policies have been shown to reinforce negative student behavior, foster student distrust in adults and can lead to LGBTQ students with disabilities, especially students of color, being pushed out of school.[23]

- **CONSIDER** using positive behavioral interventions, supports and other strategies if an individual student's behavior begins to interfere with their (or others') learning. Students with disabilities are often disproportionately and unfairly suspended and expelled from school or educated in classrooms separate from their peers. Additionally, according to a 2016 report by GLSEN, over 65% of LGBTQ students experience disciplinary discrimination based on their sexual orientation, gender identity and/or gender expression.[8] Failure to consider and provide for needed behavioral supports through the IEP process may result in a child not receiving a FAPE.[24]

- **USE** supplementary aids and services, including behavioral coaches, social skills instruction and school counselors/psychologists, to support students' access to the general curriculum with necessary modifications. For example, a school counselor may provide a student with an affirming space to share the challenges they are experiencing and strategize with them on how to address these challenges while working on their academic goals. Supporting Safe and Healthy Schools for Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) Students (GLSEN, 2019) provides research and resources on school-based mental health supports as well as the need for such.

- **CREATE** a safe and inclusive school environment for all LGBTQ students. This is critical to supporting LGBTQ students with disabilities. Potential strategies for creating an LGBTQ-inclusive environment include:

    - **ESTABLISH** anti-bullying and non-discrimination policies that are inclusive of sexual orientation, gender identity and gender expression. Policies should include: 1) easy and confidential ways for students to report bullying, and 2) alternative protocol to zero-tolerance policies for responding to bullying and harassment (e.g., positive behavioral interventions and supports and restorative justice practices).

- **ADOPT** policies and procedures that specifically support transgender and non-binary students. For example, GLSEN and the National Center for Transgender Equality developed a model policy for school districts on transgender and gender nonconforming students.

- **IMPLEMENT** inclusive dress codes that support a diversity of gender expressions. For example, Portland Public Schools has adopted a model dress code that is gender-neutral and free of racial bias.

- **PROVIDE** comprehensive professional development for all staff on creating safer and more inclusive spaces for LGBTQ students. For example, prepare staff to interrupt and address anti-LGBTQ language and behavior when it is used in school. Engage in school and district-wide ongoing and on-site professional development to offer multiple ways for adults in the schools to understand important information about LGBTQ issues, and about sexual orientation, gender identity, gender expression and disability. Welcoming Schools offers professional development trainings and provides technical assistance to educators in elementary schools and districts. The Human Rights Campaign, in partnership with the National Education Association and the American Counseling Association, presents Time to THRIVE, an annual national conference to promote the safety, inclusion and well-being for LGBTQ youth.

> "We have had some on-going professional development on making our school more LGBTQ-inclusive. This has given me a lot of tools to use in the classroom, and I've begun applying an LGBTQ-inclusive lens to IEP meetings. We even practiced how to stop students when they use derogatory language in the classroom." – **Middle school teacher**

> "I am a changed person after attending the Time to THRIVE conference! I found the entire weekend to be emotional and empowering. I've always tried to create a welcoming space for all students, but Time to THRIVE gave me more tools than I can use in a lifetime." – **Middle School Teacher from Minnesota**

- **DEVELOP** LGBTQ-inclusive curricula and create a school climate that is welcoming to LGBTQ students. Available resources include HRC's Welcoming Schools and Teaching Tolerance's. These include guidance for educators on addressing bias in age-appropriate ways and free Common Core-aligned lesson plans.

- **SUPPORT** student groups in middle and high schools that are LGBTQ-inclusive, such as gay-straight alliances or gender and sexuality alliances (GSAs).

LGBTQ identities are NOT disabilities, but students with disabilities and impairments may also be LGBTQ. This resource is intended to help educators confidently and effectively advocate for sexual and gender minority students. Ideally, students should be allowed access to needed resources, services, restrooms and locker rooms without such access being written into a Section 504 Plan or IEP, but there are times when including specific provisions about equal access may be necessary to ensure that students are able to access school programs and facilities and benefit from classroom instruction.

FURTHER READING & AVAILABLE RESOURCES

- National Association of School Psychologists (NASP) Publications on LGBTQ Youth
  - Resources on creating safe, accepting and respectful school climates that are free from discrimination, harassment, violence and abuse.
- Schools In Transition: A Guide for Supporting Transgender Students in K-12 Schools
  - Resource providing a blueprint for safe, supportive and inclusive school environments for transgender youth.
- Just As They Are: Protecting Our Children from the Harms of Conversion Therapy
  - Guide to help parents/guardians recognize when and how conversion therapy is promoted and provides information about the dangers of the practice.
- Transgender Students and School Bathrooms: Frequently Asked Questions
  - Resource addressing "many of the common questions that arise for school leaders as they work to create gender-inclusive school environments."
- Safe Space Posters for Secondary Schools; Safe Space Poster for Elementary Schools
  - Visuals to display in your office or classroom to show your space is safe and welcoming for LGBTQ students, staff and families.
- "What Do You Say to 'That's So Gay' and Other Anti-LGBTQ Comments?"
  - Guidance on how to interrupt anti-LGBTQ language and behavior with elementary school students.
- FAQ on Supporting Transgender and Non-Binary Students in K-12 Schools
  - Resource on how to support transgender and non-binary students in light of the the Department of Health and Human Services' effort to establish an anti-LGBTQ legal definition of sex under Title IX.
- Time to THRIVE Conference
  - Annual national conference for K-12 educators, counselors, parents/families and other youth-serving professionals to promote the safety, inclusion and well-being of LGBTQ youth.
- Welcoming Schools Program
  - Professional development program providing training and resources to elementary school educators to welcome diverse families, create LGBTQ and gender inclusive schools, prevent bias-based bullying and support transgender and non-binary students.
- Office of Special Education Programs (OSEP) Technical Assistance Center on PBIS
  - Resource supported by the Department of Education that assists schools, districts, and states in building capacity to implement a multi-tiered approach to social, emotional, and behavior support.

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