

# Legal Notes One: Use of Affirmed Name and Pronoun

We know LGBTQ+ students are present in our schools and coming out more frequently. Clarification about ensuring the well-being, rights and safety of LGBTQ+ youth is paramount to ensuring our youth have positive experiences and can graduate successfully. We now know over 18.2% of Florida high school students identify as LGB or unsure of their sexual orientation, as well as 1.5% of students identify as transgender (2019 Youth Risk Behavior Survey).

In tandem with Simone Chriss from Southern Legal Counsel ([simone.chriss@southernlegal.org](mailto:simone.chriss@southernlegal.org)), as well as distinguished members of our EQFL Florida School Board Attorney Advisory Group, we have created a series of "Legal Notes" to keep handy as you ensure the safety and well-being of LGBTQ+ students. Thank you for your continued dedication to equity and the support and resiliency of all students.

Every Florida School Board is responsible for providing "proper attention to [the] health, safety, and other matters relating to the welfare of students." Fla. Stat. § 1001.42(8)(a). When a school does not address a transgender student using their affirmed name and pronouns in the school setting, or discloses information about the student's gender identity through their education records, the school is placing that student at risk of harm and failing to provide a safe learning environment.

## Experience and Findings of LGBTQ+ Youth

- Florida has the third highest number of LGBTQ+ individuals in the country.
- Studies have demonstrated that 77% of trans youth experience mistreatment at school, and 75% of trans youth feel unsafe at school. This leads to school aversion, lower GPA's, dropping out, and other negative consequences.
- For trans youth, a safe and affirming learning environment requires use of the students' affirmed name and pronouns. Transgender youth are often in constant fear of bullying, harassment, and the stigma of being "outed" when schools use their dead name/birth name.
- A non-affirming and unsupportive school environment can have lasting negative consequences on a student's life, with far reaching impacts on education, employment, stability, and overall well-being.

## Why is use of affirmed name and pronouns so important?

Students have the right to have their affirmed name and pronouns used at school including on their education records, even if they have not obtained a legal name change. A current or former student's transgender status, legal name, and sex assigned at birth constitute protected personally identifiable information, the disclosure of which would violate the school's obligations under the Family Educational Rights and Privacy Act (FERPA).

Students' right to be affirmed in their gender identity at school is protected by Title IX of the Educational Amendments of 1972 as well as the guarantees of Equal Protection, Due Process, Freedom of Expression, and Right to Privacy afforded by U.S. and Florida Constitutions.

Student information systems should be updated to reflect the student's affirmed name and gender marker, and all school staff and teachers must use the student's affirmed name and pronouns.

Case law: *Bostock v. Clayton Cty.*, Georgia, No. 17-1618, 2020 WL 3146686 (U.S. June 15, 2020); *Whitaker v. Kenosha Unified School District*, 858 F.3d 1034 (7th Cir. 2017); *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011); *Powell v Schriver*, 175 F.3d 107 (2d Cir. 1999); *Adams v. Sch. Bd. of St. Johns County*, 318 F.Supp.3d 1293 (M.D. Fla. Jul. 26, 2018); *Grimm v. Gloucester County Sch. Bd.*, 302 F.Supp.3d 730 (2018); *Nguon v. Wolf*, F.Supp.2d 1177 (C.D. Cal. 2007)

## Youth Rights, Safety and Self Advocacy

- All students have the right to a safe and affirming learning environment.
- If a student has a supportive and willing parent or legal guardian, they can obtain a legal name and gender marker change on the student's behalf.
- Even if a student cannot obtain a legal name change, they have the right to have their affirmed name and pronouns used at school and on their unofficial records and communications.
- Current and former students who legally change their name can request that their records be retroactively amended so that colleges, employers, etc. do not see their dead name/birth name or their sex assigned at birth.
- A student's legal name (dead name/birth name) should only appear where necessary – i.e. standardized tests. All other records and communications should reflect affirmed name – including yearbooks, student IDs, attendance lists, school newspapers, substitute teacher plans, Student Information Systems (i.e. FOCUS or Skyward), team rosters, and more.
- Students can assert their rights under FERPA to amend their records to match their gender identity and protect them from being “outed” to others without their consent.
- A student's right to be “out” at school does not give teachers or staff the right to disclose the student's gender identity or sexual orientation to others, including the student's family. Students have the right to informational privacy, which means they get to decide when, and with whom, their personal and sensitive information is shared.
- Assistance with a legal name change, as well as amending the name and gender marker on identification documents, can be found at [floridanamechange.org](http://floridanamechange.org)

## QUESTIONS? REACH OUT TO US AT:

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