



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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Commissioner of Education
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Via email & certified mail
Belleville-Henderson Central School District
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April 17, 2025

Dear Belleville-Henderson Central School District,

The New York State Office of the Attorney General (“OAG”) and the New York State Board of Regents (“Board” or “SED”) write to remind the Belleville-Henderson School District (“District”) of their legal obligations to respect the rights of LGBTQ+ students in their care. In particular, the District may not adopt any policy that precludes transgender students from using facilities that correspond with their gender identity, nor may it discourage transgender students from exercising their right to do so. Further, we remind the District of its obligation to adhere to state laws and regulations that safeguard students from harassment, bullying, and the disclosure of protected student information. Pursuant to these obligations, the District must address harassment and bullying, including harassment or bullying that occurs during school board meetings and, in many cases, off-campus or online. The District also must promptly address any allegation that an employee wrongfully shared protected student information.

Schools May Not Adopt Discriminatory Facilities Policies or Practices

Under New York law, transgender and gender expansive students have the right to use facilities, including restrooms and locker rooms, or participate on school athletic teams consistent

with their gender identity.¹ Our state laws have robust protections for transgender students.² New York law prohibits discrimination based on sex, sexual orientation, gender identity, or gender expression.³ Conduct that denies LGBTQ+ students equal protection of the law or otherwise subjects them to “any discrimination in their civil rights” on the basis of these or other protected characteristics violates the New York State Constitution and Civil Rights Law.⁴ SED's Office of Counsel has issued a Formal Opinion of Counsel analyzing inclusive school facilities policies, in which it reached the “ineluctable conclusion . . . that denying transgender persons access to restrooms or locker rooms violates [the HRL].”⁵ The New York State Division for Human Rights has also published guidance documents in which it instructs schools that the following are unlawful discriminatory practices: (a) denying the use of restrooms or other facilities consistent with a person’s gender identity; (b) asking a transgender person to use a single-occupancy restroom because of someone else’s concerns; and (c) requiring individuals to show medical or other documents in order to use facilities, such as restrooms, locker rooms or residential facilities, consistent with their gender identity.⁶

¹ See N.Y. Exec. Law § 296(4) (prohibiting public schools from denying the use of facilities, including restrooms and locker rooms, to any person on the basis of sex, gender identity, or gender expression); N.Y. Educ. Law § 12(1) (prohibiting discrimination based on a student’s actual or perceived sex or gender on public-school property and at school functions); N.Y. Educ. Law § 3201-a (prohibiting discrimination based on sex, including gender identity and expression, with respect to inclusion on public schools’ athletic teams); see also N.Y. Exec. Law § 292(35) (defining the terms “gender identity or expression” as “a person’s actual or perceived gender-related identity, appearance, behavior, expression, or other gender-related characteristic regardless of the sex assigned to that person at birth, including, but not limited to, the status of being transgender”); N.Y. Educ. Law § 11(6) (defining “gender” as “actual or perceived sex,” including “gender identity or expression”); 9 NYCRR §§ 466.13(b)(1)–(2) (defining “[g]ender identity” as “having or being perceived as having a gender identity, self-image, appearance, behavior or expression whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned to that person at birth,” and a “transgender person [a]s an individual who has a gender identity different from the sex assigned to that individual at birth”); NYSED, *Creating a Safe, Supportive, and Affirming Sch. Env’t for Transgender and Gender Expansive Students: 2023 Legal Update and Best Practices* (June 2023), <https://www.nysed.gov/sites/default/files/programs/student-support-services/creating-a-safe-supportive-and-affirming-school-environment-for-transgender-and-gender-expansive-students.pdf> (advising school districts that New York law requires that students be allowed to use restrooms and locker rooms and participate on athletic teams consistent with their gender identities); N.Y. State Div. of Hum. Rts. (“DHR”), *Guidance on Prots. from Gender Identity Discrimination Under the N.Y. State Hum. Rts. Law* (Jan. 29, 2020), <https://dhr.ny.gov/system/files/documents/2022/04/nysdhr-genda-guidance-2020.pdf>; N.Y. Legis. B. Drafting Comm’n., Governor’s B. Jacket, L. 2019, ch. 008 at 18–19 (explaining that the state legislature enacted the 2019 Gender Expression Non-Discrimination Act (“GENDA”) to “ensure that the public understands that discrimination on the basis of gender identity and expression is prohibited,” including discrimination “because an individual has transitioned or intends to transition from one gender to another”).

² Letitia James and Dr. Betty A. Rosa, *Joint Statement of the Office of the Attorney Gen. and the State Educ. Dep’t Regarding Transgender Students’ Rts.* (Feb. 2025), <https://www.nysed.gov/sites/default/files/nysed-oag-joint-statement-regarding-transgender-students.pdf>.

³ N.Y. Exec. Law § 291(2) (“The opportunity to obtain education . . . without discrimination because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, marital status, or disability . . . is hereby recognized as and declared to be a civil right.”).

⁴ N.Y. Const. art. I, § 11(a); N.Y. Civil Rts. Law § 40-c.

⁵ NYSED, Formal Opinion of Counsel (May 14, 2024), <https://www.counsel.nysed.gov/sites/counsel/files/244.pdf>.

⁶ DHR, *Guidance on Protections from Gender Identity Discrimination Under the New York State Human Rights Law*, at p. 3 (Jan. 29, 2020), <https://dhr.ny.gov/system/files/documents/2022/04/nysdhr-genda-guidance-2020.pdf>.

Pursuant to these laws and regulations, the District may not adopt any policy that precludes transgender students from using facilities that correspond with their gender identity, nor may it discourage transgender students from exercising their right to do so. For restrooms and other shared facilities, the District may make arrangements for any student who requests additional privacy but such arrangements must be provided in a non-stigmatizing manner that protects student privacy and does not marginalize the student. Under the New York State Human Rights Law, schools cannot ask or require a transgender student to use a single-stall restroom because of someone else's concerns or condition the use of facilities such as restrooms or locker rooms upon students' provision of medical or other specific documentation.⁷

Schools Must Address Discrimination and Harassment

State laws protecting transgender students from discrimination prohibit not only acts, but also failures to act: the New York State Human Rights Law makes it unlawful for school districts to “*permit* the harassment of any student” because of the student’s sex, sexual orientation, gender identity, or gender expression.⁸ Further, in enacting the Dignity for All Students Act, the legislature found that “students’ ability to learn and to meet high academic standards, and a school’s ability to educate its students, are compromised by incidents of discrimination and harassment including bullying, taunting or intimidation.”⁹ Districts may not permit and, if it occurs, must take immediate and appropriate action to address discrimination, harassment, or bullying targeting a transgender student. Boards of education that permit harassing and stigmatizing discussion about LGBTQ+ students in public meetings may likewise expose their district to liability under this law.¹⁰

Additionally, school districts’ and boards’ acts or failures to act that lead to the bullying or harassment of LGBTQ+ students may also breach their common-law duty to provide adequate supervision.¹¹ School districts and boards owe a duty of care to the students in their schools,

⁷ NYSED, *Creating a Safe, Supportive, and Affirming Sch. Env’t*, *supra* note 1, at 23.

⁸ N.Y. Exec. Law § 296(4) (emphasis added); *see* DHR, *Guidance on Prots. from Gender Identity Discrimination Under the N.Y. State Hum. Rts. Law*, *supra* note 1. Note that, including and beyond school environments, harassment and discrimination are unlawful when based on membership in a protected class, such as “race, color, religion, disability, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, age, marital status, or status as a victim of domestic violence.” N.Y. Exec. Law § 296(4); *see also* N.Y. Const. art. I, § 11(a) (prohibiting the denial of equal protection of the laws of New York and discrimination in civil rights because of “sex, including sexual orientation, gender identity, [and] gender expression,” among other protected characteristics).

⁹ N.Y. Educ. Law § 10.

¹⁰ Comments creating a “disparately hostile educational environment relative to [a student’s] peers” on the basis of sex or gender may violate Title IX of the Educational Amendments of 1972. *Hayut v. State Univ. of N.Y.*, 352 F.3d 733, 750 (2d Cir. 2003). The New York State Legislature was clear, however, that the state Human Rights Law “shall be construed liberally for the accomplishment of the remedial purposes thereof, regardless of whether federal civil rights laws, including those laws with [comparable] provisions . . . have been so construed.” N.Y. Exec. Law § 300; *Cooper v. Franklin Templeton Invs.*, No. 22-2763-CV, 2023 WL 3882977, at *3 (2d Cir. June 8, 2023). Accordingly, merely permitting the harassment of a student on the basis of a protected characteristic, such as gender identity, may well be sufficient for liability under the state Human Rights Law, even if the harassment does not directly result in the creation of a disparately hostile environment.

¹¹ *See Shante D. by Ada D. v. City of N.Y.*, 190 A.D.2d 356, 361 (1st Dep’t 1993), *aff’d*, 83 N.Y.2d 948 (1994) (“School boards generally have a duty to supervise their students with the same degree of care as a parent would exercise in the same circumstances.”); *see also Cavello v. Sherburne-Earville Cent. Sch. Dist.*, 110 A.D.2d 253, 255

including the duty to provide “supervision and protection” comparable to “that of a parent of ordinary prudence placed in the same situation and armed with the same information.”¹² Districts and boards that allow students in their care to be bullied or harassed may be liable for the foreseeable result injuries stemming from that conduct.¹³

A district’s obligation to address discriminatory, harassing, or bullying conduct extends to conduct that occurs off school property when it “creates or would foreseeably create a risk of substantial disruption within the school environment.”¹⁴ This includes harassment or bullying that occurs online, on social media, or at off-campus events, if such activities risk substantially disrupting the school environment.¹⁵ A district must take appropriate action to address such off-campus conduct.

This includes school board meetings. In guidance published in 2023, SED shared research showing that LGBTQ+ students who feel harassed, stigmatized, or unwelcome at their schools suffer “lower academic outcomes and poorer mental well-being” and are more likely to miss school, drop out, and not attend college.¹⁶ Children should not have to endure the indignity of adults discussing their bodies or questioning the legitimacy of their identities and their life experiences in a public forum, such as a school board meeting. Under the First Amendment, school board meetings are considered limited public fora. This means that school boards “may make reasonable, viewpoint-neutral rules governing the content of speech allowed,”¹⁷ including prohibiting a particular topic or specific speech that would have discriminatory, harassing, or

(3d Dep’t 1985) (districts can be held liable “for emotional suffering due to [their] negligent supervision of other students”).

¹² *C.M. v. W. Babylon Union Free Sch. Dist.*, 231 A.D.3d 809, 811 (2d Dep’t 2024) (quotation marks and citation omitted). This duty “derives from the simple fact that a school, in assuming physical custody and control over its students, effectively takes the place of parents and guardians.” *Mirand v. City of N.Y.*, 84 N.Y.2d 44, 49 (1994).

¹³ *See Spring v. Allegany-Limestone Cent. Sch. Dist.*, 221 A.D.3d 1474, 1475–77 (4th Dep’t 2023) (finding evidence that district was “negligent in failing to adequately address and safeguard against harassment and bullying” of student), *reargument denied*, 224 A.D.3d 1335 (2024).

¹⁴ N.Y. Educ. Law § 11(7)(d) (prohibited “harassment” and “bullying” include conduct that “occurs off school property and creates or would foreseeably create a risk of substantial disruption within the school environment”).

¹⁵ *Id.*; *see also Appeal of C.B.*, 62 Ed. Dep’t Rep., Decision No. 18,238 (Feb. 8, 2023),

<https://www.counsel.nysed.gov/Decisions/volume62/d18238> (stating “I remind [the district] that it is obligated to address all bullying and harassment that ‘occurs off school property and creates or would foreseeably create a risk of substantial disruption within the school environment[.]’” (citing N.Y. Educ. Law § 11(7)(d)). Courts have found this standard properly balances individuals’ free speech rights with schools’ need to address disruptive conduct. *See, e.g., Doninger v. Niehoff et al.*, 527 F.3d 41 (2d Cir. 2008) (employing this standard to uphold discipline of student for online blog post); *Wisniewski v. Board of Educ. of the Weedsport Central School Dist.*, 494 F.3d 34 (2d Cir. 2007), *cert. denied*, 552 U.S. 1296 (2008) (employing this standard to uphold discipline of student for drawing sent over online instant messaging platform).

¹⁶ NYSED, *Creating a Safe, Supportive, and Affirming Sch. Env’t*, *supra* note 1, at 7 (citing Joseph G. Kosciw, Ph.D., Caitlin M. Clark, Ph.D., and Leesh Menard, *The 2021 National Sch. Climate Survey: The Experiences of LGBTQ+ Youth in Our Nation’s Schs.* (2022), <https://www.glsen.org/sites/default/files/2022-10/NSCS-2021-Full-Report.pdf>).

¹⁷ *Peck ex rel. Peck v. Baldwinville Cent. Sch. Dist.*, 426 F.3d 617, 626 (2d Cir. 2005) (emphasis removed); *see Hotel Emps. & Rest. Emps. Union, Local 100 of N.Y. & Vicinity, AFL CIO v. City of N.Y. Dep’t of Parks & Recreation*, 311 F.3d 534, 545–46 (2d Cir. 2002) (citing school board meetings as an example of limited public fora); *Roth v. Levittown Union Free Sch. Dist.*, No. 23-CV-0361 (RPK) (ARL), 2023 WL 6283253 (E.D.N.Y. Sept. 26, 2023) (upholding reasonable restriction on speech at school board meeting), *appeal dismissed*, No. 23-7992, 2024 WL 5111915 (2d Cir. May 23, 2024).

bullying effects.¹⁸ School boards in New York should be mindful that their “meetings are an inappropriate venue to air personal or political grievances.”¹⁹ Nor should boards allow individuals to intentionally misgender district students—a practice that, according to research, leads to feelings of stigmatization and psychological harm, including anxiety, depression, and stress.²⁰

Accordingly, the District may not permit any discrimination, harassment, or bullying against its transgender students. It must take all appropriate steps to prevent it from occurring, including during school board meetings, and must take prompt action to address it if it does occur. Any failure to do so likely violates the law and could lead to the removal of school officers or withholding of State Aid.²¹

Schools Must Safeguard Protected Student Information

Under federal and state law, a school may not disclose any student's personally identifying information without parental authorization.²² This includes its staff and school board members. Municipal officers, including administrators and board members, who willfully make unlawful disclosures of confidential student information learned in the course of their official duties may be

¹⁸ Consistent with the First Amendment, boards of education may prohibit all discussion from all viewpoints on a particular topic but may not prohibit only the expression of a particular viewpoint on that topic. *See Curley v. Philo*, No. 07CV370GLS-DRH, 2009 WL 2152323, at *3 (N.D.N.Y. July 14, 2009) (holding that a board of education’s policy prohibiting all further discussion of a specific controversy related to the district’s girls’ varsity soccer team was permissible under the First Amendment). Boards may also prohibit specific speech on any topic if such speech would have a discriminatory, harassing, or bullying effect. For example, a federal court recently upheld a school’s decision to ban two parents from wearing wristbands to a school sports event (also a limited public forum) because those wristbands displayed symbols the school determined could have a demeaning, harassing, or bullying effect on a transgender student athlete participating in the event or on other transgender students attending the event. *Fellers v. Kelley*, No. 24-cv-311, 2025 WL 1098271 (D.N.H. Apr. 14, 2025). The court found, “Having reasonably determined that the wristband symbols would likely be understood as demeaning, harassing, and psychologically injurious - potentially in severe ways - to both any transgender students attending the soccer game, and specifically [the transgender student athlete participating in the event], school authorities were duty bound to protect those students from the harassment, intimidation, and anxiety likely to follow” and therefore acted lawfully in banning the wristbands. *Id.* It further determined that this was not viewpoint discrimination, holding “the School District did not act because plaintiffs communicated an opinion opposing transgender players participating in girls’ sports” but because “it reasonably concluded that plaintiffs communicated a symbolic message (however quietly and passively) that was demeaning, harassing, and harmful to, and targeted at, a specific transgender player as well as other transgender students.” *Id.*

¹⁹ *Applications of Zamparelli*, 64 Ed Dept Rep, Decision No. 18,526, available at <https://www.counsel.nysed.gov/Decisions/volume64/d18526>.

²⁰ *See* Kevin A. McLemore, *A Minority Stress Perspective on Transgender Individuals’ Experiences with Misgendering*, 3 STIGMA AND HEALTH, 53, 54 (2018). “Misgendering” means “[a]ttributing a gender to someone that is incorrect or does not align with the person’s gender identity.” NYSED, *Creating a Safe, Supportive, and Affirming Sch. Env’t*, *supra* note 1, at 10.

²¹ N.Y. Educ. Law § 306.

²² Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (prohibiting schools’ unauthorized release of students’ personally identifying information); 34 CFR. § 99.3 (same); N.Y. Gen. Mun. Law § 805-a(1)(b) (prohibiting municipal officers from “disclos[ing] confidential information acquired ... in the course of [their] official duties”); N.Y. Educ. Law § 2-d (prohibiting schools’ unauthorized release of students’ personally identifiable information); 8 NYCRR § 200.5(e)(2) (same).

subject to removal.²³ Such confidential information could include students’ names or “personal characteristics or other information that would make it possible to identify the student with reasonable certainty.”²⁴ Teachers and others holding a teaching certificate may be subject to professional discipline for unlawful disclosures, including revocation of their license.²⁵ Other district staff may also face discipline. Should the District receive a complaint or otherwise be made aware that an officer or employee wrongfully shared protected student information, it must promptly investigate and take necessary corrective action, including [filing a Breach Report](#) with SED’s Chief Privacy Officer.

Administrators, board members, teachers, and other staff can consult resources published by our offices to understand the application of these laws and regulations. SED’s Culturally Responsive-Sustaining Education Framework provides tools and guidance to “help education stakeholders create student-centered learning environments that affirm cultural identities; foster positive academic outcomes; develop students’ abilities to connect across lines of difference; elevate historically marginalized voices; empower students as agents of social change; and contribute to individual student engagement, learning, growth, and achievement through the cultivation of critical thinking.”²⁶ SED’s best practices for “Creating a Safe, Supportive, and Affirming School Environment for Transgender and Gender Expansive Students” likewise provides important additional guidance to district leaders and stakeholders.²⁷ These and other resources should assist stakeholders in fulfilling their duty to engage in constructive discussion that assists their districts in creating a safe and welcoming environment for all students.²⁸

²³ N.Y. Educ. Law § 306(1); *see also Appeals of Ziegelbauer*, 62 Ed. Dep’t Rep., Decision No. 18,143 (July 7, 2022), <https://www.counsel.nysed.gov/Decisions/volume62/d18143> (denying board member’s appeal of board of education’s decision to remove her from office for disclosing confidential information obtained in the course of her duties); *Appeal of Nelson*, 49 Ed. Dep’t Rep., Decision No. 15,964 (Aug. 14, 2009), <https://www.counsel.nysed.gov/Decisions/volume49/d15964> (same).

²⁴ 8 NYCRR § 200.5(e)(1)(iv) (defining confidential “personally identifiable data” as including any “list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty”).

²⁵ N.Y. Educ. Law § 305(6); 8 NYCRR § 83.1.

²⁶ NYSED, *Culturally Responsive-Sustaining Framework*, <https://www.nysed.gov/sites/default/files/programs/crs/culturally-responsive-sustaining-education-framework.pdf>; *see also* NYSED, *Toolkit for Raising Awareness of the N.Y. Culturally Responsive-Sustaining Educ. Framework: Guidance Document for Sch. and Dist. Leaders* (2021), <https://www.nysed.gov/sites/default/files/programs/crs/cr-s-awareness-leaders-in-schools-and-districts-pd-toolkit-guidance-document.pdf>.

²⁷ NYSED, *Creating a Safe, Supportive, and Affirming Schs. Env’t*, *supra* note 1.

²⁸ *See, e.g.,* GLSEN, *Safe Space Kit: A Guide to Supporting Lesbian, Gay, Bisexual, Transgender, and Queer Students in Your Sch.* (2019), <https://www.glsen.org/sites/default/files/2019-11/GLSEN%20English%20SafeSpace%20Book%20Text%20Updated%202019.pdf>; Eric T. Schneiderman and MaryEllen Elia, *Joint Guidance Clarifying New York Schools’ Responsibility to Protect Transgender Students* (Feb. 28, 2018), <http://www.nysed.gov/common/nysed/files/nysed-oag-joint-guidance-letter-2-28-18.pdf>; Hum. Rts. Campaign Found., *Schs. in Transition: A Guide for Supporting Transgender Students in K-12 Schools* (2015), <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/welcoming-schools/documents/HRCF-Schools-In-Transition.pdf?mtime=20210516092237&focal=none>; NYSED, *Dignity for All Students Act Student Discrimination, Harassment and Bullying Prevention and Intervention: Guidance for Local Implementation* (July 2013), <https://www.nysed.gov/sites/default/files/programs/student-support-services/dasa-guidance-for-local-implementation.pdf>.

SED and OAG caution the District to ensure that its policies and conduct adhere to the law, and that its public meetings and schools remain constructive and respectful spaces where the dignity and rights of all students, including LGBTQ+ students, are respected.

SED and OAG are committed to ensuring that our state's schools are safe and welcoming spaces for students of all sexes, sexual orientations, gender identities, and gender expressions. Students and other community members who have experienced or witnessed harassment or discrimination on the basis of these or other protected characteristics may lodge a [complaint with OAG](#) or seek assistance from other agencies, including [SED](#), the [New York State Division of Human Rights](#), and, in New York City, the [Commission of Human Rights](#). Impacted students, parents, and other caregivers are also encouraged to seek assistance from community organizations and other non-profits, which may provide additional forms of support for students experiencing discrimination, bullying, or harassment in their school communities.

Public schools can seek out assistance from SED for support and resources to create a safe and supportive school environment for all students. For further information or questions, please contact the Student Support Services Office at (518) 486-6090.

Sincerely,

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