

## The 21<sup>st</sup> Century is Now!

# Creating a Gender-Inclusive School Environment: Three Tools Educators Need to Better Support Students Identifying as Transgender

By Kasha Roseta and Ken Turner

*By all accounts, Ash Whitaker is a stellar student. He plays in his high school orchestra, belongs to the astronomy club, and is a member of the National Honor Society. Yet, one cold winter day during his junior year of high school, Ash is pulled from class and told to report to the principal's office. His offense? Using the boys' restroom. You see, Ash is transgender—his assigned sex at birth (female) does not align with his gender identity (male)—and his Wisconsin school district has a policy stating that all students must use the restroom corresponding to their assigned sex.*

*For this violation, Ash is disciplined, his restroom use is monitored by school staff, and he is the only student required to use a gender-neutral restroom. To make matters worse, the gender-neutral restroom is located so far away from*

*his classes that he has to choose between using the restroom and being late to class. To avoid having to make this choice, Ash starts to limit his fluid intake during the day. This causes him to feel dizzy, sick, and lightheaded, which affects his ability to concentrate in class. His mental health starts to plummet, and at one point, he thinks seriously about suicide.*

*Finally, Ash has had enough. With the assistance of a national legal aid organization, he sues the school district, alleging that its restroom policy violates his civil rights under Title IX of the Education Amendments of 1972 ("Title IX") and the Equal Protection Clause of the 14<sup>th</sup> Amendment to the U.S. Constitution ("Equal Protection Clause").<sup>1</sup> After winding its way through the federal courts for over a year, the case finally settles—but not until after the district court and the Seventh Circuit have both issued preliminary rulings in Ash's favor.<sup>2</sup> For Ash, these preliminary rulings (and the settlement award) are small victories, but victories nonetheless.*

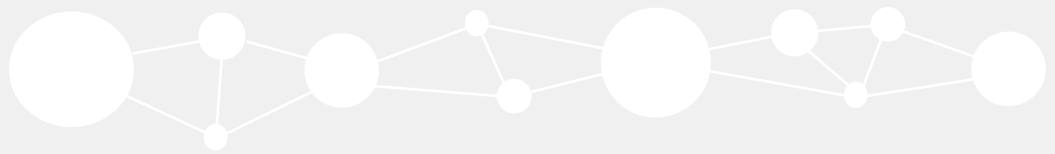
*"The reality is that regardless of how we, as educators, feel about LGBTQ+ issues, many of our students are grappling with these concepts of self-identity on a daily basis."*

Like Ash, many students identifying as transgender experience discrimination at school. But, for various reasons, not all students are in a position to take legal action. So how can we, as educators, learn to better understand and support our transgender students? This article will present three tools that can help point us down the right path.

<sup>1</sup> In his complaint, Ash specifically alleged that the district's policy violates the Equal Protection Clause of the 14<sup>th</sup> Amendment of the U.S. Constitution (prohibiting different treatment based on a number of protected classes, including sex) and Title IX of the Education Amendments of 1972 (prohibiting sex discrimination in schools receiving federal financial assistance). See *Whitaker ex rel. Whitaker v. Kenosha Unified Sch. Dist. No. 1*, No. 16-CV-943-PP (E.D. Wisc. Sep. 22, 2016).

<sup>2</sup> See *Whitaker v. Kenosha Unified Sch. Dist. No. 1*, 858 F.3d 1034 (7th Cir. 2017) (affirming a lower court order enjoining district officials from interfering with Ash's ability to use the boys' restroom during his senior year, among other things). In response, the district petitioned the United States Supreme Court for *certiorari* (to overturn this ruling) on August 25, 2017. Shortly thereafter, the district opted to withdraw its petition in order to settle the case.





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### Understand the Relevant Legal Framework.

First, educators must obtain a solid grasp of the relevant legal framework affecting transgender students, which includes federal and state laws, regulations, and policy. Notably, there is no all-encompassing federal law or regulation that explicitly protects students from discrimination based on gender identity and gender expression. While some courts have construed Title IX (the federal law that prohibits sex discrimination in schools receiving federal funds) to also encompass discrimination based on sex stereotypes (i.e., gender nonconformity), the law itself is silent on the matter, and the issue has not yet been decided by the United States Supreme Court. Without comprehensive protection under federal law, transgender students in schools across the country are instead forced to rely on a patchwork of state laws and regulations to protect them from such discrimination. Sadly, only 13 states (plus the District of Columbia) have these important laws on the books.<sup>3</sup>

Federal and state policy (e.g., guidance and guidelines) can serve as an important source of legal protection for transgender students, although it is vulnerable to political changes. During the Obama administration, for example, transgender students were protected by the U.S. Department of Education's official guidance, which stated that Title IX's sex discrimination prohibition extended to claims of discrimination based on gender identity and gender nonconformity.<sup>4</sup> This guidance also required schools to treat students consistent with their gender

identity in all regards, including access to restrooms/locker rooms.<sup>5</sup> However, in early 2017, this guidance was rescinded by the Trump administration. The resulting policy vacuum has created widespread confusion about whether transgender students are still protected under Title IX.<sup>6</sup> States, however, remain free to develop and implement policy consistent with their own state laws and regulations.

Without a clear and consistent set of legal protections to rely upon, students identifying as transgender tend to fare much more poorly in school than their cisgender peers.<sup>7</sup> For example, they experience alarming rates of harassment, intimidation, and bullying; according to one study, as many as 78% of transgender youth report being harassed at school because of their gender expression.<sup>8</sup> They are also more likely to miss school, fail to graduate, be disciplined and nonfunneled into the juvenile justice system, experience homelessness, and face serious psychological distress, including suicidal ideations and attempts.<sup>9</sup>

Students in Washington are luckier than most. Because our state has some of the most robust civil rights protections in the country, *all* students are protected from discrimination based on gender identity and gender expression under not one, but two, separate laws: the [Washington Law against Discrimination](#) and the [Equal Educational Opportunity Act](#).<sup>10</sup> In addition, OSPI's Equity and Civil Rights Office has developed [guidance](#) that clarifies Washington school districts' legal obligations and provides answers to frequently asked questions about transgender students on topics like pronoun use, student

<sup>3</sup> The 13 states with education nondiscrimination laws that explicitly protect transgender students are: California, Colorado, Connecticut, Iowa, Illinois, Massachusetts, Maine, Minnesota, New Jersey, New York, Oregon, Vermont, and Washington.

<sup>4</sup> U.S. Dept. of Educ.'s Office for Civil Rights, *Q & A on Title IX and Sexual Violence*, at 5 (April 28, 2014) (last accessed on August 22, 2017 at <https://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>).

<sup>5</sup> *Id.*

<sup>6</sup> The U.S. Department of Education's February 22, 2017 "Dear Colleague" letter revoking the previous guidance is available at <https://www2.ed.gov/about/offices/list/ocr/lgbt.html>.

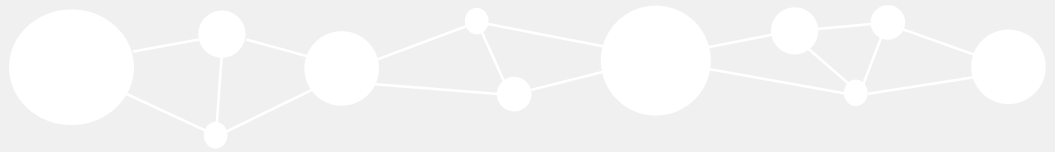
<sup>7</sup> Cisgender simply means that a person's assigned sex at birth and gender identity are aligned.

<sup>8</sup> *Separation and Stigma: Transgender Youth & School Facilities*, at 4 (2017) (last accessed August 22, 2017 at <https://www.glsen.org/article/separation-and-stigma-transgender-youth-and-school-facilities>).

<sup>9</sup> According to one report, as many as 41% of transgender people have attempted suicide, as compared to 4.6% of their cisgender peers. Discrimination is one of the most closely related stressors leading to suicide attempts. *Separation and Stigma: Transgender Youth & School Facilities*, at 4 (2017) (last accessed August 22, 2017 at <https://www.glsen.org/article/separation-and-stigma-transgender-youth-and-school-facilities>).

<sup>10</sup> RCW 49.60 and WAC 162-32 (Washington Law against Discrimination); RCW 28A.642 and WAC 392-190 (part of Washington's equal educational opportunity laws).





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privacy, school records, athletic participation, and restroom and locker room access.<sup>11</sup> And, as of January 31, 2020, all public school districts and charter schools in Washington must also have adopted a “Gender-Inclusive Schools” policy and procedure that includes certain requirements.<sup>12</sup>

The bottom line is that despite the recent shifts in the federal legal landscape, Washington’s commitment to protecting students identifying as transgender remains strong. As Superintendent Reykdal stated in a [press release](#) shortly after taking office in 2017, “Our state laws are explicit. We must not discriminate against our students, no matter their gender identity or sexual orientation.”<sup>13</sup>

### Learn Relevant Terms.

At this point some of us might be thinking, “How does this help me talk to students? While I’m sure it’s important, I am not entirely comfortable talking about gender identity in my classroom.”

As educators, we cannot lead where we are afraid to go. Polls reveal younger generations are more supportive of diversity in sexual orientation and gender identity than their parents and grandparents are currently. While these subjects may be taboo at home, students are definitely talking about them at school. The reality is that regardless of how we, as educators, feel about LGBTQ+<sup>14</sup> issues, many of our students are grappling with these concepts of self-identity on a daily basis. And, at some point during our careers, odds are that students in our own schools—and probably also in our own classrooms—will identify as non-binary. Understanding, and then respectfully using, some relevant terms—*transgender*, *cisgender*, *gender identity*, *assigned sex*, and *gender expression*, to name a few—is

the first step in making all students feel welcomed, valued, and seen.

One helpful exercise was developed for the middle school *Family Life and Sexual Health (FLASH)* curriculum<sup>15</sup>, created by Public Health, Seattle & King County. The goal of this lesson is for students to understand the difference between *biological sex*, *gender identity*, *sexual orientation*, and *sexual behavior*.<sup>16</sup> To begin, students receive four cards, each with a different term:

*Biological Sex*

*Gender Identity*

*Sexual Orientation*

*Sexual Behavior*

Students then receive 13 different definition cards. Examples of definitions are below:

\_\_\_\_\_ is a deep feeling people have about whether they are a boy, girl, both or neither.

A person’s \_\_\_\_\_ is cisgender if it matches the person’s biological sex.

\_\_\_\_\_ is based on chromosomes, either XX (female) or XY (male).

\_\_\_\_\_ is determined by whether a person is attracted to the same gender, another gender, or all genders.

In groups of 2–4, students discuss and match the terms to the definitions. Through this collaborative process, they discuss that these four terms all have different meanings even though they are often confused and misused. They also learn that because people can realize that they are

<sup>11</sup> OSPI’s Equity and Civil Rights Office is in the process of rewriting its guidance on gender-inclusive schools. When the new guidance is available, ideally in the spring of 2020, it will be posted on OSPI’s [website](#).

<sup>12</sup> A model policy and procedure on gender-inclusive schools (#3211/3211P), which OSPI co-developed with the Washington State School Directors’ Association (WSSDA), are available at no cost on WSSDA’s Featured Policies [webpage](#).

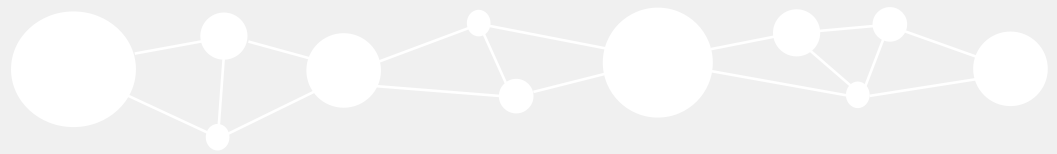
<sup>13</sup> Office of Superintendent of Public Instruction (OSPI). [Reykdal: State Laws Will Continue to Protect Transgender Students](#) [Press release], Feb. 23, 2017.

<sup>14</sup> Most commonly, this acronym stands for: lesbian, gay, bisexual, transgender, queer, questioning, and beyond.

<sup>15</sup> Public Health — Seattle & King County. (2016). *Middle School FLASH, Second Edition*. Seattle, WA: Public Health — Seattle & King County.

<sup>16</sup> 7<sup>th</sup> Grade Learning Outcome H1Se3.7.





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LGBTQ+ at any age, each person’s journey toward self-awareness is unique and worthy of respect.

While originally designed for middle school students, this is actually an activity that a health teacher, counselor, or administrator could facilitate at a school staff meeting, both to educate staff and to encourage them to become more comfortable discussing these important topics.

Another useful resource that educators can use to familiarize themselves with key terms is *Health Across the Gender Spectrum*, an [educational video series](#) created by Dr. Maya Adam of Stanford University. This sequential online class uses 19 YouTube videos, each about three minutes long, to introduce people to the gender spectrum (the idea that gender is not just a male/female binary) with personal interviews and engaging animation. Tools like the *FLASH* lesson and *Health Across the Gender Spectrum* can help both educators and students to learn and correctly use these terms on a consistent basis.

### Model a Supportive and Inclusive Learning Environment.

As educators or education advocates, we need to model a supportive and inclusive learning environment, one where students can ask tough questions and educators can feel comfortable and confident enough to engage in the conversation. We do not have to be experts in LGBTQ+ topics to create and model an inclusive learning environment. All we have to remember is that **under Washington law, all students have the right to be protected from discrimination based on gender identity or gender expression while at school.**

Below are some practical tips for making sure you are creating an inclusive learning environment:

- **Inquire whether your district has a policy and procedure** that recognizes the importance of an inclusive approach toward students identifying as transgender, and if not, work toward getting one adopted.

- **Use students’ proper names, pronouns, and gender markers to the extent possible, and require others to do the same.** Having each student fill out a confidential “getting-to-know-you” index card (or other survey tool) at the beginning of the school year that includes questions about their name, pronouns, gender marker, and anything else (favorite sport/music/activity outside of school, for example) is an easy way to accomplish this.
- **Check in privately with students from time to time** to see how the school can help them feel more comfortable. A little effort here can go a long way toward building trust with students (and also often with their families).

*Instruction on gender identity* might not always be greeted with enthusiasm from parents or colleagues. However, if we, as educators, are to live up to our state’s educational vision—every student ready for college, career, and life—we must strive to support each and every student. We must also seek to ensure that each student has equal access to their education without discrimination. What steps will you use to support the “Ash Whitakers” in your school?

### Important Vocabulary<sup>17</sup>

**Assigned Sex:** The assignment and classification at birth of people as male, female, intersex, or another sex, often based on physical anatomy and/or karyotyping. Often also known as *biological sex*.

**Cisgender:** Adjective indicating that a person’s assigned sex matches their gender identity.

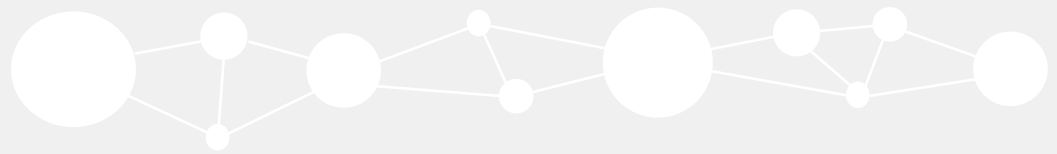
**Gender Expression:** The physical or external manifestation of a person’s gender identity through their behavior, appearance, and mannerisms (e.g., clothing, hairstyle, preferred activities).

**Gender Identity:** A person’s internal sense of being male, female, neither, both, or something else entirely.

<sup>17</sup> Unless otherwise indicated, definitions are courtesy of Trans Student Educational Resources,

<http://www.transstudent.org/definitions> (last visited Oct. 30, 2017) and *FLASH* curriculum, *infra* at footnote 13.





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**Gender Marker:** A designation (male, female, or another) that appears on a person's official records.

**Non-Binary:** A gender designation that does not use traditional binary restrictions of either male or female.

**Sexual Behavior:** Describes what a person does sexually. Can align—or not—with a person's sexual orientation, but is often influenced by societal and cultural norms and practices.

**Sexual Orientation:** A person's physical, romantic, emotional, aesthetic, and/or other form of attraction to others.

**Transgender:** Adjective indicating that a person's gender identity differs from their assigned sex.

### Educational Materials

[Gender Identity and Gender Expression in Schools](#), a webpage developed and maintained by the Equity and Civil Rights Office at OSPI, containing a multitude of resources, guidance, and information sheets for families and school districts.

[Gender Unicorn](#), an infographic designed by Trans Student Educational Resources to teach key vocabulary like gender identity, gender expression, sex assigned at birth, and sexual orientation.

[Growing Up Trans](#), a video series by PBS's Frontline that "takes viewers on an intimate and eye-opening journey inside the struggles and choices facing transgender kids and their families."

[Health Across the Gender Spectrum](#), a free online course created by Stanford University's Maya Adam, M.D., that teaches students about gender identity and the gender spectrum using illustrated stories and short teaching videos.

[How To Be A Girl](#), a podcast produced by Marlo Mack about raising her young transgender daughter.

[Transgender Boy Tells Mom 'It Shouldn't Be Scary To Be Who You Are'](#), an empowering 3-min audio story of an elementary student from NPR's StoryCorps.

[Welcoming Schools](#), a professional development program created by the Human Rights Commission that provides

training and resources to elementary school educators to help them "welcome diverse families, create LGBTQ and gender inclusive schools, prevent bias-based bullying, and support transgender and non-binary students."



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Billings Middle School in Seattle. Originally from Oregon, she earned her law degree from Seattle University, her M.P.A. from the University of Washington, and her B.S. from Northwestern University, where she also played Division I college soccer (Go Wildcats!). She enjoys trail running, reading historical fiction, watching college sports, spending time with her wife and their three dogs, and working to maintain her current title as the world's best aunt.



**Ken Turner** is an avid trail runner, cyclist, and Nordic ski patroller. He is a former ropes course manager, college physical educator, Outward Bound instructor, and high school science

teacher before coming to OSPI as the Health and Physical Education supervisor. He has degrees from both Georgia Tech and the University of Georgia and earned his Doctorate of Education through the Leadership for Learning program at the University of Washington. Ken has a 10th grade son in Seattle Public Schools, an extremely sweet Golden Doodle, and he famously bakes extra-large calzones when not working or playing in the mountains..

