

STATE OF WISCONSIN  
COURT OF APPEALS OF WISCONSIN  
DISTRICT IV

APPEAL NO. 2020AP0001032 - LV  
CIRCUIT COURT CASE NO. 2020CV000454

---

John and Jane Doe 1, Jane Doe 3, Jane  
Doe 4, John and Jane Doe 5, John and  
Jane Doe 6, John and Jane Doe 8,

Plaintiffs-Petitioners,

v.

Madison Metropolitan School  
District,

Defendant-  
Respondent, and

Gender Equity Association of James  
Madison Memorial High School,  
Gender Sexuality Alliance of Madison  
West High School, and Gender  
Sexuality Alliance of Robert M. La  
Follette High School,

Intervenor-  
Defendants-  
Respondents.

---

**INTERVENOR RESPONDENTS' OPPOSITION BRIEF TO  
PETITION FOR INTERLOCUTORY APPELLATE REVIEW  
PURSUANT TO WIS. STAT. § 808.03(2)**

---

Intervenor Respondents Gender Equity Association of James Madison Memorial High School, Gender Sexuality Alliance of Madison West Hight School, and Gender Sexuality Alliance of Robert M. La Follette High School ("Intervenor Respondents") oppose the petition by Petitioners seeking leave to appeal a non-final order from the circuit court. The circuit court found that Wisconsin law did not allow Petitioners the relief they sought and, that even if the federal standard Petitioners championed applied in Wisconsin, Petitioners had not shown they were entitled to relief under that standard. Because the circuit court was correct on the law and appropriately exercised its discretion, Petitioners cannot satisfy the criteria for permissive appeal.

Although the circuit court denied Petitioners' request to proceed anonymously to the parties and to the court, the circuit court carefully crafted a solution that would allow Petitioners to shield their names from the public while, at the same time, allowing Respondents to obtain discovery. Petitioners ask this Court to grant their petition for permissive appeal to prevent Defendants from

learning of their identities, even under an attorneys' eyes only protective order.

### **STATEMENT OF ISSUES**

1. Whether the circuit court abused its discretion by allowing Petitioners to seal their identities from the public and parties, but requiring Petitioners to provide them to counsel under an attorneys' eyes only protective order.

### **STATEMENT OF FACTS**

#### **1. Procedural History**

Petitioners filed a complaint seeking a declaratory judgment against the Madison Metropolitan School District ("MMSD") declaring that MMSD's Guidance & Policies to Support Transgender, Non-Binary, and Gender Expansive Students (the "Guidance") violates their fundamental rights as parents under the Wisconsin Constitution to the extent that the Guidance: allows their students to use a name and pronouns of their choice at school; keeps teachers and staff from communicating with parents about a student's gender identity without first obtaining the student's consent; and permits

school staff, if the student wishes, to use different names and pronouns in communications with parents than the ones they use in school. While Intervenor Respondents dispute Petitioners' claims regarding the Guidance, Petitioners have failed to show that they have any grounds for challenging it, given that they have failed to show any likelihood at all that their children will be affected by it.

Petitioners filed a motion to proceed anonymously, asking the circuit court to adopt a balancing test they argued was used by some federal courts in considering such requests and to proceed without sharing their names not only with the public, but also the court and the Respondents. With this request, Petitioners submitted an affidavit of counsel attaching social media comments that Petitioners relied on to support their desire to proceed anonymously.

MMSD opposed Petitioners' motion as Wisconsin law does not allow a party to proceed anonymously and MMSD would be prejudiced by not being able to obtain discovery if the circuit court granted Petitioners' motion. The circuit court denied the motion to allow Petitioners to proceed anonymously, but crafted a remedy

allowing them to keep their identities sealed from the public and parties, only disclosing their identities to Respondents' counsel within the restrictions of an attorneys' eyes only protective order.

At the same hearing, the circuit court granted Intervenor Respondents the right to intervene in the case to defend the Guidance.

**2. The circuit court applied the federal balancing test Petitioners' championed and found that on balance, the factors weighed against allowing Petitioners to proceed anonymously.**

This Court should not confuse Petitioners' repetition of the arguments they made to the circuit court as the findings of the circuit court. The circuit court did not find that Petitioners had demonstrated a need for anonymity from the public, the court, parties, and counsel. (Compare Petition for Permissive Appeal ("Pet.") at 10.) The circuit court did not find that the claims in this case, "directly implicates Plaintiffs' minor children" likely because Petitioners affirmatively disclaimed any reason to believe their own children are taking advantage of the protections of the Guidance or that they are transgender, nonbinary, or gender expansive; have

gender dysphoria; have exhibited any other gender-nonconformity that would suggest they would take advantage of the protections of the Guidance in the near term or ever. (*Compare* Pet. at 6.) Rather, the circuit court found Petitioners had shown that should their names be known to the public, Petitioners – not their children – would likely be subject to threats and intimidation. (Pet. App. at 124-25.)

The circuit court carefully considered Petitioners' evidence submitted in support of their motion to proceed anonymously. That evidence included vague social media postings, snide remarks about Petitioners' counsel, and vehement support for transgender, nonbinary, and gender expansive children who have traditionally been the subject of bullying and torment in schools. Petitioners provided no evidence suggesting that any of them or their children had ever personally experienced any negative reaction to their views.

The circuit court understood that it could exercise its discretion to protect the Petitioners' identities, and determined the best approach to do so while allowing for the necessary discovery

was to keep Petitioners' identities secret from the public and parties, not counsel. (Pet. App. at 111-12.) Contrary to Petitioners' assertion, the circuit court did not find that Petitioners had shown that, "anonymity will not harm either the District or the public interest." (Pet. at 10.)

Contrary to Petitioners' repeated assertions, the circuit court found that Respondents could be prejudiced by Petitioners' request. The circuit court would not agree that the Petitioners' identities were, "completely immaterial to everything that follows in this case . . . at this point in this juncture it's not for me to say as to how I would control what the lawyers do in defending the policy of the school district or in the discovery that may follow." (Pet. App. at 126-27.)

In their Petition, Petitioners suggest that Respondents' need for discovery could be met if the circuit court put restrictions on how that discovery would occur, like taking depositions by Zoom or phone, for example. Petitioners did not raise this argument to the circuit court. Nor did Petitioners raise specific objections to the exact

language of the attorneys' eyes only protective order to be negotiated by the parties. Petitioners cannot raise those issues for the first time in this Court.

Finally, Petitioners have not provided any evidence that they have faced harassment or any negative feedback because of their status as individuals who object based on their religious beliefs to a guidance intended to protect the safety and well-being of transgender, non-binary and gender expansive students at MMSD schools. In contrast, when adopting its guidance, MMSD reviewed data showing that transgender youth in Dane County are significantly more likely than cisgender youth to have experienced homelessness and violence in the home and relied on that and other data regarding the serious risks of harm that LGBTQ+ students face as bases for putting the Guidance as well as its inclusive curriculum in place. (Appendix at App. 4-8.) MMSD also noted that in response to a nationwide survey:

- three-quarters of transgender students felt unsafe at school;



- two-thirds of transgender and non-binary students reported being verbally harassed at school;
- one in four transgender and non-binary students reported being physically harassed at school; and
- one in ten transgender and non-binary students reported being physically assaulted at school.

*(Id.* at 5.)

### **REASONS TO DENY PETITION FOR PERMISSIVE APPEAL**

This Court should deny the Petition for Permissive Appeal because there is no need to disturb the circuit court's discretionary decision. Petitioners have not shown that this Court should step in for four reasons: 1) they are not likely to succeed on the merits of this permissive appeal; 2) the circuit court exercised its discretion to give them the protection they need; 3) whether the circuit court crafted a solution that meets most of their needs is not an issue of importance to the general administration of justice; and 4) this appeal will not clarify further proceedings in this case.

Although Petitioners spend some part of their petition for permissive appeal explaining why they are entitled to an appeal as of right that question is not at issue in their request for permissive

appeal. Respondents disagree that Petitioners have an appeal as of right, as no final judgment has been entered and the denial of their motion to proceed anonymously did not end Petitioners' role in this case. In fact, Petitioners continue to seek relief in the circuit court, so their role has not been ended by the circuit court's ruling. Should this Court require briefing on this issue in response to Petitioners' Notice of Appeal as of Right, Respondents will further explain their position in such briefing.

**I. PETITIONERS ARE NOT LIKELY TO SUCCEED ON THE MERITS OF THEIR REQUESTED PERMISSIVE APPEAL.**

**A. Wisconsin Law Does Not Allow Petitioners to Hide Their Identities from the Circuit Court and Defendants.**

Petitioners fail to cite to any Wisconsin precedent that allows a party to hide its identity from the circuit court and the other parties to the case. They are right that in very limited circumstances a party can prevent *the public* from learning its identity. However, none of those circumstances allow a party to withhold its identity from the circuit court or other parties.

Petitioners cannot rely on a number of Wisconsin cases in

which a party identified as "Doe" in the caption was permitted to use a pseudonym in public filings to support those arguments. None of the Wisconsin cases Petitioners cite address a party's ability to proceed anonymously to the circuit court, the parties, and counsel and thus none can be said to be precedent on this point. *Webster v. Fall*, 266 U.S. 507, 511 (1925) ("Questions which merely lurk in the record neither brought to the attention of the court nor ruled upon are not to be considered as having been so decided as to constitute precedents."). As the circuit court noted, the Wisconsin cases Petitioners cite as support for their argument suggest that the lawyers knew the names of the anonymous plaintiffs. (Pet. App. at 112-13.)

The circuit court was correct that no precedent exists in Wisconsin to allow a party to proceed anonymously. Instead, Wisconsin law only gives the circuit court the power to shield Petitioners' identities from the general public. *See State ex rel. Bilder v. Delavan Twp.*, 112 Wis. 2d 539, 334 N.W.2d 252 (1983). While there are a number of specific kinds of cases where one or more of the

parties' names are kept confidential to the public, *see, e.g.*, Wis. Stat. § 809.86, Petitioners have failed to cite any Wisconsin statute or case precedent allowing a party to hide its identity from another party and the court.

Failing to find support in Wisconsin, Petitioners base their arguments on federal cases they claim allow parties to proceed anonymously, not only to the public but as to all other litigants as well as the court. However, Petitioners grossly overstate the support in those cases for their position. Regardless, Petitioners made no effort in the circuit court to harmonize the federal cases they promoted with longstanding Wisconsin policy favoring open courts. They make no effort to do so in their petition.

Wisconsin has a strong public policy in favor of open courts, established by the legislature. *Bilder*, 112 Wis. 2d at 553-54 (referencing Wis. Stat. § 59.14(1) which was later renumbered to Wis. Stat. § 59.20(3)). The circuit court was not comfortable concluding that the decisions of the federal courts could be adopted here without conflicting with Wisconsin's strong public policy in favor of

open courts. (Pet. App. at 125.)

Petitioners suggest that Wis. Stat. § 801.21(4) allows them to proceed anonymously to the court, the parties, and counsel, but again, they rely on authority for keeping their identities secret from the *public* not from other parties. Petitioners provide no support for their assumption that sealing documents in the Court file prevents other parties from having access to those documents. If Petitioners were right, Wis. Stat. § 801.21(4) would provide not only an exception to the general rule that court records are open to the public, but would also allow for *ex parte* communication with the circuit court via filing documents under seal. It does not.

Not only did the circuit court find that Wisconsin law did not allow Petitioners to hide their identities from the other counsel in this case, the circuit court found that such action would cause substantial prejudice to Respondents. Petitioners suggest that Respondents will not be prejudiced by the relief they seek, but this Court should not let them raise arguments or suggest facts on this point they did not make to the circuit court. In front of the circuit

court, Petitioners dedicated one paragraph in their opening brief to potential prejudice to Respondents. (Cir. Ct. Record Dkt. 9 at 16.) In that paragraph, they argued that because they did not think Respondents would need discovery related to the individual Petitioners, there could be no prejudice. In their reply brief on this issue, Petitioners spent two pages criticizing MMSD's arguments that it needed discovery, but did not offer any ideas for how MMSD could get this discovery if Petitioners were allowed to keep their identities secret. (Cir. Ct. Record Dkt. 50 at 26-29.)

Changing tactics in their petition, Petitioners now suggest that Respondents have the burden of laying out their plan for discovery in this case in order to justify their objections to Petitioners' unprecedented request. They provide no authority for their position that Respondents have to disclose their counsels' work product in order to obtain discovery in this case.

Petitioners think a decision on the merits of this case can be reached (in their favor) using only the limited set of facts about them they chose to provide. However, they have no support for why

Respondents should not be able to test the truth of the facts they assert, as would happen in any other case. Nor do they explain why Respondents must accept their legal framework on summary judgment or at trial.

In contrast, in their brief in support of their petition for interlocutory appeal, Petitioners raise new arguments as to how to minimize the prejudice to Respondents, like suggesting phone depositions. This Court should not consider Petitioners' new factual argument when considering whether to grant Petitioners' request for an appeal.

Finally, Petitioners also incorrectly suggest that another Dane County judge has allowed a party to proceed anonymously. The publicly available notes in that case, however, suggest otherwise. *See* Wisconsin Circuit Court Access Program Search for Dane County Circuit Court Case No. 19CV3166 (available at: <https://wcca.wicourts.gov/caseDetail.html?caseNo=2019CV003166&countyNo=13> (last visited July 5, 2020)). In that case, the court ordered the "anonymous party" to disclose its identity in chambers and there is

no reason to assume that the court was allowing an *ex parte* discussion in chambers. *See id.* at Feb. 17, 2020 entry. Petitioners provide no evidence sufficient to conclude that the court in that case did anything other than allow the anonymous party to protect its identity from the public.

The circuit court was correct that Wisconsin law does not allow Petitioners to withhold their identities from the parties. The circuit court used its discretion to craft a solution that protected Petitioners from public disclosure while allowing Respondents to obtain necessary discovery in this case. This Court should deny Petitioners' request for permissive appeal.

**B. Even if Petitioners Are Correct and the Standard They Claim Was Adopted by Some of the Federal Circuits Applied Here, the Circuit Court Was Correct to Conclude That Petitioners Had Not Met Their Burden to Proceed Anonymously.**

The circuit court did not find that Petitioners had met the standard they asked the circuit court to apply to allow them to proceed anonymously to counsel as well as to the court. Petitioners asked the circuit court to apply a balancing test they argue is used



by some Federal courts in allowing parties to use pseudonyms.

While the circuit court found that Wisconsin had not adopted this balancing test, it also found that, on balance, Petitioners would not be entitled to use pseudonyms under that test. While Petitioners assert that there are "multiple federal cases allowing parents to proceed anonymously," (Pet. at 25), the bulk of those cases support the circuit court's ruling to allow Petitioners to proceed anonymously as to the public, but not to the parties or the court.

The balancing test Petitioners seek to apply weighs a number of factors in deciding whether to allow a plaintiff to proceed anonymously. Petitioners argue that those factors include: 1) whether the case involves minor children or their parents; 2) whether the case involves matters of a highly sensitive or personal nature; 3) whether the case implicates deeply held beliefs that provoke intense emotional responses such as lawsuits involving religion; 4) whether there is danger of retaliation due to the sensitive issues involved in the lawsuit; 5) whether the lawsuit challenges the actions of the government; 6) whether because of the purely legal

nature of the issues presented or otherwise there is an atypically weak public interest in knowing the litigants' identities; and 7) whether the defendant is prejudiced by allowing the plaintiff to press their claims anonymously. (Pet. at 6-11 (*citing Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185 (2nd Cir. 2008), *Doe ex rel. Doe v. Elmbrook Sch. Dist.*, 658 F.3d 710 (7th Cir. 2011), *Doe v. Stegall*, 653 F.2d 180 (5th Cir. 1981), and others).)

Petitioners argued that some federal courts weighed these factors to determine whether a party could shield its identity not only from the public, but also from the court, counsel, and other parties in the case. They are wrong to suggest that there is a federal standard that generally allows anonymity from the court, counsel, and parties.

Many of the cases on which Petitioners rely allowed disclosure to the parties and their counsel involved in the case. For example, in *Stegall* the pseudonymous parties disclosed their identities to the other parties and the court and merely, "sought to bar disclosure to the general public." *Stegall*, 653 F.2d at 182. In *Doe v.*

*Village of Deerfield*, the pseudonymous party alleged two of the defendants made false statements about him that lead to his arrest, he did not keep his name from the other parties. 819 F.3d 372, 374. *See also Doe v. Porter*, 370 F.3d 558, 561 (6th Cir. 2004) (stating defendants and their counsel were permitted access to plaintiffs' names, residency status, and school enrollment status). The few cases cited by Petitioners where the plaintiffs were allowed to proceed anonymously are distinguishable from this case. In those cases, there was no question that the anonymous plaintiffs were actually impacted by the challenged policy or practices and there was no harm to the defendants from being denied the plaintiffs' names. *See, e.g., Doe v. Madison School District No. 321*, 147 F.3d 832 (9th Cir. 1998); *Doe v. Harlan Cty. Sch. Dist.*, 96 F.Supp.2d 667 (E.D. Ky. 2000). However, in this case, the challenged Guidance only impacts those small number of students who are transgender, non-binary or gender expansive and therefore take advantage of the accommodations accorded under that Guidance.

Regardless of whether Petitioners misstated the protection

provided by the federal cases they cited, the circuit court applied the factors Petitioners put forward and determined that the Petitioners could proceed anonymously to the public, but *not* to the parties and the court. This Court must give deference to that decision. *Elmbrook Sch. Dist.*, 658 F.3d at 721.

Here, the Petitioners do not critique the circuit court's assessment of the evidence, rather they argue that the circuit court erred as a matter of law by not adopting the federal balancing they put forward. Petitioners are wrong. The circuit court applied the balancing test and found that under that test, Petitioners were not permitted to proceed anonymously, without providing their names to the court and counsel.

The circuit court did not abuse its discretion in concluding that these factors did not weigh in favor of allowing Petitioners to proceed without providing their names to counsel and the court. The circuit court did not find that Petitioners' "identity is completely immaterial to everything that follows in this case." (Pet. App. at 126-27.) Instead, the circuit court found that allowing Petitioners to

proceed without disclosing their names to counsel and the court would place limits on Respondents ability to obtain discovery and/or defend against Petitioners claims. (*Id.* at 127.) Although the circuit court did not articulate its reasoning as such, it was concluding that Respondents would be prejudiced by allowing Petitioners to proceed anonymously.

Moreover, the circuit court relied on Wisconsin law to prevent public disclosure when it found that Petitioners might face retaliation if their identities became public. (Pet. App. at 124.) Petitioners' counsel admitted that with this protection, "the risk is small." (*Id.* at 121.) Once the circuit court provided a remedy that significantly reduced the risk, none of the factors adopted by the various federal courts weighs in favor of Petitioners' request.

The circuit court did not abuse its discretion when it found that any need for protection could be provided by relying on less restrictive procedures allowed under Wisconsin law: allowing Petitioners to keep their identities sealed from the public and restricting disclosure to Respondents through an attorneys' eyes

only protective order. Although Petitioners continue to argue that the number of attorneys at the American Civil Liberties' Union and Quarles & Brady LLP increases the risk of disclosure, they have no evidence to support that argument and the circuit court did not find this argument persuasive.

**II. PETITIONERS DO NOT NEED PROTECTION FROM A SUBSTANTIAL OR IRREPARABLE INJURY.**

Petitioners are not facing public disclosure of their identity. They are facing disclosure to counsel subject to an attorneys' eyes only protective order. Petitioners have never provided any evidence or legal citation to support an argument that producing information pursuant to an attorneys' eyes only protective order will result in substantial or irreparable injury. They do not do so in their Petition for Permissive Appeal.

Instead, Petitioners would have this Court grant their request for a permissive appeal on the assumption that counsel will violate the proposed protective order and that said violation will result in the public disclosure of their identities. Petitioners provide no

support for their argument that this Court should grant their permissive appeal on a hypothetical scenario that involves officers of the court violating a court order.

**III. PETITIONERS HAVE NOT RAISED AN ISSUE OF GENERAL IMPORTANCE IN THE ADMINISTRATION OF JUSTICE.**

Petitioners filed their petition for interlocutory appeal to ask this Court to overrule the circuit court's decision allowing them to keep their names sealed from the public, and the parties in this case, but reveal them to counsel pursuant to a protective order to allow discovery to progress. Petitioners seek just a little more protection, at the cost of preventing Respondents from obtaining necessary discovery in this case. Just a little more protection for these Petitioners from an already infinitesimally remote risk, however, is not an issue of general importance in the administration of justice.

Because the circuit court allowed Petitioners to keep their identities sealed in court filings, the only potential issue of general importance to the administration of justice is whether an attorneys' eyes only protective order is sufficient to keep Petitioners' identities

unknown to the general public. Petitioners are not objecting to an actual protective order, they argue there is a very small chance that someone might violate the protective order.

Petitioners cite no authority finding that such a protective order is not sufficient to keep their identities secret. They cannot point to a history of ineffectiveness of such protective orders. Instead, they rely on the risk that the attorneys' eyes protective order will be leaked, an unsupported argument the circuit court considered and found did not support their extraordinary request. (Pet. at 20; Pet. App. at 114.)

Petitioners provide one reason to support their suggestion that they raise an issue of general importance: the baseless suggestion that Respondents' counsel – specifically Intervenor Respondents' counsel – will violate the protective order. (Pet. App. at 51 (conceding that Petitioners would not object to counsel from MMSD having access to Plaintiffs' identities).) They have no evidence to support their repeated, suggestions that counsel will violate the protective order to their detriment (or for that matter,



that in this day and age of electronic communications, any violation of the order will be impossible to investigate). They cannot cite to a history of failure of this counsel to abide by protective orders. The circuit court was right to reject it.

Petitioners have not demonstrated that an appeal of the circuit court's decision relates to an issue of general importance to the administration of justice. Petitioners raise concerns about the effectiveness allowing them to keep their identities secret through the use of pseudonyms in filings and an attorneys' eyes only protective order. However, they have no authority or evidence to support the argument that these procedures, taken together, will not be effective.

**IV. THIS APPEAL CANNOT DECIDE ISSUES NOT SUBJECT TO THE ORDER FROM WHICH PETITIONERS SEEK RELIEF AND THUS WILL NOT CLARIFY THE FURTHER PROCEEDINGS AS PETITIONERS SUGGEST.**

Petitioners suggest that this Court not only determine that the circuit court erroneously exercised its discretion in crafting a protection plan for them under procedures available in Wisconsin, but also make it clear that discovery specific to the individual

petitioners is completely irrelevant. The circuit court weighed Respondents' need for discovery as a factor in deciding whether to allow Petitioners to proceed anonymously. The circuit court was unwilling to significantly limit discovery so early in the proceedings and found that factor, along with many others, weighed against Petitioners' motion. However, the circuit court was not presented with a motion for a protective order with respect to specific discovery requests and had no chance to consider the appropriateness of any specific discovery. Because this issue was not presented to the circuit court, this Court should not consider it for the first time on appeal. *Wirth v. Ehly*, 93 Wis. 2d 433, 443, 287 N.W.2d 140 (1980).

### CONCLUSION

The Circuit Court did not abuse its discretion in refusing to grant Petitioners' motion to proceed anonymously. Petitioners have not identified any error, and are thus not likely to succeed on the merits; nor can they meet any of the factors required for a permissive appeal under Wis. Stat. § 808.03(2). Accordingly, this

Court should deny Petitioners' request.

DATED July 6, 2020.

*Counsel for Intervenor  
Respondents, Gender Equity  
Association of James Madison  
Memorial High School, Gender  
Sexuality Alliance of Madison  
West High School, and Gender  
Sexuality Alliance of Robert M.  
La Follette High School*

AMERICAN CIVIL LIBERTIES  
UNION OF WISCONSIN  
FOUNDATION

Laurence J. Dupuis, WI SBN  
1029261

Asma Kadri Keeler, WI SBN  
207 E. Buffalo Street, Suite 325  
Milwaukee, WI 53158  
(414)-207-4032

[ldupuis@aclu-wi.org](mailto:ldupuis@aclu-wi.org)

[akadri@aclu-wi.org](mailto:akadri@aclu-wi.org)

QUARLES & BRADY LLP



---

Emily M. Feinstein (WI SBN:  
1037924)

Adam Prinsen (WI SBN:  
1090448)

33 East Main Street, Suite 900  
Madison, WI 53703  
(608) 251-5000

[emily.feinstein@quarles.com](mailto:emily.feinstein@quarles.com)

[adam.prinsen@quarles.com](mailto:adam.prinsen@quarles.com)

*Of counsel*

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION, INC.

Lesbian Gay Bisexual  
Transgender Project  
John A. Knight

150 North Michigan Avenue,  
Suite 600  
Chicago, Illinois 60601  
(312) 201-9740

## FORM AND LENGTH CERTIFICATION

I hereby certify that this Respondent's Opposition Brief to Petition for Interlocutory Appellate Review conforms to the rules contained in Wis. Stat. §§ 809.50(2), 809.50(4) for a petition and appendix produced with a proportional serif font. The length of this brief is 26 pages and 4416 words, including footnotes.



---

Emily Feinstein

## STATEMENT OF MAILING AND SERVICE

I certify that I caused this Respondent's Opposition Brief to Petition for Interlocutory Appellate Review to be placed in a U.S. mailbox on July 6, 2020. Carol Bunk, an employee with Quarles & Brady LLP, placed the document with proper postage in a mailbox at the United States Post Office located at 441 N Lake Street, Madison, WI 53715. Five copies, along with an additional copy to be authenticated and returned, were mailed with a self-addressed stamped envelope to the Clerk of the Wisconsin Court of Appeals, 110 East Main Street, Suite 215, PO Box 1688, Madison, WI 53701-1688. Copies were also sent to counsel at the following addresses:

BOARDMAN & CLARK LLP  
Barry J. Blonien, State Bar No. 1078848  
James E. Bartzen, State Bar No. 1003047  
U.S. Bank Building, Suite 410  
1 South Pinckney Street  
P.O. Box 927  
Madison, WI 53701-0927  
Telephone: 608-257-9521  
Fax: 608-283-1709  
Email: [bblonien@boardmanclark.com](mailto:bblonien@boardmanclark.com)  
[jbartzen@boardmanclark.com](mailto:jbartzen@boardmanclark.com)

*Attorneys for Defendant Respondent Madison Metropolitan School  
District, Defendant*

WISCONSIN INSTITUTE FOR LAW & LIBERTY

Rick Esenberg (SBN 1005622)  
(414) 727-6367 | rick@will-law.org  
Luke N. Berg (SBN 1095644)  
(414) 727-7361 | luke@will-law.org  
Anthony F. LoCoco (SBN 1101773)  
(414) 727-7419 | alococo@will-law.org  
330 E. Kilbourn Ave., Suite 725  
Milwaukee, WI 53202

ALLIANCE DEFENDING FREEDOM

Roger G. Brooks (NC Bar No. 16317)  
15100 N. 90th Street  
Scottsdale, Arizona 85260  
Telephone: (480) 444-0020  
Fax: (480) 444-0028  
Email: rbrooks@ADFlegal.org

*Attorneys for Plaintiffs Petitioners*



---

Emily Feinstein



## APPENDIX CERTIFICATION

I hereby certify that filed with Intervenor Respondents' Opposition Brief to Petition for Interlocutory Appellate Review, either as a separate document or as a part of this response, is an appendix that complies with Wis. Stat. § 809.19(2)(a). No portion of the record is required by law to be confidential.

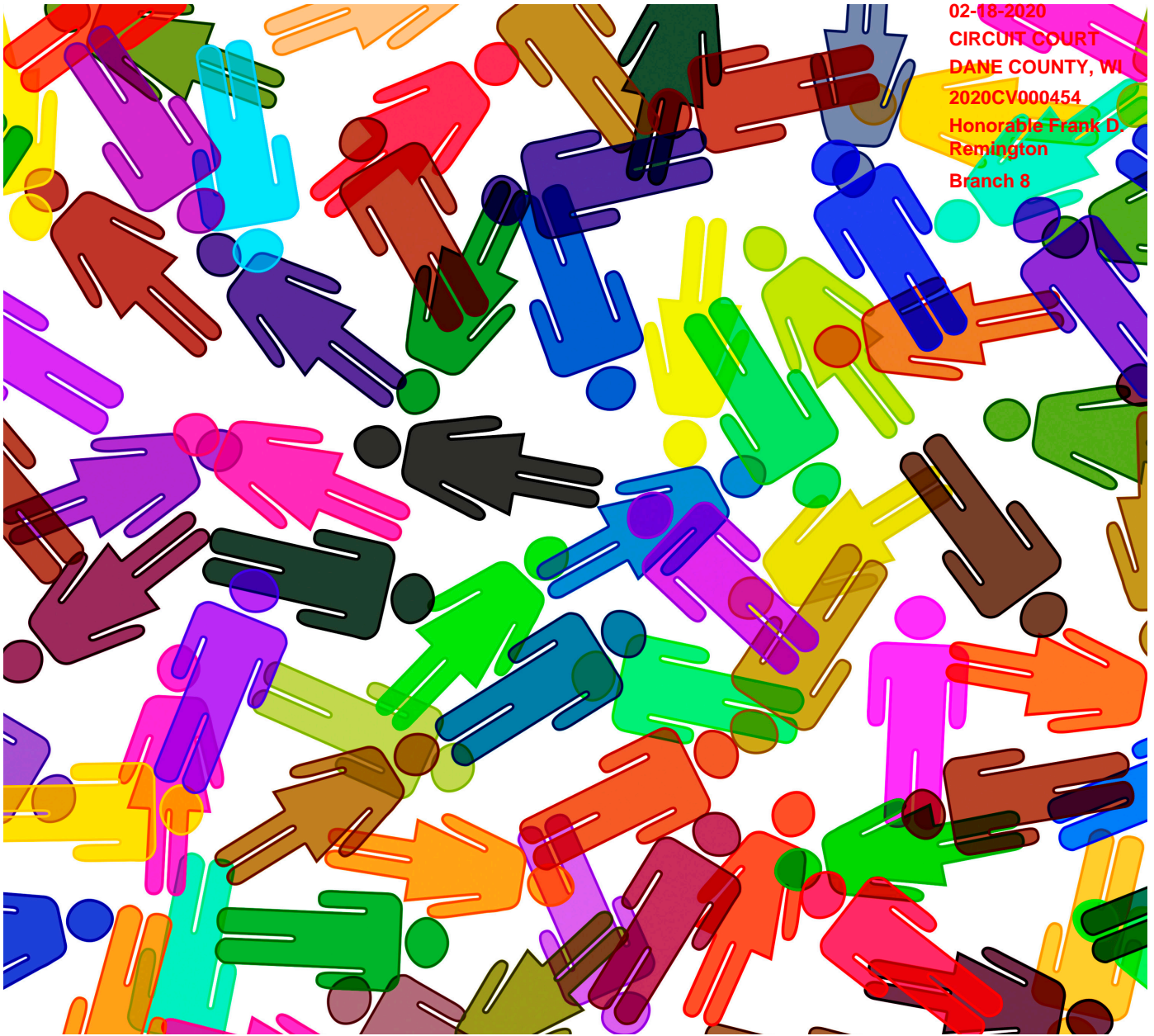


---

Emily Feinstein

EXHIBIT 1

FILED  
02-18-2020  
CIRCUIT COURT  
DANE COUNTY, WI  
2020CV000454  
Honorable Frank D.  
Remington  
Branch 8



MADISON METROPOLITAN  
SCHOOL DISTRICT



Guidance & Policies to  
Support Transgender,  
Non-binary & Gender-  
Expansive Students

April 2018

# Table of Contents

---

## 1 Message from the Superintendent

## 2 Purpose of this Guidance

- 3...Staff Training & Professional Development
- 4...Rationale / Data
- 5...Safety
- 5...Lack of Support
- 6...Negative Remarks About Gender Expression
- 7...Effects on School Achievement
- 8...Data in support of LGBTQ+ Inclusive Curriculum and Positive School Climate

## 9 Policies & Laws

- 9...Federal Laws
- 10...State Laws
- 10...District Policies
- 12...Dress code

## 13 Gender 101

## 15 Best Practices for Student Gender Transitions

- 15...Gender Support Plan
- 16...Family Communication

## 17 Privacy & Confidentiality

## 18 Names and Pronouns

- 18...MMSD-Based Name Change
- 18...Legal Name Change
- 19...Email Address
- 19...School Publications
- 19...Student ID
- 19...Transcripts
- 20...Diplomas
- 20...Standardized Tests

## 21 Safety & Bullying

## 22 School Facilities

## 23 Inclusive Classroom Practices

- 23...Welcoming Schools
- 23...Course Accessibility & Instruction
- 24...Language
- 24...Grouping Students
- 25...Physical Education
- 27...Health Education
- 28...Athletics
- 29...Clubs and Extracurricular Activities
- 30...Field Trips
- 31...School Dances, Courts, and Other Historically Gender-Based Traditions

## 32 Acknowledgements

## 33 Resources



# Message from Superintendent



Dear Madison Community,

As a school district, MMSD is committed to creating inclusive and welcoming learning communities to ensure that all students are able to graduate college, career, and community ready. We take seriously our responsibility to provide safe and nondiscriminatory environments for all students.

We have incredible transgender, non-binary, and gender-expansive students, staff, and families throughout our district, and we want our schools to be places where every child thrives.

To that end, we have worked hard to support transgender, non-binary, and gender-expansive youth in MMSD.

- We have progressive, enumerated policies in place to prevent bullying, harassment, and discrimination.
- We have expanded our Welcoming Schools program, committed to building a new generation of students who embrace diverse identities and are allies to their peers.
- We are training all of our student services staff on strategies to support our transgender, non-binary, and gender-expansive youth so they can guide student gender transitions with ease.
- We are committed to training MMSD staff on this expanded guidance so they have the knowledge and skills to not only support our transgender, non-binary, and gender-expansive youth, but to promote gender-inclusive practices districtwide.
- We have single-stall All Gender Restrooms in every MMSD school building.

We are proud to present this guide as a resource for schools, families, and youth to ensure all students' identities are recognized and treated with respect and fairness at school. We also want to ensure that all students have access to the support they need to thrive.

In this guide you will find information on creating inclusive classroom environments, district policies and practices, and additional resources or places to seek support.

The Madison Metropolitan School District will not waver in our commitment to providing all students access to an inclusive education that affirms all identities. It is our goal that these resources will improve our efforts to provide safe, healthy and positive school environments for all transgender, non-binary, and gender-expansive youth.

Sincerely,

Jennifer Cheatham  
Superintendent



**“We have incredible transgender students, staff and families throughout our district. We will always support and be proud of our trans communities. We are also dedicated to creating inclusive and welcoming learning communities and we take seriously our responsibility to provide safe and nondiscriminatory environments for all students, including students of all gender identities. This includes our practice of allowing students to use facilities consistent with their gender identity. We will not waver in our commitment to this and all other inclusive practices in our schools.”**



## Purpose of this Guidance

---

In an effort to support all students in MMSD, it is essential that we provide comprehensive guidance for youth, families, and staff so that students who identify as transgender, non-binary, and gender-expansive experience an inclusive, equitable, and high-quality education.

This guide provides:

- The rationale for inclusive policies and practices to support transgender, non-binary, and gender-expansive students.
- Detailed information on protective federal, state, and district laws and policies.
- Educational resources to build knowledge and inclusive language around gender identity.
- Best practice guidelines to support students' school-based gender transitions including: gender support planning, confidentiality, name/pronoun changes, and restrooms/changing spaces.
- Inclusive classroom and schoolwide practices that affirm students of all gender identities.

## Staff Training & Professional Development

---

The district shall conduct ongoing training for all staff members so they can best support and affirm students of all gender identities. Training needs to include professional learning on the policies and best practices found within this guidance document.

Professional development shall include, but not be limited to:

- Classroom engagement strategies, curriculum, and resources that educators can integrate into their classrooms to help foster a more gender-inclusive environment for all students.
- School and district policies regarding bullying, harassment, discrimination, and suicide prevention as well as strategies for prevention and intervention.
- Terms, concepts, and current developmental understandings of gender identity, gender expression, and gender diversity in children and adolescents.
- Strategies for communication with students and families to support transgender, non-binary, and gender-expansive youth.





## Rationale/Data

Based on the adverse health outcomes for transgender youth as indicated in the Dane County Youth Assessment and the Gay Lesbian Straight Education Network's (GLSEN) National School Climate Survey, we consider it our obligation to ensure safe, affirming learning environments for our transgender youth in MMSD.

As reported on the 2015 Dane County Youth Assessment (DCYA) , MMSD high school students who identified as transgender had adverse outcomes compared to their cisgender peers. Please note we do not have data on non-binary or gender-expansive youth because there is not research available at this time. The 2018 Dane County Youth Assessment (DCYA) will be inclusive of multiple gender identities, and we will update our data once it is available.

Dane County Youth Assessment Cis vs. Trans Comparison	Cisgender Youth	Trans Youth
<b>Family Support &amp; Home Experiences</b>		
• Homeless in last 12 months	4%	19%
• Parents talk with me about future plans	98%	71%
• Hit by a parent	9%	27%
<b>School Experiences &amp; Connectedness</b>		
• In Special Education	10%	32%
• Skipped school in past month	32%	45%
• I have an adult I can talk to	82%	59%
<b>Mental Health</b>		
• Report having long-term mental health problems	27%	38%
<b>Physical Safety and Systems Involvement</b>		
• Carried a weapon to school in last month out of fear for safety / need for protection	5%	29%
• Juvenile corrections for 30+ days in past year	1%	9%





The National School Climate Survey is administered every other year by GLSEN (Gay Lesbian Straight Education Network) and documents the experiences of LGBTQ+ youth. The most recent survey was done in 2015 and published in 2016; the final sample included over 10,000 students with a spectrum of gender identities in grades 6 to 12 from all 50 states and the District of Columbia from more than 3,000 unique school districts. The following are the themes, identified by GLSEN, based on the 2015 survey administration:

## Safety

- Three-quarters of transgender students felt unsafe at school because of the way they expressed their gender. Of the youth who identified as “another gender” or “genderqueer,” 61% felt unsafe at school.
- Two-thirds (65%) of transgender and non-binary students report being verbally harassed at school; one in four (25%) were physically harassed. One in ten (12%) were physically assaulted.

## Lack of Support

- Almost two-thirds (60%) of transgender students had been denied access to restrooms or locker rooms consistent with their gender identity.
- Half (51%) of transgender students were prevented from using their names or pronouns that align with their gender identity.
- One out of four (28%) transgender students had been prevented from wearing clothes that aligned with their gender expression.
- 63.5% of LGBTQ+ students who had reported an incident said that school staff did nothing in response.
- The most common reasons given for not reporting incidents of victimization to school personnel were:
  - doubts that staff would effectively address the situation and
  - fears that reporting would make the situation worse





Negative Remarks  
About Gender Expression

**Virtually all LGBTQ+ students heard negative remarks about gender expression sometimes (not acting “masculine enough” or “feminine enough”) with two-thirds hearing them regularly.**



**One in ten heard these kinds of remarks regularly from their teachers or other school staff.**



## Effects on School Achievement

---

LGBTQ+ students who experienced higher levels of victimization because of their gender identity and/or gender expression:

- Were almost three times as likely to have missed school in the past month than those who experienced lower levels (59.6% vs. 20.8%).
- Had lower GPAs than students who were less often harassed (2.9 vs. 3.3).
- Were twice as likely to report that they did not plan to pursue any post-secondary education (e.g., college or trade school; 9.5% vs. 5.4%).
- 42.5% of LGBTQ+ students who reported that they did not plan to finish high school, or were not sure if they would finish, indicated that they were considering dropping out because of the harassment they faced at school.





# Data in support of LGBTQ+ Inclusive Curriculum and Positive School Climate

---

Based on the National School Climate Survey, one strategy that educators can employ to promote safe and affirming school environments is including positive representations of LGBTQ+ people, history, and events in the curriculum. Among the LGBTQ+ students in GLSEN's 2009 National School Climate Survey, attending a school with an LGBTQ+ inclusive curriculum was related to a less-hostile school experience for LGBTQ+ students as well as increased feelings of connectedness to their school communities.

## 1. Inclusive curriculum contributes to a safer school environment for LGBTQ+ youth.

- GLSEN's 2009 National School Climate Survey revealed that when educators include positive representations of LGBTQ+ people, history, and events in their curricula, students experienced school as a less-hostile place.
- Less than a fifth of students at schools with inclusive curriculum reported high levels of verbal harassment, physical harassment, and physical assault, compared to about 1 in 3 other students. LGBTQ+ students in schools with an inclusive curriculum were also:
  - Half as likely to experience high levels of victimization because of sexual orientation or gender expression.
  - About half as likely to miss school because of feeling unsafe or uncomfortable. Less than a fifth (17.1%) of students with inclusive curricula stayed home from school for at least one full day, compared to nearly a third (31.6%) of other students.

## 2. Inclusive curriculum helps LGBTQ+ students feel more connected to their schools.

- Students in schools with an inclusive curriculum feel a greater sense of connectedness to their school communities than other students.
- By including LGBTQ+ related content in their curriculum, educators can send a message that they are a source of support for LGBTQ+ students.
  - For example, almost three-quarters (73.1%) of students with an inclusive curriculum felt comfortable talking to a teacher about LGBTQ+ related issues, compared to half (50.1%) of students without this resource in school.

## 3. Inclusive curriculum can reinforce peer acceptance of LGBTQ+ students.

- The inclusion of LGBTQ+ people, history, and events in the classroom curriculum educates all students about LGBTQ+ issues and may help to reduce prejudice and intolerance of LGBTQ+ people.
  - When educators work to cultivate greater respect and acceptance of LGBTQ+ people among the student body, their efforts can result in a more positive school experience for LGBTQ+ students.
  - GLSEN research consistently shows that an inclusive curriculum is associated with increased peer support for LGBTQ+ students.



# Policies & Laws

## Federal Laws

### **Family Educational Rights and Privacy Act of 1974 (FERPA):**

FERPA protects the privacy of student educational records, and prohibits the improper disclosure of personally identifiable information from students' records. FERPA allows parents of students under 18 years of age to obtain their child's educational records and seek to have the records amended. Former or current students have the right to seek to amend their records if the information in present records is "inaccurate, misleading, or in violation of the student's rights of privacy" (34 C.F.R. § 99.7(a)(2)(ii)).

### **Guidance for Schools, Students, and Families: Educational Records**

Students have the right to change their name and/or gender marker on their educational records under this federal law. If under the age of 18, students need the permission of one parent or legal guardian. For more information, please see MMSD-Based Name Change section.

### **Confidentiality**

The district shall ensure that all personally identifiable and medical information relating to transgender, non-binary, and gender-expansive students shall be kept confidential in accordance with applicable state, local, and federal privacy laws. School staff shall not disclose any information that may reveal a student's gender identity to others, including parents or guardians and other school staff, unless legally required to do so or unless the student has authorized such disclosure.

Transgender, non-binary, and gender-expansive students have the right to discuss and express their gender identity and expression openly and to decide when, with whom, and how much to share private information. If a student chooses to use a different name, to transition at school, or to disclose their gender identity to staff or other students, this does not authorize school staff to disclose a student's personally identifiable or medical information.

### **Title IX, Education Amendments of 1972:**

Title IX ensures that no person is discriminated against because of their gender in any academic program including, but not limited to, admissions, financial aid, academic advising, housing, athletics, recreational services, health services, counseling and psychological services, classroom assignment, grading, and discipline. Although Title IX does not expressly address gender identity or expression, this law has been used in the protection of students who are transgender and gender-expansive against discrimination because discrimination based on gender identity qualifies as sex discrimination.



## State Laws

---

### **Wisconsin Statute 118.13:**

This state statute prohibits discrimination against students. It states that no one “may be denied admission to any public school or be denied participation in, be denied the benefits of or be discriminated against in any curricular, extracurricular, pupil services, recreational or other program or activity because of the person’s sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability.”

### **Wisconsin Statute 118.46:**

This state statute explains Wisconsin school districts must have student anti-bullying policies and what must be included in such policies.

### **Wisconsin Administrative Code Chapter 9:**

This administrative code establishes procedures for enforcing Wisconsin Statute 118.13. It also indicates when the Wisconsin Department of Public Instruction may review discrimination complaints.

## District Policies

---

### **Student Anti-Bullying Board Policy 4510:**

The Madison Metropolitan School District strives to provide an environment where every student feels safe, respected and welcomed and where every staff member can serve students in an atmosphere that is free from significant disruptions and obstacles that impede learning and performance.

Bullying can have a harmful social, physical, psychological and/or academic impact on students who are the victims of bullying behaviors, students who engage in bullying behaviors and bystanders that observe acts of bullying. The Madison Metropolitan School District does not allow bullying behavior toward or by students, school employees or volunteers on school/District grounds, at school/District-sponsored activities or in transportation to and from school or school/District-sponsored activities.

MMSD defines bullying as the intentional action by an individual or group of individuals to inflict physical, emotional or mental harm or suffering on another individual or group of individuals when there is an imbalance of real or perceived power. Bullying behavior creates an objectively hostile or offensive environment. Such an environment may cause, or be likely to cause, negative and harmful conditions.



## District Policies

---

### **Guidance for Schools, Students, & Families:**

Based on the MMSD Anti-bullying policy above, MMSD must protect our transgender, non-binary, and gender-expansive students from bullying and harassment. Bullying incidents should be reported to a school staff member (by the student who is being targeted, another student, a family member, or staff member) and will be investigated by school staff promptly to determine if bullying exists. We will consider the needs of the targeted student a priority in bullying incidents. Staff will respect student confidentiality throughout the investigation, be careful not to “out” students while communicating with family/peers, and involve the targeted student throughout the intervention process.

### **Additional resources:**

[MMSD Anti-bullying Website](#)

[MMSD Anti-bullying Report Form](#)

[Flowchart for Bullying Investigation](#)

[MMSD Bullying Booklet](#)

[FAQ for Families](#)

### **Student Non-discrimination Board Policy 4620:**

The Madison Metropolitan School District strives to provide an environment where every student feels supported, respected, and welcomed and where every student can learn in an atmosphere that is free from harassment and discrimination. Discrimination and harassment can have a harmful social, physical, psychological, and/or academic impact on students who are the victims of these actions, students who engage in these behaviors, and bystanders that observe discriminatory and/or harassing acts.

The Madison Metropolitan School District does not allow discrimination or harassment toward or by students on school/district grounds, at school/district-sponsored activities, or in transportation to and from school or school/district-sponsored activities. District policy protects students from discrimination and harassment regarding a person’s sex, race, color, age, national origin, ancestry, religion, creed, pregnancy, marital status, parental status, homelessness, **sexual orientation, gender identity, gender expression**, or disability including their physical, mental, emotional, or learning disability and/or retaliation as defined in this policy.

### **Guidance for Schools, Students & Families:**

Based on the MMSD Student Non-discrimination policy above, MMSD must protect our transgender, non-binary, and gender-expansive students from discrimination and harassment. Discrimination should be reported to the MMSD Title IX Investigator and will be investigated to determine if discrimination occurred.

### **Additional resources:**

[Equal Opportunity Office Website](#)

[Discrimination Complaint Form](#)

[MMSD Student Non-discrimination Policy \(Full Policy\)](#)





## Dress code:

---

Students have the right to dress and present themselves in a way that is consistent with their gender identity, as long as they follow the dress code for all students. The MMSD Dress Code states that students may dress in any style they desire as long as their chosen attire does not cause a disruption or distraction in the school environment, reveal intimate body parts, or pose a safety risk to the student or others.

Schools may enforce dress codes in accordance with MMSD policy, but any such dress codes should not be based on gender. Students shall have the right to dress in accordance with their gender identity and expression, including maintaining a gender-neutral appearance within the constraints of the dress codes adopted by the school. School staff shall not enforce a school's dress code more strictly against transgender, non-binary, or gender-expansive students than other students. Gender-neutral dress codes apply to regular school days as well as special events, such as dances and graduation ceremonies.



## Gender 101

**Agender:** A term that describes a person who does not identify with any gender.

**Cisgender:** A term that describes a person whose gender identity aligns with the sex assigned to them at birth.

**Coming Out:** The process in which a person first acknowledges, accepts and appreciates their sexual orientation or gender identity and begins to share that with others.

**Gender:** A person's internal sense of self as male, female, both or neither (gender identity), as well as one's outward presentation and behaviors (gender expression). Gender norms vary among cultures and over time.

**Gender-expansive:** An umbrella term used for individuals that broaden their own culture's commonly held definitions of gender, including expectations for its expression, identities, roles, and/or other perceived gender norms. Gender-expansive individuals include those with transgender and non-binary identities, as well as those whose gender in some way is seen to be stretching society's notions of gender.

**Gender Expression:** How a person expresses their gender through outward presentation and behavior. This includes, for example, a person's clothing, hairstyle, body language and mannerisms.

**Gender Fluid:** People who have a gender or genders that change. Gender fluid people move between genders, experiencing their gender as something dynamic and changing, rather than static.

**Gender Identity:** An internal, deeply felt sense of being male, female, a blend of both or neither—how individuals perceive themselves and what they call themselves. One's gender identity can be the same as or different from their sex assigned at birth.

**Gender Spectrum:** The broad range along which people identify and express themselves as gendered beings or not.

**Genderqueer:** People that typically reject the binary categories of gender, embracing a fluidity of gender identity. People who identify as "genderqueer" may see themselves as being both male and female, neither male nor female or as falling completely outside these categories.

**Gender Transition:** The process by which some people strive to more closely align their outward identity with the gender they know themselves to be. To affirm their gender identity, people may go through different types of transitions.

- **Social transition:** This can include a name change, change in pronouns, and/or change in gender expression (appearance, clothes, or hairstyle).
- **Legal transition:** The process of updating identity documents, such as birth certificates and drivers' licenses, to reflect a person's authentic gender and name.
- **Medical transition:** For adolescents in the early stages of puberty, this may include the use of puberty blockers to pause puberty. Medical supports may also include gender-affirming hormones to foster secondary sex characteristics (such as breasts, facial hair, and laryngeal prominence, or an "Adam's apple") that are aligned with the teen's gender identity. Some adults may undergo gender-affirmation surgeries.





---

**LGBTQ+:** An acronym for lesbian, gay, bisexual, transgender, queer and/or questioning. Additions to this acronym can include A, for “asexual” or “ally,” and I, for “intersex.”

**Non-binary:** An umbrella term for gender identities that are not necessarily boy/man or girl/woman. People who identify their gender as non-binary may feel they have more than one gender, don’t identify with a specific gender, or something else all together.

**Outing:** Exposing someone’s sexual orientation or gender identity to others without their permission.

**Queer:** A term some people use to identify themselves with a flexible and inclusive view of gender and/or sexuality. Also used interchangeably with LGBTQ+ to describe a group of people such as “queer youth.” It is also seen in academic fields, such as queer studies or queer theory. Historically it has been used as a negative term for LGBTQ+ people. Some people still find the term offensive while some embrace the term as an identity.

**Sexual Orientation:** Describes a person’s emotional, romantic, or sexual attraction to other people. Some examples of sexual orientations are gay, lesbian, bisexual, asexual or pansexual.

**Sex Assigned at Birth:** This is generally determined by external genitalia at birth—female, male, or intersex.

**Transgender or Trans:** A term used to describe people who identify as a different gender from the sex they were assigned at birth. Being transgender does not imply any specific sexual orientation; transgender people may identify as straight, gay, lesbian, bisexual, etc.

**Transphobia:** The fear or hatred of, or discomfort with, transgender people.

**Two-Spirit:** An umbrella term indexing various indigenous gender identities in North America.

---

\*Please keep in mind that language around gender and sexual orientation is continually evolving, thus compelling us to be ongoing learners. This list has been compiled with resources from Welcoming Schools and Gender Spectrum as of February 2018.



## Best Practices for Student Gender Transitions

## Gender Support Plan

When a student comes out as transgender, non-binary, genderfluid, etc., we strongly recommend the completion of a gender support plan. A Gender Support Plan is a document that creates shared understanding about the ways in which a student's authentic gender will be accounted for and supported at school. School staff, caregivers, and the student can work together to complete this document. All MMSD Student Services staff have been trained to support transgender youth and gender support planning; additional assistance can be provided through the MMSD LGBTQ+ Lead.

### Gender Support Plans include:

- Student's gender identity, name, and pronouns
- Level of privacy desired
- Staff communication / Communication to peers
- Key contacts at home and at school
- Curriculum considerations
- Access to restrooms, locker rooms, and other school activities
- District policies and guidance that support trans transgender, non-binary, and gender-expansive youth
- Staff professional development



# Family Communication

Families are essential in supporting our LGBTQ+ students. We believe that families love their children, have incredible dreams for them, and hope to keep them safe from harm. We know that family acceptance continues to have a profound impact on the physical and mental health outcomes of our LGBTQ+ young people. In MMSD, with the permission of our students, we will strive to include families along the journey to support their LGBTQ+ youth.

## Communication with Families

We strive to include families in the process of supporting a student's gender self-determination, including transition.

- Families should be made aware of the policies, practices, and guidance that support and protect their child. Families are encouraged to advocate for their child's educational success.
- During a gender support plan meeting, it is best practice to establish a communication plan that meets the needs of the family-school team.
- Families can request a meeting to review their child's gender support plan at any time.

## Disclosure to Families

Students identified as transgender, non-binary, and gender-expansive may have not come out to their families regarding their gender identity. Disclosing a student's personal information such as gender identity or sexual orientation can pose imminent safety risks, such as losing family support and housing.

- All staff correspondence and communication to families in regard to students shall reflect the name and gender documented in Infinite Campus unless the student has specifically given permission to do otherwise. (This might involve using the student's affirmed name and pronouns in the school setting, and their legal name and pronouns with family).
- In the event that a student insists on maintaining privacy from their family, student services staff shall discuss with the student contingency plans in the event that their privacy is compromised.
- Student services staff shall provide support and access to resources for transgender, non-binary, and gender-expansive students and their families. The district LGBTQ+ Lead is also available for consultation and support.





# Privacy & Confidentiality

## **Staff Communication**

In some cases there may only be one or two staff members who know a student's gender story and directly support that student. It is up to the student and their family to decide who at school is informed. Schools must ensure confidentiality by adhering to FERPA guidelines.

## **Substitute Teachers**

To avoid harmful misgendering or misnaming, teachers should ensure that all information shared with substitute teachers is updated and accurate. For example, make sure attendance rosters, shared include accurate student names and pronouns, keeping in mind that not all students have their affirmed names and genders updated in Infinite Campus.

## **Coming out to Staff and Peers**

It takes a lot of courage and interpersonal strength to socially transition in school, and every student's journey is unique. When/if ready, we want to support our students to identify a safe, individualized plan for how they will inform their teachers and peers about their transition, if they choose to do so. Transgender, non-binary, and gender-expansive students may request time to address their class about their gender identity and pronouns. Students may share this information with their classes based on the student's preferences or as outlined in their gender support plan. Students have the right to speak freely about their identity, but school staff do not.

Please see appendix for additional resources from Gender Spectrum: "[Communicating a Change in Gender Status](#)" and "[Student Gender Communication Plan](#)"



# Names & Pronouns

Having one's gender identity recognized and validated is important. All MMSD staff will refer to students by their affirmed names and pronouns. Staff will also maintain confidentiality and ensure privacy. Refusal to respect a student's name and pronouns is a violation of the MMSD Non-discrimination policy.

## MMSD-Based Name Change

MMSD students have the right to change their name and/or gender in district systems (e.g., Infinite Campus) to their affirmed name and pronouns with the permission of one parent/legal guardian.

- At this time, Infinite Campus (IC) only allows for binary gender classification (Female or Male).
- At MMSD, we are committed to developing an inclusive database that affirms the many genders and pronouns of our students. We intend to roll this out during 2018-19 registration.
- Students will be called by their affirmed name and pronouns regardless of parent/guardian permission to change their name and gender in MMSD systems. See privacy section for additional information.
- For changes in Infinite Campus, please use this [Name/Gender/Email Change Form](#).
- Once the form is completed, please scan and send to MMSD's LGBTQ+ Lead. It typically takes 3-5 business days to complete the name/gender change.

## Legal Name Change

Students and families may choose to consider a legal, court-based name change with the Clerk of Courts office in their county.

- Linked here is the [Name Change Procedure in Dane County](#); if born outside Wisconsin, students will need to file with the Clerk of Courts in their [birth state](#).
- A legal name change becomes especially important for many high school students when applying for post-secondary education to ensure that records on MMSD transcripts, ACT/SAT tests, financial aid documents, and applications are all consistent.
- Students may need assistance and information about the legal name change process, especially if they are over 14 years old and pursuing a legal name change on their own. Students might need support filling out court documents, accessing the cost of court filing fees, and advocating for confidential name changes (without publication). Student Services personnel are available to help students and their families navigate this process.



## Email Address

Students can have their school-based email address changed when they complete their [Name/Gender/Email Change Form](#).

- Changes take 3-5 business days to complete.
- Students will receive an email notifying them when their email address has been changed. All emails, contacts, and Google Drive contents will be transferred.
- Please contact the LGBTQ+ Lead for assistance.

## School Publications

After a student transitions their name and/or gender, they may need assistance updating their name and/or gender in school-based student publications, such as yearbooks.

- These changes are completed at the student's school.
- When completing a gender support plan, it is important that a school-based staff member is assigned to assist them in changing their name/picture in publications in a time-sensitive manner.

## Student ID

After a student transitions their name and/or gender, they may need an updated student ID and picture.

- These changes are completed at the student's school.
- When completing a gender support plan, it is important that a school-based staff member is assigned to assist them in accessing a new photo ID in a time-sensitive manner.

## Transcripts

MMSD uses a program called Parchment to capture all student transcripts.

- Parchment records will have students' MMSD-based name and gender information, which may or may not be consistent with a student's legal name and gender.
- This can become confusing for some students when applying for post-secondary education, since they would like to have consistent student information on records.
- Some students may choose to consider a legal, court-based name change to alleviate this concern. Others may choose to change their name back in Infinite Campus (IC) for a short period of time.
- MMSD is advocating for changes with IC so that this barrier does not exist for our transgender and non-binary youth.

MMSD alumni who have transitioned are welcome to request an updated transcript with their affirmed name and gender.

- Alumni must first update their information with MMSD on Infinite Campus. This requires submitting their updated birth certificate, state ID, or passport to the LGBTQ+ Lead, who will work with the MMSD Registrar to adjust their legal name in school records.
- Alumni can then register on Parchment with their affirmed name and gender, and access updated transcripts.





## Diplomas

Students can request to have their affirmed name listed on their high school diploma.

- Students who have obtained a legal name change or have made an MMSD-based name change will have their affirmed name on their diploma.
- Students under the age of 18 who have not completed an MMSD-based name change may still have their affirmed name read during graduation and listed on their diploma.
  - As a universal practice, schools shall inform all students about their right to have their affirmed name on their diploma and communicate the process for requesting this accommodation.
  - When a student requests a diploma-based name change, it is best practice to connect them with a trusted student services team member to discuss potential outcomes with their family and support system.

- MMSD Alumni can request a new diploma by submitting their updated birth certificate, state ID, or passport to the LGBTQ+ Lead, who will work with the MMSD Registrar and former high school to obtain a new diploma.

## Standardized Tests

We are committed to ensuring that our students have accurate identifying information on all standardized tests. To guarantee this and avoid harmful misgendering, the LGBTQ+ Lead, Registrar, and Assessment department communicate on a regular basis to make sure all student name and gender changes are updated on assessment labels.





## Safety & Bullying

Transgender, non-binary, and gender-expansive students are disproportionately targeted for teasing, bullying, harassment, and physical violence. MMSD staff must consistently confront and report suspected bullying or other behaviors that contribute to an unsafe school community. This may include name calling, misgendering, microaggressions, and bullying based on gender stereotypes, gender identity, and/or gender expression.

The district is responsible for providing a safe and supportive environment for all students. To help meet this responsibility, the district has created a student anti-bullying policy (#4510) and a bullying policy to protect staff (#8013). You can find more information on [student anti-bullying here](#). More information is available under the “Policies and Laws” section above.







# School Facilities

## Restrooms

Having safe and respectful access to restroom facilities is important to the health and wellbeing of those who identify as transgender, non-binary, or gender-expansive. Students shall have access to the restroom that corresponds to their gender identity consistently asserted at school.

All MMSD schools have at least one single stall All Gender Restroom in their building that all students have the right to use. No student shall be required to use such a restroom. The All Gender Restroom may not be given as the only option for students who identify as transgender, non-binary, or gender-expansive.

It can be emotionally harmful for transgender, non-binary, and gender-expansive youth to be questioned or interrogated when using the restroom. We shall assume that our students are using the restroom that is consistent with their gender identity. Therefore, staff shall not confront students about their gender identity upon entry to the restroom. Only if there are behavioral incidents in the restroom should administration resort to the implementation of the Behavior Education Plan.

## Changing Areas

All students must have access to changing facilities that correspond to their gender identity. MMSD is committed to having safe all gender changing areas. This will be assessed in the 2017-18 school-year and implemented during the 2018-19 school year. Students will have access to changing spaces that ensures safety and success for the course.

For detailed information specific to physical education, athletics, and extra-curricular activities, please see “Physical Education” section below.





# Inclusive Classroom Practices



## Welcoming Schools

Welcoming Schools is a comprehensive approach to creating respectful and supportive elementary schools with resources and professional development to:

- **Embrace Family Diversity**
- **Create LGBTQ+ inclusive schools**
- **Prevent bias-based bullying**
- **Create Gender-Inclusive Schools for all students**
- **Support transgender, non-binary, and gender-expansive students.**

We are committed to the Welcoming Schools approach and believe it is a valuable, proactive social-emotional learning program that embraces the diverse identities of our students, staff, and families. As of the 2017-2018 school year, we have 16 MMSD partner schools dedicated to this important equity work, and we will continue to grow Welcoming Schools districtwide. For more information on Welcoming Schools lessons, books, and overall program, visit our website at [mmsd.org/welcoming-schools](https://mmsd.org/welcoming-schools).

### **Course Accessibility & Instruction**

Students have the right to equitable learning opportunities in their school. Students shall not be required to take and/or be denied enrollment in a course on the basis of their gender identity in any educational and academic program.



## Language

---

In MMSD, we will strive to model gender-inclusive language that affirms the gender diversity of our MMSD students, staff, and families and disrupts the gender binary.

Adapted from Gender Spectrum's 12 Easy Steps towards Gender Inclusion, here are some ideas:

- Teach about gender! Include books and lessons that are inclusive of all identities and send messages of empowerment to students.
- Do not use gender as a way to divide groups, tasks, or people. (e.g., In addition to not grouping by gender, we will not say "boys will bring crayons and girls will bring markers" on a school supply list).
- Limit gendered and binary language, because it excludes people. When referring to the whole group, use "students" or "scholars" instead of "boys and girls" or "ladies and gentlemen."
- Model the use of non-binary pronouns (e.g., they/them/theirs and ze/hir/hirs) and non-binary honorifics (e.g., Mx.)
- Ask all students to share their affirmed names and pronouns, either in writing or aloud.
- Have visual images and posters that send messages of gender inclusion.
- When hearing misconceptions about gender or language that reinforces the gender binary, find a way to be an ally and disrupt it! Use the opportunity as a teachable moment, address it with the group, or have a conversation in private – but do something.
- When hearing biased language, bullying, or harassment, follow MMSD policy and address immediately.

## Grouping

---

Teachers should use non-gendered methods for grouping students. Instead of grouping by boys and girls, ideas might include birth month, length of hair, color of clothing, favorite season, shoelaces versus no shoelaces, count off by numbers, clock partners, pre-planned groups, etc. Asking your students for suggestions of grouping is a great way to gain more ideas as well.



# Physical Education

Participation in physical activity plays an integral role in developing a child's fitness and health, self-esteem, and general well-being. Physical Education teachers in MMSD are committed to ensuring all students learn in a safe, inclusive environment where gender does not play a role in student learning expectations or structure of activities for learning.

Physical Education teachers should evaluate all activities, rules, policies, and practices to ensure that gender-inclusive practices are in place.

## **Fitness Testing**

By performing health-related fitness assessments, one is able to identify strengths and areas in need of improvement relating to physical health. Teachers are encouraged to use fitness testing results as a way for students to set personal fitness goals to strive for improvement versus meeting a gendered healthy fitness zone score. Fitness testing software often identifies healthy fitness zones in a binary capacity, only offering male or female options. Students who identify as transgender, non-binary, or gender-expansive should be able to use the healthy fitness zones that are consistent with their gender identity. MMSD is committed to establishing healthy fitness zones that do not categorize students based on gender.

## **Clothing**

Per Board Policy 3651, students must come to physical education class in appropriate clothing consistent with the health, safety, and instructional needs of the program. Appropriate attire includes athletic shoes and clothing that allows for full movement in class activities. This may not require students to physically change clothing prior to class. If other accommodations are needed, students should consult their physical education teacher or the LGBTQ+ Lead.

Physical Education attire should not be gendered. For example, teachers can list the type of attire that is appropriate for swimwear, but shall not say "girls must wear x and boys must wear y."

## **Swimming**

MMSD strives to ensure all students have access to all curricular opportunities for learning where they are safe and supported. Some students who identify as transgender, non-binary, and gender-expansive may require accommodations to access participating in swimming. Examples of accommodations include alternative swimwear, smaller environments, and privacy for changing. Communication between students, teachers, and families is encouraged to develop a plan to meet the needs of the individual student.

For our transgender, non-binary, and gender-expansive youth who are experiencing body dysphoria, swimming might not be a safe, affirming option for them. In these cases, we will offer students an alternative learning opportunity aligned with student learning outcomes. For additional guidance around this topic, students and families can contact their building administrator or LGBTQ+ Lead.

## **Changing Areas**

All students must have access to changing facilities that correspond to their gender identity. MMSD is committed to having safe all gender changing areas; this will be assessed in the 2017-18 school year and implemented during the 2018-19 school year. Students will have access to changing spaces that ensure safety and success for the course.



---

**Universal Practices for Inclusion:**

- At the start of each semester, Physical Education teachers will have a whole-class discussion to inform all students of behavioral expectations as well as all available options for changing areas.
  - Review expectations for respecting the privacy and personal space of other people in the changing area. Make clear what appropriate conduct is in spaces where students are changing clothes and consequences for not adhering to them.
  - For example: The girls changing area is located \_\_\_\_\_, the boys changing area is located \_\_\_\_\_. An all gender changing area is located \_\_\_\_\_ for any student seeking additional privacy.
- The teacher will also invite students to communicate with the teacher if additional accommodations are needed or if they have any questions.

**Student Accommodations:**

- When requested, schools will provide access to a reasonable alternative changing facility that is more private and not gendered. This is an accommodation we would provide for any of our MMSD students, not just students who identify as transgender, non-binary, and gender-expansive.
- Reasonable accommodations may include:
  - Single, locked stalls within binary changing spaces.
  - Separate changing spaces that are not gendered; also including single, locked stalls. These all gender spaces should be located in proximity to Physical Education class and/or extracurricular activities.

---

**Considerations:**

- Students who are asking for accommodations should have voice in determining the changing area that best fits their individual needs.
- Students' needs may change, so it is important to check in regularly to determine if their gender support plan needs to be updated.
- Keep in mind that spaces inside of binary changing areas may not feel comfortable to some students, including transgender and non-binary youth; therefore, this may require a separate space where students do not have to enter through a binary changing area.







## Health Education

---

All students will have access to high-quality Human Growth & Development curriculum that focus on student skill-development to promote lifelong healthy lifestyles. MMSD is committed to providing Health Education curricula that provides students with skills-based learning opportunities that are inclusive, age-appropriate, medically accurate, and non-stigmatizing.

Health education teachers should evaluate all curricular materials, such as lesson activities, assessments, videos, and so on to ensure that gender-inclusive practices are in place. It is essential that LGBTQ+ students see themselves in the curriculum.

### **Human Growth and Development**

Instruction should include educating students on various vocabulary related to biology, gender identity, gender expression, and sexual orientation.

Examples of inclusive practices:

- When teaching about bodily changes with biological sex relating to puberty, use terms such as “people with penises” and “people with vaginas/vulvas/uteruses” instead of “girls and boys” or “girl-bodied / boy-bodied.”
- When teaching about families and relationships, discuss the concept of multiple pathways to relationships and family. Include multiple family structures – people who are raised by adopted parents, foster parents, grandparents/family members, single-parent household, same-sex parents, divorced parents, etc.
- When age-appropriate, educate students on the multiple pathways to family, including concepts of In vitro fertilization, artificial insemination, adoption, etc.

For more information on health education curriculum, contact the Physical Education, Health, and Wellness Coordinator.



## Athletics

---

MMSD, in collaboration with the Wisconsin Interscholastic Athletic Association (WIAA), is committed to increasing the participation of students who identify as transgender, non-binary, or gender-expansive in athletics.

- Students are able to participate on a team consistent with their gender identity.
- At this time, we do not have many non-binary athletic options for our students; therefore, students who identify as non-binary or gender-expansive can participate on the team that feels like the best fit for them.
- There are some circumstances where students may participate on the team consistent with the sex they were assigned at birth in order for them to feel safe, supportive, and successful. Open communication is encouraged among the student, their family, and their coach to ensure the best option for the student based on their individual goals.
- If students, families, or educators need support in this area, please contact the MMSD Physical Education, Health, and Wellness Coordinator.

If more information is needed, contact your administrator to seek guidance from Central Office Student Services.



# Clubs and Extracurricular Activities

All students of all genders should have access to opportunities for clubs and extracurricular activities to enrich their educational experience.

## **Inclusive Access and Participation in Clubs & Activities:**

- Model inclusive messaging when promoting clubs and extracurricular activities to encourage access and participation for our gender-expansive students. Sometimes clubs and activities might be marketed specifically to “boys” or “girls.” This practice excludes many of our transgender, non-binary, and gender-expansive youth.

### Examples:

- All genders are encouraged to participate in Ultimate Frisbee.
- Handing out the karate club flyer to all students, not just the boys (even if the host organization asks you to just send out to “boys”)
- A poster that is representative of diverse students to promote math club.

## **Inclusive Language and Practice in Clubs & Activities:**

- Make sure club leaders are aware of MMSD policies and guidance to support our transgender, non-binary, and gender-diverse youth.
- Leaders should review all club materials to ensure they are inclusive of gender-diverse youth.
- Model gender-inclusive language that affirms the gender diversity of our MMSD students, staff, and families and disrupts the gender binary. See Language section for additional examples.
- Clubs and activities are not to be separated by gender.
  - Make sure all genders have access to all clubs and activities.
  - Avoid using gender as a characteristic for divisions.
  - For clubs that have been traditionally divided by binary gender (e.g., Boy Scouts, Girl Scouts, Girls on the Run), we must not discriminate against or exclude our transgender, non-binary, and gender diverse youth. Students should be able to participate in all desired clubs and activities. See Title IX policies for additional information.





## Field Trips

It is the responsibility of the adult in charge of the trip to guarantee the safety and inclusion of all students. This includes checking in advance for all gender restrooms, all gender changing facilities, and inclusive room assignments.

### Day Field Trips

- Gender should not be used when dividing students into groups on field trips, and field trips must be accessible and planned to be inclusive for students of all gender identities.
- If a location does not have accessible facilities (all gender restrooms, private changing areas, etc.), communicate in advance with all of your students in case accommodations are needed.
- Accessibility should be a consideration when choosing a field trip site.

### Overnight & Extended Field Trips

As a universal practice, staff shall begin by developing expectations for appropriate conduct with all students (i.e. respect for privacy, personal space, and boundaries; modesty; physical contact).

- When traveling on overnight school-related trips where room sharing may be required, our transgender, non-binary, and gender-expansive students' comfort level with sleeping arrangements will largely dictate the manner in which related issues are addressed

- It is strongly recommended to first ask the student their rooming preference.
  - Transgender students have the right to room with other students who share the gender identity they consistently assert at school.
  - Transgender, non-binary, and gender-expansive students should be able to have options such as friend, social, or leadership pairings.
  - In some cases, a student may want a room with fewer roommates or another alternative suggested by the student or the student's family. Trip organizers will work with the student, school staff, and/or the student's parents/guardians to make appropriate arrangements. The school should honor these requests whenever possible. In all circumstances, the arrangements are to be made with the student's consent.
- Regardless of whether any roommates know about the student's gender identity, the school has an obligation to maintain the student's privacy and cannot disclose information about the student's identity.
- If students who identify as transgender or non-binary, or gender-expansive are uncomfortable with all options above regarding changing facilities and travel accommodations, it is strongly recommended that the student be able to choose other activities in lieu of activities requiring changing facilities or room shares. It is recommended that all reasonable alternatives suggested by the student or parents/guardians be considered.



## School Dances, Courts, and Other Historically Gender-Based Traditions

School traditions are important to all students. Transgender, non-binary, and gender-expansive students are no exception. The First Amendment and the right to equal protection grant transgender, non-binary, and gender-expansive students protection from discrimination based on sexual orientation and gender identity and allow students the right to authentically show their gender identity and gender expression at prom, homecoming, and similar school events.

- With an expectation of inclusivity, schools shall evaluate school traditions such as dances, homecoming/prom courts, etc. to determine whether these activities are inclusive for all genders. Schools may decide to revise existing traditions or establishing new traditions.
- For example, the tradition of having a male homecoming king and a female homecoming queen and gendered court was once commonplace. Most MMSD schools have moved away from binary gender courts because they exclude the gender diversity of their student body. Instead of electing a homecoming king and homecoming queen, some schools have chosen to nominate “prom ambassadors,” “homecoming court,” or “homecoming royalty.”
- Transgender, non-binary, or gender-expansive youth have the right to fully participate in all school activities and social events without discrimination.





## Acknowledgements

---

MMSD would like to acknowledge the support from across the country that has influenced and enhanced this guidance document. Thank you to the following school districts and organizations for the best practice recommendations, model policies, and support:

- ACLU
- DC Public Schools
- Gay, Lesbian, Straight, Education Network (GLSEN)
- Gender Spectrum
- Los Angeles Unified School District (LAUSD)
- Minnesota School Safety Technical Assistance Council
- Minus18
- Welcoming Schools

We would also like to thank the MMSD Action Team to Support Transgender, Non-binary, and Gender-expansive Youth. Representatives include participants from:

- GSAFE: Creating Just Schools for LGBTQ+ Youth
- MMSD Building Services
- MMSD Chief of Schools Office
- MMSD Curriculum & Instruction
- MMSD Legal Services
- MMSD Office of the Registrar
- MMSD Student Leaders
- MMSD Student Services
- MMSD Superintendent's Office
- Transparent Group of Wisconsin



# Resources

---

## 1. Gender 101 Concepts & Vocabulary

- [Welcoming Schools' Definitions to help understand gender and sexuality](#)
- [Genderbread Person](#) from It's Pronounced Metrosexual
- [Trans 101](#) video from Minus18
- [What are Pronouns?](#) article, app, & video from Minus18

## 2. MMSD Gender Support Resources

- [MMSD Gender Support Plan](#)
- [MMSD Name/Gender/Email Change Form](#)
- [MMSD flowchart to guide gender transition process](#)
- [Communicating a Change in Gender Status from Gender Spectrum](#)
- [Student Gender Communication Plan from Gender Spectrum](#)

## 3. Local Resources for Students and Families

- Madison Metropolitan School District Resources
  - Your child's School Team
  - Districtwide resources: LGBTQ+ Lead, Title IX, Coordinator of PE/Health/Wellness
- Community Resources in Madison
  - [Youth Resource List](#)
  - [Transparent Group](#)

## 4. National Resources on Gender Inclusive Schools for Educators and Administrators

- Welcoming Schools' [Checklist for a Welcoming and Inclusive School Environment](#)
- Gender Spectrum's [Schools in Transition: A Guide to Supporting Trans Youth](#)
- Gender Spectrum video: [How to design a Gender Support Plan](#)
- [Supporting & Caring for Transgender Children](#)

## 5. Resources for Families

- Local
  - [Transparent Group](#): Monthly Support Group & Google Group
  - [Pediatric & Adolescent Transgender Health \(PATH\) Clinic](#)
  - [PFLAG](#) Monthly Support Group
  - [GSAFE](#): Creating Just Schools for LGBTQ+ Youth
  - [Orgullo Latinx](#)
- National
  - Advocates for Youth~ [10 Tips for Parents of LGBTQ+ Youth](#)
  - Welcoming Schools~ [Gender Inclusive Schools & Supporting Transgender and Non-binary Youth](#)
  - [Gender Spectrum](#)
  - [GLSEN](#)
  - [The Family Acceptance Project](#)
  - PFLAG: [Guide to be a Trans\\* Ally](#)
  - [Trans Youth Family Allies](#)
  - [Families in Transition: A Resource Guide for Parents of Trans Youth](#)

## 6. Policies

- Board Policy [4510: Student Anti-Bullying](#)
- Board Policy [4620: Student Non-Discrimination](#)
- Board Policy [8012: Staff-Visitors Non-Discrimination](#)
- Board Policy [8013: Workplace Bullying](#)