

A CALL FOR RESTORATIVE ACTION: REDUCING THE RISK OF DEATH BY SUICIDE FOR TRANSGENDER, NONBINARY, AND INTERSEX YOUTH THROUGH ENSURED ACCESS TO GENDER-AFFIRMING EDUCATIONAL SPACES

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INTRODUCTION

“Meeting people where they are is not selling out – it’s what this work is.”

Rep. Sarah McBride¹

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** This Author would like to remind readers that every person’s experience with gender and sexuality is unique. This Author has put in an intentional, good-faith effort to craft a Note that is affirming, uplifting, and inclusive of the transgender and gender non-conforming communities. When reading this Note, readers should be cautious not to make generalized assumptions about any one individual’s gender identity, nor should readers make any such generalized assumptions about the transgender or gender non-conforming communities at large. Moving forward, readers are encouraged to continue learning and listening to transgender and gender non-conforming voices, as well as those among the collective LGBTQ+ community. *See Being an LGBTQ+ Ally*, HUM. RTS. CAMPAIGN FOUND. (Oct. 2022), <https://reports.hrc.org/being-an-lgbtq-ally> [<https://perma.cc/K2R8-78UV>].

*** This Note discusses several heavy topics, including but not limited to death by suicide, gender dysphoria, bullying, and harassment. This Note also briefly discusses material that may have included or alluded to anti-LGBTQ+ themes. This Author asks readers to be mindful and take care while reading this Note. For individuals struggling or in crisis, help is available by calling or texting 988 to connect with the Suicide & Crisis Lifeline. For young LGBTQ+ individuals struggling or in crisis, help is also available through The Trevor Project by texting ‘START’ to 678-678, calling 1-866-488-7386, or messaging a counselor online. Trans individuals may also call Trans Lifeline at 877-565-8860 to talk to another trans and/or nonbinary individual. *See If you need to talk, the 988 Lifeline is here*, 988 LIFELINE, <https://988lifeline.org/> [<https://perma.cc/7MU3-7ZHA>] (last visited Sep. 15, 2025); *We’re here for you*, THE TREVOR PROJECT, <https://www.thetrevorproject.org/get-help/> [<https://perma.cc/2A9W-GHUV>] (last visited Sep. 15, 2025); *Hotline*, TRANS LIFELINE, https://translifeline.org/hotline/?gad_source=1&gad_campaignid=15918598973&gbraid=0AAAAoQgEevgWMzkmm2yMR3wz-oyeMZEx&gclid=Cj0KCQjwxL7GBhDXARIsAG0cmIOPX5SsJruFbSR2fVwpVVQzNjFUuYYvZUCZRmkADAYTyYwRlP9q7kQaAgYYEALw_wcB [<https://perma.cc/8PYM-JRE8>] (last visited Sep. 15, 2025).

1. HUMAN RIGHTS CAMPAIGN, *Rep. Sarah McBride Speaks at the 2025 HRC Greater New York Dinner* (YouTube, Feb. 3, 2025), <https://www.youtube.com/watch?v=fObv7A93YDM> [<https://perma.cc/VKG2-URAS>].

I. A NATIONAL CRISIS

On March 14, 2024, the President of the United States issued a statement, asserting that “[e]very young person deserves to have the fundamental right and freedom to be who they are, and feel safe and supported at school and in their communities.”² The statement was issued in response to the death of sixteen-year-old Nex Benedict.³

Nex attended a public high school in the Owasso School District in Oklahoma.⁴ To some of his⁵ peers, Nex was known as brave, easy to love, and overall, a good person.⁶ One friend recalled looking up to Nex and admiring their authenticity and willingness to “stick up for themselves or for someone else.”⁷ Another reflected that Nex “would have done anything for someone that he cared about or loved.”⁸

However, on February 7, 2024, Nex had been beaten unconscious by three students in the girls’ bathroom at school.⁹ Even though Nex had bruises over his face and eyes, and scratches behind his head, the school did not call an ambulance, nor did they file a police report. Instead, Nex’s mother took them to a medical center for treatment.¹⁰ The next day, on February 8, 2024, Nex

2. JOE BIDEN, *Statement from President Joe Biden on Nex Benedict*, THE WHITE HOUSE (MAR. 14, 2024), <https://www.whitehouse.gov/briefing-room/statements-releases/2024/03/14/statement-from-president-joe-biden-on-nex-benedict/> [https://perma.cc/VA5E-NBBQ].

3. *Id.*; see also Laurel Powell, *U.S. Department of Education Finds Nex Benedict’s School District Accountable for Fostering Hostile Climate in Response to HRC Complaint*, HUM. RTS. CAMPAIGN (Nov. 13, 2024), <https://www.hrc.org/press-releases/u-s-department-of-education-finds-nex-benedicts-school-district-accountable-for-fostering-hostile-climate-in-response-to-hrc-complaint> [https://perma.cc/ZB6S-357Y].

4. Powell, *supra* note 3.

5. Some sources state that Nex used they/them pronouns, and some state Nex used he/him pronouns. Other sources state that Nex used both he/him and they/them pronouns. Out of respect, this Author will use both he/him and they/them pronouns for Nex. See e.g., Colbi Edmonds & Adeel Hassan, *What We Know About the Death of a Nonbinary Student in Oklahoma*, N.Y. TIMES (Mar. 15, 2024), <https://www.nytimes.com/article/nex-benedict-oklahoma.html> [https://perma.cc/BVH4-69QD] (stating that Nex often used they and them pronouns); Lana Leonard, *Read the Stories of Nex Benedict as Told by Their Chosen Family, Friends and Allies at Owasso Vigil*, GLAAD (Feb. 27, 2024), <https://glaad.org/read-the-stories-of-nex-benedict-as-told-by-their-chosen-family-friends-and-allies-at-owasso-ok-vigil/> [https://perma.cc/5HV7-NQZ9] (quoting a friend of Nex who alleged Nex used he and him pronouns); *LIVE UPDATES: The Death of Nex Benedict and Community Response in Greater Oklahoma*, GLAAD (Feb. 28, 2024), <https://glaad.org/live-updates-the-death-of-nex-benedict-and-community-response-in-oklahoma> [https://perma.cc/7S3Y-8RJ8] (stating that Nex used he and they pronouns); C Mandler, *What happened to Nex Benedict?* NPR (Mar. 22, 2024, 10:24 A.M.), <https://www.npr.org/2024/03/15/1238780699/nex-benedict-nonbinary-oklahoma-death-bullying> [https://perma.cc/C93W-T8QV] (stating that Nex used he and him pronouns as well as they and them pronouns).

6. See Leonard, *supra* note 5.

7. *Id.*

8. *Id.*

9. Edmonds & Hassan, *supra* note 5.

10. Bevan Hurley, *Oklahoma banned trans students from bathrooms. Now Nex Benedict is dead after a fight at school*, INDEPENDENT (Feb. 20, 2024) <https://www.independent.co.uk/news/world/americas/nex-benedict-dead-oklahoma-b2501844.html> [https://perma.cc/W3W3-VZSU].

collapsed in his living room and was taken to a pediatric emergency room.¹¹ Eventually, he could no longer sustain his injuries.¹² Nex was officially declared dead later that day.¹³

The incident came after Nex had already been subjected to bullying and harassment for over a year.¹⁴

The reason for the bullying and harassment? Nex's gender identity.¹⁵

Nex identified as Two-Spirit,¹⁶ transgender,¹⁷ and gender non-conforming.¹⁸ Yet, Nex was more than their gender identity.¹⁹ Outside of school, Nex lived and had interests like any other adolescent. Nex enjoyed drawing, reading, and playing games, and he had a cat named Zeus.²⁰ Nex, who was Indigenous, had family roots tracing back to the Choctaw Nation.²¹ They also had a family that "encouraged open discussion about questions of gender and identity."²²

Ultimately, Nex was a kid who "just wanted to be accepted, [and who] should still be here with us today."²³ An autopsy report later revealed multiple

11. *Id.*

12. Jose Soto, *Honoring Nex Benedict, a 16-Year-Old Non-Binary Oklahoma High School Student Who Tragically Died One Day After Being Beaten Unconscious in a School Bathroom*, HUM. RTS. CAMPAIGN (Feb. 21, 2024), <https://www.hrc.org/news/honoring-nex-benedict-16-year-old-non-binary-high-school-student-who-tragically-died-after-school-beating> [<https://perma.cc/R92D-3D5C>].

13. Hurley, *supra* note 10.

14. Compl. ¶ 1, *Benedict v. Indep. Sch. Dist. No. 11*, No. 4:25-cv-00321-MTS (N.D. Okla. June 26, 2025), ECF No. 2; Hurley, *supra* note 10. Nex's mother, Sue, filed suit as administrator of Nex's estate on June 26, 2025. In her complaint, Sue alleged that Nex endured "verbal abuse, physical assault, sexual harassment, cyberbullying, social isolation, and humiliation by other students on a regular basis." Compl. ¶ 15.

15. *PFLAG National Glossary*, PFLAG, <https://pflag.org/glossary/> [<https://perma.cc/W9HV-TDCD>] (last visited Oct. 6, 2025) (referring to "gender identity" as "a person's deeply held core sense of self in relation to gender. . . . Gender identity is a separate concept from sexuality and gender expression."); Complaint, *supra* note 14, ¶ 16; *see also* Leonard, *supra* note 5; Mandler, *supra* note 5.

16. *PFLAG National Glossary*, *supra* note 15 (defining Two-Spirit as a "term used within some American Indian (AI) and Alaska Native (AN) communities to refer to a person who identifies as having both a male and a female essence or spirit [The term] encompasses sexual, cultural, gender, and spiritual identities, and provides unifying, positive, and encouraging language that emphasizes reconnecting to tribal traditions").

17. *Id.* (explaining that "transgender" is a "term describing a person's gender identity that does not necessarily match their assigned sex at birth [It is] an umbrella term to describe groups of people who transcend traditional expectations of gender identity or expression").

18. *Id.* (explaining that "gender non-conforming" is an "umbrella term for those who do not follow gender stereotypes, or who expand ideas of gender expression or gender identity"); Recognize that some sources reported that Benedict identified as "nonbinary." *See e.g.* Mandler, *supra* note 5 (reporting that Benedict identified as transgender and nonbinary); Soto, *supra* note 12 (describing Nex as nonbinary); *see also* *PFLAG National Glossary*, *supra* note 15 (explaining that "nonbinary" refers to individuals "who do not subscribe to the gender binary.")

19. *See* Leonard, *supra* note 5.

20. Soto, *supra* note 12.

21. Hurley, *supra* note 10.

22. Soto, *supra* note 12.

23. Biden, *supra* note 2.

injuries to Nex's head, neck, and torso.²⁴ The same report concluded that "a toxic combination of diphenhydramine, an antihistamine commonly used for allergies, and fluoxetine, a drug often used to treat depression," caused Nex's death.²⁵ The Oklahoma Medical Examiner's Office ultimately determined that Nex died by suicide.²⁶

Risk of death by suicide for teens and adolescents is considered a "substantial public health concern" in the United States, especially as rates of poor mental health and behaviors related to death by suicide have continued to rise in recent years.²⁷ As of January 2024, death by suicide is the second leading cause of death for children between the ages of 10 and 14 and the third leading cause of death for children and emergent adults between the ages of 15 and 24.²⁸ In 2023, 20.4% of adolescents "seriously considered attempting [death by] suicide," and 9.5% did attempt death by suicide.²⁹

Death by suicide "stems from a complex mix of factors and affects people of all backgrounds."³⁰ Although young people are impacted collectively, studies show some groups of teens and adolescents face additional stressors that disproportionately increase their risk of death by suicide.³¹ For instance, youth living in rural communities, Black youth, American Indian and Alaska Native youth, girls and young women, and youth involved in the criminal legal system are all disproportionately at risk for death by suicide.³² Indeed, also among those disproportionally affected are LGBTQ+³³ youth.³⁴

24. Edmonds & Hassan, *supra* note 5.

25. *Id.*

26. *Id.*; Mandler, *supra* note 5.

27. Jorge V. Verlenden et al., *Mental Health and Suicide Risk Among High School Students and Protective Factors – Youth Risk Behavior Survey, United States, 2023*, 73 MORBIDITY AND MORTALITY WKLY. REP. 79, 79 (Oct. 10, 2024), <https://www.cdc.gov/mmwr/volumes/73/su/pdfs/su7304a9-H.pdf> [<https://perma.cc/J97V-CXF5>].

28. *Facts About Suicide Among LGBTQ+ Young People*, THE TREVOR PROJECT (Jan. 2024), <https://www.thetrevorproject.org/resources/article/facts-about-lgbtq-youth-suicide/> [<https://perma.cc/5KM6-VYY5>].

29. Verlenden et al., *supra* note 27.

30. YOUTH SUICIDE: CURRENT TRENDS AND THE PATH TO PREVENTION, THE JED FOUND. 36 (Dec. 6, 2023) https://jedfoundation.org/wp-content/uploads/2024/06/JED-Suicide-Trends-Report_June-2024.pdf [<https://perma.cc/U52Q-9D2T>].

31. *Id.* at 17.

32. *See id.* at 18-25.

33. *PFLAG National Glossary*, *supra* note 15 (defining "LGBTQ+" as "an acronym collectively [referring to] lesbian, gay, bisexual, transgender, or queer [individuals].") Sometimes, the term is stated merely as LGBT (lesbian, gay, bisexual, or transgender), GLBT (gay, lesbian, bisexual, and transgender). Sometimes, the "Q" in LGBTQ stands for "questioning." The "+" represents members of the LGBTQ community whose identities may not be captured by the letters "L," "G," "B," "T," or "Q," such as, for instance, "pansexual," "asexual," "intersex," "Two-Spirit," etcetera. This Author may use LGBTQ+ interchangeably with LGBT, GLBT, LGBTQIA, or other collective acronyms to write with clarity and in a good-faith effort intended to affirm all members of the LGBTQ+ community.

34. YOUTH SUICIDE: CURRENT TRENDS AND THE PATH TO PREVENTION, *supra* note 30, at 23.

II. RISK OF DEATH BY SUICIDE AND LGBTQ+ YOUTH

For LGBTQ+ youth, the risk of death by suicide is higher compared to that of their heterosexual³⁵ and/or cisgender³⁶ peers.³⁷ According to the Trevor Project's 2023 U.S. National Survey on the Mental Health of LGBTQ+ Young People, 41% of surveyed LGBTQ+ youth seriously considered attempting death by suicide, a rate almost double that of the 20.8% of adolescents overall in the same year.³⁸ In 2024, 39% of surveyed LGBTQ+ youth seriously considered death by suicide.³⁹

LGBTQ+ youth are not “inherently prone” to risk of death by suicide because of their sexual orientation⁴⁰ or gender identity, but are, in fact, at higher risk because of how they are treated and stigmatized in society.⁴¹ Research suggests that LGBTQ+ children subjected to anti-LGBTQ+ experiences or messages may “compound and produce negative mental health outcomes and increase [risk of death by suicide] among LGBTQ+ individuals.”⁴² Notably, LGBTQ+ youth are “more than four times as likely” to attempt death by suicide.⁴³ The risk of death by suicide is even higher for transgender and

35. *PFLAG National Glossary*, *supra* note 15 (defining “heterosexual” in that it “refers to a person who is sexually attracted to a person of a different gender or sex.”)

36. *Id.* (defining “cisgender” as a “term used to refer to an individual whose gender identity aligns with the sex assigned to them at birth.”) Cisgender is not a slur. *Id.* “Cis” or “cisgender” may be used to refer to non-trans people. SHON FAYE, *THE TRANSGENDER ISSUE: TRANS JUSTICE IS JUSTICE FOR ALL* xviii (Verso, 2022); *see e.g., id.* at xvii (“We need a word for the 99 per cent of people in our society who do not have the experience of being trans, who fill almost all positions of power and authority, who control access to healthcare and education, and who make our laws.”).

37. Verlenden et al., *supra* note 27, at 83.

38. 2023 U.S. NATIONAL SURVEY ON THE MENTAL HEALTH OF LGBTQ+ YOUNG PEOPLE, THE TREVOR PROJECT 4 (2023) https://www.thetrevorproject.org/survey-2023/assets/static/05_TREVOR05_2023survey.pdf [<https://perma.cc/C2WY-84F6>] [hereinafter TREVOR PROJECT 2023 SURVEY].

39. R. NATH ET AL., 2024 U.S. NATIONAL SURVEY ON THE MENTAL HEALTH OF LGBTQ+ YOUNG PEOPLE, THE TREVOR PROJECT 2 (2024), https://www.thetrevorproject.org/survey-2024/assets/static/TTP_2024_National_Survey.pdf [<https://perma.cc/RN62-JW4J>]; LGBTQ+ youth of color reported even higher rates of death by suicide compared to their white peers. In 2023, 11% of white LGBTQ+ youth did attempt death by suicide “compared to 22% of Native/Indigenous [LGBTQ+] youth, 18% of Middle Eastern/North African [LGBTQ+] youth, 16% of Black [LGBTQ+] youth, 17% of multiracial [LGBTQ+] youth, 15% of Latinx [LGBTQ+] youth, and 10% of Asian/Pacific Islander [LGBTQ+] youth.” *Facts About Suicide Among LGBTQ+ Young People*, *supra* note 28. In 2024, 10% of white LGBTQ+ youth did attempt death by suicide, compared to 24% of Native/Indigenous LGBTQ+ youth, 14% of Middle Eastern/Northern African LGBTQ+ youth, 14% of Black LGBTQ+ youth, 16% of multiracial LGBTQ+ youth, 13% of Latinx LGBTQ+ youth, and 10% of Asian American/Pacific Islander LGBTQ+ youth. NATH ET AL., *supra* note 39, at 5.

40. *PFLAG National Glossary*, *supra* note 15 (explaining that sexual orientation refers to “the sexual attraction toward other people or no people.”)

41. THE TREVOR PROJECT, *Learn with Love: Trey & Gloria* (YouTube, Nov. 14, 2024), <https://www.youtube.com/watch?v=gXzKHxD3WoA> [<https://perma.cc/HM3G-BSG5>].

42. *Facts About Suicide Among LGBTQ+ Young People*, *supra* note 28.

43. *Id.*

nonbinary⁴⁴ children.⁴⁵

III. INCREASED RISKS OF DEATH BY SUICIDE FOR TRANSGENDER AND GENDER NON-CONFORMING YOUTH

Of the surveyed LGBTQ+ youth who seriously considered death by suicide in 2024, 46% were transgender or nonbinary.⁴⁶ Of that percentage, 14% of transgender and nonbinary youth attempted death by suicide, compared to only 7% of cisgender youth, and of those surveyed:

- 47% of transgender girls and young women considered death by suicide, a rate 16% *higher* than that of cisgender girls and young women.⁴⁷
- 14% of transgender girls and young women attempted death by suicide, compared to only 8% of cisgender girls and women.⁴⁸
- 52% of transgender boys and young men considered death by suicide, a rate 25% *higher* than that of cisgender boys and young men.⁴⁹
- 18% of transgender boys and young men attempted death by suicide, compared to 7% of cisgender boys and young men.⁵⁰
- 43% of nonbinary youth considered death by suicide. 13% attempted death by suicide.⁵¹

While researchers haven't been able to determine precisely which factors contribute to a heightened risk of death by suicide for transgender and nonbinary youth, some theorize that bullying, discrimination, social exclusion, and

44. *PFLAG National Glossary*, *supra* note 15 (explaining that some individuals use the term “nonbinary” (or “non-binary”) interchangeably with terms such as “genderqueer,” “genderfluid,” “gender non-conforming,” “gender diverse,” or “gender expansive.”) For purposes of this Note, this Author will use “nonbinary” (or “non-binary”), unless the source explicitly uses the term “gender non-conforming.” This Author advises readers to recognize the nuances between the terms “nonbinary” and “gender non-conforming,” that not all transgender and nonbinary people consider themselves gender nonconforming, and that “trans” is “used for shorthand for ‘transgender.’” *Id.*; *Glossary of Terms: Transgender*, GLAAD <https://glaad.org/reference/trans-terms> [<https://perma.cc/AHC3-KT7D>] (last visited Sep. 16, 2025).

45. YOUTH SUICIDE: CURRENT TRENDS AND THE PATH TO PREVENTION, *supra* note 30, at 23.

46. NATH ET AL., *supra* note 39, at 3.

47. *Id.* at 4. (emphasis added).

48. *Id.*

49. *Id.* (emphasis added).

50. *Id.*

51. *Id.*

prejudice have all contributed to such high risks.⁵² Research also shows that various environmental, mental, and physical risk factors have contributed to heightened risks of death by suicide among LGBTQ+ youth.⁵³ Nevertheless, the fact of the matter is this:

Children who identify as transgender or nonbinary are dying.

IV. THE ROLE OF SCHOOLS IN THE UNITED STATES AND REDUCING RISKS OF DEATH BY SUICIDE FOR TRANSGENDER AND GENDER NON-CONFORMING YOUTH

Death by suicide is preventable, and schools can play a key role in preventing death by suicide for students.⁵⁴ Research demonstrates that the risk of death by suicide is lower for transgender and nonbinary students who attend schools that are welcoming to LGBTQ+ students.⁵⁵ Still, in 2024, only 54% of surveyed transgender and nonbinary students had access to a gender-affirming space at school.⁵⁶ On that basis, schools must implement policies and practices that cultivate an inclusive, affirming, and safe environment for all LGBTQ+ students and, in particular, for transgender and nonbinary students.⁵⁷

In the last several years, the United States has taken small steps to promulgate legal guidance that empowers schools to protect transgender and gender non-conforming students. In April 2024, Title IX was amended to offer federal protections for LGBTQ+ students and teachers of color.⁵⁸ Specifically, the Department of Education clarified that Title IX's prohibition of sex-based discrimination includes discrimination based on sexual orientation and gender identity, in light of the United States Supreme Court's historic ruling in *Bostock*

52. Jen Christensen, *Transgender people face significantly higher suicide risk, Danish study finds*, CNN (June 28, 2023, at 6:18 P.M.), <https://www.cnn.com/2023/06/28/health/transgender-suicide-risk/index.html> [<https://perma.cc/LD7V-BGZX>].

53. See *Suicide Risk Factors for LGBTQ+ Youth*, THE TREVOR PROJECT (July 16, 2021) <https://www.thetrevorproject.org/resources/article/suicide-risk-factors/> [<https://perma.cc/YUQ4-E9BY>].

54. *Id.*; *LGBTQ Youth and Suicide*, N.Y.C. DEP'T OF HEALTH & MENTAL HYGIENE, <https://www.nyc.gov/site/doh/health/health-topics/lgbtq-youth-suicide.page> [<https://perma.cc/DJU7-NKQQ>] (last visited Sep. 16, 2025); Lynsay Ayer & Lisa J. Colpe, *The Key Role of Schools in Youth Suicide Prevention*, 62 J. AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY 19, 20 (Jan. 2023), <https://pmc.ncbi.nlm.nih.gov/articles/PMC9384325/pdf/main.pdf> [<https://perma.cc/3EP2-QBTC>].

55. *Does Your School Welcome LGBTQ+ Students?*, THE TREVOR PROJECT (Aug. 23, 2023), <https://www.thetrevorproject.org/resources/guide/is-your-school-lgbtq-affirming/> [<https://perma.cc/V7ET-6B42>].

56. NATH ET AL., *supra* note 39, at 23.

57. See *Does Your School Welcome LGBTQ+ Students?*, *supra* note 55.

58. Press Release, U.S. Dep't of Education, U.S. Department of Education Releases Final Title IX Regulations, Providing Vital Protections Against Sex Discrimination (Apr. 19, 2024), <https://www.ed.gov/about/news/press-release/us-department-of-education-releases-final-title-ix-regulations-providing> [<https://perma.cc/NF8W-JKLR>].

v. Clayton County.⁵⁹ But this proved to be short-lived. In January 2025, less than one year later, the United States Department of Education notified schools that Title IX would be enforced as it had been written in 2020, leaving transgender and gender nonconforming students without federal protections from sex-based discrimination and Title IX schools without the resources to deliver a gender affirming educational space.⁶⁰

To that end, there remains a sense of urgency in the United States for policymakers to implement legal protections for transgender and nonbinary students that would inherently reduce the risks of death by suicide. In this effort, the United States would not be in isolation. According to the International LGBTQI⁶¹ Youth & Student Organisation (“IGLYO”), Malta, Norway, and Sweden are the top three-ranked European countries based on the degree to which their educational systems are inclusive for LGBTQ+ students.⁶² In particular, Malta achieved the highest score for most of the indicators assessed by IGLYO.⁶³ The United States must study and implement similar systemic, research-based legal protections like those in Malta to contribute to a lessened risk of death by suicide for transgender and gender non-conforming youth. By first ensuring public school students have guaranteed access to gender-affirming educational spaces on a federal level, Congress should pass the Equality Act to codify the Supreme Court’s decision in *Bostock v. Clayton County*, and the Department of Education should reimplement Title IX as amended in 2024.

59. *Id.*; see also *Updates Clarify LGBTQI+ Protections in Title IX*, GLSEN, <https://www.glsen.org/sites/default/files/2024-04/Title%20IX.PDF> [https://perma.cc/RQ4W-NA7D] (last visited Oct. 7, 2025).

60. Press Release, U.S. Dep’t of Educ., U.S. Department of Education to Enforce 2020 Title IX Rule Protecting Women (Jan. 31, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-education-enforce-2020-title-ix-rule-protecting-women> [https://perma.cc/T7B7-C2XM].

61. *PFLAG National Glossary*, *supra* note 15 (explaining that LGBTQI is the acronym used in Malta and the International LGBTQI Youth & Student Organisation. The “I” stands for “Intersex” and that “Intersex” refers to “people whose bodies exhibit characteristics associated with both male and female biology.”)

62. *LGBTQI Inclusive Education Map 2025*, INT’L LESBIAN, GAY, BISEXUAL, TRANS, QUEER & INTERSEX YOUTH & STUDENT ORG. (2025), <https://www.education.iglyo.org/> [https://perma.cc/2BVB-Q95W].

63. LGBTQI INCLUSIVE EDUCATION REPORT 2025, INT’L LESBIAN, GAY, BISEXUAL, TRANS, QUEER, & INTERSEX YOUTH & STUDENT ORG. 137 (3d ed. 2025), https://iglyo326-my.sharepoint.com/personal/jeremy_iglyo_com/_layouts/15/onedrive.aspx?id=%2Fpersonal%2Fjeremy%5FIGlyo%5Fcom%2FDocuments%2FIGLYO%20LGBTQI%20Inclusive%20Education%20Report%202025%20%2D%20Compressed%2Epdf&parent=%2Fpersonal%2Fjeremy%5FIGlyo%5Fcom%2FDocuments&ga=1 [https://perma.cc/8PGM-7BWS] (Malta received perfect scores for the following indicators: Anti-Discrimination Legislation Applicable to Education, Policies and Action Plans, Inclusive Compulsory Education Curricula, School Environment and Partnerships, Legal Gender Recognition, Support Systems for LGBTQI Young People, Information and Guidelines, and International Commitments).

BACKGROUND

“There is nothing to be feared, only understood. Now is the time to understand more so that we fear less.”

-Marie Curie⁶⁴

I. UNDERSTANDING WHAT IT MEANS TO IDENTIFY AS ‘TRANSGENDER,’
‘NONBINARY,’ OR ‘INTERSEX.’

“How does someone know if they’re transgender?”

“I like to think about it in terms of handedness . . . If I asked you to sign your name with your nondominant hand, it would feel weird. If I asked you to describe it to me, you’d probably say things like *the pen doesn’t fit comfortably in my hand*; or *it’s awkward*; or *I have to try hard to make legible something that I can do with my other hand effortlessly*. It feels forced. . .

“This example is a really great way to understand what it means to be transgender. Everyone has a dominant gender identity. It’s not a preference, it’s not something you can change just because you feel like it—it’s just how you’re wired.”⁶⁵

Excerpt from Mad Honey, written by authors Jodi Picoult and Jennifer Finney Boylan

“Transgender” is a term⁶⁶ describing people who identify with a gender

64. TEDx TALKS, *Making Space for Transgender Kids* | Sarah Garwood | TEDxRitenourRoad, (YouTube, Mar. 28, 2019), <https://www.youtube.com/watch?v=k931AO6b9pY> [<https://perma.cc/BFU8-9ZHB>].

65. JODI PICOULT & JENNIFER FINNEY BOYLAN, *MAD HONEY* 330 (Jennifer Hershey ed., Penguin Random House 2022).

66. “Terms are always changing in the LGBTQ+ community.” *Definitions*, TRANS STUDENT EDUC. RES., <https://transstudent.org/about-2-2/definitions/> [<https://perma.cc/9CQL-ZMXM>]; *See also* FAYE, *supra* note 36 at xvi (“[L]anguage evolves so rapidly that specialist terms commonly used even five years previously soon become redundant through changes in linguistic fashion and in society or simply through the development of new perspectives that change the way language is used.”) Some individuals interpret and use terms differently than others. GUIDE TO BEING AN ALLY TO TRANS AND NONBINARY PEOPLE, PFLAG 5 (2024) <https://pflag.org/wp-content/uploads/2016/04/S4E-Trans-Ally-Guide-FINAL.pdf> [<https://perma.cc/6ZCJ-Z32Z>]. This Author has put in a good faith attempt to use language that is affirming, just, and accurate as the language exists as of December 2025. This Author may also use “trans” in a good-faith effort to use inclusive language while recognizing that individuals may use varying terms in accordance with their gender identity or expression. *See PFLAG National Glossary, supra* note 15.

identity that is inconsistent with the individual's sex assigned⁶⁷ at birth.⁶⁸ Some individuals, including some who identify as transgender, do not identify as either a "man" or a "woman" and may feel comfortable identifying as "nonbinary."⁶⁹ Others who do not follow gender stereotypes may use the term "gender non-conforming."⁷⁰

Some individuals are born with, or develop during childhood, "differences in their sex traits or reproductive anatomy," meaning that they may have differences in their genitalia, hormones, internal anatomy, or chromosomes.⁷¹ These people are "intersex." An estimated 2% of humans are born with different intersex variations.⁷² For perspective, this is the same percentage of people born with red hair.⁷³ Although "intersex" is distinct from "transgender," the struggles and needs of intersex people are "deeply intertwined" with those of transgender people.⁷⁴

Transgender people represent a diverse and complex community, and there is no "one right way" to "be transgender."⁷⁵ Some cisgender people find it difficult to understand what it means to "be transgender," and others have few opportunities to learn about transgender and gender non-conforming identities.⁷⁶ However, a person need not understand another individual's identity to consider societal factors that impact a transgender person's needs and authentic life

67. *PFLAG National Glossary*, *supra* note 15. (defining "assigned sex" as "[t]he sex assigned to an infant at birth based on the child's visible sex organs, including genitalia and other physical characteristics" and that "biological sex" is sometimes referred to as "sex assigned at birth," too, and is not to be confused with "gender.")

68. *Understanding Transgender People: The Basics*, ADVOCS. FOR TRANS EQUAL., <https://transequality.org/issues/resources/understanding-transgender-people-the-basics> [https://perma.cc/A5LS-66TP] (last visited Mar. 9, 2025); *see also* TRANS STUDENT EDUC. RES., *supra* note 66 ("Encompassing term of many gender identities of those who do not identify or exclusively identify with their sex assigned at birth. The term transgender is not indicative of gender expression, sexual orientation, hormonal makeup, physical anatomy, or how one is perceived in daily life.").

69. Not every person who identifies outside the gender binary uses "nonbinary." Other terms include, without limitation, "genderqueer," "agender," "bigender," and "genderfluid." The person may use the word that they feel is the best or most affirming term for their personal lived experience. *Understanding Nonbinary People: How to Be Respectful and Supportive*, ADVOCS. FOR TRANS EQUAL., <https://transequality.org/issues/resources/understanding-nonbinary-people-how-to-be-respectful-and-supportive> [https://perma.cc/UVB7-XLZN] (last visited Mar. 9, 2025).

70. *See PFLAG National Glossary*, *supra* note 15.

71. *What is intersex?*, INTERACT ADVOCS. FOR INTERSEX YOUTH, <https://interactadvocates.org/faq/> [https://perma.cc/5QS8-9YZJ] (last visited Mar. 9, 2025).

72. Tekla Taylor, *On Intersex Awareness Day, we celebrate trans and intersex solidarity*, ADVOCS. FOR TRANS EQUAL. (Oct. 26, 2024), <https://transequality.org/news/intersex-awareness-day-we-celebrate-trans-and-intersex-solidarity#:~:text=As%20we%20honor%20Intersex%20Awareness,Intersex%20is%20different%20from%20transgender> [https://perma.cc/3RTE-DDGY].

73. *Id.*

74. *Id.*

75. *Understanding Transgender People: The Basics*, *supra* note 68; TEDx TALKS, *What does being transgender mean anyway?* | Jay Simmons | TEDxSt Albans (YouTube, Nov. 14, 2023), <https://www.youtube.com/watch?v=26E9Eeyipto> [https://perma.cc/E35L-ZQJ3].

76. *Understanding Transgender People: The Basics*, *supra* note 68.

experiences.⁷⁷ Nevertheless, evidence demonstrates that transgender people are not new; transgender people have existed throughout human history and across the globe.

II. LIFE OUTSIDE THE GENDER BINARY: A BRIEF HISTORY

Although the modern term “transgender” first manifested in the 1960s, people have challenged the gender binary for centuries.⁷⁸ In Hindu society, evidence of third gender people can be found in holy texts such as the Ramayana and the Mahabharata.⁷⁹ Often revered, various groups of third gender individuals have existed throughout South Asian history.⁸⁰ One such group, hijras, has historically been highly respected.⁸¹ By 2014, India, Nepal, and Bangladesh “had all officially recognized third gender people as citizens deserving of equal rights.”⁸² Still, today, many hijras continue to experience prejudice and a lack of essential resources.⁸³

Many Indigenous nations⁸⁴ recognize a third gender, which today commonly falls under the umbrella term “Two-Spirit.”⁸⁵ Geo Soctomah Neptune, a Passamaquoddy Two-Spirit basket maker, explained that the more recent term “Two-Spirit” was proposed in 1990 to help educate and contextualize Native gender variance for non-Native peoples.⁸⁶ Not all Indigenous nations have a concept of Two-Spirit people, although across the more than 150 different Native American tribes that do, Two-Spirit people have been held in high regard and considered sacred.⁸⁷ Colonization has led to less acceptance of Two-Spirit people, resulting from an attempt to “civilize Indigenous people.”⁸⁸ More

77. *Id.* (emphasis added).

78. Erin Blakemore, *How historians are documenting the lives of transgender people*, NAT’L GEOGRAPHIC (June 24, 2022), <https://www.nationalgeographic.com/history/article/how-historians-are-documenting-lives-of-transgender-people> [https://perma.cc/EJ85-H2KY]; *See also Seven Things About Transgender People That You Didn’t Know*, HUM. RTS. CAMPAIGN (Apr. 26, 2024), <https://www.hrc.org/resources/seven-things-about-transgender-people-that-you-didnt-know> [https://perma.cc/B9BB-N7M3].

79. Kristofer Rhude, *The Third Gender and Hijras*, HARV. DIVINITY SCH. (2018), <https://rpl.hds.harvard.edu/religion-context/case-studies/gender/third-gender-and-hijras> [https://perma.cc/L9SB-DSC3].

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. At the highest risk for death by suicide are Indigenous youth who are Two-Spirit or LGBTQ+, with reports showing that 2% of Indigenous LGBTQ+ youth people attempted death by suicide in 2024. NATH ET AL., *supra* note 39.

85. THEM, *What does “Two-Spirit” Mean?* | *InQueery* | *them*. (YouTube, Dec. 11, 2018), <https://www.youtube.com/watch?v=A4lBibGzUnE> [https://perma.cc/U275-Z2P2].

86. *Id.*

87. *Id.*; *Two Spirit and LGBTQ+ Identities: Today and Centuries Ago*, HUM. RTS. CAMPAIGN (Nov. 23, 2020), <https://www.hrc.org/news/two-spirit-and-lgbtq-idenitites-today-and-centuries-ago> [https://perma.cc/BGL7-6M7U].

88. THEM, *supra* note 85.

recently, many Indigenous peoples are working to reclaim Two-Spirit traditions to “heal from the injustices” stemming from American colonization.⁸⁹

For years, too, researchers have studied the effects of gender-affirming care on gender dysphoria.⁹⁰ In 1895, one of the earliest informal transgender support groups, the Cercle Hermaphrodites, formed in New York City.⁹¹ Instituted during a period where trans⁹² people were subject to intense violence,⁹³ the Cercle Hermaphrodites was a secret society where transfemme⁹⁴ persons could safely gather in private, connect with one another, and store their gender affirming clothing.⁹⁵ Also around this time, German Jewish physician Magnus Hirschfeld shifted the focus of his work from medicine to a lifelong study of sex, gender, and sexuality.⁹⁶ In 1897, Hirschfeld cofounded the Scientific-Humanitarian Committee, an organization known as one of the first queer⁹⁷ advocacy groups, and in 1919, he founded the Institute for Sexual Science in

89. *Id.*

90. Alejandra Caraballo, *To protect gender-affirming care, we must learn from trans history*, HARV. PUB. HEALTH (June 21, 2023), <https://harvardpublichealth.org/equity/to-protect-gender-affirming-care-we-must-learn-from-trans-history/> [<https://perma.cc/L7D9-YHBS>]. “Gender dysphoria” refers to a “sense of unhappiness . . . over the incongruence between how one subjectively understands one’s experience of gender and how one’s gender is perceived by others.” SUSAN STRYKER, *TRANSGENDER HISTORY: THE ROOTS OF TODAY’S REVOLUTION* 17 (Seal Press, 2nd ed. 2017).

91. STRYKER, *supra* note 90, at 57.

92. Recognize that “trans” is “used as shorthand for *transgender*.” *Glossary of Terms: Transgender*, *supra* note 44.

93. At the time, cities enforced laws that criminalized gender nonconformity and people who expressed themselves in a manner deemed inconsistent with their sex assigned at birth were at risk of being “arrested, fined, jailed or institutionalized.” Trans people also had “no legal recognition of gender transition” and “no gender-affirming clinics.” Also, during this period, “newspapers sensationalized anyone who defied gender norms,” and “medical authorities pathologized any form of gender nonconformity.” *Trans History Spotlight: The Cercle Hermaphrodites*, PLUME CLINIC (May 27, 2025, 23:59 EST), <https://getplume.co/blog/trans-history-spotlight-the-cercle-hermaphrodites/> [<https://perma.cc/57V3-7D5T>] [hereinafter *Trans History Spotlight*].

94. *PFLAG National Glossary*, *supra* note 18 (explaining that “transfemme” is an abbreviation of “transfeminine;” “transfeminine” refers to a person assigned male at birth who is “closer to femininity than masculinity but is not a binary woman.” See also *Glossary of Terms: Transgender*, *supra* note 44 (explaining that “sex at birth” refers to the assignment infants are given “based on the appearance of their external anatomy.”)

95. *Trans History Spotlight*, *supra* note 93; Eamon Schlotterback, *Cercle Hermaphrodites*, GAY & LESBIAN REV. (June 6, 2025), <https://glreview.org/cercle-hermaphrodites/> [<https://perma.cc/7EK8-7QFS>].

96. *Magnus Hirschfeld*, U.S. HOLOCAUST MEM’L MUSEUM (Dec. 17, 2021), <https://encyclopedia.ushmm.org/content/en/article/magnus-hirschfeld-2> [<https://perma.cc/ETF3-UXBT>].

97. *PFLAG National Glossary*, *supra* note 15 (explaining that “queer” is a term reclaimed by some members of the LGBTQ+ community to “describe themselves and/or their community . . . [T]he term is also considered by some to be inclusive of the entire community and by others who find it to be an appropriate term to describe their more fluid identities.”)

Berlin.⁹⁸

The Institute for Sexual Science facilitated research efforts and offered resources for transgender people, including treatments that today are known as gender-affirming care.⁹⁹ In 1931, Dora Richter, one of the Institute's housekeepers, underwent one of the first male-to-female genital transformation surgeries.¹⁰⁰ Likewise, Danish painter Lili Elbe received several gender reassignment surgeries, one of which was performed under Hirschfeld's supervision.¹⁰¹ Notably, Hirschfeld recognized the distinctions between sexuality and gender identity.¹⁰²

Hirschfeld's work came to an abrupt halt once Adolf Hitler rose to power.¹⁰³ On May 6, 1933, Nazi-supporting youth broke into and looted the Institute for Sexual Science and the Scientific-Humanitarian Committee.¹⁰⁴ Days later, the entirety of the Institute's library materials were publicly burned¹⁰⁵ by Nazi officials in Berlin's Bebelplatz Square.¹⁰⁶ With more than 20,000 books consumed in flames, the incident is known as one of the first and largest Nazi book burnings and also one of the first recorded attempts to erase transgender people from history.¹⁰⁷ Soon after, Hirschfeld fled Germany.¹⁰⁸ Only two years later, in 1935, Hirschfeld died of a heart attack.¹⁰⁹

During the 1940s and early 1950s, scientific researchers in the United States began studying sexuality and gender.¹¹⁰ In 1952, former United States Army private Christine Jorgensen became the first American to receive sex-reassignment surgery.¹¹¹ Jorgensen's story soon made headlines, and she later

98. STRYKER, *supra* note 90, at 55; see, Brandy Schillace, *The Forgotten History of the World's First Trans Clinic*, SCI. AM. (May 10, 2021), <https://www.scientificamerican.com/article/the-forgotten-history-of-the-worlds-first-trans-clinic/> [<https://perma.cc/M9YF-ARRD>].

99. STRYKER, *supra* note 90, at 55.

100. *Id.*

101. *Id.*; *Lili Elbe – Nominee*, LEGACY PROJECT <https://legacyprojectchicago.org/person/lili-elbe> [<https://perma.cc/5NG6-SGGT>] (last visited Sep. 16, 2025); *Lili Elbe*, BIOGRAPHY, <https://www.biography.com/artists/lili-elbe> [<https://perma.cc/M97U-7SKE>] (last visited Sep. 20, 2025).

102. *Magnus Hirschfeld*, *supra* note 96.

103. Gerard Koskovich, *Through Knowledge to Justice: The Sexual World of Dr. Magnus Hirschfeld*, GLBT HIST. SOC'Y MUSEUM & ARCHIVES, <https://www.glbthistory.org/hirschfeld> [<https://perma.cc/J47R-Z3RY>] (last visited Sep. 16, 2025).

104. *6 May 1933: Looting of the Institute of Sexology*, HOLOCAUST MEM'L DAY TR., <https://hmd.org.uk/resource/6-may-1933-looting-of-the-institute-of-sexology/> [<https://perma.cc/4ZRJ-ZWJ5>] (last visited Sep. 16, 2025).

105. *Id.*

106. *Id.*

107. *Id.*; see also TED, *A Short History of Trans People's Long Fight for Equality* | Samy Nour Younes, at 04:15 (YouTube, Apr. 30, 2019), <https://www.youtube.com/watch?v=qRJJR6bGyL4> [<https://perma.cc/8LJV-SP9P>].

108. STRYKER, *supra* note 90, at 56.

109. *Id.*

110. *Id.* at 60.

111. Blakemore, *supra* note 78.

became known as a celebrity, entertainer, and public speaker.¹¹² By the late 1950s, the American transgender liberation movement had gained momentum.¹¹³

One of the first movements of collective trans resistance likely began in 1959 with the Cooper Do-Nuts riots in Los Angeles, where queer patrons defended themselves from police harassment by allegedly throwing coffee, utensils, and pastries at the officers.¹¹⁴ In 1965, members of a local gay and lesbian rights group joined together with local teenagers to stage sit-ins at Dewey's lunch counter in Philadelphia.¹¹⁵ Inspired by the American Civil Rights Movement, Dewey's sit-in participants protested a new policy that asked staff to refuse service to any customers who appeared to challenge heteronormative gender expression or sexuality.¹¹⁶

Roughly a year later, in 1966, Gene Compton's Cafeteria in San Francisco became the site of yet another significant act of trans resistance.¹¹⁷ Known today as the Compton's Cafeteria Riots, the event began when a group of trans women reached a breaking point after a police officer put his hand on one of them.¹¹⁸ This came after law enforcement continually targeted trans women for a variety of "crimes," like "female impersonation" and "obstructing the sidewalk."¹¹⁹

Notably, on June 28, 1969, New York Police Department officers raided the Stonewall Inn, a popular queer establishment in the city, giving rise to a six-

112. Rebecca Poole, *From GI Joe to GI Jane: Christine Jorgensen's Story*, THE NAT'L WORLD WAR II MUSEUM (June 30, 2020), <https://www.nationalww2museum.org/war/articles/christine-jorgensen> [<https://perma.cc/VF3L-X8DD>]; John T. McQuiston, *Christine Jorgensen, 62, Is Dead; Was First to Have a Sex Change*, N.Y. TIMES (May 4, 1989), <https://www.nytimes.com/1989/05/04/obituaries/christine-jorgensen-62-is-dead-was-first-to-have-a-sex-change.html> [<https://perma.cc/RS9L-NWKG>]; *Milestones in the American Transgender Movement*, N.Y. TIMES (Aug. 28, 2015), <https://www.nytimes.com/interactive/2015/05/15/opinion/editorial-transgender-timeline.html> [<https://perma.cc/R4XX-5P3R>].

113. See *Milestones in the American Transgender Movement*, N.Y. TIMES (Aug. 28, 2015), <https://www.nytimes.com/interactive/2015/05/15/opinion/editorial-transgender-timeline.html> [<https://perma.cc/R4XX-5P3R>].

114. *Id.*; There remains some skepticism as to whether the Cooper Do-nuts riots truly happened or not. Even still, in 2023, the City of Los Angeles honored Cooper Do-nuts as "a safe haven for all members of the queer community." Erik Piepenburg, *A Gay Riot at a Doughnut Shop? The Legend Has Some Holes*, N.Y. TIMES (June 6, 2023), <https://www.nytimes.com/2023/06/05/dining/gay-riot-los-angeles-doughnut-shop.html> [<https://perma.cc/8UN7-ANX7>].

115. STRYKER, *supra* note 90, at 81-85.

116. Susan Ferentinos, *Dewey's Lunch Counter Sit-In*, ENCYC. GREATER PHILA. (2016), <https://philadelphiaencyclopedia.org/essays/deweys-lunch-counter-sit-in/> [<https://perma.cc/TNS2-JG86>].

117. STRYKER, *supra* note 90, at 81-85.

118. *Id.*; Sam Levin, *Compton's Cafeteria riot: A historic act of trans resistance, three years before Stonewall*, GUARDIAN (June 21, 2019), <https://www.theguardian.com/lifeandstyle/2019/jun/21/stonewall-san-francisco-riot-tenderloin-neighborhood-trans-women> [<https://perma.cc/JS8H-JKN2>].

119. Levin, *supra* note 118.

day-long protest against discrimination and police brutality.¹²⁰ Today, the Stonewall Riots are remembered as “an explosive beginning of a new chapter in the fight for LGBTQIA+ rights, a battle waged against a backdrop of harsh laws and societal disdain.”¹²¹ Among those at Stonewall were trans activists, including Miss Major Griffin-Gracy, as well as Marsha P. Johnson¹²² and Sylvia Rivera:

“Stonewall turned [Rivera], [Johnson], and all their street queen comrades from ladies-in-waiting to ladies-in-action, ladies who would no longer tolerate being kept out, locked up, pushed around, and beaten down. Their timing was perfect; divine even. The arc of history was simply following them, trending toward where they already were: being their fullest, deepest, irrepressible selves, even as every message in social and political life told them that they couldn’t be, that they had to be otherwise.”¹²³

Later, Johnson and Rivera would become co-founders of the Street Transvestite Action Revolutionaries (“STAR”).¹²⁴ STAR has since been recognized as one of the first American organizations dedicated to advocacy and to providing resources for queer and trans youth and adults alike.¹²⁵ Miss Major Griffin-Gracy, who passed away on October 13, 2025 in Little Rock, Arkansas, also left behind a legacy in the fight for trans liberation from which her participation in

120. *Today in History – June 28: The Stonewall Uprising of 1969*, LIBR. OF CONG., <https://www.loc.gov/item/today-in-history/june-28/> [<https://perma.cc/32MK-SCGY>] (last visited Oct. 1, 2025); *Stonewall Riots*, HIST. (July 18, 2025), <https://www.history.com/topics/lgbtq/the-stonewall-riots> [<https://perma.cc/7UPH-FUZM>].

121. TOURMALINE, MARSHA: THE JOY AND DEFIANCE OF MARSHA P. JOHNSON 70–71 (Penguin Random House, 1st ed. 2025); *See also Today in History – June 28: The Stonewall Uprising of 1969*, *supra* note 120 (“[Stonewall’s events] would fundamentally change the nature of LGBTQ+ activism in the United States”).

122. The modern term “transgender” became more widespread in use after Johnson’s death. *Marsha P. Johnson*, NAT’L WOMEN’S HIST. MUSEUM, <https://www.womenshistory.org/education-resources/biographies/marsha-p-johnson> [<https://perma.cc/B6LZ-49YV>] (last visited Dec. 19, 2025). Marsha was transfeminine and gender nonconforming and described herself as “transvestite” and a “queen.” SHON FAYE, *THE TRANSGENDER ISSUE: TRANS JUSTICE IS JUSTICE FOR ALL* 129 (Verso, 2022). The term “transvestite” was first coined by Magnus Hirschfeld and was “used in much the way that *transgender* came to be used in the 1990’s and afterward, to convey a sense of a wide range of gender-variant identities and behaviors.” STRYKER, *supra* note 90, at 39–40. Sylvia Rivera, who later described herself as transgender, also identified as “queen” and “transvestite.” FAYE, *supra* note 36 at 208.

123. TOURMALINE, *supra* note 121, at 89–90, 203; *see also* STRYKER, *supra* note 90, at 105; *Marsha Johnson, Sylvia Rivera, and the history of Pride Month*, SMITHSONIAN INST. (June 7, 2021) <https://www.si.edu/stories/marsha-johnson-sylvia-rivera-and-history-pride-month> [<https://perma.cc/5Y7B-2WM9>].

124. *Marsha P. Johnson: The Transgender Activist Who Pioneered the Fight for LGBTQ+ Rights*, N.H. CTR. FOR JUST. & EQUITY, <https://nhcje.org/blog/marsha-p-johnson-the-transgender-activist-who-pioneered-the-fight-for-lgbtq-rights> [<https://perma.cc/8QED-NXE4>] (last visited Oct. 1, 2025).

125. *Id.*

the Stonewall Riots marked only the beginning.¹²⁶ Miss Majors spent her life as a fierce advocate for incarcerated trans women, and eventually worked with the Transgender Gender-Variant & Intersex Justice Project,¹²⁷ as well as with various AIDS organizations and resource centers.¹²⁸ The Stonewall Riots instigated a “global movement of gay pride and gay liberation,” where “LGBT people stood shoulder to shoulder.”¹²⁹ While the transgender liberation movement gained traction, transgender people would continue to face hardships in the upcoming decades, including high rates of discrimination, unemployment, arrests, and the AIDS epidemic.¹³⁰

III. TODAY AND BEYOND: WHY UNITED STATES POLICYMAKERS MUST ADVOCATE FOR ACCESS TO A GENDER-AFFIRMING EDUCATIONAL EXPERIENCE FOR TRANSGENDER YOUTH

To this day, American transgender people continue to advocate for equal treatment under the rule of law.¹³¹ Currently, an estimated 2.8 million transgender individuals live in the United States and represent all ethnic and racial backgrounds.¹³² Research demonstrates younger age groups are more likely to identify as transgender compared to older age groups.¹³³ While roughly 0.8% of adults identify as transgender, 3.3% of youth between ages 13 and 17 identify as transgender in the United States.¹³⁴ According to experts, young people have increased access to terminology to explore their gender identities, unlike adults, who may feel more constrained due to generational differences.¹³⁵ Experts have also found that it has become more socially acceptable to explore gender, especially as social media has afforded young people a new platform to find

126. Alex Traub, *Miss Major Griffin-Gracy, Trans Activist Who Saw It All, Dies*, N.Y. TIMES (Oct. 21, 2025), <https://www.legalbluebook.com/bluebook/v21/tables/t6-case-names-and-institutional-authors-in-citations?id=327192&tokens=institut> [https://perma.cc/5V7A-SE8E].

127. The Transgender Gender-Variant & Intersex Justice Project’s (“TGIJP”) mission is “to challenge and end the human rights abuses committed against Black, Black/Brown Trans people inside of California prisons, jails, detention centers and beyond.” *About TGIJP*, MISS MAJOR ALEXANDER L. LEE TGIJP BLACK TRANS CULTURAL CTR. <https://tgijp.org/sample-page/> [https://perma.cc/N32H-3MU2] (last visited Dec. 19, 2025).

128. Traub, *supra* note 126; jmasters, *Miss Major-Griffin-Gracy: The Celebrated Trans Elder Opens Up on the LGBTQ&A Podcast, “There Aren’t That Many Black Girls Still Alive,”* GLAAD, (Feb. 23, 2021) <https://glaad.org/miss-major-griffin-gracy-celebrated-trans-elder-opens-lgbtqa-podcast/> [https://perma.cc/8X3P-WYMH].

129. FAYE, *supra* note 36 at 209.

130. TED, *supra* note 107, at 03:12-03:18.

131. *Id.* at 03:08.

132. JODY L. HERMAN & ANDREW R. FLORES, HOW MANY ADULTS AND YOUTH IDENTIFY AS TRANSGENDER IN THE UNITED STATES? 2 (Aug. 2025), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pop-Update-Aug-2025.pdf> [https://perma.cc/7ARP-GYKZ].

133. *Id.* at 21.

134. *Id.* at 2.

135. Azeen Ghorayshi, *Report Reveals Sharp Rise in Transgender Young People in the U.S.*, N.Y. TIMES (June 10, 2022), <https://www.nytimes.com/2022/06/10/science/transgender-teenagers-national-survey.html> [https://perma.cc/8XVU-8APE].

communities of other youth with similar feelings related to gender.¹³⁶

In 2024, 88% of surveyed young LGBTQ+ people reported that one of the top actions people can do to show support and acceptance is to trust that they know who they are, and 62% reported that learning more about LGBTQ+ identities can do the same.¹³⁷ Dr. Sarah Garwood, MD, an Adolescent Medicine specialist, commented that what hurt her transgender youth patients the most was “being around people and environments that reject them.”¹³⁸

Supporting transgender youth remains a matter of life and death.¹³⁹ Many transgender children do not have access to such needed support, stemming from a variety of reasons.¹⁴⁰ Author Shon Faye wrote in her book, *The Transgender Issue: Trans Justice Is Justice For All*, “[t]ypically trans people are lumped together as ‘the transgender issue,’ dismissing and erasing the complexity of trans lives, reducing them to a set of stereotypes of which various social anxieties can be brought to bear.”¹⁴¹ Faye also notes that “[h]uman beings rely on familiarity to understand and empathize with others.”¹⁴² In effect, trans

136. *Id.*

137. NATHET AL., *supra* note 39, at 22.

138. TEDx TALKS, *Making Space for Transgender Kids* | Sarah Garwood | TEDxRitenourRoad, at 2:33 (YouTube, Mar. 28, 2019), <https://www.youtube.com/watch?v=k931AO6b9pY> [<https://perma.cc/BFU8-9ZHB>].

139. *Transgender Children & Youth: Understanding the Basics*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/transgender-children-and-youth-understanding-the-basics> [<https://perma.cc/PR45-PNNG>] (last visited Feb. 17, 2025).

140. HUM. RTS. CAMPAIGN, *Supporting Transgender, Non-Binary, And Gender-Expansive Children: Navigating Care in a Complicated Political Landscape* (2024), <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/files/documents/Supporting-Caring-for-Trans-Children-UPDTE-100424.pdf> [<https://perma.cc/F8R5-YH8D>]. There are many reasons why transgender, nonbinary, and intersex children do not have access to support. Author Shon Faye explained that “[t]he demand for true trans liberation echoes and overlaps with the demand of workers, socialists, feminists, anti-fascists, and queer people.” Faye, *supra* note 36 at xiv. Additionally, “the existence of trans people is a source of constant anxiety for many who are either invested in the status quo or fearful about what would replace it.” *Id.* Likewise, “trans people are positioned in relation to a normative culture that is both fascinated and repelled by [transgender people].” Ivan Natividad, *Why is anti-trans violence on the rise in America?* UC BERKELEY NEWS (June 25, 2021) <https://news.berkeley.edu/2021/06/25/why-is-anti-trans-violence-on-the-rise-in-america/> [<https://perma.cc/T5Q5-TECB>]. Transgender people also experience “misunderstanding, prejudice, and discrimination.” Stryker, *supra* note 90, at 7. Some anti-trans advocates exploit misinformation to advance their political agenda. Simón(e) D. Sun & Florence Ashley, *Anti-Trans Myths: How a political movement manufactured scientific misinformation and legitimized hate*, OPENMIND MAG. (Nov. 6, 2023), <https://www.openmindmag.org/articles/anti-trans-myths> [<https://perma.cc/UN36-FTAR>]. Yet, “[trans people] are not an ‘issue’ to be debated and derided.” Faye, *supra* note 36 at 271. Trans people have “been discriminated against, pathologized and victimized.” *Id.* at xiii. See also Stryker, *supra* note 90, at 7 (“Being trans is like being gay: some people are just ‘that way,’ though most people aren’t. We can be curious about *why* some people are gay or trans, and we can propose all kinds of theories or tell interesting stories about how it’s possible to be trans or gay, but ultimately we simply need to accept that some minor fraction of the population (perhaps including ourselves) simply *is* ‘that way.’”) [<https://perma.cc/P9YH-HYZB>].

141. FAYE, *supra* note 36 at xiv.

142. *Id.* at 11.

people “rely more heavily on media representation, on political solidarity from people who aren’t trans and vocal, and ongoing support from public institutions to create the right conditions for understanding and compassion from the rest of society.”¹⁴³

It remains imperative not only for all people to have access to scientifically accurate information on gender identity, but also for transgender children to have access to supportive educational settings.¹⁴⁴ For this reason, the United States has a duty to ensure that students attending schools that receive federal funding have access to a gender-affirming education.

ANALYSIS

“If you still don’t get what it means to be transgender, that’s alright because it’s confusing and, genuinely, you don’t need to. All you need to do is respect trans people.”
-Jay Simmons¹⁴⁵

I. CAN LEGAL SAFEGUARDS ENSURING ACCESS TO GENDER-AFFIRMING SPACES IN SCHOOLS REDUCE THE RISKS OF DEATH BY SUICIDE FOR TRANSGENDER YOUTH?

School policies that ultimately protect transgender and gender-nonconforming students also lead to increased academic success. According to researchers at the UCLA School of Law Williams Institute, compared to that of their cisgender counterparts, roughly three times as many transgender people stated that “lifetime adverse treatment at school impacted their academic success.”¹⁴⁶

Research also demonstrates that school policies protecting transgender and gender non-conforming students will have a positive impact on mental health.¹⁴⁷ For instance, when school policies explicitly name gender identity or expression as a protected status, rates of bullying and victimization decrease.¹⁴⁸ Providing teachers and school personnel with adequate training on topics related to gender identity and expression also leads to decreased rates of victimization of transgender and gender non-conforming students.¹⁴⁹ Schools can also ensure

143. *Id.*

144. *See generally* HUM. RTS. CAMPAIGN, *supra* note 140.

145. TEDx TALKS, *supra* note 75, at 09:42-09:53.

146. KERITH J. CONRON, KATHRYN K. O’NEILL & LUIS A. VASQUEZ, EDUCATIONAL EXPERIENCES OF TRANSGENDER PEOPLE 2 (Apr. 2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Higher-Ed-Apr-2022.pdf> [<https://perma.cc/Z2FU-75VB>].

147. Russell B. Toomey et al., *Gender-Affirming Policies Support Transgender and Gender Diverse Youth’s Health*, SOC’Y FOR RSCH. IN CHILD DEV. 1 (Jan. 2022), <https://www.srcd.org/sites/default/files/resources/SRCD%20SOTE-Gender%20Affirming%20Policies%202022.pdf> [<https://perma.cc/PHJ5-X4ZJ>].

148. *Id.* at 2.

149. *Id.*

that transgender and gender non-conforming students can use gendered facilities, including locker rooms and restrooms, that align with their affirmed gender.¹⁵⁰ Overall, transgender and nonbinary youth who have access to gender-affirming spaces report lower rates of attempted death by suicide compared to students without access to gender-affirming spaces.¹⁵¹

American policymakers can set the expectation that federally funded schools must provide students with a gender-affirming educational atmosphere by implementing Title IX, as amended in April 2024. Because Title IX serves to ensure students are protected at a federal level from discrimination on the basis of gender identity, sexual orientation, and sex characteristics, transgender, gender non-conforming, and intersex youth can have assurance that schools will be safer and more inclusive.¹⁵²

II. WHAT IS TITLE IX?

On June 23, 1972, President Richard Nixon signed Title IX into law.¹⁵³ Title IX of the Education Amendments of 1972, commonly called “Title IX,” protects persons from sex-based discrimination “in education programs or activities that receive federal financial assistance.”¹⁵⁴ Congress had two key objectives when enacting Title IX. First, Title IX is meant to ensure that public financing would not contribute to discriminatory educational practices, and second, Title IX was intended to protect individual citizens from being subject to discriminatory educational practices.¹⁵⁵

Title IX protects against sex discrimination in all aspects of an educational program, including admissions, employment, and treatment of the participants enrolled in the program.¹⁵⁶ The Department of Education’s Office of Civil Rights enforces Title IX by evaluating, investigating, and resolving complaints that allege sex discrimination in institutions receiving federal financial assistance, including schools and local and state agencies.¹⁵⁷ Under Title IX, financial assistance constitutes grants or loans of Federal financial assistance, a

150. NATH ET AL., *supra* note 39, at 21; *PFLAG National Glossary*, *supra* note 15 (Affirmed gender refers to “an individual’s true gender, as opposed to their gender assigned at birth. This term should replace terms like new gender or chosen gender, which imply that an individual chooses their gender”).

151. NATH ET AL., *supra* note 39, at 24.

152. *UPDATES TO TITLE IX: WHAT YOU NEED TO KNOW ABOUT THE RIGHTS OF LGBTQI+ YOUTH IN SCHOOLS*, GLSEN, <https://www.glsen.org/title-ix> [<https://perma.cc/Y43L-SSYH>] (last visited Mar. 9, 2025).

153. *Title IX Legal Manual*, U.S. DEP’T OF JUST. C.R. DIV. (SEP. 14, 2023), [<https://perma.cc/3F5Y-4N4R>]; *The 14th Amendment and the Evolution of Title IX*, U.S. CTS. <https://www.uscourts.gov/about-federal-courts/educational-resources/educational-activities/14th-amendment-and-evolution-title-ix> [<https://perma.cc/7H59-3XDF>] (last visited Dec. 19, 2025).

154. 20 U.S.C. § 1681 (1972); *Title IX and Sex Discrimination*, U.S. DEP’T OF EDUC. (Aug. 23, 2024), [<https://perma.cc/VSK3-WXTT>].

155. *Cannon v. Univ. of Chicago*, 441 U.S. 677, 704 (1979).

156. *Title IX Legal Manual*, *supra* note 153.

157. *Title IX and Sex Discrimination*, *supra* note 154.

grant of Federal real or personal property, services of Federal personnel, sales or leases of Federal property for nominal or no consideration, or any other contract assisting an educational program or activity.¹⁵⁸

Schools and educational programs that receive federal funds, with some exceptions,¹⁵⁹ must adhere to the requirements outlined in Title IX. For instance, such programs must have at least one employee as a designated Title IX Coordinator.¹⁶⁰ The school or educational program must also adopt, publish, and implement a nondiscrimination policy and grievance procedures consistent with the requirements of the federal code.¹⁶¹ Parents, guardians, or other authorized stakeholders must receive a notice of nondiscrimination, which must include a statement of nondiscrimination based on sex, a discussion of the application of Title IX, and the name and contact information of the Title IX coordinator.¹⁶² The notice must also instruct stakeholders on how to locate the institution's nondiscrimination policy, the procedures for filing a grievance, and how to report information or make a complaint regarding conduct constituting sex discrimination.¹⁶³ Although, the notice of nondiscrimination is not the only requirement that a school or institution must adhere to under Title IX; all requirements outlined in the Code of Federal Regulations shall be maintained.¹⁶⁴

III. THE 2024 TITLE IX RULE

On April 19, 2024, the United States Department of Education published a Final Rule amending Title IX.¹⁶⁵ The 2024 Amendment aimed to clarify the definition of "sex-based harassment" to protect against discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.¹⁶⁶ Before the 2024 Amendment, Title IX did not explicitly protect against discrimination based on "sexual orientation" or

158. 34 C.F.R. § 106.2 (2020).

159. Educational institutions controlled by religious organizations are exempt to the extent that the application of Title IX would be "[inconsistent] with the religious tenets of [the] organization." 34 C.F.R. § 106.12 (2020). Educational institutions that prepare individuals for the United States military or the merchant marine also have Title IX exemptions. 34 C.F.R. § 106.13 (2020). Other organizations with Title IX exemptions include social fraternities, social sororities, voluntary youth service organizations, Young Men's Christian Association (YMCA), Young Women's Christian Association (YWCA), Girl Scouts, Boy Scouts, and Camp Fire Girls. 34 C.F.R. § 106.14 (2020).

160. 34 C.F.R. § 106.8(A) (2020).

161. *Id.* § 106.8(b) (2020).

162. *Id.*

163. *Id.*

164. *See generally* 34 C.F.R. § 106 (2020).

165. Hereafter, the "2024 Amendment" will refer to the Title IX amendment as articulated by the Final Rule issued on April 19, 2024. The "2020 Title IX Rule" refers to Title IX particularized to the 2024 Amendment published on April 19, 2024. Press Release, *supra* note 60.

166. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33474, 33476 (Apr. 29, 2024) (to be codified at 34 C.F.R. pt. 106).

“gender identity.”¹⁶⁷

The 2024 Title IX Rule explicitly stated that sex-based discrimination includes discrimination based on sexual orientation and gender identity.¹⁶⁸ Essentially, the 2024 Amendment clarified that discrimination based on sexual orientation or gender identity is a violation of federal law.¹⁶⁹ Whereas Title IX used to only prohibit “sex harassment,” the Final Rule’s amended language states that harassment that is “sex-based” is prohibited.¹⁷⁰ Although the Final Rule explicitly stated such protections, the U.S. Department of Education previously interpreted Title IX to protect against such discrimination due to the 2020 Supreme Court’s holding in *Bostock v. Clayton County*.¹⁷¹ In an opinion written by Justice Gorsuch, the majority held that Title VII, the federal law prohibiting sex discrimination in employment, protects against discrimination based on sexual orientation and gender identity.¹⁷² While Title VII and Title IX are two distinct statutes, Title VII has traditionally served as a guide for interpreting Title IX, as both statutes prohibit sex-based discrimination.¹⁷³

The Final Rule offering protections for LGBTQ+ students was initiated approximately one year after the Supreme Court decided *Bostock*. On March 8, 2021, President Joe Biden issued an Executive Order guaranteeing that all students were protected against discrimination based on sex, which included discrimination “on the basis of sexual orientation or gender identity.”¹⁷⁴ The Executive Order directed the Secretary of Education and the Attorney General to review rules, regulations, orders, guidance documents, policies, and agency actions to ensure consistency with Title IX and the policy outlined in the Executive Order.¹⁷⁵

Days later, on March 26, 2021, Principal Deputy Assistant Attorney General Pamela S. Karlan issued a memorandum to the Federal Agency Civil Rights Directors and General Counsels to address whether the Court’s holding in *Bostock* applied to Title IX.¹⁷⁶ Karlan’s memorandum stated that the U.S. Department of Justice Civil Rights Division had determined that the “best reading of Title IX’s prohibition on discrimination” included discrimination based on gender identity and sexual orientation.¹⁷⁷

On July 12, 2022, the Department of Education published the Notice of

167. Libby Stanford, *New Title IX Rule Has Explicit Ban on Discrimination of LGBTQ+ Students*, EDUC. WEEK (Apr. 19, 2024), <https://www.edweek.org/policy-politics/new-title-ix-rule-has-explicit-ban-on-discrimination-of-lgbtq-students/2024/04> [<https://perma.cc/49H2-GHVZ>].

168. 34 C.F.R. § 106.10 (2024).

169. *Updates Clarify LGBTQ+ Protections in Title IX*, *supra* note 59.

170. *Id.*

171. Stanford, *supra* note 167.

172. *Bostock v. Clayton Cnty.*, 590 U.S. 644, 683 (2020).

173. *Title IX Legal Manual*, *supra* note 153.

174. Exec. Order No. 14,021, 86 Fed. Reg. 13797, at 13803-04 (Mar. 11, 2021).

175. *Id.*

176. Memorandum from Pamela S. Karlan, Principal Deputy Assistant Att’y Gen. for the C.R. Div., to Fed. C.R. Div. and Gen. Couns. (Mar. 26, 2021), [<https://perma.cc/V696-SERQ>] (on file with the U.S. Dep’t of Justice).

177. *Id.*

Proposed Rulemaking regarding the 2024 Amendment.¹⁷⁸ On April 29, 2024, approximately 240,000 public comments were received on the docket regarding the 2024 Amendment.¹⁷⁹ Numerous commenters shared personal experiences as either complainants or respondents or as persons managing such complainants or respondents involved in the Title IX grievance procedures.¹⁸⁰ Here, commenters spoke about a wide range of concerns and ideas, ranging from areas of weakness regarding enforcement and investigations of alleged Title IX violations to personal stories where persons felt as though their Title IX complaints were not taken seriously by school administrators.¹⁸¹ Further, some comments concerned experiences relating to sexual orientation and gender identity, in which some commenters shared personal experiences in support of the 2024 Amendment:

Commenters from more than 40 States in all regions of the United States and in communities across the political spectrum shared their experiences as members of the LGBTQI+ community, or as parents, teachers, and friends of LGBTQI+ individuals. They described bullying and harassment of students based on sexual orientation and gender identity that ranged from single interactions with peers to systemic concerns such as constant verbal harassment, bullying, and threats of physical violence that are often ignored or excused by recipients from early elementary school through graduate school.¹⁸²

Parents, teachers, and school counselors also shared a variety of concerns, many of which acknowledged that inclusive school environments had or could have a positive impact on LGBTQI+ students.¹⁸³ Some commenters also expressed detrimental impacts that could happen when students do not have access to an inclusive school environment. These concerns addressed an increase in harassment, bullying, and threats of physical violence.¹⁸⁴

The comments also addressed specific concerns for transgender and nonbinary students. For instance, transgender and nonbinary individuals shared experiences where they faced threats or actual physical violence as students.¹⁸⁵ Such experiences caused lasting anxiety and led to an impact in their ability to

178. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 87 FR 41390 (proposed July 12, 2022) (to be codified at 34 C.F.R. pt. 106).

179. *Id.*

180. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33474, 33478 (Apr. 29, 2024) (to be codified at 34 C.F.R. pt. 106).

181. *Id.*

182. *Id.* at 33479.

183. *Id.* at 33479-80.

184. *Id.* at 33480.

185. *Id.*

engage academically.¹⁸⁶ Moreover, transgender students spoke on bathroom inaccessibility.¹⁸⁷ Many students shared that they felt unsafe using a facility that did not align with their gender identity, and some shared that they had no access to a gender-neutral facility at all.¹⁸⁸ Commentators also discussed that a safe educational environment is a “matter of life or death” for transgender and nonbinary students.¹⁸⁹ Many transgender students also shared that they or their peers had attempted death by suicide as a consequence of harassment or discrimination based on their gender identity.¹⁹⁰ Transgender students also expressed that a supportive school environment positively impacted their social, emotional, and academic well-being.¹⁹¹

Not all commenters vocalized support for the 2024 Amendment. Many commenters expressed that Title IX should only strive to provide equal educational access to cisgender women.¹⁹² Some commenters also voiced concern that the 2024 Amendment would interfere with personal family lives.¹⁹³ And, some commenters wrote that the 2024 Amendment would “diminish the role of parents” regarding a child’s decision-making.¹⁹⁴

The Department of Education provided responses to many of the concerns addressed by commenters. For example, the Department agreed that transgender students experience substantial harm when they are excluded from using facilities consistent with their gender identity and that access to such facilities is “critical to the health and well-being of transgender youth.”¹⁹⁵ The Department also addressed the contention that Title IX, in part, would provide greater protections for transgender students compared to cisgender students. Here, the Department clarified that Title IX encompasses protections for *all* students experiencing discrimination based on their gender identity.¹⁹⁶ They argue that transgender students do not pose a threat to cisgender students, specifically noting that “preferences or discomfort” cannot “justify otherwise unconstitutional discrimination against others.”¹⁹⁷ Overall, the Department’s discussion and analysis of the comments regarding the 2024 Amendment convey that inclusive policies lead to increased positive school experiences for all students.

By offering clear legal protections to LGBTQ+ students, the 2024 Title IX Rule ensured that schools and institutions were held accountable for facilitating

186. *Id.*

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.* at 33820.

196. *Id.*

197. *Id.*

an inclusive school environment to continue receiving federal funding.¹⁹⁸ In a federal investigation, the United States Department of Education Office of Civil Rights (“OCR”) found that Owasso School District violated Title IX of the Education Amendments of 1972 because it was “well aware of the hostile climate in their schools, yet repeatedly chose indifference and action when confronted.”¹⁹⁹ The investigation also revealed that there had been several other instances where the district had failed to respond to notices of sexual harassment.²⁰⁰ OCR ultimately entered into a resolution agreement with Owasso Public Schools to “remedy the District’s failure to comply with the requirements of Title IX.”²⁰¹ Kelley Robinson, president of the Human Rights Campaign, responded to the OCR’s findings with the following: “Trans and non-binary students have worth . . . they deserve the same access to a quality and safe education – just like every other child in America.”²⁰²

IV. THE BRIEF ENACTMENT OF THE 2024 TITLE IX RULE

On February 4, 2025, the United States Department of Education sent a “Dear Colleague” letter to advise educators and administrators that Title IX would be enforced per its 2020 enactment.²⁰³ The decision to enforce the 2020 Title IX rule came after *Tennessee v. Cardona*, a decision issued by the United States District Court for the Eastern District of Kentucky.²⁰⁴ In *Tennessee v. Cardona*, the court set aside 2024 Title IX Rule on the basis, that the Final Rule regarding the 2024 amendment “impermissibly redefine[d] discrimination on the basis of sex for purposes of Title IX,”²⁰⁵ The court also concluded the 2024 Title IX Rule violated the Constitution on the basis it would require Title IX recipients to use a student’s affirmed name and pronouns, and thus offended the First Amendment.²⁰⁶ Moreover, the court found that the 2024 Title IX Rule is arbitrary and capricious, that the appropriate remedy is to vacate the 2024 Title IX Rule in its entirety, and that schools and educational institutions receiving federal funding need not comply with the 2024 Title IX Rule to receive

198. *Updates Clarify LGBTQI+ Protections in Title IX*, *supra* note 59.

199. Powell, *supra* note 3.

200. *Id.*

201. Email from Karen E. Mines, Reg’l Dir. of Region V, U.S. Dep’t Educ. Off. for C.R., to Dr. Margaret Coates, Superintendent of Owasso Pub. Schs. (Nov. 13, 2024), <https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/05241363-a.pdf> [<https://perma.cc/8LMC-RZEY>].

202. Powell, *supra* note 3.

203. Press Release, U.S. Dep’t of Education, U.S. Department of Education to Enforce 2020 Title IX Rule Protecting Women (Jan. 31, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-education-enforce-2020-title-ix-rule-protecting-women> [<https://perma.cc/T7B7-C2XM>]; Letter from Craig Trainor, Acting Assistant Sec’y, Off. C.R., U.S. Dep’t Educ. (Feb. 4, 2025) <https://www.ed.gov/media/document/title-ix-enforcement-directive-dcl-109477.pdf> [<https://perma.cc/5HJQ-JXNY>].

204. Letter from Craig Trainor, Acting Assistant Sec’y, *supra* note 203.

205. 762 F. Supp. 3d 615, 624 (E.D. Ky. 2025).

206. *Id.* at 624.

funding.²⁰⁷

Shortly after *Tennessee v. Cardona*, on January 20, 2025, President Trump issued an Executive Order in which “all agencies and departments within the Executive Branch” were ordered to “enforce all sex-protective laws to promote [the] reality” that there are “two sexes, male and female.”²⁰⁸ On January 29, 2025, President Trump signed an executive order that would ultimately withhold federal funds from educational institutions that allow students to transition socially.²⁰⁹ The order, *Ending Radical Indoctrination in K-12 Schooling*, attempts to protect children from “radical, anti-American ideologies [that] deliberately [block] parental oversight.”²¹⁰ Within less than one year of the 2024 Title IX Rule going into effect, schools and institutions were no longer bound by its language and thus no longer had the incentive to facilitate a learning environment that is inclusive of LGBTQ+ children, at least in regard to the receipt of federal funds.

At the same time, there remains an increase in the number of anti-LGBTQ+ policies in state and local legislatures, many of which affect schools and limit access to queer-affirming spaces and support in the classroom.²¹¹ Some transgender and nonbinary students have been targeted with policies banning youth from participating in sports activities and using gendered facilities that align with their gender identity.²¹² Other policies require schools to out transgender students to their families by requiring school personnel to report when a student asks to use a different affirmed name or pronouns.²¹³ 58% of transgender and/or nonbinary youth reported being prevented or discouraged from using a bathroom that corresponds to their gender identity.²¹⁴ Among those, 85% reported experiencing depressive moods, and 60% seriously considered death by suicide.²¹⁵

The vacatur of the 2024 Title IX Rule, paired with the increasing number of anti-LGBTQ+ policies, has left transgender and nonbinary individuals feeling

207. *Id.* at 628.

208. Letter from Craig Trainor, Acting Assistant Sec’y, *supra* note 203; Exec. Order No. 14168, 90 Fed. Reg. 8615 (Jan. 20, 2025).

209. *US: Trans Youth’s Access to Lifesaving Care Under Threat*, H. RTS. WATCH (Feb. 3, 2025, at 09:00 ET), <https://www.hrw.org/news/2025/02/03/us-trans-youths-access-lifesaving-care-under-threat> [<https://perma.cc/6FMC-KMPT>].

210. *Ending Radical Indoctrination in K-12 Schooling*, THE WHITE HOUSE (Jan. 29, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/ending-radical-indoctrination-in-k-12-schooling/> [<https://perma.cc/2B4W-VRLC>].

211. *Anti-LGBTQ+ School Policies and LGBTQ+ Young People*, THE TREVOR PROJECT (Aug. 21, 2024), <https://www.thetrevorproject.org/research-briefs/anti-lgbtq-school-policies-and-lgbtq-young-people/> [<https://perma.cc/EMZ3-8BPW>].

212. *Id.*

213. *Id.*

214. Myeshia Price-Feeney, Amy E. Green & Samuel H. Dorison, *Impact of Bathroom Discrimination on Mental Health Among Transgender and Nonbinary Youth*, 68 J. ADOLESCENT HEALTH 1142 (2021), <https://pubmed.ncbi.nlm.nih.gov/33288457/> [<https://perma.cc/FCU2-AX8N>].

215. Price-Feeney, Green & Dorison, *supra* note 214, at 1145.

increasingly fearful and anxious in trying to navigate everyday life.²¹⁶ With research demonstrating that trans students are already at heightened risks for death by suicide, there remains a compelling need for the Department of Education to reenact the 2024 Title IX Rule. Such action would demand that public school students have guaranteed access to gender affirming educational spaces and improve the mental, social, and emotional well-being of public-school students who identify as trans.

DISCUSSION

“Changemaking is not easy, and it’s not always fair. But, it is possible.”
*Rep. Sarah McBride*²¹⁷

I. INTERPRETING TITLE IX: HOW HAVE THE UNITED STATES COURTS PREVIOUSLY CONSIDERED RIGHTS OF TRANSGENDER YOUTH IN THE EDUCATIONAL CONTEXT?

Even before the 2024 Title IX Rule, Title IX has been construed differently among various federal courts in the United States in the context of its application to LGBTQ+ students. In *Adams v. Sch. Bd. of St. Johns Cnty.*, the Eleventh Circuit held that separating school bathrooms based on how a student’s sex is assigned at birth is constitutional and complies with Title IX.²¹⁸ The court held that the school board’s guidelines for best practices for LGBTQ+ students allowed transgender students to have control over their gender expression and noted that transgender students would be allowed to use a gender-neutral restroom.²¹⁹ Under the policy, transgender students could be denied the use of the restroom that corresponds to the child’s gender identity.²²⁰ The court considered the plain and ordinary meaning of the word “sex” as it was understood in 1972, and stated that if gender identity were to be protected by law, such a decision should be left to Congress and not the courts.²²¹

Only two years before *Adams*, the Fourth Circuit came to a different conclusion than the Eleventh Circuit. In *Grimm v. Gloucester Cty., Sch. Bd.*, the court considered whether equal protection and Title IX could protect transgender students by allowing them to use the restroom that aligns with their gender identity.²²² In *Grimm*, Gavin Grimm began his social transition at the

216. Rachel Crumpler, *Trump’s executive orders spark anxiety among NC’s transgender, nonbinary community*, NC HEALTH NEWS (Feb. 13, 2025), <https://www.northcarolinahealthnews.org/2025/02/13/trump-executive-orders-restrictions-spark-anxiety-nc-transgender-community/> [https://perma.cc/MY6N-RR63].

217. HUMAN RIGHTS CAMPAIGN, *supra* note 1, at 07:48.

218. 57 F.4th 791, 796 (11th Cir. 2022).

219. *Id.* at 802-03.

220. *Id.* at 798.

221. *Id.* at 817.

222. 972 F.3d 586, 593 (4th Cir. 2020).

end of his freshman year of high school.²²³ Although the school initially allowed him to use the male restrooms, the school rescinded this permission when the Gloucester County School Board received community backlash.²²⁴ The school board responded by implementing a policy that forced students to use the restroom that aligned with their sex assigned at birth, and installed single-stall restrooms as an “alternative” for students with “gender identity issues.”²²⁵

The court began its analysis by explaining what it means to be a transgender person.²²⁶ The court emphasized that being transgender “is not a psychiatric condition, and ‘implies no impairment in judgment, stability, reliability, or general social or vocational capabilities.’”²²⁷ The court also acknowledged that many transgender people suffer from mental illnesses and exhibit suicidal ideation at a rate of nine times more than the general population.²²⁸ The court also emphasized that a transgender student’s ability to achieve academic success may be impaired by harassment and bullying.²²⁹ The court also stated what transgender people have always known to be true: “transgender students have better mental health outcomes when their gender identity is affirmed.”²³⁰

Notably, the Fourth Circuit builds space to explain why bathroom accessibility is so imperative for transgender individuals. In her autobiography, Jazz Jennings recounted her experience in preschool, where her restroom options were to either use the classroom bathroom, where her classmates could easily hear her relieving herself, or to use the nurse’s bathroom.²³¹ Today, transphobic rhetoric has circulated online regarding transgender people and bathroom usage.²³² Yet, research demonstrates that there are no increased risks to women and children when transgender individuals use the restroom that aligns with their gender identity.²³³ Research also demonstrates that forcing transgender and nonbinary young people to use the restroom that aligns with their sex assigned at birth is a source of distress that leads to poorer mental health and increased risk of death by suicide.²³⁴ Transgender individuals who

223. *Id.*

224. *Id.*

225. *Id.*

226. *Id.* at 594.

227. *Id.*

228. *Id.*

229. *Id.* at 597.

230. *Id.*

231. JAZZ JENNINGS, BEING JAZZ: MY LIFE AS A (TRANSGENDER) TEEN 35 (Ember, 2016).

232. See Elena Moore & Rachel Treisman, *GOP lawmaker seeks bathroom restrictions on federal property*, NPR (Nov. 20, 2024), <https://www.npr.org/2024/11/19/nx-s1-5196116/capitol-transgender-bathroom-ban-nancy-mace-sarah-mcbride> [<https://perma.cc/7WKW-H7DH>].

233. Julie Moreau, *No link between trans-inclusive policies and bathroom safety, study finds*, NBC NEWS (Sep. 19, 2018), <https://www.nbcnews.com/feature/nbc-out/no-link-between-trans-inclusive-policies-bathroom-safety-study-finds-n911106> [<https://perma.cc/NNR6-H4FH>].

234. Jonah P. DeChants, et. al, *Transgender and nonbinary young people’s bathroom avoidance and mental health*, 26 INT’L J. OF TRANSGENDER HEALTH 351, 358 (2025); https://pmc.ncbi.nlm.nih.gov/articles/PMC12016251/pdf/WIJT_26_2335512.pdf [<https://perma.cc/74MN-LHF9>].

are denied access to their affirmed restroom are also more likely to experience negative experiences, including being subject to verbal harassment, physical assault, and denial of access.²³⁵

The Fourth Circuit recognized the harmful effect that limiting restroom policies can have on transgender and nonbinary students.²³⁶ Citing an amicus brief prepared by The Trevor Project, the court in *Grimm v. Gloucester Cnty. Sch. Bd.* noted that “58% of transgender youth reported being discouraged from using the bathroom that corresponds with their gender.”²³⁷ Additionally, 40% of transgender students “fast, dehydrate, or find ways not to use the bathroom” when denied use of a restroom that aligns with their gender.²³⁸ Significantly, schools from around the country have allowed transgender students the use of a bathroom that aligns with their gender identity, and such permissions have not resulted in violence towards other students.²³⁹ Notably, the Ninth Circuit made a similar finding in one case, noting that “[c]ourts have recognized that the presence of transgender people in an intimate setting does not, by itself, create a sexually harassing environment that is severe and pervasive.”²⁴⁰

Forcing transgender students to use only single-stall restrooms can make a child feel “stigmatized and isolated.”²⁴¹ Moreover, forcing students to use single-stall restrooms can disrupt a transgender student’s learning experience if the option is located in a physically inconvenient location.²⁴² For Grimm, because he had been denied use of the restroom that aligned with his gender identity, he suffered urinary tract infections as a result of practicing restroom avoidance.²⁴³ Ultimately, the court held that the school board’s policy constituted sex-based discrimination and that transgender individuals constitute a quasi-suspect class.²⁴⁴

Grimm lent instructive guidance for students seeking relief from restrictive restroom policies in future cases.²⁴⁵ In *Doe v. South Carolina*, Doe, an eighth-grade child, attended a South Carolina public school.²⁴⁶ At the time, the South Carolina legislature’s budget appropriation bills included a provision that, in

235. JODY L. HERMAN, ANDREW R. FLORES, & ELANA REDFIELD, SAFETY AND PRIVACY IN PUBLIC RESTROOMS AND OTHER GENDERED FACILITIES, UCLA SCH. OF LAW WILLIAMS INST. 5 (Feb. 2025), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Bathroom-Access-Feb-2025.pdf> [<https://perma.cc/BC97-JSZQ>].

236. See DeChants et al., *supra* note 234, at 358.

237. 972 F.3d 586, 597 (4th Cir. 2020).

238. *Id.*

239. *Id.*

240. *Parents for Privacy v. Barr*, 949 F.3d 1210, 1227 (9th Cir. 2020); *Parents for Privacy v. Dallas Sch. Dist. No. 2*, 326 F. Supp. 3d 1075, 1102 (D. Or. 2018).

241. *Grimm*, 972 F.3d at 600.

242. *Id.*

243. *Id.*

244. *Id.* at 613.

245. See *Doe v. South Carolina*, No. 25-1787, 2025 U.S. App. LEXIS 20849, at *19 (4th Cir. Aug. 15, 2025).

246. *Id.* at *3.

part, demanded that multi-stall restrooms would be used for and by one sex.²⁴⁷ The relevant provision defined “sex” as “a person’s biological sex, either male or female, as objectively determined by anatomy and genetics existing at the time of birth.”²⁴⁸ The provision also provided that school districts who did not comply with the provision would have 25% of their state funding withheld.²⁴⁹

The student, Doe, while assigned female at birth, had a gender identity as male and “live[d] consistently with his male gender in all aspects of life.”²⁵⁰ Accordingly, Doe used the boys’ restroom.²⁵¹ This caused teachers and administrators to punish Doe, and he eventually received a one-day suspension.²⁵² Even more, Doe’s parents were informed that, should Doe, a minor child who identified as a boy, continue to use the boys’ restroom, Doe would continue receiving penalties, one of which could be expulsion.²⁵³ Doe’s parents withdrew Doe from public school, and he finished out the remainder of his eighth-grade year online.²⁵⁴

As a result, Doe’s academic performance began to suffer.²⁵⁵ His parents ultimately concluded that attending an in-person public school would be a superior academic setting for Doe because of the educational and social opportunities that in-person school delivers to students.²⁵⁶ Doe’s parents later filed suit, alleging that the relevant provision violated Title IX and the Equal Protection Clause by “forbid[ding] transgender students from using the restroom consistent with their gender identities.”²⁵⁷

Two days after filing the complaint, Doe filed a motion for a preliminary injunction to “enjoin enforcement of the [provision].”²⁵⁸ In light of the Supreme Court’s decision to grant *certiorari* in another case, the U.S. District Court for the District of South Carolina stayed the case and denied all pending motions, including Doe’s complaint and motion for a preliminary injunction without prejudice.²⁵⁹ Doe then filed a notice of appeal and a motion for an injunction pending appeal, which the State of South Carolina moved to dismiss.²⁶⁰

Among other conclusions, the Fourth Circuit Court of Appeals recognized that *Grimm* is binding precedent and thus granted Doe’s motion for an injunction pending appeal.²⁶¹ Yet, the Fourth Circuit’s opinion is written with a veil of uncertainty:

247. *Id.*

248. *Id.*

249. *Id.* at *3.

250. *Id.* at *4.

251. *Id.*

252. *Id.*

253. *Id.*

254. *Id.*

255. *Id.*

256. *Id.*

257. *Id.* at *5.

258. *Id.*

259. *Id.* at *6-7.

260. *Id.* at *8.

261. *Id.* at *22-23.

“[A]lthough this concern will no doubt be taken up more fully by the panel to consider Doe’s appeal on the merits, we briefly note that the State discounts *Grimm*’s presently binding effect on Doe’s claims by forecasting that it—or its premises—will be overruled by the Supreme Court[.]”²⁶²

In his concurrence, Chief Judge Albert Diaz echoed the court’s concerns with the future of *Grimm* in light of the Supreme Court granting *certiorari* in *B.P.J. v. West Virginia State Board of Education*, a case involving a law barring transgender girls from participating in girls’ school sports.²⁶³ Even still, Chief Judge Diaz reiterated that “Doe has endured—and will continue to endure—irreparable harm without an injunction. The constitutional violation is [thus] reason enough to grant relief.”²⁶⁴ Moreso, Chief Judge Diaz noted that Doe’s harms also included him “feel[ing] physically uncomfortable from a full bladder” from his own restroom avoidance and, of course, “the shame and indignity Doe will face for being singled out based on his transgender status.”²⁶⁵ In the end, Chief Judge Diaz states, point-blank, the truth of the matter: “That’s a harm that can’t possibly be remedied with money damages.”²⁶⁶

The State applied for a stay of injunction pending appeal to the United States Supreme Court.²⁶⁷ Although the Court denied the application, the Court made it a point to explain that it did not rule on the case merits: “The denial of the application is not a ruling on the merits of the legal issues presented in the litigation. Rather, it is based on the standards applicable for obtaining emergency relief from this Court.”²⁶⁸ As the Fourth Circuit earlier indicated, the future of *Grimm* remains uncertain.

Even still, other circuits have also recognized the value of *Grimm*’s holding. The Seventh Circuit reached a similar conclusion in *Whitaker v. Kenosha Unified School District Number 1 Board of Education*, where a seventeen-year-old student was only permitted to use the girls’ restroom or the single-use restroom, despite having publicly transitioned and identified as male.²⁶⁹ In *Whitaker*, the court acknowledged that Whitaker was afraid that using the gender-neutral bathroom would merely draw more attention to his gender identity.²⁷⁰ Like the plaintiff in *Grimm*, Whitaker began avoiding the restroom, partly because he was afraid that he would be disciplined for using the boys’

262. *Id.* at *21-22.

263. *Id.* at *25 (Diaz, C.J., concurring) (“[W]hatever the Court decides in [*West Virginia State Board of Education v. B.P.J.*], the law today is *Grimm*.”); *West Virginia v. B.P.J.*, No. 24-43, 2025 U.S. LEXIS 2661 (July 3, 2025).

264. Doe, 2025 U.S. App. LEXIS 20849, at *27 (Diaz, C.J., concurring)

265. *Id.* at *27-28.

266. *Id.* at *28.

267. *South Carolina v. Doe*, No. 25A234, 2025 U.S. LEXIS 2784, at *1 (Sep. 10, 2025).

268. *Id.*

269. 858 F.3d 1034, 1040 (7th Cir. 2017).

270. *Id.*

restroom.²⁷¹ In effect, Whitaker began restricting his water intake.²⁷² This harmed Whitaker, who was diagnosed with vasovagal syncope, a condition which made him prone to fainting or seizures when dehydrated.²⁷³ The Seventh Circuit ultimately held that forcing a transgender student to use the bathroom that aligns with their sex assignment is sex stereotyping.²⁷⁴ Consequently, as the court noted, “[a] policy that requires an individual to use a bathroom that does not conform with his or her gender identity punishes that individual for his or her gender non-conformance, which in turn violates Title IX.”²⁷⁵

After the 2024 Title IX Rule came into effect, some courts started to consider the impact of *Bostock* as it relates to Title IX and transgender public-school students. In *A.C. v. Metropolitan School District of Martinsville*, the Seventh Circuit applied *Bostock*’s reasoning to Title IX, and “ha[d] no trouble concluding that discrimination against transgender persons is sex discrimination for Title IX purposes, just as it is for Title VII purposes.”²⁷⁶ Per *Bostock*’s instruction, the court proceeded by “ask[ing] whether . . . [the] plaintiffs [were] suffering negative consequences . . . for behavior that is being tolerated in male students who are not transgender.”²⁷⁷ For Title IX purposes, this analysis concerned the “lack of equal access to school programs.”²⁷⁸ Additionally, In *Tirrell v. Edelblut*, the New Hampshire District Court cited *A.C.*, noting that “applying *Bostock*’s recognition of the inextricable relationship between sex and transgender status to Title IX would not prevent schools from maintaining different housing, bathrooms, or athletic teams for men and women.”²⁷⁹ Here, the court went on to add “[t]he fact that Title IX expressly allows for sex-separated athletic teams does not mean that a law barring all transgender girls from playing on girls’ teams comports with Title IX.”²⁸⁰

In *Tirrell*, plaintiffs challenged a New Hampshire law that prohibited transgender girls from participating in girls’ sports.²⁸¹ The plaintiffs alleged that their rights had been violated under the Equal Protection Clause of the Fourteenth Amendment and under Title IX.²⁸² In its opinion, the court considered that the plaintiffs had experienced gender dysphoria, a medical condition that results when one’s sex assignment is not in alignment with gender identity.²⁸³ The court noted that it would be unrealistic for either girl to play on the boys’ sports teams, as such participation would be “humiliating, damaging

271. *Id.* at 1040–41.

272. *Id.* at 1041.

273. *Id.*

274. *Id.* at 1048.

275. *Id.* at 1049.

276. 75 F.4th 760, 769 (7th Cir. 2023).

277. *Id.*

278. *Id.*

279. 748 F. Supp. 3d 19, 48 (D.N.H. 2024)

280. *Id.* at 44.

281. *Id.* at 28.

282. *Id.* at 24.

283. *Id.* at 25.

to her mental health, and would exacerbate her symptoms of gender dysphoria.”²⁸⁴ The court applied the Supreme Court’s holding in *Bostock v. Clayton County*, noting that, as both a “textual and logical matter,” a prohibition of sex-based discrimination “encompasses a prohibition on transgender-based discrimination” as well.²⁸⁵ The court also acknowledged that the plaintiffs would encounter public stigmatization, and that such exclusion would “directly counter to their medical providers’ recommendations that they seek social acceptance of their gender identities[.]”²⁸⁶

II. THE POTENTIAL OF THE EQUALITY ACT

Despite all the ways courts have previously interpreted Title IX, it remains that the 2024 Title IX Rule has been vacated. As of January 2025, Title IX does not require schools to have protections ensuring access to an educational experience free from discrimination based on gender identity. If Title IX is reissued as it was in April 2024, then the United States will have enacted policies that ultimately reduce the risk of death by suicide for transgender students. Even so, there are additional steps the United States could take in the effort to prohibit discrimination for the LGBTQ+ community beyond the public-school setting.

On June 21, 2023, members of Congress reintroduced H.R. 15, or as it is commonly known, the Equality Act. The Equality Act aims to “prohibit discrimination on the basis of sex, gender identity, and sexual orientation[.]”²⁸⁷ Under the Act, sex, sexual orientation, gender identity, pregnancy, childbirth (or a related medical condition of such), and sex-based stereotypes can serve as the basis for discrimination, and each, in itself, is a form of sex discrimination.²⁸⁸

The Equality Act would amend the Civil Rights Act of 1964 and other civil rights laws to provide explicit protections for LGBTQ+ people in areas including “housing, employment, public education, credit, public spaces, federally funded programs, and jury service.”²⁸⁹ The act also provides that women may not be discriminated against in public spaces and federal programs.²⁹⁰ The Equality Act also prohibits racial and religious discrimination in public spaces. The act also speaks on the intersectionality that manifests in sex-based discrimination.²⁹¹ For instance, section 2(a)(2) provides that discrimination may be based “on a combination or the intersection of multiple protected characteristics.”²⁹²

LGBTQ+ persons are also explicitly named under the Equality Act. The Act

284. *Id.* at 28.

285. *Id.* at 44.

286. *Id.* at 45.

287. H.R. 15, 118th Cong. (2023).

288. *Id.*

289. *Equality Act*, GLSEN, https://www.glsen.org/sites/default/files/2021-06/GLSEN_Equality_Act_Factsheet_June_2021.pdf [<https://perma.cc/3KWA-YWY7>] (last visited Mar. 9, 2025).

290. *Id.*

291. *Id.*

292. H.R. 15, 118th Cong. (2023).

provides that discrimination includes the “exclusion and denial of entry, unequal or unfair treatment, harassment, and violence” that prevents “full participation” of LGBTQ+ persons in society and commerce.²⁹³ In totality, the Act addresses positive social *and* economic outcomes resulting from strengthened protections under the Equality Act.²⁹⁴

The Equality Act would codify *Bostock v. Clayton County*.²⁹⁵ Currently, the Supreme Court’s decision in *Bostock v. Clayton County* is vulnerable to being overruled by a future Court.²⁹⁶ As evidenced by the vacatur of the 2024 Title IX Rule, the Equality Act would provide protections for LGBTQ+ persons in a much more stable capacity. By passing the Equality Act, the United States would be among other global leaders striving to extend protections to LGBTQ+ persons. The United States has the potential to become a global leader in LGBTQ+ inclusion by learning from other countries that have already paved the way.

PROTECTING TRANSGENDER, GENDER NON-CONFORMING, AND INTERSEX STUDENTS: LEARNING FROM MALTA

To reemphasize, the United States would not be alone in the pursuit to extend protections for LGBTQ+ students, and particularly for transgender, nonbinary, and, likewise, intersex students. As previously stated, the International LGBTQI Youth & Student Organisation ranked Malta as one of the top three European countries in 2025, based on its offering of inclusive education to LGBTQI students.²⁹⁷ However, Malta is no stranger to recognition from IGLYO. IGLYO ranked Malta as one of the top three countries in 2022 and 2018, indicating that Malta has consistently been ranked in this position across all three editions of its Inclusive Education Report, making it a model country for the United States.²⁹⁸

I. MALTA’S GOVERNMENTAL STRUCTURE

Unlike the United States, Malta is a single-chamber parliamentary republic with a prime minister as the head of government.²⁹⁹ Malta, a member of the

293. H.R. 5, 117th Cong. (2021).

294. *Id.*

295. *The Equality Act*, HUM. RTS. CAMPAIGN (Apr. 29, 2025), <https://www.hrc.org/resources/equality> [<https://perma.cc/AAC2-HGAG>].

296. *Id.*

297. See *LGBTQI Inclusive Education Map 2025*, *supra* note 62.

298. See *LGBTQI Inclusive Education Map 2022*, INT’L LESBIAN, GAY, BISEXUAL, TRANS, QUEER, AND INTERSEX YOUTH & STUDENT ORG. 2 (2022), <https://www.education.iglyo.org/#chart> [<https://perma.cc/2BVB-Q95W>]; *LGBTQI Inclusive Education Map 2018*, INT’L LESBIAN, GAY, BISEXUAL, TRANS, QUEER, AND INTERSEX YOUTH & STUDENT ORG. 2 (2018), <https://www.education.iglyo.org/#chart> [<https://perma.cc/2BVB-Q95W>].

299. *Malta*, EUR. UNION, https://european-union.europa.eu/principles-countries-history/eu-countries/malta_en [<https://perma.cc/2QMC-4QEU>] (last visited Oct. 11, 2025).

European Union since 2004, is considered one of the most transgender-friendly countries in the world.³⁰⁰ Malta is one of only five nations that have constitutionally established LGBTQ+ rights and was the first to establish gender identity as a protected class.³⁰¹ In fact, Malta was the first country in the European Union to add protections for gender identity to its constitution, and transgender people have the ability to change their legal gender marker without a court-mandated application or parental consent beginning at age sixteen.³⁰²

Under Chapter IV of the Malta Constitution, “every person in Malta is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed, sexual orientation, or *gender identity*[.]”³⁰³ The Malta Constitution also provides that no person should be discriminated against by any public official or public authority on the basis, in part, of gender identity.³⁰⁴

Malta ratified the European Convention on Human Rights in 1967.³⁰⁵ As a European country, Malta is bound to abide by the rights and guarantees designated in the European Convention of Human Rights.³⁰⁶ The Convention on Human Rights gives effect and makes binding the rights stated in the Universal Declaration of Human Rights.³⁰⁷

II. MALTA AND ITS HISTORICAL ADHERENCE TO THE EUROPEAN COURT OF HUMAN RIGHTS

The European Court of Human Rights, based in Strasbourg, France, considers applications by individuals or member states alleging human rights violations.³⁰⁸ Proceedings, which commence at a national level, are first brought before the national courts and then to the highest domestic court of a nation.³⁰⁹ Afterward, applications are sent to the European Court of Human Rights, and

300. Laura Begley Bloom, *New LGBTQ+ Safety Report Ranks Trans Friendly Travel Destinations*, FORBES (June 27, 2023, 6:00 A.M.), <https://www.forbes.com/sites/laurabegleybloom/2023/06/27/new-lgbtq-safety-report-ranks-trans-friendly-travel-destinations/> [https://perma.cc/82WM-Z543].

301. Stephen Emms, *Malta: The tiny European island of tolerance*, BBC (Jan. 31, 2024), <https://www.bbc.com/travel/article/20240130-malta-the-tiny-european-island-of-tolerance> [https://perma.cc/9PV4-8DZD].

302. Bloom, *supra* note 300.

303. MALTA CONST. art. 32 (emphasis added).

304. *Id.* at art. 45.

305. MALTA, EUR. CT. OF HUM. RTS. (June 2025), https://www.echr.coe.int/documents/d/echr/cp_malta_eng [https://perma.cc/NND2-GQSF].

306. *What is the European Court of Human Rights?*, EQUAL. & HUM. RTS. COMM’N (Aug. 9, 2016), <https://www.equalityhumanrights.com/human-rights/what-are-human-rights/what-european-court-human-rights> [https://perma.cc/DN85-ZBEA].

307. *European Convention on Human Rights*, EUR. CT. OF HUM. RTS., <https://www.echr.coe.int/european-convention-on-human-rights> [https://perma.cc/FXH6-S8SK] (last visited Oct. 11, 2025).

308. *What is the European Court of Human Rights?*, *supra* note 306.

309. *The life of an application*, EUR. CT. OF HUM. RTS., https://www.echr.coe.int/documents/d/echr/Case_processing_ENG [https://perma.cc/Q8F3-69EP] (last visited Oct. 11, 2025).

proceedings thus commence.³¹⁰ In conducting its initial analysis, the Court will examine the merits of the application.³¹¹ The court may enter a final judgment if a violation is found.³¹² Afterward, the judgment is executed, and the State in question may be required to (a) pay compensation, (b) adopt general compliance measures, or (c) adopt individual measures as a sense of redressability.³¹³ In 2024, the Court considered twenty-two applications from Malta.³¹⁴ Of those twenty-two applications, fifteen were declared inadmissible or struck out.³¹⁵ Consequently, seven judgments were delivered by the Court, and it found at least one violation of the European Convention on Human Rights.³¹⁶

Notably, in 2013, the Court passed down a decision in *Cassar v. Malta*.³¹⁷ In *Cassar v. Malta*, applicant Joanne Cassar alleged that Malta had violated Article 12 of the Convention on Human Rights because she had been denied the right to marry after she had undergone sex-reassignment surgery.³¹⁸ Cassar also alleged that her complaint was made under Articles 8 and 13 and stated that she had not been provided with an effective remedy when her rights were violated.³¹⁹ Ultimately, the case was struck out³²⁰ because an out-of-court settlement had been reached by the applicant in 2013, in which Malta agreed to compensate Cassar ten thousand euros.³²¹ The settlement also provided that Malta would make “all necessary amendments to enable the applicant to marry a person of the sex opposite to that of the applicant acquired sex” by the end of 2013.³²²

Accordingly, other applications for Malta have concerned: right to life; detention conditions of those awaiting immigration proceedings; inhuman or degrading treatment or punishment; right to liberty and security; Article 6 of the Convention on Human Rights; family and private life; freedom of expression; discrimination; and property issues.³²³

III. MALTA AND ITS FIGHT FOR TRANSGENDER INCLUSION

In 2015, Malta adopted the Gender Identity, Gender Expression, and Sex

310. *Id.*

311. *Id.*

312. *Id.*

313. *Id.*

314. MALTA, *supra* note 305, at 1.

315. *Id.*

316. *Id.*

317. *Id.* at 5.

318. *Cassar v. Malta*, App. No. 36982/11, ¶¶ 7-10, 16 (July 9, 2013), <https://hudoc.echr.coe.int/eng?i=001-123392> [<https://perma.cc/L62C-KBCA>].

319. *Id.* ¶ 16.

320. *Id.* ¶ 20. (The court “may decide to restore an application to its list of cases if it considers that the circumstances justify such a course, as would be if the Government fails to fulfill its commitment to take the above-mentioned action”).

321. *Id.* ¶ 18.

322. *Id.*

323. MALTA, *supra* note 305, at 2-4.

Characteristics Act.³²⁴ The Act provides that all persons in Malta have the right to (a) “the recognition of their gender identity;” (b) the ability to develop in accordance to their gender identity; (c) treatment in accordance of their gender identity, including the ability to have their legal documentation reflect such; and (d) “bodily integrity and physical autonomy.”³²⁵ The act also provides that a person’s gender identity shall be respected at all times.³²⁶ Significantly, the act explicitly provides that a person is not required to provide any proof of physical surgeries, hormone therapies, or any other “psychiatric, psychological, or medical treatment to make use of the right to gender identity.”³²⁷ In fact, the Act provides that Maltese citizens have the right to request name and gender-marker changes to align with a person’s gender identity.³²⁸

The purpose of the Act is essentially to ensure a “simplified procedure” could be offered in a capacity that “respects the privacy of the person requesting that one’s official documents be changed to reflect the person’s gender.”³²⁹ The Act also provides that the “best interest of the child” standard is applicable to children.³³⁰ The Act also acknowledges non-binary genders, as Maltese individuals can apply the gender marker “X” on official documents.³³¹

Part of the reason why Malta has been focusing its government policy on offering protections for LGBTQ+ equity is due to the Sexual Orientation, Gender Identity, Gender Expression, and Sex Characteristics Unit (“SOGIGESC”). Developed in June 2018, SOGIGESC currently focuses its work on implementing the 2023—2027 LGBTIQ Equality Strategy and Action Plan.³³² The LGBTIQ Equality Strategy and Action Plan reflects Malta’s commitment to advancing the rights of queer individuals while maintaining its first-place ranking on various global indices measuring LGBTIQ+ legal and policy frameworks.³³³

324. ATT DWAR L-IDENTITA TAL-ĠENERU, L-ESPRESSJONI TAL-ĠENERU U L-KARATTERISTIĊI TAS-SESS [GENDER IDENTITY, GENDER EXPRESSION AND SEX CHARACTERISTICS ACT] 2015, Cap. 540, § 3(1) (Malta).

325. *Id.* § 3.

326. *Id.* § 3(3).

327. *Id.* § 3(4).

328. *Id.* § 4.

329. Kyle Knight, *Dispatches: Malta’s Inspiring Gender Recognition Law*, HUM. RTS. WATCH (Apr. 1, 2015, at 17:59 ET), <https://www.hrw.org/news/2015/04/01/dispatches-maltas-inspiring-gender-recognition-law> [<https://perma.cc/23CR-MVG6>].

330. *Id.*

331. *Legal Gender Recognition and Bodily Integrity*, HUM. RTS. DIRECTORATE (2023), <https://humanrights.gov.mt/legal-gender-recognition-and-bodily-integrity/#> [<https://perma.cc/SN8P-U2EK>].

332. *About the SOGIGESC Unit*, HUM. RTS. (2023), <https://humanrights.gov.mt/about-the-sogigesc-unit/> [<https://perma.cc/QP2F-H8SB>].

333. *LGBTIQ Equality Strategy and Action Plan 2023—2027*, HUM. RTS. DIRECTORATE (2023), <https://humanrights.gov.mt/wp-content/uploads/2024/04/LGBTIQ-Equality-Strategy-and-Action-Plan-2023-%E2%80%932027-EN-1.pdf> [<https://perma.cc/N38T-HEWU>].

IV. MALTA'S 2023—2027 LGBTIQ EQUALITY STRATEGY AND ACTION PLAN

The 2023—2027 Plan provides a list of initiatives that the Maltese government has implemented in the spirit of improving life and wellness for LGBTIQ citizens.³³⁴ Specifically for transgender persons, the 2023—2027 Plan indicates that Malta has conducted an intentional program to identify vulnerable transgender individuals in alliance with their employers.³³⁵ The 2023—2027 Plan also conveys that schools have taken on measures to ensure academic environments are inclusive for transgender and intersex students.³³⁶ The 2023—2027 Plan also provides that transgender individuals would be able to access healthcare that is specific to the needs of trans and gender non-conforming individuals.³³⁷ Other specific measures outlined in the policy fall within Malta's promise for Right to Equality and Freedom from Discrimination; Right to Education; Right to Health; Equality in Sport; Right to Private and Family Life; Freedom from Hatred; LGBTIQ Civil Society; Right to Seek Asylum; Promotion of LGBTIQ Equality on an International Level; and other relevant measures alike.³³⁸

The 2023—2027 Plan also reflects the progress from the 2018—2022 Plan. Accordingly, around 80% of the targets outlined in the 2018—2022 Plan were achieved, and some were even evolved into other measures in the 2023—2027 Plan.³³⁹ One of the challenges for Malta seemed to be a lack of resources.³⁴⁰ On the other hand, a significant achievement that resulted from the efforts to implement the 2018—2022 Plan includes the “promoti[on] [of] LGBTIQ inclusive educational approaches” through effective teacher training, although such efforts still need extra support to transfer such skills to intra-curricular approaches.³⁴¹

Importantly, the 2023—2027 Plan is not ignorant of the idea that Malta isn't perfect—prejudice is still real and impacts LGBTIQ Maltese citizens.³⁴² However, by explicitly naming this area of improvement in the 2023—2027 Plan, Malta has implicitly emphasized yet another reason for edits continual implementation. In other words, if Malta did not need improvement, in theory, there would be no need for an implementation plan in the first place.

V. EDUCATIONAL INITIATIVES OUTLINED IN MALTA'S 2023—2027 PLAN

Area D6 of the 2023—2027 Plan focuses on “ensur[ing] that the right to education can be effectively enjoyed by LGBTIQ+ individuals, free from

334. *Id.* at 11.

335. *Id.*

336. *Id.* at 12.

337. *Id.*

338. *Id.* at 11-13, 15.

339. *Id.* at 16.

340. *Id.*

341. *Id.*

342. *Id.* at 10.

discrimination.”³⁴³ Some of the outlined provisions provide that Malta aims to develop practical resources teachers can use to dissuade bullying, encourage allyship, embrace consensual relationships, and more.³⁴⁴ The 2023—2027 Plan also aims to provide diverse resources to both teachers and students.³⁴⁵

Such efforts are not the only acts Malta has implemented to ensure LGBTIQ+ curriculum is implemented in Maltese schools. In 2015, Malta’s Ministry for Education and Employment introduced the Trans, Gender Variant, and Intersex Students in School Policy. The Policy, which was initially developed in alignment for the 2014—2024 Framework for the Education Strategy for Malta, strives to provide “every student . . . with the necessary knowledge, skills, competencies, and attributes for citizenship and employability within an inclusive, safe, secure and motivating school environment that inspires and facilitates learning.”³⁴⁶ The Policy provides three primary aims: (1) “foster a school environment that is inclusive, safe, and free from harassment and discrimination for all members of the school community, students, and adults, regardless of sex, sexual orientation, gender identity, gender expression, and/or sex characteristics;” (2) “promote the learning of human diversity that is inclusive of trans, gender variant, and intersex students, thus promoting social awareness, acceptance and respect;” and (3) “ensure a school climate that is physically, emotionally, and intellectually safe for all students to further their successful learning development and well-being, including that of trans, gender variant and intersex persons.”³⁴⁷

As reflected in the Policy, “inclusivity,” “diversity,” “equity,” and “social justice” are among Malta’s core values, and the policy shall cover “behavior [*sic*] that takes place in the school, on school property, and school-sponsored functions, and activities.”³⁴⁸ The Policy’s scope also reaches into online platforms.³⁴⁹

The Policy alludes to the idea that many people do not have a sufficient awareness of what it means to be a transgender, gender variant, or intersex child.³⁵⁰ However, the Policy also notes it is not the responsibility of trans, gender variant, and intersex individuals to need to fight for access to human rights merely because others lack a sense of familiarity with gender non-conforming lives.³⁵¹ As the Policy notes, “every student deserves to be treated with respect and to be protected from violations of their human rights, including

343. *Id.* at 46.

344. *Id.* at 47.

345. *Id.*

346. SILVAN AGIUS ET AL., TRANS, GENDER VARIANT AND INTERSEX STUDENTS IN SCHOOLS POLICY, MINISTRY FOR EDUC. & EMP. (Dolores Gauci ed., June 2015), <https://sustainabledevelopment.gov.mt/wp-content/uploads/2021/10/Trans-Gender-Variant-and-Intersex-Students-in-Schools-Policy.pdf> [<https://perma.cc/XH22-CT9X>].

347. *Id.* at 5-6.

348. *Id.* at 6.

349. *Id.*

350. *Id.* at 6-7.

351. *Id.* at 7.

their right to be free from discrimination, harassment, and violence.”³⁵²

The Policy reflects similar research findings as explored by The Trevor Project and other research organizations regarding the correlation between mental health, academic success, and discriminatory experiences. The Policy recognizes that many trans, gender variant, and intersex students have a heightened experience of bullying across the European Union.³⁵³ It is uncontested, though, that “[b]eing able to be one’s self at school is an essential factor in every student’s success and well-being.”³⁵⁴ As a result, schools have a social responsibility to ensure that learning environments are safe and inclusive, especially for trans, gender variant, and intersex students.

As emphasized above, communities must recognize areas of growth in setting established targets for improvement. The Policy provides the following as issues faced by trans, gender variant, and intersex students:

“Sex and gender stereotypes; culture and cultural expectations; lack of well-being due to discrimination, bullying, and other unfair treatment; exclusion from sports and other gendered activities; unease with gendered uniforms, toilets, and other gendered spaces; decreased attention during school time and failure to learn due to lack of safety in school and lack of support services; decreased attention during school time and failure to learn due to lack of safety in school and lack of support services; minority stress and social isolations; absenteeism due to lack of safety in schools.”³⁵⁵

The Policy also outlines specific needs required for the care of trans, gender non-conforming, and intersex students, including adequate facilities, inclusive school policies, support from the school and broader community, and more.³⁵⁶

VI. EXPECTATIONS OF TEACHERS

Malta’s Trans, Gender Variant, and Intersex Students in School Policy emphasizes that teachers should use affirming language when referring to students, rather than outdated or harmful language.³⁵⁷ Teachers must also facilitate effective partnerships with parents, students, and other stakeholders to ensure that each child receives a validating educational experience.³⁵⁸ In fact, teachers are also expected to adhere to Malta’s Teachers’ Code of Ethics and Practice. According to the Code, teachers are “encourage[d] to adopt an informed approach to their teaching and its contexts and to reflect on the good

352. *Id.* at 8.

353. *Id.*

354. *Id.*

355. *Id.* at 12.

356. *Id.*

357. *Id.* at 13.

358. *Id.* at 13-14.

and correct practices as professional teachers.”³⁵⁹

Key Principle 3 of Malta’s Teachers Code of Ethics and Practice outlines that teachers shall “[r]espect the [u]niqueness and [d]iversity of students.”³⁶⁰ Principle 3.1 provides that teachers must “demonstrate respect for diversity, maintain fairness and promote equality irrespective of gender, race, religion, sexual orientation, appearance, age, language or different needs or abilities.”³⁶¹

RECOMMENDATION

“Some of the biggest misunderstandings [people] have about being trans is (sic) you’re trying to be someone else. No. You’re trying to be you. You’re trying to be you to the fullest.”
*Nel Huff*³⁶²

Malta’s Trans, Gender Variant, and Intersex Students in School Policy marks the first time that a European country has implemented a “comprehensive education policy focusing on the needs of trans, gender variant and intersex children.”³⁶³ Like the United States’ 2024 Amendments, the policy provided different procedures for Maltese schools, offering guidance on how the policy could be implemented and that authentic adherence to the policy is fundamental.³⁶⁴ Though unlike the United States, Malta, to date, has remained firm in its commitment to facilitating inclusive atmospheres for students. Approximately 77 percent of Maltese survey respondents agreed that school and educational materials should include information about gender identity, compared to only 54 percent of Americans, as reported in a separate survey.³⁶⁵

The 2024 Title IX Rule set forth hope for transgender students in the United States. Even more, after it initially went into effect, organizations such as GLSEN offered resources, including model policies, to help implement Title IX

359. Teachers’ Code of Ethics and Practice, 2012, S.L.327.02, sch. A, <https://legislation.mt/eli/sl/327.2/eng/pdf> [<https://perma.cc/6JUW-K4JS>] (Malta).

360. *Id.* Principle 3.

361. *Id.* Principle 3.1.

362. NPR, *A Few Things to Know About Being Transgender* | NPR, YOUTUBE (Nov. 21, 2017) <https://www.youtube.com/watch?v=SHR-0TeUq3U> [<https://perma.cc/YEH9-JX9Q>].

363. *Malta launches inspiring education policy for trans, gender variant and intersex children*, ILGA EUR. (June 16, 2015), <https://new.ilga-europe.org/resources/news/latest-news/malta-education-policy-june2015> [<https://perma.cc/3YLP-ENQD>].

364. *Id.*

365. LUONA LIN ET AL., PUBLIC VIEWS ON PARENTS OPTING THEIR CHILDREN OUT OF LEARNING ABOUT RACE AND LGBTQ ISSUES, PEW RSCH. CTR., 1, 25 (Feb. 22, 2024), https://www.pewresearch.org/social-trends/wp-content/uploads/sites/3/2024/02/ST_24.02.22_lgbtq-race-in-schools_report.pdf [<https://perma.cc/8P2S-WPMP>]; James Debono, *Educate us: 77% agree with school lessons about transgender identity*, MALTA TODAY, (Jan. 17, 2024, 7:00 AM ET), https://www.maltatoday.com.mt/news/national/127010/educate_us_77_agree_with_school_lessons_about_transgender_identity [<https://perma.cc/8PXP-GU6K>].

in a manner that complied with both federal and state law.³⁶⁶ Specifically, GLSEN’s model policy attempted to meet all schools and educators at the level at which they could digest and understand how to support transgender and gender-nonconforming students. For instance, the policy provided definitions for inclusive language, a reader-friendly explanation of what Title IX entails, and information about other inclusive acts, such as the Family Educational Rights and Privacy Act (“FERPA”) and the Americans with Disabilities Act (“ADA”).³⁶⁷ In essence, the model policy shared many similarities with Malta’s Trans, Gender Variant, and Intersex Students in School Policy. GLSEN’s model policy instructed stakeholders on how to file complaints with the Title IX coordinator and outlined supportive measures schools could take to ensure student success and agency compliance.³⁶⁸ The model policy provided examples of how teachers could ensure their curricula were inclusive for LGBTQ+ students, noting that research shows that access to a queer-inclusive curriculum leads to a positive overall impact on school experiences for LGBTQ+ students.³⁶⁹ Not only would the United States be side-by-side with Malta in the charge for LGBTQ+ inclusion, but so would other United States organizations, thereby establishing one collective charge to facilitate learning environments where trans students have ensured access to a gender-affirming space.

Malta’s commitment to transgender, gender variant, and intersex inclusion has impacted the overall Maltese perception of transgender individuals. By reimplementing the 2024 Title IX Rule and by codifying the Equality Act, the United States would scaffold its perception of transgender individuals, too.

CONCLUSION

“I was born Trans, and I will die Trans. And until then, I will not be silent.”
*Danielle Tanner*³⁷⁰

While countries such as Malta have taken restorative steps to advocate for trans youth, there remains a disconnect in the United States. For one, it is material that the “debate about trans youth doesn’t *exclude the voices of trans youth*.”³⁷¹ At heart, transgender people are the “best spokespeople for their own

366. See MODEL LOCAL EDUCATION AGENCY POLICIES ON IMPLEMENTING TITLE IX AND OTHER FEDERAL NONDISCRIMINATION PROTECTIONS FOR LGBTQIA2S+ YOUNG PEOPLE IN K-12 SCHOOLS, GLSEN (2024), <https://www.glsen.org/sites/default/files/2024-04/Model%20Local%20Education%20Agency%20Policies.pdf> [<https://perma.cc/M57U-ZNVF>].

367. See *id.*

368. *Id.* at 12-13.

369. *Id.* at 28-29.

370. Danielle Tanner (@ddarlingnyc), INSTAGRAM, *I was born Trans, and I will die Trans. And until then, I will not be silent* (Mar. 17, 2023), <https://www.instagram.com/p/Cp6YMAyri2I/> [<https://perma.cc/SV42-P3AD>].

371. JACK TURBAN, *FREE TO BE: UNDERSTANDING KIDS & GENDER IDENTITY*, 249 (Simon & Schuster, LLC, 2024).

experience.”³⁷² “Like many trans kids, I knew who I was in my heart,” stated activist Dylan Mulvaney.³⁷³ Recently, in December 2025, Congresswoman Sarah McBride shared more about her personal experience during the same week in which politicians announced more plans to limit gender affirming care for trans youth:

“I get it’s hard to understand what it feels like to be trans. I get that it is hard to understand what it’s like to be me. I get that it’s hard to understand [gender affirming care] and understand the need for it. But one of the things that gets so lost in this conversation is that the transgender adults of today were kids once. I was a kid once. I didn’t have the courage to come out until I was twenty-one, but it’s a fact I’ve known about myself for my entire life. I didn’t have the courage to come out until I was twenty-one and that means twenty-one years of pain. Twenty-one years of unwavering homesickness that only went away when I was able to get the care that I needed. And my biggest regret in life is that I never had a childhood without that pain.”³⁷⁴

“[N]ow more than ever, gender has exploded into the political arena, with legal implications for everything from medical regulation to education policy, to sports.”³⁷⁵ In times where trans people “have become targets of extreme political discrimination and violence,” community advocates should “learn the facts about who trans people are, become educated about the realities trans people face, and understand that [their] collective equality is connected to the safety and freedom of people who are transgender.”³⁷⁶ This includes undertaking a thoughtful analysis into the needs of trans youth, and the power that comes with safe, gender-affirming educational spaces.

Yes, “gender is complex.”³⁷⁷ Nevertheless, the work to understand the

372. Corrine Segal & Eric Krupke, *Here’s what most people get wrong about the transgender community*, PBS (Apr. 23, 2015) <https://www.pbs.org/newshour/nation/breaking-common-misconceptions-gender> [https://perma.cc/HD9D-EAW3].

373. Video posted by Dylan Mulvaney (@dylvanmulvaney) & Human Rights Campaign (@humanrightscampaign), INSTAGRAM (Sep. 28, 2023), <https://www.instagram.com/reel/Cxv04INRkD4/> [https://perma.cc/P552-A2W9].

374. Video posted by Rep. Sarah McBride (@congresswomansarahmcbride), INSTAGRAM (Dec. 17, 2025), https://www.instagram.com/congresswomansarahmcbride/reel/DSYd_6jCdHb/ [https://perma.cc/43WT-69DX]; See also Selena Simmons-Duffin, *RFK Jr. and Dr. Oz announce moves to ban gender-affirming care for young people*, NPR (Dec. 18, 2025, 5:25 PM) <https://www.npr.org/sections/shots-health-news/2025/12/18/nx-s1-5647789/transgender-gender-affirming-care-rfk-jr-dr-oz-trump> [https://perma.cc/45AF-27TQ]; Ellis Kim, *House passes bill criminalizing gender-affirming care for minors*, CNN (Dec. 17, 2025), <https://www.cnn.com/2025/12/17/politics/house-bill-criminalizing-gender-affirming-care-minors> [https://perma.cc/WQA5-CZM4].

375. TURBAN, *supra* note 371, at 382.

376. *Transgender Awareness Week*, GLAAD <https://glaad.org/transweek/> [https://perma.cc/EV7X-JUV4] (last visited Dec. 19, 2025).

377. TURBAN, *supra* note 371, at 249.

complexities of gender is important.

The work to unpack the complexities of our own genders, how society's handling of gender has impacted us, and how gender and society intersect is tough work, but it's essential—now more than ever. Fighting the temptation to oversimplify, as many politicians have done, and instead jumping into the complexity, will allow us all to not just support trans youth, but also better understand ourselves, as we continue through a world that is inevitably impacted by gender.”³⁷⁸ Ultimately, “the liberation of trans people would improve the lives of everyone in our society.”³⁷⁹ However, transgender and nonbinary people should not carry this burden alone. By ensuring that youth have access to gender-affirming educational spaces, the United States can take a step towards reducing the risk of death by suicide for LGBTQ+ youth as a whole, and especially for transgender, nonbinary, and intersex youth. For that reason, the 2024 Title IX Rule should be reimplemented and enforced, and Congress should codify the Equality Act.

“I marvel at the courage of transgender young people today who are sharing themselves with their families and the world, despite the toxicity and the hate that too often emanates from the building behind me, and from politicians within it.

All any of us want is to live a life of purpose and happiness and wholeness. None of us know how long we have. None of us know how much time we have on this planet. It is already hard enough to raise a family. It is already hard enough to be a kid.

And government should not make it harder.”

*Rep. Sarah McBride*³⁸⁰

378. *Id.* at 249, 295.

379. FAYE, *supra* note 36, at xiii.

380. Rep. McBride, *supra* note 374.