

# SEPARATION AND STIGMA: TRANSGENDER YOUTH & SCHOOL FACILITIES



# TRANSGENDER YOUTH IN AMERICA'S SCHOOLS

an infographic presented by



## OVER 150,000 TRANSGENDER YOUTH

THERE ARE APPROXIMATELY 130,000 SCHOOLS IN THE U.S. SCHOOLS MUST BE READY TO SUPPORT ALL STUDENTS, INCLUDING TRANSGENDER STUDENTS.



### MANY TRANSGENDER STUDENTS EXPERIENCE DISCRIMINATION AND FEEL UNSAFE IN SCHOOLS

**75%** OF TRANSGENDER STUDENTS FELT UNSAFE AT SCHOOL BECAUSE OF THEIR GENDER EXPRESSION

**70%** OF TRANSGENDER STUDENTS SAID THEY'D AVOIDED BATHROOMS BECAUSE THEY FELT UNSAFE OR UNCOMFORTABLE

**60%** OF TRANSGENDER STUDENTS HAD BEEN REQUIRED TO USE A BATHROOM OR LOCKER ROOM THAT DID NOT MATCH THE GENDER THEY LIVE EVERY DAY

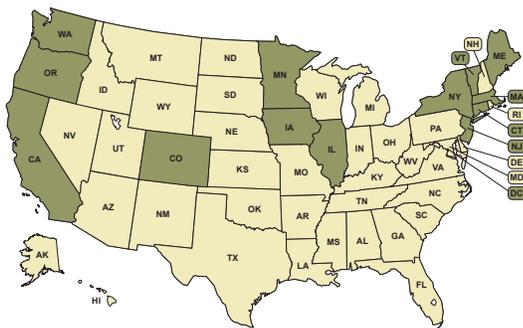


### SOME STATE AND FEDERAL LAWS PROTECT TRANSGENDER STUDENTS

ONLY 13 STATES AND DC HAVE EDUCATION NON-DISCRIMINATION LAWS EXPLICITLY PROTECTING TRANSGENDER STUDENTS

EXISTING FEDERAL LAW PROTECTS ALL STUDENTS FROM BULLYING AND DISCRIMINATION

But implementation of these federal protections varies across the country and federal courts are currently hearing arguments about these protections.



Estimates of transgender youth between the ages of 13-17 are from the Williams Institute, "Age of Individuals Who Identify as Transgender in the United States," January 2017. Estimate of the number of U.S. schools is from the National Center for Education Statistics at the Department of Education, "Fast Facts." Data about the experiences of transgender students at school are from GLSEN, "The 2015 National School Climate Survey," December 2016. Information about state laws and policies can be found at the Movement Advancement Project, LGBT Equality Maps.

## INTRODUCTION

Every student deserves a fair chance to succeed in school and to be protected from discrimination and bullying. Yet this is not the experience of far too many of the estimated 150,000 transgender students aged 13-17 in the United States.<sup>1</sup> As adults argue about whether to allow transgender students to use restrooms that match the gender they live every day,<sup>a</sup> it is transgender students who pay a heavy personal price.

On the surface, the argument is about bathrooms, but at a deeper level, it is about the recognition of transgender students as worthy of being included in our public education system. America has long recognized that “separate but equal” is separate, not equal. And yet, when it comes to transgender students, “separate but equal” is often exactly the proposed solution.

Singling out transgender students and telling them they must use separate restrooms is humiliating and discriminatory, adding to the bullying and mistreatment so many transgender youth already face. The separate, single-stall restrooms some transgender students are required to use are often too far away to access during breaks, making them accessible in theory but inaccessible in practice. On the other hand, forcing transgender students into restrooms that don’t match the gender they live every day puts their safety at even greater risk.<sup>2</sup> All students deserve a safe school environment and school policies should protect students from bullying. But, for example, forcing a transgender girl—who lives every day as a girl—to use the boy’s restroom puts her at significant risk for harassment and assault.

For many transgender students, being banned from using the restroom that matches how they live everyday means they are unable to use the restroom at school. The result? Many transgender students face health problems related to lack of fluid intake and “holding it,” while others simply stop going to school altogether because of the challenges of spending a full day in school activities without restroom access.<sup>3</sup>

Although schools throughout the country have successfully implemented policies that meet the needs of all students, the restroom debate has been taken up by policymakers, parents, school districts, courts, and state legislatures across the country. Most recently, the U.S. Departments of Justice and Education rescinded legal guidance that clarified that Title IX of the Civil

Rights Act protects transgender students’ access to facilities that match their gender identity.<sup>4</sup> As a result, the U.S. Supreme Court refused to hear the case of *Gloucester County School Board v. G.G.*, commonly referred to as the Gavin Grimm Case.<sup>5</sup> Instead, the Supreme Court remanded the case back to the Fourth Circuit Court of Appeals to re-hear the case given the change in position from the Departments of Justice and Education. While the withdrawal of this guidance does not change the protections transgender students continue to have under Title IX, it sends the message that the government is not willing to fully enforce those protections.

To make sense of the legal arguments and the broader national context for transgender students and facilities access at school, this report outlines how excluding transgender students from the school facilities that match their gender is not only unnecessary, but profoundly harmful. The report also examines the existing federal, state, and local landscape for transgender students and their ability to access facilities at school across the country.

## TRANSGENDER STUDENTS FACE HOSTILITY, DISCRIMINATION, AND BULLYING

There are an estimated 150,000 transgender youth between the ages of 13 and 17.<sup>6</sup> These transgender students, as well as those who are younger, are part of school communities throughout the country, and like other students, they’re there to learn, graduate and prepare for their future. When schools fail to protect transgender students from discrimination and bullying—or when they deny transgender students access to restrooms that match the gender they live every day—it becomes extremely difficult for transgender students to succeed in school and prepare for their future. In many ways, barring transgender students from using the restroom is the functional

<sup>a</sup> **Transgender.** The term transgender describes individuals whose sex assigned at birth is different from the gender they know they are on the inside. At some point in their lives, many transgender people decide they must live their lives as the gender they have always known themselves to be, and transition to living as that gender. **Gender identity and gender expression.** Gender identity is a person’s deeply felt inner sense of being male, female, or a gender other than male or female. Gender expression refers to a person’s characteristics and behaviors such as appearance, dress, mannerisms, and speech patterns that can be described as masculine, feminine, or something else. Note that gender identity and expression are different than sexual orientation, and transgender people may identify as heterosexual, gay, lesbian, bisexual, or otherwise.

equivalent of barring them from school. The following pages outline the profound harms of hostile school environments for transgender students.

- **Transgender students experience pervasive hostility, discrimination and bullying at school.** The 2015 National School Climate Survey by GLSEN found that three-quarters (75%) of transgender students felt unsafe at school because of their gender expression and they were more likely to experience verbal harassment, physical harassment, and physical assault than their peers.<sup>7</sup> Eighty-six percent of lesbian, gay, bisexual, transgender, and queer (LGBTQ) students in the same survey reported hearing anti-transgender comments at school, with over forty percent hearing them often or frequently.<sup>8</sup>

## 75% OF TRANSGENDER STUDENTS FELT UNSAFE AT SCHOOL BECAUSE OF THEIR GENDER EXPRESSION



Source: Kosciw, et al. "The 2015 National School Climate Survey: The experiences of lesbian, gay, bisexual, transgender, and queer youth in our nation's schools." 2016. GLSEN.

- **The majority of transgender students face discriminatory school policies limiting their access to facilities.** According to the 2015 National School Climate Survey conducted by GLSEN, 60% of transgender students were forced to use a bathroom or locker room that did not match the gender they live every day.<sup>9</sup> When transgender students are forced to use bathrooms that do not match their gender, or when they are barred from communal facilities altogether and told to use a separate facility, they are singled out for discrimination and harassment. Seven out of ten (70%) transgender students surveyed in the 2015 National School Climate Survey said they'd avoided bathrooms because they felt unsafe or uncomfortable.

## 60% OF TRANSGENDER STUDENTS WERE FORCED TO USE A BATHROOM OR LOCKER ROOM THAT DID NOT MATCH THE GENDER THEY LIVE EVERY DAY



Source: Kosciw, et al. "The 2015 National School Climate Survey: The experiences of lesbian, gay, bisexual, transgender, and queer youth in our nation's schools." 2016. GLSEN.

- **Transgender students are targeted by school officials.** Half (50%) of transgender students in the 2015 National School Climate Survey were unable to use the name or pronoun in accordance with their gender, and 28% had been prevented from wearing clothing that reflected their gender identity.<sup>10</sup>

## 50% OF TRANSGENDER STUDENTS WERE UNABLE TO USE THE NAME OR PRONOUN THAT MATCHED THEIR GENDER



Source: Kosciw, et al. "The 2015 National School Climate Survey: The experiences of lesbian, gay, bisexual, transgender, and queer youth in our nation's schools." 2016. GLSEN.

- **Many transgender students report serious physical and emotional health consequences.** Seven out of ten (70%) transgender students report avoiding bathrooms,<sup>11</sup> which can lead to significant health problems and interfere with their ability to learn and focus in class. In the largest survey of transgender adults, 32% of adults reported that they avoided eating or drinking in the last year so they wouldn't need to use the restroom, and 8% reported having a urinary tract infection or kidney-related medical issue in the last year resulting from avoiding the restroom.<sup>12</sup> Research shows that transgender students who are subjected to discrimination in schools also experience increased levels of depression.<sup>13</sup> Conversely, transgender students who are supported in their transition (e.g. are addressed with correct names and pronouns and able to use the appropriate communal restroom) report mental health outcomes that are similar to those of their non-transgender peers.<sup>14</sup>

**70%** OF TRANSGENDER STUDENTS SAID THEY'D AVOIDED BATHROOMS BECAUSE THEY FELT UNSAFE OR UNCOMFORTABLE



Source: Kosciw, et al. "The 2015 National School Climate Survey: The experiences of lesbian, gay, bisexual, transgender, and queer youth in our nation's schools." 2016. GLSEN.

- **Exclusion and discrimination makes it more difficult for transgender students to succeed at school.** Experiencing high levels of victimization and discrimination at school puts transgender students at greater risk for lower educational outcomes.<sup>15</sup> In fact, transgender youth are more likely than others to experience school discipline, such as detention or suspension, and more likely to be tunneled into

the criminal or juvenile justice systems as a result. In addition, transgender students are more likely to miss school and less likely to plan to graduate high school.<sup>16</sup> And, according to the U.S. Transgender Survey, a survey of nearly 28,000 transgender adults, transgender people who faced mistreatment, violence, or discrimination because of their transgender status while in school were more likely to be currently experiencing serious psychological distress or to have experienced homelessness.<sup>17</sup>

TRANSGENDER STUDENTS WHO EXPERIENCE HIGHER LEVELS OF VICTIMIZATION BECAUSE OF THEIR GENDER EXPRESSION ARE **3x** MORE LIKELY TO HAVE MISSED SCHOOL IN THE PAST MONTH THAN OTHER STUDENTS



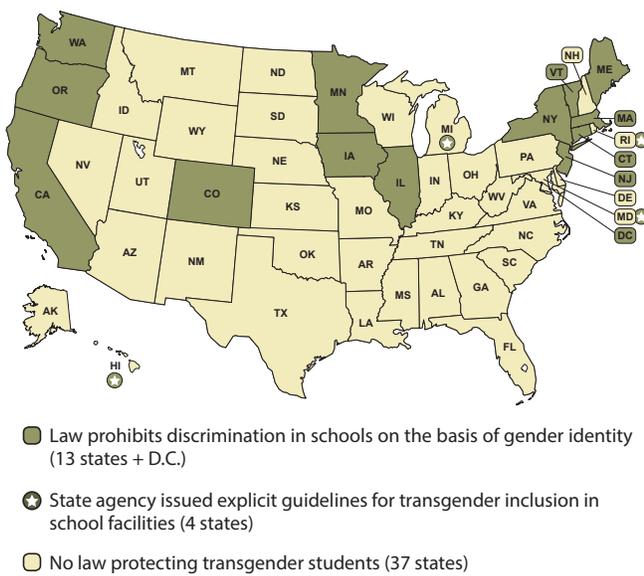
Source: Kosciw, et al. "The 2015 National School Climate Survey: The experiences of lesbian, gay, bisexual, transgender, and queer youth in our nation's schools." 2016. GLSEN.

All students deserve a safe school environment, and protecting transgender students helps ensure that they have the same opportunity as their classmates to fully participate in school.

**SCHOOLS ACROSS THE COUNTRY HAVE SUCCESSFULLY SUPPORTED TRANSGENDER STUDENTS WHILE PROTECTING THE SAFETY AND PRIVACY OF ALL STUDENTS**

School administrators have long worked to accommodate the needs of their students without banning transgender students from common spaces. Hundreds of school districts across the country have successfully worked to ensure that transgender students have access to facilities that match their gender identity while still protecting the privacy and safety of all students.<sup>18</sup> Additionally, 13 states and the District of Columbia have

Figure 1: Safe Schools Non-Discrimination Laws



Source: Movement Advancement Project, Equality Maps, current as of April 1, 2017. For updates see [http://lgbtmap.org/equality-maps/safe\\_school\\_laws](http://lgbtmap.org/equality-maps/safe_school_laws).

explicit laws prohibiting discrimination in education based on gender identity and sexual orientation. These state laws protect transgender students from discrimination by staff, faculty, and students, including being unfairly denied access to facilities. More than 18 million students attend public K-12 schools within the 13 states and District of Columbia that have LGBT non-discrimination statutes.<sup>19</sup> Additionally, there are four states wherein relevant state agencies have issued guidances for educators and school officials regarding the treatment of transgender students. The guidelines explicitly state that transgender students are to be able to access the restroom and locker room that correspond to the student's gender identity.

Despite the successful experiences of schools nationwide, opponents of transgender-inclusive school policies continue to argue that allowing transgender students to access bathrooms compromises the safety and privacy of other students. Of course, safety and privacy in restrooms and locker rooms are an important concern, which is why having inclusive school policies doesn't affect schools' legal obligation to ensure safe facilities and to act if a student engages in inappropriate behavior or tries to invade someone's privacy. In short, a school's responsibility and ability to keep all students safe is not compromised by allowing a transgender student to use the facilities consistent with their gender identity. Similarly, a student cannot

simply abuse policies protecting transgender students and "pretend to be transgender for a day" to enter the bathroom or locker room of the opposite sex. And if someone abuses any school policy to harm another student or invade their privacy, schools can and will stop such behavior as part of their legal obligation to provide a safe learning environment for all students.

However, such interventions simply haven't been necessary because, as schools with inclusive policies know from first-hand experience, these inclusive policies simply do not cause an increase in student misconduct. Contrary to fears raised by some, inclusive policies are working. Recognizing that all students, including transgender students, care about safety and privacy in restrooms and locker rooms, there is generally much more privacy afforded students today than even 10 years ago and certainly more than decades ago. This makes it easier to ensure that all students' needs are met without banning transgender students from bathrooms and locker rooms. And schools across the country have successfully worked to ensure that transgender students have access to facilities that match their gender identity while still protecting the safety and privacy of all students.

Schools have worked to provide additional privacy for students who want it, while also ensuring that transgender students are not singled out and forced to use segregated facilities. For example, Atherton High School, in Jefferson County, Kentucky, issued a policy that offers examples of accommodations to address any student's request for increased privacy: "use of a private area within the public area of the locker room facility (e.g. nearby restroom stall with a door or an area separated by a curtain); use of a nearby private area (e.g. nearby restroom); or a separate changing schedule." Also, guidelines in Washington State maintain that any student who wants increased privacy "[has] the option to make use of a separate restroom and have their concerns addressed without stigmatizing any individual student."<sup>20</sup> These policies make clear that no student is forced to use a separate space and that special accommodations can be made available for any student, regardless of the reason for the request.

But these aren't the only schools who have successfully implemented inclusive policies. School administrators representing schools and districts from 31 states and the District of Columbia submitted an amicus brief in the Gavin Grimm case stating that their collective real-world experience shows fears around

inclusive policies are baseless. The administrators informing the brief are collectively responsible for educating approximately 2.1 million students annually and submitted the following argument:

*"[The administrators'] collective experiences refute the hypothetical concerns raised here by Petitioner Gloucester County School Board: that allowing all students to access sex-specific facilities and amenities that match their gender identity will lead to general disruption; will violate the privacy or "comfort" of other students; or will lead to the abolition of gender-segregated facilities and activities for all students. [They] have addressed and in some cases personally grappled with many of the same fears and concerns in their own schools and districts. However, in [their] professional experience, none of those fears and concerns has materialized in the form of actual problems in their schools. Instead, inclusive policies not only fully support the reality of transgender students' circumstances, but also foster a safer and more welcoming learning environment for all students."*<sup>21</sup>

Ultimately, transgender-inclusive policies ensure that all students, including transgender students, are able to learn and thrive as equal members of the school community. For transgender students, having a supportive policy was related to a lower likelihood of gender-related discrimination — specifically, being prevented from using bathrooms/locker rooms of their gender identity, wearing clothes not deemed appropriate for their legal sex, and using their preferred name and pronoun.<sup>22</sup>

## LACK OF EXPLICIT FEDERAL PROTECTIONS LEAVES TRANSGENDER STUDENTS AT RISK

Federal law currently ensures access to education regardless of numerous characteristics, including race and sex. It does not, however, explicitly prohibit discrimination in education based on gender identity. A majority of courts to have considered the issue have recognized that discrimination based on gender identity against transgender people is discrimination based on sex. However, not all courts agree and law in this area is not yet settled.

In 2014, under the Obama Administration, the Departments of Justice and Education issued official

guidance clarifying that transgender students are protected from discrimination in education based on Title IX's prohibition on sex discrimination.<sup>23</sup> Relying on this interpretation, the Department of Education sent a letter to school districts in 2016 indicating that as a result of Title IX's prohibition on discrimination in education based on sex, transgender students must be treated with respect and, among other things, be able to access sex-segregated facilities such as restrooms and locker rooms in accordance with their gender identity.<sup>24</sup>

However, in early 2017 under the Trump Administration, the Departments of Justice and Education rescinded that guidance. The practical effect of rescinding the guidance is that the federal government is no longer instructing schools that they have an obligation to treat transgender students with the same dignity as any other students, including when it comes to restroom access, and that the government has signaled that it may not fully enforce Title IX's protections.

Rescinding the guidance did not undo existing legal protections for transgender students that were affirmed by numerous federal courts. It did however lead the U.S. Supreme Court to withdraw its decision to hear arguments in the case of Gavin Grimm. In this case, the Supreme Court was set to consider, in part, arguments as to whether Title IX's prohibition on sex discrimination does, in fact, include discrimination based on gender identity. However, the lower court relied heavily on the prior guidance from the federal government in finding that transgender students are protected under Title IX. With the original guidance being withdrawn, the Supreme Court sent the decision back to the Fourth Circuit of Appeals to reconsider the case.<sup>25</sup>

Of course, the ongoing federal court cases do not directly impact transgender students who have protections under their state's law, and for the most part, also do not impact students who live in a supportive local school district. Yet for many transgender students, the lack of clarity regarding federal law and the current legal challenges call into question whether they can safely attend school. It also sends a signal that transgender students cannot count on the support of the federal government, despite the positive real-world experiences of schools with inclusive policies covering millions of students across the nation.



Additionally, many of these bills are particularly harmful as they effectively override transgender-inclusive policies at the school district level. They also tie the hands of local school administrators to find solutions that meet the needs of their students. Instead, school administrators would no longer be allowed to support transgender students in their schools, and these students would have little legal recourse or administrative support should they experience restroom discrimination. Worse still is that this could amount to a complete policy reversal at the school—this would essentially pull the carpet out from under transgender students who “came out” in a presumably supportive environment who then suddenly find themselves in a hostile environment, unable to go back in the closet. Further, some bills, like that proposed in Kentucky, include clauses that leave administrators and teachers open to legal charges brought by parents if they are supportive of a transgender student who accesses a restroom that aligns with the gender they live every day.

## CONCLUSION

Schools across the country have a legal obligation to enforce policies that protect students from harassment and discrimination—and that obligation includes protecting transgender students from discrimination, harassment, and violence. Unfortunately, too many transgender students experience school to be a place where they are unsafe and unsupported—a place where they can’t even safely use the restroom. A school’s responsibility and ability to keep all students safe is not compromised by allowing a transgender student to use the facilities consistent with their gender identity. When schools deny transgender students access to these facilities, they are inflicting profound harm on these students, and making it impossible or unsafe for some transgender students to attend school at all.

Many school districts and states know that ensuring safety for transgender students does not compromise, but rather expands, their commitment to all their students. In the absence of explicit federal protections and in the face of an onslaught of anti-transgender state legislation, school administrators and teachers have the obligation to create a safe and inclusive school environment for all students, including transgender students.

## Transgender Students are Affected by Numerous School Policies

This report focuses on transgender students and school facilities, but there are a number of laws and policies that impact transgender students at school. These policies generally fall into three areas: Curriculum, Health & Safety, and Equal Access.



### Curriculum

All students, including transgender students, deserve access to academic content that is accurate, fair, and does not stigmatize them. Some states and school district have proactively integrated LGBT-specific content into their subject requirements through LGBT-inclusive curriculum policies to protect transgender students from stigmatization in the classroom. In California, for example, the Fair, Accurate, Inclusive and Respectful (FAIR) Education Act requires better representation of the LGBT community in academic content.

However, seven states have policies that restrict the discussion of LGBT people and issues (including sexual health and HIV/AIDS awareness) in a positive light. These policies, known as “Don’t Say Gay” laws, are generally written to regulate sexual health education, but are often misapplied by schools to exclude LGBT topics from other parts of the curriculum, school events and programs, and even extracurricular activities including GSAs (Gay-Straight Alliances or Gender and Sexual Alliances).



### Health & Safety

Students spend upwards of seven hours of each day in school and school administrators and teachers have a responsibility to provide all students, including transgender students, with a safe and affirming place to learn during those hours. Some general policies are meant to provide an environment that affirms transgender students’ identities, including when it comes to how they can dress, how they’re addressed, and what school records they can change. These policies ensure that transgender students can live and go to school in a way that is consistent with their gender identity.

Two state and local policies designed to protect transgender students from harm are anti-bullying laws and conversion therapy bans. Anti-bullying laws protecting transgender students prohibit bullying and harassment based on gender identity and often require anti-bullying training for students, staff, and faculty. Nineteen states and D.C., as well as hundreds of school districts across the country, have such anti-bullying policies in place.

Conversion therapy bans safeguard transgender students from harmful practices aimed at “correcting” their gender identity or expression. In the five states and D.C. and handful of cities with conversion therapy bans, school guidance counselors and other mental health professionals are prohibited from subjecting transgender minors to conversion therapy. In other states, like Tennessee, laws explicitly protect therapists’ and guidance counselors’ ability to engage in conversion therapy.



### Equal Access

Schools also provide students with opportunities for enrichment and personal development through intramural sports, clubs, and extracurricular activities and all students should be able to access these opportunities equally. Students should not be excluded from these integral components of school life just because they are transgender. As discussed in the report, non-discrimination policies protect transgender students from separation and isolation in school facilities, but they also protect transgender students from being unfairly excluded from participating in activities after school and during school hours. These policies also protect LGBT clubs like GSAs from being treated differently than other student clubs.

A number of states have taken steps to unfairly limit access to school sports and clubs for transgender students, for example, by requiring them to compete on sports teams that correspond to the sex listed on their birth certificate rather than the gender they live everyday.

## ENDNOTES

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- <sup>8</sup> *Ibid.*
- <sup>9</sup> *Ibid.*
- <sup>10</sup> *Ibid.*
- <sup>11</sup> *Ibid.*
- <sup>12</sup> National Center for Transgender Equality. "Harassment of Transgender People in Bathrooms and Effects of Avoiding Bathrooms." July 2016. <http://static1.squarespace.com/static/54f76238e4b03766696d8f4c/t/5782a8d9197aea57b589608/1468180715744/USTS-Preliminary-Findings-July-2016-2.pdf> (accessed March 15, 2017).
- <sup>13</sup> "The 2015 National School Climate Survey: The experiences of lesbian, gay, bisexual, transgender, and queer youth in our nation's schools."
- <sup>14</sup> Lily Durwood, Katie A. McLaughlin, and Kristina R. Olson. "Mental Health and Self-Worth in Socially Transitioned Transgender Youth." 56 *Journal of the American Academy of Child & Adolescent Psychiatry* 116, 116 (2017). [http://www.jaacap.com/article/S0890-8567\(16\)31941-4/abstract](http://www.jaacap.com/article/S0890-8567(16)31941-4/abstract) (accessed March 15, 2017).
- <sup>15</sup> "The 2015 National School Climate Survey: The experiences of lesbian, gay, bisexual, transgender, and queer youth in our nation's schools."
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- <sup>19</sup> Estimate based on publicly available data of K-12 student populations from the U.S. Department of Education, National Center for Educational Statistics. (accessed January 2017).
- <sup>20</sup> U.S. Department of Education. "Examples of Policies and Emerging Practices for Supporting Transgender Students." May 2016. <https://www2.ed.gov/about/offices/list/oes/osh/osh/emergingpractices.pdf> (accessed March 15, 2017).
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- <sup>25</sup> "G.G. v. Gloucester County School Board."
- <sup>26</sup> Transgender Law Center, Whitaker v. Kenosha Unified School District. <https://transgenderlawcenter.org/archives/category/cases/whitaker> (accessed March 16, 2017).
- <sup>27</sup> Lambda Legal, Evancho v. Pine-Richland School District. <http://www.lambdalegal.org/in-court/cases/evancho-v-pine-richland-school-district> (accessed March 16, 2017).
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## ABOUT THIS SPOTLIGHT

This report is part of an ongoing series that will provide in-depth analyses of laws and policies tracked at the Movement Advancement Project's "Equality Maps," found at [www.lgbtmap.org/equality-maps](http://www.lgbtmap.org/equality-maps). The information in this report is current as of the date of publication; but the [online maps](#) are updated daily.



movement advancement project ▶

3020 Carbon Place • Suite 202 • Boulder, CO 80301  
[www.lgbtmap.org](http://www.lgbtmap.org)



110 William Street • 30th Floor • New York, NY 10038  
[www.glsen.org](http://www.glsen.org)