



Supporting LGBTQ+ Youth When Policies Mandate Discrimination

States and individual school districts continue to enact or consider harmful policies that target LGBTQ+ youth. These policies vary, but common requirements include: prohibition of use of school facilities or participation in school sponsored activities (including sports) that align with a student's gender identity; parental consent to have a student's gender identity affirmed and acknowledged in school; mandatory parental notification when a student discloses they may be questioning their sexuality or gender identity; prohibition of classroom instruction on nonheteronormative sexual orientations and gender identities; removal of any classroom decorations that signal support for LGBTQ+ youth (e.g., Pride flags or stickers); and protections for staff who refuse to affirm a student's identity and punitive measures for staff who do. In some states or districts, teachers, school staff, and families who identify as LGBTQ+, and those who advocate for LGBTQ+ youth, are being silenced either directly by policies designed to curtail LGBTQ+ topics and discussions or through harassment for their advocacy efforts. This limits the availability of visible LGBTQ+ adults who youth may look to for mentorship or when struggling with their identity, and it further stigmatizes LGBTQ+ individuals and identities.

A lot of uncertainty surrounds these laws and policies, many of which use intentionally vague language. Existing legal challenges from 20 states¹ to the U.S. Department of Education's (DOE) 2021 interpretation and enforcement of Title IX² and expected challenges to the forthcoming Title IX regulations, both of which affirm that the prohibition of sex-based discrimination includes discrimination on the basis of sexual orientation and gender identity, creates additional confusion. In states that are *not* part of the legal challenge to the 2021 guidance, the DOE's interpretation of LGBTQ+-related discrimination and harassment as prohibited sex-based discrimination fully applies; among other things, this means that the Department will investigate complaints of LGBTQ+-related discrimination and that school psychologists in these states can communicate with confidence that such discrimination is prohibited and that the prohibition is federally enforceable. In the 20 states challenging the 2021 guidance, the DOE's uneven history with regard to LGBTQ+-related discrimination exacerbates confusion.³ What is certain regardless of state, however, is that these policies are in direct conflict with NASP's ethical principles and standards as well as its professional^{4,5} and policy positions⁶, leaving many school psychologists confused about how they can continue to support LGBTQ+ youth in schools when state law or district policy prohibits or impedes such support.

This document contains information to guide ethical decision making, provides strategies to support LGBTQ+ youth, and gives examples of actions school psychologists should engage in to reverse these harmful policies.

¹ Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, Tennessee, South Carolina, South Dakota, and West Virginia.

² <https://www2.ed.gov/about/offices/list/ocr/correspondence/stakeholders/educator-202106-tix.pdf>

³ There is a long history of Title IX being prohibiting discrimination based on sex or gender stereotypes, including specifically as it relates to harassment or bullying of LGBTQ+ students for not acting in conformity with gender stereotypes. Cites: 2022 Title IX NPRML <https://www.govinfo.gov/content/pkg/FR-2022-07-12/pdf/2022-13734.pdf>, 2011 Dear Colleague Letter: <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html>.

⁴ National Association of School Psychologists. (2017). Safe and supportive schools for LGBTQ+ youth (Position statement).

⁵ National Association of School Psychologists. (2022). Safe and Supportive Schools for Transgender and Gender Diverse Students. [Position Statement].

⁶ Resolution on Gender and Sexual Orientation Diversity in Children and Adolescents in Schools <https://www.nasponline.org/x60392.xml>

This document does not constitute legal advice. Each situation will be different based on state or district policy at the time of the decision-making, and school psychologists are encouraged to consult with their supervisors or district counsel for guidance on specific situations.

REVIEW OF RELEVANT PRINCIPLES AND ETHICAL STANDARDS

The NASP *Principles for Professional Ethics*⁷ provide guidance for professional practice and emphasize the responsibility of school psychologists to consider the interests and rights of children and youth as their highest priority in decision making. As such, school psychologists should serve as advocates for all students and speak up for their needs and rights, even when it may be difficult to do so.

When conflicts between ethics and law occur, school psychologists are expected to take steps to resolve conflicts in a problem-solving process with others and through positive, respected, and legal channels. If they are not able to resolve the conflict in this manner, they may abide by the law, as long as the resulting actions do not violate basic human rights. If law or district policy poses a barrier to ethical practice, school psychologists must advocate for changes in those laws or policies and practices to better align them with ethical standards. Ethical principles and standards specific to current efforts related to LGBTQ+ youth are as follows:

Guiding Principle 1.2 Privacy and Confidentiality: School psychologists respect the right of persons to choose for themselves whether to disclose their private thoughts, feelings, beliefs, and behaviors (p. 43).

- **Standard I.2.5 Privacy Related to Sexual Orientation and Gender Identity and Expression:** School psychologists respect the right of privacy of students, parents, and colleagues with regard to sexual orientation, gender identity, or transgender status. They do not share information about the sexual orientation, gender identity, or transgender status of a student (including minors), parent, or school employee with anyone without the individual's permission.

Guiding Principle I.3. Fairness, Equity, and Justice: In their words and actions, school psychologists promote fairness and social justice. They use their expertise to cultivate school climates that are safe, welcoming, and equitable to all persons regardless of actual or perceived characteristics, including race, ethnicity, color, religion, ancestry, national origin, immigration status, socioeconomic status, primary language, gender, sexual orientation, gender identity, gender expression, disability, or any other distinguishing characteristics.

- **Standard I.3.I Discrimination:** School psychologists do not engage in or condone actions or policies that discriminate against persons, including students and their families ... based on actual or perceived characteristics.

Guiding Principle III.2. Forthright explanation of professional services, roles, and priorities: School psychologists are candid about the nature and scope of their services.

- **Standard III.2.3. Priority of Child Welfare:** The school psychologist's commitment to protecting the rights and welfare of children and youth is communicated to the school administration, staff, and others as their highest priority in providing services. School psychologists are ethically obligated to speak up for the interests and rights of students and families, even when it may be difficult to do so.

Guiding Principle IV.1 Promoting Healthy School, Family, and Community Environments: School psychologists use their expertise in psychology and education to promote school, family, and community environments that are safe and healthy for children and youth.

- **Standard IV.1.2 Promoting Systems Change:** School psychologists use their professional expertise to promote changes in schools and community service systems that will benefit children and youth and other clients. They advocate for school policies and practices that are in the best interests of children and respect and protect the legal rights of students and parents.

⁷ National Association of School Psychologists. (2020). *The Professional Standards of the National Association of School Psychologists*.

Guiding Principle IV.2 Respect for Law and the Relationship of Law and Ethics: School psychologists are knowledgeable of and respect laws pertinent to the practice of school psychology. In choosing an appropriate course of action, they consider the relationship between law and the *Principles for Professional Ethics*.

- **Standard IV.2.2. Intersection of Law and Ethics:** School psychologists respect the law and the civil and legal rights of students and other clients. The *Principles for Professional Ethics* may require a more stringent standard of conduct than law, and in those situations school psychologists are expected to adhere to the Principles (p.54).
- **Standard IV.2.3 Conflicts Between Law and Ethical Principles:** When conflicts between ethics and law occur, school psychologists take steps to resolve the conflict through positive, respected, and legal channels. If they are not able to resolve the conflict in this manner, they may abide by the law, as long as the resulting actions *do not violate basic human rights* [emphasis added].

School psychologists must abide by, and clearly communicate, specific limits in confidentiality. These limits must be clearly understood by parents and students before entering into a counseling relationship. In most states, the limits of confidentiality require disclosure when a student is being hurt, hurting themselves, hurting someone else, or is involved in something illegal. In these circumstances, disclosure of relevant information is necessary to maintain safety.

PROMOTING PARENT AND FAMILY ENGAGEMENT

School psychologists understand the importance of parent and family engagement as a key component of school and student success and strive to develop positive and collaborative relationships with parents and families. School psychologists are ethically required to ensure that parents are afforded the opportunity to meaningfully participate in important decisions affecting their own child while simultaneously respecting a student's right to privacy and confidentiality, including respecting a student's decision to not disclose their sexual orientation or gender identity.

When working with students who have disclosed that they identify as LGBTQ+, or are questioning their sexual orientation or gender identity, school psychologists should let each student determine if, how, and when they want to disclose this information. If a student is apprehensive about sharing this information with their families, school psychologists can work with the student to help them plan a way to share their sexual orientation or gender identity with their family in a manner that fosters acceptance and promotes their well-being.

Research from the Family Acceptance Project and others recognizes the importance of family–school partnerships in learning, social–emotional well-being, and gender exploration. School psychologists can work with families to help them better understand a young person's gender diversity and exploration and provide guidance on how to support their child.

There may be times, however, when a young person does not yet feel comfortable disclosing their sexuality or gender identity to parents. Some of these situations may constitute abusive environments which necessitate involvement of Child Protective Services (CPS), but other times a young person may simply be unready to come out to multiple parties. It is imperative to respect a student's pace in the coming out process. Meeting gender diverse students where they are affords school psychologists and the student the time to build bridges to understanding. Communicating this to parents proactively and as concerns arise is part of informed consent.

Ensuring the safety of children and youth is of top priority, and if there is concern that disclosure of a student's sexual orientation or gender identity will endanger a student, school psychologists should follow district/state protocol to report such concerns and ensure safety. In addition, school psychologists work to help families better understand and accept their child's identity and can provide strategies to help them best support their child moving forward. Additional resources to support these efforts are at the end of this document.

STRATEGIES TO SUPPORT LGBTQ+ YOUTH

School psychologists' ethical responsibility and professional priority is to support the mental, emotional, and physical well-being of the students with whom they are working or who seek their help. As outlined in NASP's *Principles for*

Professional Ethics, school psychologists respect the rights and dignity of all persons to have ongoing self-exploration of, education surrounding, and conversations about gender identity and the right to determine when to disclose personal and private information and to whom. While each situation is unique, here are some guidelines and strategies for school psychologists keep in mind.

- Of utmost importance is understanding relevant law and policy that dictates what school psychologists can and cannot do. It is equally important to have a clear understanding of how proposed law or policy would impact practice, so one can provide accurate information to families and students as needed.
- School psychologists must be honest and transparent with students, including explanations of what the law requires. For example, during a formal evaluation with a student who identifies as transgender, if state law or policy requires official documents to contain the student's name and sex as determined by their birth certificate, this should be explained to the student from the outset. The school psychologists should not promise things they cannot do.
- It is appropriate to inform students that they are seen, heard, affirmed, valued, and supported. When law or policy prevents affirmation without parental consent, that can be acknowledged. For example, "[chosen name], you know I respect you and support every student's right to express themselves authentically and have their identities affirmed. However, current school policies/law limit my ability to do so. Let's think of what we can do so you feel supported and safe both at school and at home." For older students, one could share that many adults in the school community also support the student's rights to express themselves and be affirmed and are advocating for policy changes (if local efforts are underway).
- Students should be reminded that the school psychologist can only promise their own behavior, not that of others. No one should placate students by providing false reassurance.
- Families and educators may have to be educated or reminded that **gender exploration** is developmentally appropriate, and many young children go through periods of gender exploration in terms of how they dress and toys they play with. While a child's **gender expression** (gender-specific behavior) may be influenced by societal norms and peer and family relationships, **gender identity** (the internal sense of being a boy, a girl, in between, or something else) cannot be changed, nor can one "teach" a child to identify in a specific manner.
- Acknowledgment that one's gender identity does not align with one's biological sex is not an overnight phenomenon. Before developing the courage to come out to anyone, the young person has undoubtedly been questioning their gender identity for some time. Disclosing this privileged information without the student's explicit knowledge not only undermines the therapeutic relationship but, in the best situations, robs the individual of the opportunity to be affirmed by another person and, in the worst situations, opens them up to possible abuse, neglect, homelessness, shame, and other potentially catastrophic outcomes if their admission is not well received.

ADVOCACY STRATEGIES

School psychologists are ethically obligated to advocate on behalf of all students. This includes LGBTQ+ youth. As further outlined in *Standard 1.3.2 Correcting Discriminatory Practices*, school psychologists should work to correct practices that are unjustly discriminatory or that deny students or others their legal rights. One of the most important ways school psychologists can shape advocacy moving forward is to gain a clear understanding of what a proposed or enacted law/policy requires and what real and potential impact it will have on children, youth, and their families. School psychologists should seek out objective and credible analysis of what the law will and will not do, how it could affect practice in schools, and any new or modified legal obligations they must adhere to. The NASP Policy Playbook provides detailed guidance on using social media and other methods of communication to advocate for needed change and educate legislators on important issues.

If a state has already passed a version of these discriminatory laws or a school board has adopted a similar policy, school psychologists are ethically obligated to engage in efforts to change it. They are encouraged to connect with existing organizations or coalitions with a history of advocating for and with LGBTQ+ youth in these and other efforts:

- Educate the community at large about the impact of the law/policy and seek to build a diverse coalition of support.
- Communicate the impact of a specific law or policies on students, educators, families, school climate, and the community with policy makers and advocate for a reversal or change of policy.
- Gather stories from LGBTQ+ youth and their families. Offer to speak on their behalf if they cannot do so themselves.
- Gather stories from non-LGBTQ+ people about the effects of these policies. Offer to speak on their behalf if they cannot do so themselves.
- Identify local or national organizations that will provide timely updates about impending policy, court cases, or other legal actions that could impact LGBTQ+ youth.
- Work with state associations to mobilize more school psychologists across the state to (a) request meetings with legislators, school board members, and other knowledgeable people; (b) circulate petitions; (c) organize letter or phone call campaigns; and (d) use other communication outlets to show a unified message of support for LGBTQ+ youth and against harmful and discriminatory policy and practice.
- If possible, get involved with community groups that work to support LGBTQ+ youth through advocacy, education, and support.
- Identify key opportunities for change. For example, the election of a new governor, state school superintendent, state legislators, or local school board members could provide opportunity for positive action. Pay attention to the priorities of incoming elected officials and seek allies when possible.

If these laws or policies have not been enacted in their state or school district, it is imperative that school psychologists engage in proactive advocacy to prevent introduction and passage of these policies. Many of the aforementioned strategies apply, but the focus should shift to highlighting the importance of inclusive policy and practice and, if these are currently in place, the positive outcomes of such policy and practice. Additional actions include:

- Communicating with state and local policy makers and the general public (e.g., letters to the editor, awareness campaigns) about the importance of inclusive and affirming school policies for all students, including LGBTQ+ and BIPOC students.
- Identifying key spaces that allow one to influence those with power, influence, or decision-making authority (e.g., town halls, school board meetings, state hearings). Those providing formal comments or testimony should:
 - establish who they are and why they have credibility to talk about the policy and its consequences [including if they are speaking for themselves or have permission to represent an organization or school district];
 - provide quantitative and qualitative data and research from reputable sources that supports their position and shows the negative impacts on all people in a school when discrimination is mandated;
 - clearly articulate exactly what they are advocating for or against at the beginning and end of their remarks;
 - share a personal story about working with LGBTQ+ students and families, loved ones who have been affected by anti-LGBTQ+ policies, or even their own experiences, if they identify as LGBTQ+. (That said, it is important to protect the confidentiality of others involved by not providing identifying information.)
- Educate those in the school and community about LGBTQ+ identities and how to support LGBTQ+ students and families. This can help increase awareness of these issues and shrink public support for policies that mandate discrimination and cause harm.

ADDITIONAL RESOURCES

- NASP Position Statement: Safe and Supportive Schools for Transgender and Gender Diverse Students, <https://www.nasponline.org/x59940.xml>
- NASP Position Statement: Safe and Supportive Schools for Lesbian, Gay, Bisexual, Transgender, Questioning (LGBTQ+) Youth, <https://www.nasponline.org/x26826.xml>

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- APA and NASP Joint Resolution on Supporting Sexual/Gender Diverse Children and Adolescents in Schools, <https://www.apa.org/about/policy/resolution-supporting-gender-diverse-children.pdf>
- NASP FAQ on Gender Inclusive Schools: Policy, Law, and Practice, <https://www.nasponline.org/resources-and-publications/resources-and-podcasts/diversity-and-social-justice/lgbtq-youth/gender-inclusive-schools-faqs/gender-inclusive-schools-policy-law-and-practice>
- GLSEN National School Climate Survey, <https://www.glsen.org/nscs>
- GLSEN State Research Snapshots, <https://maps.glsen.org/state-research-snapshots/>
- Trevor Project 2022 Survey on LGBTQ Youth Mental Health, <https://www.thetrevorproject.org/survey-2022/>
- NASP Handout: Supporting LGBTQ+ Youth During Troubling Times, <https://www.nasponline.org/x42495.xml>
- Family Acceptance Project, <https://familyproject.sfsu.edu/>

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