

Transgender Students Case Law and Policy Update: Title IX and the Vermont Public Accommodations Act

Emily Simmons, VSBA

Director of Legal & Policy Services

Background – Definitions

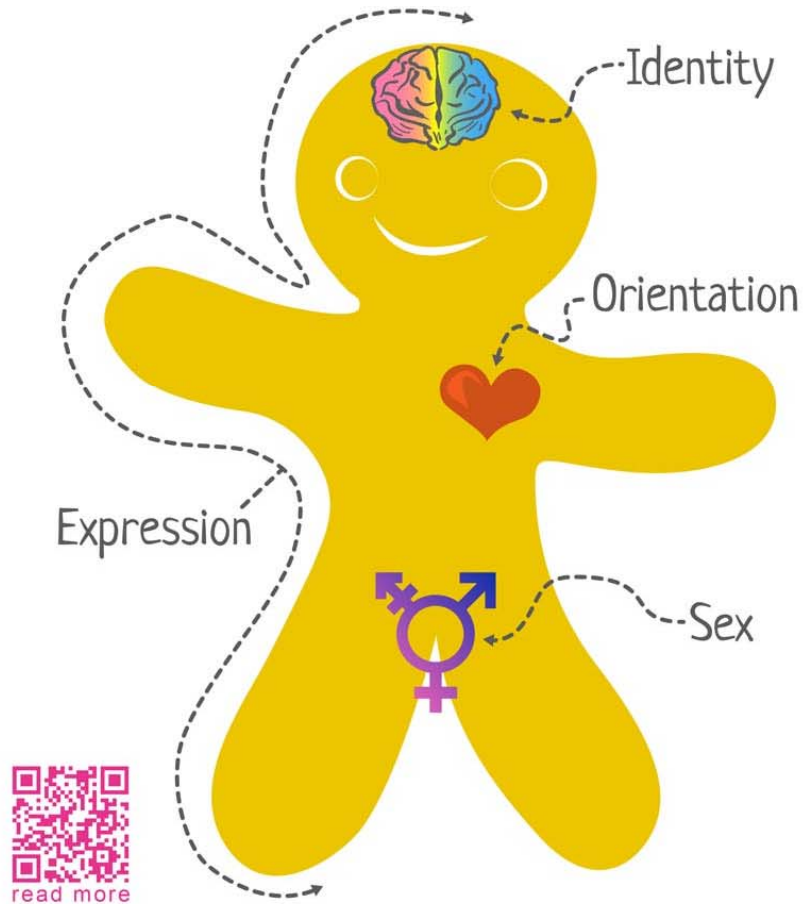
- Sex -a person's biological status, typically categorized as male, female, or intersex (i.e., atypical combinations of features that usually distinguish male from female). There are a number of indicators of biological sex, including sex chromosomes, gonads, internal reproductive organs, and external genitalia
- Gender -the attitudes, feelings, and behaviors that a given culture associates with a person's biological sex. Behavior that is compatible with cultural expectations is referred to as gender-normative; behaviors that are viewed as incompatible with these expectations constitute gender non-conformity.

Background – Definitions

- **Gender identity**- one's sense of oneself as male, female, or transgender... When one's gender identity and biological sex are not congruent, the individual may identify as transsexual or as another transgender category.
- **Gender expression**- the way in which a person acts to communicate gender within a given culture; for example, in terms of clothing, communication patterns and interests. A person's gender expression may or may not be consistent with socially prescribed gender roles, and may or may not reflect his or her gender identity
- **Sexual orientation**- a person's emotional and sexual attraction to other people based on the gender of the other person. Sexual orientation is not the same as gender identity. Not all transgender students identify as gay, lesbian or bisexual, and not all gay, lesbian and bisexual students display gender nonconforming characteristics.

The Genderbread Person

by www.ItsPronouncedMetrosexual.com



Gender Identity

Woman Genderqueer Man

Gender identity is how you, in your head, think about yourself. It's the chemistry that composes you (e.g., hormonal levels) and how you interpret what that means.

Gender Expression

Feminine Androgynous Masculine

Gender expression is how you demonstrate your gender (based on traditional gender roles) through the ways you act, dress, behave, and interact.

Biological Sex

Female Intersex Male

Biological sex refers to the objectively measurable organs, hormones, and chromosomes. Female = vagina, ovaries, XX chromosomes; male = penis, testes, XY chromosomes; intersex = a combination of the two.

Sexual Orientation

Heterosexual Bisexual Homosexual

Sexual orientation is who you are physically, spiritually, and emotionally attracted to, based on their sex/gender in relation to your own.

Context

- 1.4 million American adults, or 0.6% of population identify as transgender
 - American Psychological Association: “It is difficult to accurately estimate the number of transgender people, mostly because there are no population studies that accurately and completely account for the range of gender identity and gender expression.”
- 80% of transgender students reported feeling unsafe at school (Trans Student Equality Resources, 2013)

Context – Federal Law

- Title IX
 - 20 USC § 1681
 - “No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”
- Equal Protection Clause of 14th Amendment
 - [Petitioner’s claim] is that the 14th Amendment’s protections “encompass both discrimination based on the biological differences between men and women and discrimination based on gender nonconformity... By requiring G.G. – a transgender boy – to use separate restrooms because of his “gender identity issues”, the School Board, under color of state law, has treated and continues to treat G.G. differently from similarly situated students based on his gender.” (G.G. compliant, G.G. V. Gloucester County Sc. Bd., 822 F.3d 709 (4th Cir. 2016), mandate recalled, stay granted, U.S., Aug. 3, 2016, petition for cert. filed Aug. 30, 2016.)

Context – Federal Law

1. National Legal Scene

- a. Title IX
 - i. Interpretation by OCR timeline
- b. Equal Protection Clause
 - i. What class? G.G. and other cases
 - 1. Pending SCOTUS review

1. Vermont Legal Scene

- a. PAA – gender identity is protected class
 - i. 1 V.S.A. § 144 (Act 41 of 2007) “Gender identity” means an individual’s actual or perceived gender identity, or gender-related characteristics intrinsically related to an individual’s gender or gender identity, regardless of the individual’s assigned sex at birth.
- b. Law is settled in Vermont. Students must be allowed access to equal opportunity/preferred facilities corresponding to gender identity

1. Policy –

- a. Definitions – pay attention because these are shifting.
-

a. Facilities

a. Pronouns

- a. Confidentiality
 - b. Changes to records
 - i. No legal name change required for “informal” records
-

