



Transgender Students and School Bathrooms



National Association
of Independent Schools



Introduction

Independent schools, like their public school counterparts, are considering how to best serve an increasingly diverse student population. For schools serving transgender and gender-expansive students, the question of how to best meet students' basic needs has proven to be a complex inquiry, one that traverses wide-ranging social, emotional, legal, religious, privacy, and ethical positions. Many educators, parents, and families have grappled with the implications of transgender students using bathrooms and other facilities that align with their gender identity, rather than the sex they were assigned at birth. And as these discussions take place, the daily experiences of students are affected.

As mission-driven institutions, independent schools have a head start in setting the tone for dialogue and discernment about the issues and concerns that can arise when they attempt to meet the needs of transgender or transitioning students. Independent school leaders know that being proactive about matters related to diversity and inclusion yields the most effective outcomes, and this applies to the complexities of gender as well.

While the binary male/female gender paradigm is no longer sufficient for understanding gender identity and gender expression, this perspective is new to many people. School leaders can reduce misunderstanding and conflict by raising awareness and educating constituencies about gender diversity, including transgender status.

Anticipating challenges, listening to concerns from all quarters, and providing concrete responses to questions will allow administrators and other school leaders to successfully navigate most situations this topic reveals. All members of the community benefit when the school gives serious consideration to the issues they are raising.

Many independent schools have welcomed and are effectively serving transgender students; some independent schools have even become models for educational policy and practice in supporting transgender students. Yet other schools have become mired in controversy that all too often focuses on bathroom use. Therefore, NAIS is releasing the following “FAQs” resource about transgender and gender-expansive students using bathrooms consistent with their gender identity.

This guide, developed in partnership with Gender Spectrum, is designed to help you frame the discussion of bathroom and other facilities use so you can enter the conversation with confidence.

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Climate, Supervision, and Behavior

In this document, you will find many of the frequently asked questions about transgender students using bathrooms consistent with their gender identity. Before exploring these, we want to help you frame the discussion so you can enter the conversation with confidence and certainty.

At the core of all of the scenarios below, one or more of three issues can be identified: climate, supervision, and behavior. Being mindful of these three aspects of a school's functioning is critical to responding to bathroom questions and concerns.

- **Climate** refers to the quality, character, and “feel” of a school that you might notice when walking around the campus. A positive school climate is established by setting concrete expectations for student and adult conduct based on a school's mission, vision, and core values. These expectations are reinforced by clear policies, practices, and behavioral norms that are deliberately embodied by all members of the school community. Together these elements contribute to the type of safe, respectful, and inclusive culture desired by independent schools.
- **Supervision** refers to the degree to which adults are paying attention to the school's climate, anticipating and preempting those situations where a healthy, inclusive climate might be compromised. While adults cannot be everywhere at all times, effective and consistent supervision reassures students that the school is monitoring what goes on, is aware of areas where students might feel vulnerable, and responds effectively. Consistent supervision reassures all members of the school community that they can expect to be safe at school. Rather than punitive, supervision is ultimately preventative, a key strategy for reinforcing a school's positive climate.
- **Behavior** refers to the specific actions of adults and students — what they say and do. Establishing a positive school climate and supervising it accordingly presumes that students know how they are supposed to behave and that adults model behaviors that engender safety and respect for all students. Schools cannot assume that every child knows what appropriate behavior looks like. When a school clearly conveys what behaviors are and are not acceptable, the issues related to bathrooms move from assumptions and misperceptions about an individual's intent and instead focus on their observable action.

Options for Everyone

Every child needs to be safe in the bathroom. Across our country, too many students avoid using bathrooms out of fear that another student might mistreat or harm them, emotionally or physically. The consequences of these kinds of behaviors can be severe, impacting a child's health, well-being, and ability to concentrate on learning. By creating a positive climate, supervising it appropriately, and making behavioral expectations clear, schools can reduce all students' fears about safety in bathrooms and other spaces.

For a variety of reasons, however, there will remain a small percentage of students who would prefer a more private space than many school bathrooms allow. Whether this is for cultural or religious reasons, a particular health issue, concerns related to gender, or simple modesty, schools should work actively to identify private options that are available to any student who requests access to them. Regardless of the student's underlying reason for using it, such an option must be free from stigma; a student who uses a private space should not be ridiculed or singled out by staff or students. Providing private bathrooms should be one of many ways in which schools meet a diversity of student needs. At the same time, a private bathroom space must be optional; no child should be required to use such a space.

Gender Support Plans

When schools determine that gender is central to a student's or family's concern about safety and inclusion at school, developing a Gender Support Plan (GSP) can help all parties involved. A GSP is an essential ingredient in proactively preparing for bathroom-related questions. A GSP is created collaboratively among school leaders, the transgender or other gender-expansive student, and the student's family (when appropriate) to address a variety of issues they may face at school, including bathroom use. These plans allow the school to establish the necessary conditions for an individual student to have the most positive experience possible. GSPs also demonstrate the school's commitment to thoughtfully managing the process of addressing the student's needs. However, the development of a GSP should never be used as a

“I’ve memorized both the locations of and fastest routes to the few gender-neutral bathrooms on campus because it’s the only way I can actually use the restroom.”

way to delay a student's ability to live authentically at school. Rather, it should represent to the student the school's ongoing process for managing student needs and a commitment to their safety.

Frequently Asked Questions

In the scenarios below, you will notice that every situation applies to all students and their behaviors in bathrooms. Despite questions or concerns being raised, it will become clear that gender identity and/or the bodies of students are not the variables that need to be accounted for. Instead, focus must be on school climate, supervision, and behavior. These, along with non-stigmatized bathroom options and established processes for working with transgender or non-binary students, will allow schools to address the various questions and concerns that are raised by parents, staff members, and students.

Why can't transgender students just use a private bathroom?

Transgender students can face many barriers to acceptance at school, and requiring them to use a bathroom that is designated especially for them is tremendously stigmatizing. A school's insistence that they be segregated from their peers also sends a message that the student's gender identity is not real or valid. This represents an official refutation of the child's sense of self. Coming from the very adults charged with protecting them, this can be devastating to the child's sense of safety. If forced to use a private space, many transgender students will simply not use any bathroom at school, compromising their health and interfering with their ability to focus on learning as they monitor their water intake, avoid foods that will make them thirsty, and/or try to wait until they get home to go to the bathroom. Make no mistake about it: Not allowing a transgender student to use the restroom consistent with their gender identity causes harm — emotionally, physically, academically, and socially. It is not a matter of discomfort. Explicitly denying a transgender student access to the bathroom corresponding to their gender identity endangers their health and well-being.

What if my child does not feel safe or comfortable being in the bathroom with a transgender student?

Lack of safety and lack of comfort are two different concerns and require different responses from schools. Independent schools are routinely sought out by parents and families seeking safe, diverse, academically and intellectually stimulating learning communities. Routinely, schools' handbooks and codes of conduct promise learning environments free from bullying and harassment.

In order to meet these expectations, most schools have policies and practices in place to prevent behaviors such as verbal harassment, physical intimidation, inappropriate touching, or invasion of a student's privacy. When these policies are violated, schools take action.

Research shows that a school's responsibility to keep all students safe is not compromised by policies allowing transgender students to use bathrooms consistent with their gender identity or by the presence of transgender students in bathrooms. A student's mere presence does not make them a threat to others, and their use of bathroom facilities does not make other students unsafe.

Comfort, on the other hand, is a separate issue. For any number of reasons, a student may not feel comfortable being in the bathroom with other students and may require increased privacy. Remedies for these situations include providing more private options, such as a staff bathroom, other single-stall bathrooms, or a bathroom in the nurse's office. Regardless of gender, any student should have access to these alternatives, but no students should be forced to use alternative facilities because some of their peers are made uncomfortable by their presence. In our experience, when schools make these alternative options available, very few students choose to use them. Their availability is, however, an effective strategy to improve the school climate for those who choose to make use of them.

What if my child is worried about seeing the genitalia of another student or another student seeing their genitalia?

Most students are quite self-conscious about their peers seeing their bodies. With this in mind, it is imperative that schools be specific about which behaviors are and are not acceptable in the bathroom. Appropriate behaviors include respecting the privacy and honoring the personal space of other students using the facility. Expectations for all students in any school context should also include a prohibition against leering at another student or making disparaging comments about another student's body. Students should not see one another partially undressed in the restroom. If for some reason a student needs to disrobe, they should do so privately in a stall or in one of the private spaces described above. These expectations apply to all students.

Regardless of gender identity, it is inappropriate for any student to actively attempt to view another student's genitals. Such behaviors clearly create an unsafe school climate, and may well constitute sexual harassment. Schools have an obligation to respond to such occurrences and have procedures for doing so.

With regard to transgender students, several important ideas must be considered. Even more

Q: When a business/school/institution decidedly and clearly shows that it does not recognize and support all gender identities, what effect does this have on you?

A: “My guard is up, I find myself mentally apologizing for being present (as it is clear I am not welcome there), and I try to avoid that business/school/institution as much as possible for fear of physical harm and verbal abuse.”

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than their cisgender peers, the vast majority of transgender youth have no desire for anyone to see their bodies. They will typically go to significant lengths to ensure that this does not occur. It is extremely unlikely that another student will see their body unless deliberately trying to do so. In fact, this is a very common fear for many transgender youth and their families and something that schools should be prepared to address in the development of a student’s GSP. It should also be noted that much of the fear about transgender students in bathrooms rests on the false notion that a transgender student wants access for an improper purpose, namely to leer at other students. Research has shown that this is not an issue in schools with policies that ensure that transgender students can use the bathroom aligned with their gender.

Once again, any student who feels uncomfortable in the student bathroom for any reason should be given the option to use a more private facility as described above.

What is there to prevent a student from pretending to be transgender in order to go into another bathroom (i.e., a boy pretends to be a girl so he can enter the girls’ bathroom)?

Kids simply do not announce that they are transgender on a lark. In the experience of the many schools in states across the country that have had policies in place for years providing transgender students access to the facilities consistent with their gender identities, students have not asserted false gender identities to gain access to facilities. In a recent study of 17 public school districts with such inclusive policies — districts that together serve over 600,000 students — not a single one reported such scenarios. The total number of students served in these districts is close to the total number of students enrolled in independent schools.

Should a student enter bathroom facilities without permission (e.g., on a dare from a classmate), they are violating the school’s rules that likely existed long before schools gave

transgender students access to the facilities matching their gender identity. Whether students enter facilities without permission will be a matter of the climate and level of supervision at the school; this is entirely unrelated to whether the school has a policy of giving transgender students access to bathrooms based on gender identity. Furthermore, the systematic establishment of Gender Support Plans for transgender students will serve as an effective checkpoint for distinguishing between an authentic versus a disingenuous request by a student to use a different restroom.

What should a staff member do if a student requests to use the bathroom consistent with their gender identity and the teacher is unaware that the student identifies as transgender or non-binary?

A staff member caught off guard by a student's use of — or request to use — a restroom they've previously not used might be unsure of how to respond. In such instances, it is critical that the adult proceed respectfully in addressing the situation. This could include speaking privately with the student and inquiring about the request: "I just want to check in and see if this is something new for you. Is using that restroom related to your gender identity? Are there other ways we might support you around your gender at school?"

This would be an ideal time to raise the need for developing a Gender Support Plan with the student in order to identify bathroom as well as other gender-related needs. If for any reason the staff member does not feel comfortable in such an instance, they should be instructed to tell the student that they want to ensure that the child will be supported and request that they be able to share the student's request with a school administrator or counselor.

Are there specific legal requirements associated with allowing or not allowing transgender students to use bathrooms consistent with their gender identity?

Independent schools that take federal funding or participate in federal programs must comply with Title IX. There is much controversy about whether Title IX includes protection for transgender students, including affirmatively allowing transgender students to use the bathroom of their identified gender. Although previous guidance from the Department of Education was recently rescinded, federal courts have consistently ruled that Title IX does provide such protection. All independent schools must also be aware of state and local laws and cases related to this issue, regardless of funding, as this is an area of the law that is growing and changing rapidly.

“As a transguy, simple things like using the bathroom become stressful. When schools recognize and support all gender identities, I can finally be stress-free knowing that, though I’m in public, I’m in a safe and supportive environment.”

Do I have to worry about parents of other students filing a suit against my school or me because transgender students are allowed to use bathrooms consistent with their gender identity?

There is nothing that prevents a parent of any student from filing a lawsuit against an independent school or employee. However, a lawsuit is more likely to arise from a transgender student who is harassed, discriminated against, or otherwise treated differently because of the student’s gender, particularly if such treatment is contrary to the school’s policies, what has been communicated to the student or parents in creating expectations, or is in violation of state or federal law. This is yet another reason why it is incumbent upon schools to create a safe school climate, supervise it appropriately, and clearly articulate expectations about acceptable behaviors.

As to the wider community, schools have found value in offering parent education sessions on gender and gender identity as part of their early and ongoing transition planning. Many of these sessions make wise use of community resources while taking care to respect the needs and desires of a transitioning student and their family. Teaching all parents and caregivers about gender assists them in talking about gender differences and expansiveness with their children.

What if the bathroom that corresponds to the transgender student’s gender identity would not be safe for the transgender student?

If school administrators believe they cannot provide a student with safe facilities, including student bathrooms, then administrators should discuss this with the student during the creation of the GSP. The objective is not to convince the transgender student to rescind the request but to acknowledge that the school climate and associated supervision protocols need to be better developed to support the student’s safety. Potential options for bathroom access should be discussed, such as including greater freedom to use the bathroom during class time, increased teacher presence around bathrooms in between classes, or a “buddy system.” But

again, a transgender student should never be forced or pressured into using alternate facilities so that school or district personnel feel more comfortable. Furthermore, the issues related to the transgender student's safety are likely making other students feel unsafe as well. Thus, in addition to addressing this concern with the transgender student, administrators should also identify ways to improve the school climate so that all students can feel safe in the bathroom.

What about students with a non-binary gender identity? Are they allowed to simply switch back and forth whenever they choose?

Students who are non-binary do not identify as either a boy or a girl. School personnel may be confused by the ever-growing variety of labels with which students identify their gender, but addressing bathroom use does not have to be complicated. Schools can accommodate non-binary students by putting a Gender Support Plan in place identifying which bathroom the student will use. What is essential in situations involving non-binary students is working on a case-by-case basis around the student's needs. Our experience has been that doing so within a school climate that is positive and well supervised, with clear expectations for how students are supposed to behave and options for students who request them, non-binary students using restrooms does not result in difficulties for anyone on campus.

What can I say to parents or students who are genuinely uncertain about the idea of transgender students using bathrooms?

It can be easy to assume that a parent or student who voices uncertainty about transgender students using bathrooms consistent with their gender identity is insensitive, uncaring, or even bigoted. In our experience, that is rarely the case. Most people have never known, or at least been aware of knowing, a transgender person. This lack of familiarity, as well as the public discourse, which tends to characterize transgender people as scary or threatening, can create uncertainty, discomfort, and sometimes fear. Unfounded as it may be, it is nonetheless often a sincerely held belief.

Thus, in encountering the concerns of others, begin by assuming that they are being raised with positive intent. Recognize and affirm that they may not be familiar with any transgender or gender-expansive children or youth. Reassure them that this is new for many people, perhaps including yourself. Being uncomfortable with something new is natural. Reinforce that your number one priority is making sure that every child is safe at school. Every student deserves to use bathrooms and other school facilities and participate in school programs without worrying about being harmed or mistreated. Emphasize the seriousness with which you take any person's behaviors that make another student unsafe.

Ask them to detail the specific concerns they have. More than likely, these concerns will be one or more of the ideas described above. Try to help them consider for a moment what they would want the school to do if their own child was perceived to be different from the other students, be it for their religion, ability, size, or another frequently misunderstood aspect of identity. Ask them how it might feel for such a student to be the subject of others' rejection. If, after all of that, the parent is still concerned about their child using a bathroom that transgender students are also using, gently remind them that you are more than happy to provide their child with a private option. If any student is not comfortable, for any reason, then they can have access to a space where they have the degree of privacy they need and where they will not be worried about the presence of another student.

Given the importance of having options for all students, some schools consider moving toward a campus in which all bathrooms are "gender neutral" or "all gender." If these are single-user bathrooms, there seems little reason to keep these designated by gender. Like those in our homes, such bathrooms are available to anyone. Gender neutral can also refer to multi-stall bathrooms that can be used by anyone regardless of gender. These are bathrooms where it is likely that one would encounter people of any gender at the sink or coming in and out of stalls. Having some or all multi-stall bathrooms declared "gender neutral" dispenses with labeling them as "male" or "female," instead opting for signs that indicate anyone is able to use that facility.

If your school decides to create single-user or all-gender bathroom facilities, we recommend doing so with an accompanying education plan for informing your community about the purposes for taking this step, and to do so respectfully and with sensitivity to the many viewpoints about this topic. Schools that consider moving toward all-gender bathrooms should

Q: When a business/school/institution decidedly and clearly shows that it recognizes and supports all gender identities, what effect does this have on you?

A: "This makes me feel welcomed and understood. As a teenager, I want to feel the same as all of my peers. When a place validates my identity, it gives me a sense that being transgender doesn't have to be a big thing. It makes me feel reassured, safer, and more normal."

also be mindful of the need for options for any student who might require or prefer a more private space.

Why are we doing this for just one or two students?

The simple answer is that you are not doing this just for a small group of students. Creating spaces that affirm individuals' gender benefits all students. By emphasizing positive climate, effective supervision, and clear behavioral expectations, along with providing non-stigmatized options for any student who needs them, you are establishing conditions that meet the needs of every child.

Conclusion

Community discussions about bathrooms can quickly break down, in large measure because gender is something most of us take for granted — we simply haven't needed to give it a lot of thought.

It is incumbent upon educators charged with addressing these concerns to engage their community in a healthy and well-informed conversation. A major purpose of schools is to provide education and to model ways to resolve issues in a diverse society.

Many of the concerns raised about transgender students and bathrooms are based on a lack of familiarity and knowledge about gender in general and transgender identities specifically. They are based on fear of the unknown or the unfamiliar. As has been the case throughout the history of our democratic society, many of the inaccurate assumptions about gender can be addressed through reasoned conversation and education, the very mission of our schools.

Gender Spectrum's mission is to create a gender-inclusive world for all children and youth. To accomplish this, we help families, organizations, and institutions increase understandings of gender and consider the implications that evolving views have for each of us.

The **National Association of Independent Schools** provides services to more than 1,800 schools and associations of schools in the United States and abroad, including 1,500 nonprofit, private K-12 schools in the U.S. that are self-determining in mission and program and are governed by independent boards. NAIS works to empower independent schools and the students they serve.