



**WASHINGTON SCHOOLS**  
RISK MANAGEMENT POOL

# **Male, Female, Transgender: Who Can Use Locker Rooms and Restrooms in Washington Schools**

prepared for WSRMP by:

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**Introduction**

A new Washington State rule<sup>1</sup> requires that individuals be allowed to use restrooms, locker rooms, and other gender-segregated facilities consistent with their gender expression or gender identity rather than with their biological sex. This rule is causing a significant amount of controversy. Several petitions have been submitted to repeal the rule, many individuals and groups are lobbying both for and against it, and legislative action has been initiated to overturn the rule. At this point, the rule is in effect, but its ultimate fate remains undetermined.

Following the implementation of this rule, concerns have been expressed about its abuse by sexual predators and voyeurs, especially regarding men's presence in locker rooms used by women and girls. On February 8, 2016, a man utilized the women's locker room at Evans Pool in Seattle both before and after his swim, including while young girls were changing for swim practice. Although he had no physical appearance of a transgender person and did not verbally identify as a transgender or gender nonconforming person, he reportedly cited the state rule in defense of his presence in the locker room, stating "the law has changed and I have a right to be here." Reports indicate that he was offered an alternative changing area, but did not use it. The police were not called and no further action was taken.

Many school districts were left with questions regarding the scope of the new rule, whether it must be followed, and how to handle the real-life situations that may arise in its wake. This is a complex issue that raises strong feelings on all sides. There are no quick and easy answers and no one-size-fits-all solution. Each situation that arises must be addressed with sensitivity and compassion for all involved and with professionalism and composure in the face of often-high emotions.

**Guidance**

This brief overview is intended to provide Districts with guidance on what to do, in real time, when an event similar to the one at Evans Pool occurs during public use of a school facility. It also briefly addresses student use of locker rooms and restrooms. Both of these matters raise complex, multi-faceted social and legal issues. If you are faced with one of these situations on an ongoing or regular basis, consultation with an attorney will likely be beneficial.

**Situations Involving Public Use of a District Facility**

**Situation One:** A person who does not appear to express or identify as transgender or gender nonconforming – or whom you suspect may be doing so disingenuously – utilizes a locker room or restroom inconsistent with their biological sex.

In this situation, you should take the following actions:

- Ask the person if the person gender identifies consistent with the segregated locker room or restroom in question.
- If the person refuses to answer or says that they do not gender identify consistent with the segregated locker room, ask the person to leave the locker room or restroom inconsistent with their biological sex and offer them a separate, private area for their use, if available. In addition, call 9-1-1 (or your onsite SRO, if dealing with a student and an SRO is present) and report the event. If the person gives an answer that appears disingenuous, e.g. “Right now, I identify as a woman,” then express your concern with their answer and follow the advice in this bullet point.
- If the person refuses to leave the locker room or restroom, offer a separate, private area to others in the locker room or restroom, if available. Also, let these individuals know that the police have been or are being contacted.
- If the person asks about your District’s policy and procedures, refer them to a specific person within your District who is prepared to address this issue. This name and contact information should be provided to staff members who may need to distribute it.

**Situation Two:** A person who appears to express or identify as transgender or gender nonconforming utilizes a locker room or restroom inconsistent with their biological sex and it is complained about by other users of the facility.

In this situation, you should take the following actions:

- Offer the complaining person a separate, private area for their use, if available. If not available, offer to let them know when the person who identifies as transgender or gender nonconforming is done using the facility.
- If the person asks about your District’s policy and procedures, refer them to a specific person within your District who is prepared to address this issue. This name and contact information should be provided to staff members who may need to distribute it.

**Do not take the following actions:**

In either situation, you should not take the following actions:

- Do not ask a person to prove their gender or gender identity in any way.
- Do not ask a person who expresses or identifies as transgender or gender nonconforming to see their Driver’s License or other form of identification, if not requested of all patrons.

- Do not question a person about their gender identity or gender expression once he/she has made it known.

### **Situations Involving Student Use of Facilities**

There has been a great deal of recent legal guidance regarding how to handle locker room and restroom facilities (among other issues) for students who identify as transgender. In addition to the new Washington rule, the U.S. Department of Education and U.S. Department of Justice issued a joint “Dear Colleague” letter that ties equal treatment of transgendered students to Title IX funding,<sup>2</sup> the U.S. Department of Education issued Examples of Policies and Emerging Practices for Supporting Transgender Students,<sup>3</sup> and the NSBA issued 2016 Transgender Students in Schools: Frequently Asked Questions and Answers for Public School Boards and Staff.<sup>4</sup> Unsurprisingly, these guidance documents are not in complete alignment with one another, and they raise as many questions as they answer. At this time, the law in this area is not settled. So what should you do?<sup>5</sup>

If you have a student who identifies as transgender, you should be following your own District policy, which should be reviewed in light of the recent legal guidance. In the event that your District utilizes the WSSDA Model Policy, locker room usage by transgender or gender nonconforming students should be assessed on a case-by-case basis, in line with the goals outlined in the Policy. If your discussions with a student to whom such a policy applies become complicated, we advise you to contact the WSRMP and/or your general counsel for further advice.

On the other hand, if you have a student who has historically not identified as transgender or gender nonconforming, who utilizes a restroom or locker room inconsistent with their biological sex apparently disingenuously (perhaps in response to the new Washington rule or national guidance), you should take the actions outlined in Situation One, above, and consider disciplinary action in accordance with existing District Policy. No existing laws, nor any of the current legal guidance, provides access to locker rooms and restrooms of the opposite sex to males or females who are not transgender.

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<sup>1</sup> WAC 162-32-060 went into effect on December 26, 2015.

<sup>2</sup> Catherine E. Lhamon & Vanita Gupta, *Joint “Dear Colleague” Letter*, U.S. DEP’T OF EDUC. & U.S. DEP’T OF JUST. (May 13, 2016), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>.

<sup>3</sup> Amy Whalen & David Esquith, *Examples of Policies and Emerging Practices for Supporting Transgender Students*, U.S. DEP’T OF EDUC. (May 2016), <http://www2.ed.gov/about/offices/list/oese/oshs/emergingpractices.pdf>.

<sup>4</sup> NSBA, 2016 Transgender Students in Schools: Frequently Asked Questions and Answers for Public School Boards and Staff (Apr. 27, 2016), [https://cdn-files.nsba.org/s3fs-public/reports/2016\\_Transgender\\_Guide.pdf?fR8tsknQRT6y2\\_Cy.WC6K2y2KEH.ewZg](https://cdn-files.nsba.org/s3fs-public/reports/2016_Transgender_Guide.pdf?fR8tsknQRT6y2_Cy.WC6K2y2KEH.ewZg).

<sup>5</sup> OSPI provides additional resources regarding various issues relating to Lesbian, Gay, Bisexual, Transgender, and Questioning Youth at <http://www.k12.wa.us/Safetycenter/LGBTQ/default.aspx>.