

# Legal Notes Eight:

## Utilizing Special Education Plans to Support LGBTQ+ Youth

All school districts should strive to provide an affirming and safe environment for LGBTQ+ students to fulfill the state's paramount duty under the Florida Constitution to make adequate provision for a safe, secure, and high quality education for all children residing within its borders. Art. IX, § 1(a), Fla. Const. For some students, access to the learning environment may require additional supports, services, and accommodations, which can be provided through special education plans such as IEPs and 504 Plans.

In tandem with Simone Chriss from Southern Legal Counsel ([simone.chriss@southernlegal.org](mailto:simone.chriss@southernlegal.org)), as well as members of our EQFL Florida School Board Attorney Advisory Group, we have created a series of "Legal Notes" to keep handy as you continue to move forward with ensuring the safety and wellbeing of LGBTQ+ students.

*For LGBTQ+ youth, there are a variety of approaches to ensure their experience in school is safe and affirming. We have outlined below how the IEP/504 processes can be used to support our LGBTQ+ students, however this should not be the exclusive means used to provide support to these students, and an IEP or 504 Plan should always be utilized in conjunction with other tools for creating an affirming learning environment. For instance, districts should consider utilizing **Gender Support and Safety Plans** when appropriate for transgender and non-binary students, as these have been implemented successfully in many districts statewide. We urge districts to continue efforts to cultivate inclusion within the classroom, and to always consider the individual and unique needs of each student when evaluating options for providing support.*

- LGBTQ+ students are often deprived of the opportunity to access the learning environment. For instance, when transgender and non-binary students are denied the basic human function of using the bathroom, they are effectively excluded from school; when students are bullied without staff intervention, or dead named and misgendered by teachers, they often experience emotional and psychological distress preventing them from learning.
- **Being LGBTQ+ is not a disability.** However, if LGBTQ+ students have disabilities unrelated to their LGBTQ+ identity **OR** they experience anxiety, depression, or psychological distress as a result of not having their identities affirmed at school or elsewhere, they may qualify for special education services or accommodations. For example, "**gender dysphoria**" refers to the "discomfort or distress that results from an incongruence between one's sex assigned at birth and one's gender identity," which **some but not all transgender people experience** at such a high level that it meets criteria for a formal diagnosis under the DSM-5.
- For **some** transgender students, the **distress caused by not having their gender identity affirmed** at school may manifest in ways (anxiety, depression, school avoidance, inability to concentrate) that may be diagnosable and for which supports and accommodations at school can be helpful (**i.e. ensuring consistent use of affirmed name/pronouns, access to sex-segregated spaces, stress breaks, identifying a support person with whom the student feels safe/affirmed, etc.**)
- When a non-affirming environment impacts a student's ability to learn and succeed in school, the special education laws can be **utilized as a powerful tool to create a more inclusive, safe, and supportive environment** in which they can thrive.
- The services provided through IEPs or 504 plans do not have to be solely academic, and can be used to help students who may be struggling **emotionally, socially, or academically** so that they can remove obstacles, create an affirming environment, and succeed in school.
- **Parents and schools are often resistant** to utilizing the federal protections provided by special education laws because of **misconceptions and perceived stigma** (like the belief that a student with an IEP/504 plan must be placed in separate, specialized classes, when in fact these laws **require** placement in the "least restrictive environment" (regular classes) absent a compelling reason otherwise). These laws are **designed to counteract** the effects of social, emotional and academic difficulties that are hindering a student's progress, not create additional obstacles.
- LGBTQ+ students, and particularly transgender students, are already disproportionately likely to experience harassment & bullying and to feel unsafe at school, which leads to lower GPAs, missing school, dropping out, and other negative outcomes. For some, the supports and accommodations available through an IEP/504 Plan can mitigate these negative outcomes.

## **Potential Supports and Accommodations to Include in an IEP or 504 Plans**

Consistent use of affirmed name and pronouns in all school records, classrooms and other activities, regardless of legal name change or updated birth certificate;

Access to bathrooms and sex-segregated spaces consistent with gender identity;

Identification and designation of a safe space and a supportive adult with whom the student feels comfortable and can check in with when necessary;

Providing a behavior plan, when necessary, to address non-attendance or school aversion to integrate the student safely back into school;

Stress breaks throughout the day to reduce anxiety caused by being in the school environment;

Arrange for counseling in school for the student if it would help them succeed, or counseling incorporating the parents if necessary for student well-being;

Providing LGBTQ+ cultural competency training for teachers and staff to ensure the student has access to an affirming and safe learning environment;

The student's ability to start or participate in the school's GSA (Gay-Straight Alliance or Gender-Sexuality Alliance).

## **The Legal Framework**

### **The Individuals with Disabilities in Education Act ("IDEA"):**

- The IDEA is a federal law that requires that all public schools provide a free appropriate public education (FAPE) to eligible children with disabilities, 20 U.S.C. § 1412(a)(1), which provides the student an Individual Education Plan (IEP).
- The IEP can provide positive supports and accommodations necessary to allow meaningful access to school when it is otherwise being denied (*see examples above*).
- LGBTQ+ students may qualify for an IEP under the categories of "other health impairment" or "emotional disability" due to the anxiety, depression and psychological distress resulting from not having their identities affirmed and respected at school.

### **Section 504 of the Rehabilitation Act ("Section 504"):**

- Section 504 is a civil rights act that protects people with disabilities from being denied benefits or discriminated against in any program receiving federal financial assistance (i.e. public schools). Unlike the IDEA, Section 504 does not specifically list disabilities for eligibility, but defines disability as "an impairment that substantially limits one or more major life activities."
- "Learning" is a major life activity (34 C.F.R. § 104.3(j)(2)(ii)), so a student who is struggling to learn due to a non-affirming environment could qualify for a 504 Plan.
- The 504 Plan can list supports and accommodations needed to create an affirming environment in which the student can thrive (*see examples above*).

### **Know your rights: As we prepare for the start of the upcoming school year, students and parents should understand their rights under the IDEA and Section 504.**

- Request an assessment for qualification for an IEP or 504 Plan - conducted by an assessor who is culturally competent in LGBTQ+ issues. 20 U.S.C. § 1414(b)(3)(A)(1).
- Once eligibility for services is determined, request a meeting with the school and develop the Plan to ensure appropriate supports and accommodations are in place.
- If you need assistance, contact Simone Chriss at [simone.chriss@southernlegal.org](mailto:simone.chriss@southernlegal.org)

## **Questions? Reach out to us at:**

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