

Meet your hosts



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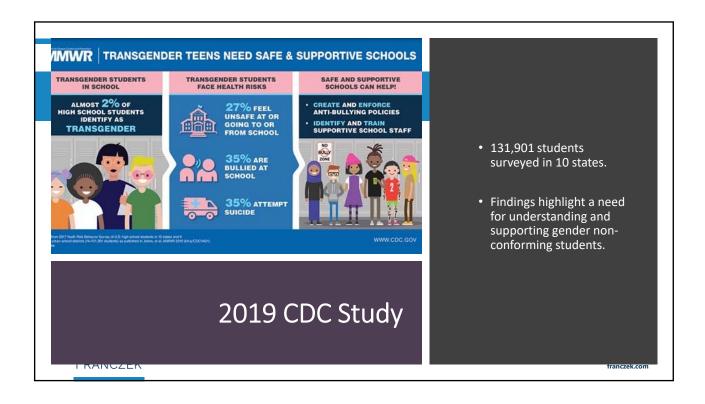
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AGENDA

Background

- General legal protections based on gender identity
- Gender Identity and Special Education
- Summary and Conclusion

Why is this topic important?



Statistics (cont'd)

- More than 66% of transgender students avoid bathrooms at school.
- 71.5% of LGBTQ students avoid school functions.
- 31.8% of LGBTQ students missed school because of feeling unsafe.
- 63.5% of LGBTQ students reporting bullying claimed they received no response from school.

Gender Identity and Special Education

Americans With Disabilities Act

- "Gender identity disorders not resulting from physical impairments" excluded from consideration as disability
- But recent decision in <u>Blatt v. Cabela's Retail</u> (E.D. Pa. 2017) is noteworthy
 - "Gender identity" can reasonably be interpreted as substantially limiting major life activities
 - Expansive interpretation likely to result in increase in transgender-related ADA claims

Section 504

- Physical or mental impairment that impacts major life activity
- Major life activities include learning
- Gender identity is not disability in and of itself
- But 504 plan might be appropriate if mental health associated with gender identity impacts education

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IDEA

- Increasing requests for eligibility under "emotional disturbance" category
- Often seek funding for day treatment, wilderness programs or residential placement
- Must review mental health status within context of developmental history

IDEA (cont'd)

- Gender dysphoria is recognized psychological diagnosis
- Discomfort with incongruity between gender assigned at birth and perceived gender or incongruity between desired gender and gender allowed to be expressed
- Range of gender dysphoria and its impact on ability to access education will determine whether student qualifies for special education

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IDEA (cont'd)

- Two due process cases in California
 - Both involve students transitioning from female to male and who are placed in out-of-state RTCs
 - Both students making educational progress
 - School psychologist recommended no eligibility (depression/anxiety was not of marked degree and could be related to gender dysphoria)

Practical considerations

- 1 IEP/504 documentation
- **2** Parental involvement
- **3** Accommodations
- 4 Student privacy concerns/requests
- **5** Post-secondary transition

Legal Protections

Federal Protections-Still Evolving

- Title IX
- 2016 Dear Colleague Letter (withdrawn 2017)
- 2017 Dear Colleague Letter

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State Law:
The Illinois Human Rights Act

Important Federal Cases

- Whitaker v. Kenosha Unif. Sch. Dist. No. 1, 858 F.3d 1034 (7th Cir. 2017)
- Gavin Grimm v. Gloucester Cty. Sch. Bd., ____ F.Supp.3d ____, 2019 WL 3774118 (E.D. Va. Aug. 9, 2019)(latest ruling)

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Important State Cases

- Maday v. Township High School District 211 (2018)
- Doe v. Lake Park High School (2019)

Summary and Conclusions