


TRANSGENDER UPDATE



"I'm here about the details."

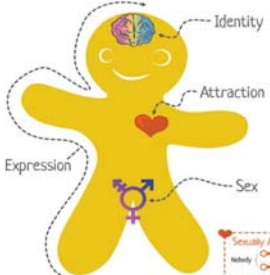
Steve Williams
Bobby Truhe
KSB School Law
(402) 804-8000

steve@ksbschoollaw.com
bobby@ksbschoollaw.com

KSB School Law
@SteveEsteban
@btruhe

The Genderbread Person v3.1

its pronounced **metrosexual**



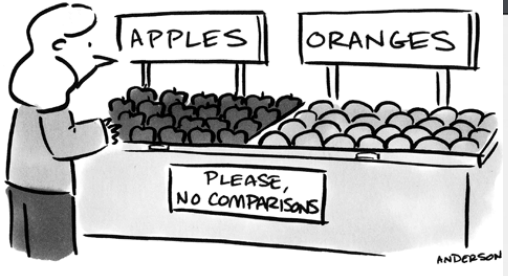
Gender Identity
Nongendered → Woman-ness → Man-ness

Gender Expression
Agender → Feminine → Masculine

Biological Sex
Asex → Female-ness → Male-ness

Sexually Attracted to
Nobody → Women/Women/Transsexual → Men/Men/Transsexual

Romantically Attracted to
Nobody → Women/Women/Transsexual → Men/Men/Transsexual



© MARK ANDERSON
WWW.ANDERSONS.COM

The Legal Tension

- U.S. and Nebraska law: "gender" not protected
 "Disability shall not include homosexuality, bisexuality, transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender-identity disorders not resulting in physical impairments, other sexual behavior disorders, problem gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from current illegal use of drugs"
- OCR/DOJ/EEOC/AG: "gender" is protected
 "[T]he Department of Justice will take the position in litigation that the protection of Title VII of the Civil Rights Act of 1964 extends to claims of discrimination based on an individual's gender identity, including transgender status."

The Push for Added Rights

- U.S. Attorney General: "sex" = "gender"
 - SCOTUS: "Gender norms" discrimination was based on sex (*in one case!*)
 - AG: Gender identity discrimination "in and of itself" is discrimination based on "sex"
- Nebraska law changes?
 - LB 586: protects "sexual orientation" and "gender identity"



Impact on Public Schools

- U.S. DOE/OCR: students should use facilities of their choice
- Virginia school board resolution
 - Limits facility use to “biological genders”
 - Requires unisex/isolated facility accomodation
 - ACLU files complaint with DOJ/DOE
 - DOJ likely to sue school

Impact on Public Schools

- Aurora, IL Board Policy
 - Permitted the students to choose
 - Board called a follow-up meeting 2 days later to rescind policy
 - “[Asst. Supt.] said the policy needed to be updated and changed, we believed her. We had no reason not to believe her.”
 - Board president issued public apology

Impact on Public Schools

- “Kentucky Student Privacy Act”
 - Limits facility use to the “biological sex” as determined by “chromosomes” which “is identified at birth a person’s anatomy”
 - Officials must provide “the best available accommodation” but cannot permit restroom and locker facility use of opposite sex
 - If staff member permits or fails to stop transgender student from using facilities, student may sue the school for \$2,500

Downey Unified School Dist.

- Facts
 - Junior high male presenting as female
 - Principal took makeup
 - Asked S not to discuss identity
 - Couldn't participate with peers in group counseling discussions
 - Forced to sit in the front of the bus alone
 - Called "gay," "fag," and "whore"
 - Said S should transfer

Downey Unified School Dist.

- OCR Settlement
 - Hire an expert (probably OCR's...)
 - Work with expert on "school climate"
 - Permit S to use sex-designated facilities consistent with her identity
 - Draft "Success Plan" for S
 - Remove discipline from S file
 - Amend policies to add "gender ID"
 - Mandatory training and literature

Downey Unified School Dist.

- OCR Settlement
 - Hire an expert (probably OCR's...)
 - Work with expert on "school climate"
 - Permit S to use sex-designated facilities consistent with her identity
 - Draft "Success Plan" for S
 - Remove discipline from S file
 - Amend policies to add "gender ID"
 - Mandatory training and literature

Downey Unified School Dist.

- OCR Settlement
 - Hire an expert (probably OCR's...)
 - Work with expert on "school climate"
 - Permit S to use sex-designated facilities consistent with her identity
 - Draft "Success Plan" for S
 - Remove discipline from S file
 - Amend policies to add "gender ID"
 - Mandatory training and literature

Examples From Nebraska

- Dance team
- Physical education classes
- Makeup and attire



GLSEN Model Policy

- Definitions
- Bullying, Harassment, and Discrimination
- Privacy/Confidentiality
- Student Records
- Names and Pronouns
- Facility and Program Access
- Dress Code
- Student Gender Transitions
- Training and Professional Development

Policy Consideration

- Not legally required
- Avoid sex-assigned facility use
- Keep accommodation and harassment prevention separate
- Your other policies still apply
- Benefits: provides clear guidance
- Pitfalls: provides clear guidance
- Be accommodating without a policy
- Consider other lawsuits, such as First Amendment



TRANSGENDER UPDATE



"Our goal is to establish language that is gender-neutral, ethnic-neutral and age-neutral, while celebrating our spirit of diversity."

**Steve Williams
Bobby Truhe**
KSB School Law
(402) 804-8000

steve@ksbschoollaw.com
bobby@ksbschoollaw.com

 KSB School Law
 @SteveEsteban
@btruhe
