

Formal Opinion of Counsel

I am in receipt of your letter, which asks whether New York’s Gender Expression Non-Discrimination Act (GENDA) protects students’ ability to utilize the “school restrooms and locker rooms” that align with their gender. The answer is yes.

GENDA, Chapter 8 of the Laws of 2019, “reaffirm[ed]” New York State’s commitment “to assure that every individual within this state is afforded an equal opportunity to enjoy a full and productive life ...” To that end, it declared discrimination based on “gender identity or expression” an unlawful practice under the Human Rights Law.¹ GENDA specifically prohibits public schools² from “deny[ing] the use of [their] facilities to any person otherwise qualified, or ... permit[ting] the harassment of any student or applicant ... by reason of ... [a person’s] gender identity or expression.”³

Restrooms and locker rooms are unquestionably “facilities.” And denying transgender students access thereto would be due to, or “by reason of,” their gender identity. The ineluctable conclusion, then, is that denying transgender persons access to restrooms or locker rooms violates GENDA.

The New York State Division of Human Rights (DHR) has reached the same conclusion. In two guidance documents, DHR indicates that the following three scenarios are examples of unlawful discriminatory practices:

- Denying the use of restrooms or other facilities consistent with a person’s gender identity;
- Asking a transgender person to use a single-occupancy restroom because of someone else’s concerns; and

¹ Transgender persons are explicitly included within the definition of “gender identity or expression.” Executive Law § 292 (35) (“a person’s actual or perceived gender-related identity, appearance, behavior, expression, or other gender-related characteristic regardless of the sex assigned to that person at birth, including, but not limited to, the status of being transgender”).

² Executive Law § 292 (39) (c) (defining an “educational institution” as “any public school, including any school district, board of cooperative educational services, public college or public university”).

³ Executive Law § 296 (4). This reflects the New York State Education Department’s longstanding position. *See, e.g.*, New York State Education Department, “Guidance to School Districts for Creating a Safe and Supportive School Environment For Transgender and Gender Nonconforming Students,” Jul. 20, 2015, at pp. 9-10, available at https://www.p12.nysed.gov/dignityact/documents/Transg_GNCGuidanceFINAL.pdf (last accessed May 14, 2024).

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- Requiring individuals to show medical or other documents in order to use facilities, such as restrooms, locker rooms or residential facilities, consistent with their gender identity.⁴

Thus, while I commend the Clarkstown Board of Education for adopting a policy that is inclusive of transgender students, the right to access school facilities exists irrespective of local policy.

American history is characterized by an ever-evolving notion of human dignity. Transgender individuals have joined African Americans, women, individuals with disabilities, Native Americans, Latinos, Asian Americans, and other members of the LGBTQ+ community in demanding the right to be seen in their full humanity. The current of legal equality flows in a single direction—and cannot be held back.

Dated May 14, 2024
Superintendent of Schools
Clarkstown, N.Y.

⁴ New York State Division of Human Rights, “Guidance on Protections from Gender Identity Discrimination Under the New York State Human Rights Law,” Jan. 29, 2020, at p. 3, *available at* <https://dhr.ny.gov/system/files/documents/2022/04/nysdhr-genda-guidance-2020.pdf> (last accessed May 14, 2024) and “GENDA & Educational Institutions Under the NYS Human Rights Law,” Feb. 2024, at p. 2, *available at* <https://dhr.ny.gov/system/files/documents/2024/02/nysdhr-genda-school-handout.pdf> (last accessed May 14, 2024).