

Gender Expansive¹ Individualized Education Programs: New Standard IEP Nonbinary Gender Option

What has changed?

The Oregon Standard Individualized Education Program (IEP) form has been updated to reflect the expectation for a nonbinary sex/gender marker option within student and staff data collections.² This update brings the document in alignment with other guidance related to student records and data collections.

Gender is currently included as part of the Oregon Standard IEP template, but is not a required component of an IEP under OAR 581-015-2200. IEP teams can choose to leave the gender marker field blank. IEP Teams must be offered the ability to select from at least the three legal sex/gender marker options (M, F, and X) if gender is recorded in the IEP. No documentation is required to support a sex/gender marker option.

DEMOGRAPHICS

Student	Resident District	IEP Meeting Date
Gender: __ M __ F __ X Grade: __	Attending District	Annual IEP Review Date
Date of Birth (mm/dd/yy)	Attending School	Amendment Date
Secure Student Identifier (SSID)	Case Manager	Most Recent (re)Evaluation Date
Primary Disability Code & Category	Secondary Disability Code & Category – OPTIONAL	Re-Evaluation Due Date

Why is this change occurring?

This update to the Oregon Standard IEP aligns with both Oregon and federal law as well as best practices in student wellbeing. Beginning with the 2018-19 school year, Oregon was among the first states to require a nonbinary sex/gender marker option in student and staff data collections.³ That includes a student's IEP documentation.

¹ Gender expansive is an umbrella term used to describe people whose gender expression and identity expand beyond perceived or expected societal gender norms. Some gender-expansive individuals identify as multiple genders, some identify more binarily as a man or a woman, and some identify as no gender. Gender-expansive people might feel that they exist among genders, as on a spectrum, or beyond the notion of the man/woman binary entirely. This term is meant to represent the myriad of system-impacted gender identities, expressions, and assignments, including but not limited to transgender, nonbinary, two spirit, intersex, agender, genderqueer, and genderfluid identities, as described in ORS 329.847.

² ODE Executive Numbered Memo: 008-2017-18, New Gender Code for 2018-19, June 21, 2018, <https://www.oregon.gov/ode/about-us/Documents/Executive%20Numbered%20Memo%20Gender%20ID%20for%20data%20collections.pdf>

³ ODE Executive Numbered Memo: 008-2017-18, New Gender Code for 2018-19, June 21, 2018, <https://www.oregon.gov/ode/about-us/Documents/Executive%20Numbered%20Memo%20Gender%20ID%20for%20data%20collections.pdf>

Gender identity is also a protected class under both federal and state civil rights law. Under Oregon law, gender identity is defined as “an individual’s gender-related identity, appearance, expression or behavior, regardless of whether the identity, appearance, expression or behavior differs from that associated with the gender assigned to the individual at birth.”⁴ Title IX prohibits sex discrimination in any federally-funded program, which includes discrimination based on gender identity.⁵ In Oregon, any public elementary or secondary school that receives state funding is prohibited from engaging in gender identity discrimination.

In addition to being the law, ensuring the implementation of policies, procedures, and practices that create a safe and welcoming school environment is the right thing to do and saves lives. When young people are supported in their personal gender identity journey, research shows this increases their academic access and success.⁶ In addition to academic benefits, national research from 2022 indicates that LGBTQ2SIA+ youth who live in a community that is accepting of LGBTQ2SIA+ people reported significantly lower rates of attempted suicide than those who do not.⁷ Ensuring students’ accurate gender is reflected in their IEP is a simple way to support their academic success and mental health.

How should IEP teams implement this change?

Districts should prepare teams to implement this update during annual IEP meetings or as soon as possible following a student, parent, or caregiver request.

Next Steps

Districts should ensure all IEP teams are made aware of this change and are prepared to appropriately document any updates to a student’s accurate gender in the system or forms used by your district.

School districts should also be prepared to ensure a respectful environment which honors a student’s identity in each IEP meeting and when updating records. The recommendations from the Human Rights Campaign’s [Gender & Children: A Place to Begin Checklist](#) may help schools establish an inclusive culture where gender expansive students feel a deep sense of belonging. Strong inclusive cultures in a school generally help to establish the conditions that allow for IEP teams to have the capacity to frame needed conversations about gender respectfully within the IEP meeting.

Gender identity is a protected class under both federal and state civil rights law. In Oregon, any public elementary or secondary school that receives state funding is

⁴ ORS 174.100

⁵ 20 U.S.C. 1681, 34 CFR § 106

⁶ The 2019 National School Climate Survey, GLSEN, 2020 <https://www.glsen.org/research/2019-national-school-climate-survey>

⁷ [2022 National Survey on LGBTQ2SIA Youth Mental Health](https://www.thetrevorproject.org/survey-2022/), The Trevor Project, <https://www.thetrevorproject.org/survey-2022/>

prohibited from engaging in gender identity discrimination. Students cannot be unlawfully discriminated against because of their gender identity. While districts should take affirmative steps to ensure an affirming environment at each IEP meeting, they must also ensure that, in the event of a bias incident, appropriate steps are taken to address any harm caused. ODE has shared [this guidance](#) to support districts in developing policy and procedures to address bias incidents.

Case managers may ask students, if appropriate, which sex/gender marker should appear on their IEP, if any. When asking, case managers should take care to ensure the student's confidentiality and to ask in a respectful manner. For example, it is appropriate to directly ask the student, "Do you want your IEP to indicate Male, Female, or Nonbinary (which is designated with an 'X')?" or to ask "Would you like your IEP to have the same or a different gender/sex marker than your current school records?"

Please note, under FERPA, parents have rights related to a student's record. A school district may therefore be limited in whether or not it can update a student's record to reflect the sex/gender marker asserted by the student; districts are encouraged to consult with their legal counsel with any questions about FERPA and parental rights in a specific situation.

Historical IEP and Assessment Records

Records that districts collect or create as required by federal law, including those records required by the Individuals with Disabilities Education Act (IDEA), must meet legal requirements while balancing respect for student privacy. IDEA records should reflect a student's accurate gender as asserted by the student, if known, including in the sex/gender marker designation and in pronoun use throughout the documentation. Gender is included as part of the Oregon Standard IEP template, but is not required IEP content (OAR 581-015-2200).

IDEA requires the maintenance of historical documentation which may have the consequence of outing a student against their will. Districts must maintain historical records consistent with the requirements of state and federal law, which could include amending them to accurately reflect a student's gender identity when requested by a parent/guardian or eligible student. Districts are encouraged to consult with their legal counsel about the requirements for the retention of records that may out a student and their release under public records law. Federal regulations related to the Family Educational Rights and Privacy Act (34 CFR § 99.20) allow for parents/guardians and eligible students to request the amendment of information in their education records when they believe that the information is inaccurate, misleading, or in violation of their privacy rights. Districts and schools should carefully consider each student's individual context when considering amendment of records. ODE encourages districts to consult with their legal counsel on potential changes in retention schedules and practices in order to ensure the privacy needs of students are honored.

However, even in situations where records have not been amended, districts and school teams should take care to ensure that historical records are stored in an appropriately

confidential manner, that access is restricted to only those with a legitimate educational interest review prior documents, and that, whenever possible, student permission is obtained prior to reviewing any records that out the student. If a district cannot amend the prior IEP document to reflect a student's asserted gender, the district should ensure that the next IEP or other related documentation—such as evaluation or assessment records—fully captures all information from prior IEPs and reflects the gender asserted by the student.

Planning for Gender Expansive Support and Safety for Students served by IEPs

Any student may need additional support and services related to identifying, navigating, and accessing their education. Although there is no specific requirement under the IDEA to include information about the student's gender identity in an IEP, for students served through special education, a student's IEP is intended to be the cornerstone of their educational program. For gender expansive students, there may be a specific need to plan for their support and safety related to their gender identity and/or expression. As such, IEP teams may wish to incorporate student support and safety planning related to gender identity into the IEP document. Teams are encouraged to include a student's support and safety plan as they would a student's health or behavioral health plan.

Please see Chicago Public Schools' [Supporting Gender Diversity Toolkit](#), Egale Canada Human Rights Trust's [Transition Plan for Transgender & Gender Diverse Students](#), and Gender Spectrum's [Gender Support Plan](#) for example student support and safety planning templates.

Additional Information, Resources, and Supports

Additional information and guidance can be found in the [Oregon Department of Education's Guidance to School Districts: Creating a Safe and Supportive Environment for Transgender Students \(2016\)](#). This guidance includes information on student identity and expression (names, pronouns, and self-expression); student privacy; student records; and facilities access.
