

Considerations for Gender-Affirming Facilities

This document is a supplemental resource developed alongside the 2023 Oregon Department of Education’s [Supporting Gender Expansive Students: Guidance to Schools](#) that may be used by districts and community partners who support gender expansive youth in schools. Please visit the [guidance website](#) for additional tools and supplemental resources for supporting students.

The information within the following resource document is not legal advice, nor should it be relied on as legal advice. If you require legal advice regarding the issues discussed in this document, please consult an attorney.

Quick Facts about Gender-Affirming Facilities

ODE encourages schools and districts to review the [Facilities Access section](#) of the guidance, in order to understand legal requirements and research that supports gender-affirming facilities.

- **Oregon state law affirms** that students have the right to use school facilities such as restrooms, locker rooms, and showers in a manner consistent with their gender identity.
- In Oregon, between 28-33% transgender and nonbinary students were prevented from using the bathroom or locker room that aligned with their gender. ([GLSEN, 2021](#))
- Like anything new, **time and student-centered conversations will be needed** to raise awareness of self- and peer-advocacy for gender-affirming restroom policies

Considerations for Restrooms

- Gender-neutral, single-user, or all-user restroom options must meet Americans with Disabilities Act (ADA) **accessibility requirements**, and should be available:
 - **at all times**, not just during school hours to consider after-school events;
 - **unlocked**, *without* requiring a key or permission to use; and
 - **conveniently located**, without the need to travel long distances to use, especially during short breaks between classes.
- Naming conventions other districts and higher education institutions have used or considered: “**All User**,” “**All Gender**,” “**Single User**,” “**Student**,” or simply “**Restroom**” to differentiate from the binary “Boys/Men” and “Girls/Women” signage.
- If a school has **single-user** restrooms or locker rooms available these may be offered as an option for the privacy and safety of gender expansive students, but these should not be offered as the only option. Gender expansive students should be supported to determine which available facilities align with their asserted gender identity.
 - **Why?** While well-intentioned, offering *only* a single-user restroom option (such as a nurse or staff restroom) can increase isolation and stigma for some students, and restricting access to restrooms that align with a student’s gender identity could be discrimination under Oregon law.

Considerations for Locker Rooms

- Some districts and schools are opting to create either a **third all-user option** or **4-6 smaller locker room facilities** that can be dedicated to individual athletic teams or provide multiple options for physical education (P.E.) classes in re-imagining the 2 larger facilities split by binary gender/sex.
- Prioritize **private changing areas** in all locker room facilities to meet privacy needs of all students, especially if offering a third all-user/neutral facility is not currently an option.

Considerations for Signage of Restrooms & Locker Rooms

- When creating a gender-neutral or all-user restroom or locker room use **symbols and words** on external doors and/or internal stalls **that indicate available facilities, not gender/sex marker**.
 - Why? Signage with words and symbols that indicate “Male” or “Female” discourage use by gender expansive students and staff and can perpetuate unsafe environments.
 - Examples: A symbol of a toilet or urinal, wheelchair accessible symbol, symbol of menstrual products, symbol of toilet stalls, symbol of shower stalls, symbol of lockers (see [example here](#)).
- For locker rooms that are designated to teams, rather than by sex/gender marker, consider using **neutral naming conventions** (e.g., “Locker Room A, B, C, D”).
 - Create a protocol for **marking the door with the assigned team and date** with a simple sign to reduce confusion or privacy concerns of players (e.g., “North H.S. Hawks, Volleyball Team, Friday 3/17/2023 3-6pm”).

Considerations for Athletics and Physical Education Classes

- Gender expansive students should be permitted to participate on the team or group **in accordance with their asserted gender identity** when sports and P.E. lessons are separated by sex/gender.
 - Title IX only allows separation by sex/gender in specific, limited circumstances, which includes contact sports during P.E. classes.¹ Schools are encouraged to limit single-sex/gender programming unless explicitly necessary.
 - Schools should be prepared to accommodate all students who do not feel safe or comfortable playing contact sports on either gender-separated team.
- P.E. or Health teachers who **notice recurring absences** in P.E. classes may consider checking in with students with recurring absences to see if their safety needs are being met by the changing facilities, curriculum, and/or dress code required for use. Refer to the [Student Support and Safety Plan Template](#) for ideas.

¹ 34 CFR 106.34(a)(1)

Considerations for Facilities Construction and Renovation

ODE recognizes the tremendous cost required for any construction or remodel efforts and the challenge of funding these efforts.

- **Funding sources** that may be helpful:
 - Bond measures (acknowledging the complexity of this requiring widespread community support and majority vote)
 - Facilities-specific funding from state
 - **Student Investment Account (SIA) funds:** Facility improvements directly related to improving student health or safety are allowable. Facility improvements that are not directly related to improving student health or safety may be allowable and hinge on several variables, including:
 - Identifying how building, expanding, or modifying facilities meets the intent of the SIA
 - Describing how community engagement and input elevates the need to build or expand facilities
 - Articulating how an equity lens was applied in choosing this strategy to address equity-based disparities of student outcomes
 - Providing the context to show there is a true lack of space to execute the strategy and that building or expanding facilities is necessary to implement the strategy
 - **High School Success (HSS) funds:** Facility improvements to support dropout prevention strategies in all high schools could be allowable.
 - For both SIA and HSS funds, if a district did not include them in their 2023-25 Integrated Application, they would need to pursue a plan change. For more information about plan changes, reach out to ODE.EII@ode.oregon.gov.
 - Planned ADA accessibility renovations
- When renovations or larger scale remodels are not an option, districts may consider **smaller scale solutions** such as private changing partitions.
- All **relevant building codes, state and federal laws** apply during construction and renovation, including ADA accessibility requirements.
 - To see examples of similar renovation projects, search [OregonBuys](#) for “restroom” project bids.
- Offer **community engagement opportunities** before making large-scale renovations.

Considerations for Travel & Overnight Accommodations

- Proactively ask gender expansive students about their **safety needs** and which room assignments, restroom, and changing facilities would be the most supportive and available during travel, overnight lodging, and other schools’ facilities.
- **Separate accommodations** may be offered as an option for the privacy and safety of gender expansive students, but these should not be offered as the only option.
 - **Why?** Requiring separate lodging *only* for gender expansive or LGBTQ2SIA+ students may be considered discriminatory, reduces the potential for social connection with peers, and can increase isolation and stigma for students.

- Coaches and school leaders should **proactively inquire about the available facilities options *without outing*** a gender expansive student's identity.
 - Why? Sharing a student's identity without their permission may increase hostility, bullying, or harassment during away games or overnight trips.

Preventing and Responding to Discrimination & Bias

- Prioritize student-led and staff-led conversations about **locker room culture, safety, and group agreements** within Athletics, Health, P.E., and other related activities at the start of every school year, semester, and athletic season.
- Consider the difference between **safety and discomfort** – Data shows that transgender and gender expansive students are routinely harassed, bullied, and sexually assaulted at a [higher rate](#) than cisgender students in Oregon schools.
 - When gender expansive students have accessible and safe bathroom access, they are able to focus on what's important—school and learning. Schools already have robust policies to keep students safe. *Supportive bathrooms policies don't change schools' ability to hold all people accountable if harmful behavior occurs.*
 - Districts should be prepared to **interrupt assumptions** that gender expansive students are likely to cause harm to cisgender students, against known data.
- **Feeling discomfort in the presence of a nonbinary person is not the same thing as discrimination.**
 - Individual support and accommodations (such as a private changing space) can be made for any students who feel uncomfortable, but that individual support plan cannot create a discriminatory environment for other students and cannot infringe on the rights of others to experience nondiscrimination.
 - Districts and schools are encouraged to **address and respond to [identity-based bias incidents](#)**, in order to **educate** cisgender students about gender identity with the goal of connection and belonging for all students.
- Adults can address discomfort or privacy concerns for students by **supervising locker rooms using audio cues**, without visually monitoring students.