
The LGBTQ Community and the Law: A Discussion on Youth, Transgender Rights, and Legal Needs of Low-Income LGBT People

Friday, September 16, 2016

Albany Marriott

CLE Course Materials and NotePad[®]

Complete course materials distributed in electronic format online in advance of the program.

Sponsored by the

New York State Bar Association and the Committee on Legal Aid

This program is offered for education purposes. The views and opinions of the faculty expressed during this program are those of the presenters and authors of the materials. Further, the statements made by the faculty during this program do not constitute legal advice.

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New York State Bar Association**

Lawyer Assistance Program 800.255.0569



Q. What is LAP?

- A.** The Lawyer Assistance Program is a program of the New York State Bar Association established to help attorneys, judges, and law students in New York State (NYSBA members and non-members) who are affected by alcoholism, drug abuse, gambling, depression, other mental health issues, or debilitating stress.

Q. What services does LAP provide?

- A.** Services are **free** and include:
- Early identification of impairment
 - Intervention and motivation to seek help
 - Assessment, evaluation and development of an appropriate treatment plan
 - Referral to community resources, self-help groups, inpatient treatment, outpatient counseling, and rehabilitation services
 - Referral to a trained peer assistant – attorneys who have faced their own difficulties and volunteer to assist a struggling colleague by providing support, understanding, guidance, and good listening
 - Information and consultation for those (family, firm, and judges) concerned about an attorney
 - Training programs on recognizing, preventing, and dealing with addiction, stress, depression, and other mental health issues

Q. Are LAP services confidential?

- A.** Absolutely, this wouldn't work any other way. In fact your confidentiality is guaranteed and protected under Section 499 of the Judiciary Law. Confidentiality is the hallmark of the program and the reason it has remained viable for almost 20 years.

Judiciary Law Section 499 Lawyer Assistance Committees Chapter 327 of the Laws of 1993

Confidential information privileged. The confidential relations and communications between a member or authorized agent of a lawyer assistance committee sponsored by a state or local bar association and any person, firm or corporation communicating with such a committee, its members or authorized agents shall be deemed to be privileged on the same basis as those provided by law between attorney and client. Such privileges may be waived only by the person, firm or corporation who has furnished information to the committee.

Q. How do I access LAP services?

- A.** LAP services are accessed voluntarily by calling 800.255.0569 or connecting to our website www.nysba.org/lap

Q. What can I expect when I contact LAP?

- A.** You can expect to speak to a Lawyer Assistance professional who has extensive experience with the issues and with the lawyer population. You can expect the undivided attention you deserve to share what's on your mind and to explore options for addressing your concerns. You will receive referrals, suggestions, and support. The LAP professional will ask your permission to check in with you in the weeks following your initial call to the LAP office.

Q. Can I expect resolution of my problem?

- A.** The LAP instills hope through the peer assistant volunteers, many of whom have triumphed over their own significant personal problems. Also there is evidence that appropriate treatment and support is effective in most cases of mental health problems. For example, a combination of medication and therapy effectively treats depression in 85% of the cases.

Personal Inventory

Personal problems such as alcoholism, substance abuse, depression and stress affect one's ability to practice law. Take time to review the following questions and consider whether you or a colleague would benefit from the available Lawyer Assistance Program services. If you answer "yes" to any of these questions, you may need help.

1. Are my associates, clients or family saying that my behavior has changed or that I don't seem myself?
2. Is it difficult for me to maintain a routine and stay on top of responsibilities?
3. Have I experienced memory problems or an inability to concentrate?
4. Am I having difficulty managing emotions such as anger and sadness?
5. Have I missed appointments or appearances or failed to return phone calls?
Am I keeping up with correspondence?
6. Have my sleeping and eating habits changed?
7. Am I experiencing a pattern of relationship problems with significant people in my life (spouse/parent, children, partners/associates)?
8. Does my family have a history of alcoholism, substance abuse or depression?
9. Do I drink or take drugs to deal with my problems?
10. In the last few months, have I had more drinks or drugs than I intended, or felt that I should cut back or quit, but could not?
11. Is gambling making me careless of my financial responsibilities?
12. Do I feel so stressed, burned out and depressed that I have thoughts of suicide?

There Is Hope

CONTACT LAP TODAY FOR FREE CONFIDENTIAL ASSISTANCE AND SUPPORT

The sooner the better!

Patricia Spataro, LAP Director

1.800.255.0569

New York State Bar Association

FORM FOR VERIFICATION OF PRESENCE AT THIS PROGRAM

Pursuant to the Rules pertaining to the Mandatory Continuing Legal Education Program for Attorneys in the State of New York, as an Accredited Provider of CLE programs, we are required to carefully monitor attendance at our programs to ensure that certificates of attendance are issued for the correct number of credit hours in relation to each attendee's actual presence during the program. Each person may only turn in his or her form-you may not turn in a form for someone else. Also, if you leave the program at some point prior to its conclusion, you should check out at the registration desk. Unless you do so, we may have to assume that you were absent for a longer period than you may have been, and you will not receive the proper number of credits.

Speakers, moderators, panelists and attendees are required to complete attendance verification forms in order to receive MCLE credit for programs. Faculty members and attendees: please complete, sign and return this form along with your evaluation, to the registration staff **before you leave** the program.

**You MUST turn in this form at the end of the
program for your MCLE credit.**

<p>The LGBTQ Community and the Law: A Discussion on Youth, Transgender Rights, and Legal Needs of Low-Income LGBT People Friday, June 16, 2016 New York State Bar Association's Committee on Legal aid, Albany Marriott, Albany, NY</p>

Name:

(Please print)

I certify that I was present for the entire presentation of this program

Signature:

Date:

Speaking Credit: In order to obtain MCLE credit for speaking at today's program, please complete and return this form to the registration staff before you leave. **Speakers** and **Panelists** receive three (3) MCLE credits for each 50 minutes of presenting or participating on a panel. **Moderators** earn one (1) MCLE credit for each 50 minutes moderating a panel segment. Faculty members receive regular MCLE credit for attending other portions of the program.

NEW YORK STATE BAR ASSOCIATION

Live Program Evaluation (Attending In Person)

Please complete the following program evaluation. We rely on your assessment to strengthen teaching methods and improve the programs we provide. The New York State Bar Association is committed to providing high quality continuing legal education courses and your feedback is important to us.

Program Name:

Program Code:

Program Location:

Program Date:

1. What is your overall evaluation of this program? Please include any additional comments.

☐ Excellent ☐ Good ☐ Fair ☐ Poor

Additional Comments _____

2. Please rate each Speaker's Presentation based on **CONTENT** and **ABILITY** and include any additional comments.

	CONTENT				ABILITY			
	Excellent	Good	Fair	Poor	Excellent	Good	Fair	Poor
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Additional comments (CONTENT)

Additional comments (ABILITY)

3. Please rate the program materials and include any additional comments.

☐ Excellent ☐ Good ☐ Fair ☐ Poor

Additional comments

4. Do you think any portions of the program should be **EXPANDED** or **SHORTENED**? Please include any additional comments.

☐ Yes – Expanded ☐ Yes – Shortened ☐ No – Fine as is

Additional comments

5. Please rate the following aspects of the program: **REGISTRATION; ORGANIZATION; ADMINISTRATION; MEETING SITE** (if applicable), and include any additional comments.

	Please rate the following:				
	Excellent	Good	Fair	Poor	N/A
Registration	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Organization	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Administration	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Meeting Site (if applicable)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Additional comments

6. How did you learn about this program?

☐ Ad in legal publication ☐ NYSBA web site ☐ Brochure or Postcard
☐ Social Media (Facebook / Google) ☐ Email ☐ Word of mouth

7. Please give us your suggestions for new programs or topics you would like to see offered



**The LGBTQ Community and the Law: A Discussion on Youth, Transgender Rights, and
Legal Needs of Low-Income LGBT People**

*Partnership Conference
September 16, 2016*

WORKSHOP OUTLINE

– *Panel Introduction/Overview of Program*

Panelists:

- Jose Abrigo, Esq., Legal Services NYC
- Adam Heintz, Esq. Legal Services NYC
- Katherine McGerald, Esq. Legal Services of the Hudson Valley
- Christopher Oldi, Esq., Legal Services of the Hudson Valley
- Milo Primeaux, Esq. Empire Justice Center

– *LGBTQ Youth Discussion*

- Legal Protections (DASA, Title IX, etc.).
- Best practices for schools re: transgender and gender nonconforming students
- Legal remedies for school's failure to protect students

– Q&As on LGBTQ Youth issues

– *Transgender Legislative Rights*

- Current protections / New protections
- Best practices for representing trans* individuals
- Bathroom laws (North Carolina v. NY, etc.)

– Q&As on Transgender Legislative Rights issues

– *Legal Needs of Low Income LGBT People*

- LSNY Report Overview and Significant Statistics
- Unique Needs of LGBT Low Income community
- Best Practices for assisting this community

– Q&As on Legal Needs of Low Income LGBT People Issues

– Final Wrap Up

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The LGBTQ community and the Law: A Discussion on Youth, Transgender rights, and Legal Needs of Low-Income LGBT People

LGBTQ Youth Discussion



The LGBTQ Community and the Law: A Discussion on Youth, Transgender Rights, and Legal Needs of Low-Income LGBT People

YOUTH



YOUTH LGBTQ Legal Issues

BUT FIRST, POP QUIZ:

LGBTQ -- A standard acronym:

- Lesbian • Gay • Bisexual • Transgender • Queer/Questioning

*These terms are fluid and **DO NOT** represent all sexual orientations/gender identities. It is always best to respect individuals' self-determination and honor the terms they use to identify themselves

- **Cisgender** –

The term used to describe people whose sex assignment at birth corresponds to their gender identity and expression, or who is not transgender.

- **Sexual Orientation-**

is about who you are romantically, sexually and/or spiritually attracted to.

- **Gender Identity**

is about how you understand your own gender and how you express that.

- **Gender** is not always binary, and there are many diverse ways that people identify their gender



ISSUES TO DISCUSS

- **DIGNITY FOR ALL STUDENTS ACT**
- **TRANSGENDER AND GENDER NON-CONFORMING STUDENTS**
- **TITLE IX PROTECTIONS**



YOUTH LGBTQ Legal Issues

THE NEW YORK STATE DIGNITY FOR ALL STUDENTS ACT (DIGNITY ACT)

New York State Education Law Article 2

The Context

Approximately 15-20% of the U.S. student population is bullied. 88% of secondary students observed bullying while 77 % said they had been victims.



YOUTH LGBTQ Legal Issues

Students Reported- STATISTICS

- The most common form of bullying was based on **physical appearance**.
- 66 % reported that students were harassed at least sometimes because of looks or body size.
- 57% reported students were bullied/harassed at least sometimes because of the way they expressed their gender.
- 52 % reported students were bullied/harassed because they were or were perceived to be lesbian, gay or bisexual...even though only 5% identified as being so.

According to a study conducted by the National Center of Transgender Equality (2011; updated report to come out in 2016):

- 82% of transgender youth report that they feel unsafe at school
- 44% of them had been abused physically (ex. punched, shoved, etc.)
- 67% of them had been bullied online
- 64% of them had their property stolen or destroyed



YOUTH LGBTQ Legal Issues

MORE STATISTICS

According to the United States Center for Disease Control (2014), compared to non-LGBT children, LGBT children who felt high levels of rejection were:

- About **six** times more likely to be seriously depressed
- More than **eight** times more likely to attempt suicide
- More than **three** times more likely to abuse illegal drugs
- More than **three** times more likely to engage in risky sexual behavior



YOUTH LGBTQ Legal Issues

THE LAWS

- 50 states have anti-bullying laws
- Almost all have passed or amended them since 2008

Particularly Comprehensive State Statutes:

- NY's Dignity For All Students Act specifically includes categories such as sexual orientation and weight;
- NJ's law is most far-reaching-training, reporting and off campus activities
- MA includes off-campus behavior in its statute



YOUTH LGBTQ Legal Issues

The Dignity for All Students Act (DASA) (N.Y. Educ. Law Sections 10-18, 801-a)

Prohibits discrimination against, and harassment of, students based on actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, or sex by school employees or other students on school property or at a school function.



YOUTH LGBTQ Legal Issues

The Dignity for All Students Act (DASA) (N.Y. Educ. Law Sections 10-18, 801-a)

Harassment is: “the creation of a hostile environment by conduct or by verbal threats, intimidation or abuse that has or would have the effect of unreasonably and substantially interfering with a student’s educational performance, opportunities or benefits, or mental, emotional or physical well-being; or conduct, verbal threats, intimidation or abuse that reasonable causes or would reasonably be expected to cause a student to fear for his or her physical safety.”

N.Y. Educ. Section 11(7) (2010)



YOUTH LGBTQ Legal Issues

The Dignity for All Students Act (DASA) (N.Y. Educ. Law Sections 10-18, 801-a)

The Act Covers and Applies to:

- Bullying and harassment by students AND adults
- “School property” and “school functions”
- Bullying and harassment for any reason
- Applies to public schools, BOCES and charter schools
- Applies to incidents on school property (in a school building, athletic playing field, playground, parking lot, school bus).
- Applies to public school sponsored functions (school sponsored extra curricular activities or events).



YOUTH LGBTQ Legal Issues

The Dignity for All Students Act (DASA) (N.Y. Educ. Law Sections 10-18, 801-a)

What about Cyber Bullying / Internet Harassment:

- The Dignity bill prohibits bullying on school property or at a school function.
- Educators are not expected to “spy” on students’ out-of-school communications. Educational resources shouldn’t be used to seek out online communications that are inappropriate.
- But, educators should be willing to step in when cyber bullying affects a student’s ability to function in school



YOUTH LGBTQ Legal Issues

SCHOOL RESPONSE:

- Principal, Superintendent or Designee-thorough investigation of all reports.
- If complaint is verified, take prompt action to end harassment, eliminate hostile environment and prevent recurrence.
- Principal to make regular report on data and trends related to harassment to the superintendent.
- Duty of staff to report incidents to building principal or superintendent or designee within specified timeframes orally and in writing.
- School professionals applying on or after July 1, 2013 for a license or certificate shall have completed training on school patterns of harassment, bullying and discrimination.



YOUTH LGBTQ Legal Issues

How to Discipline?

- Measured, age appropriate responses
- Progressive model: intervention, education and discipline
- Consider nature of behavior, development age of student, history or behavior problems.
- Consistent with Code of Conduct

Possible Remedies?

- Safety Plans
- Check-ins with teachers, guidance counselors or others student feels comfortable with
- Does DASA have any teeth?



YOUTH LGBTQ Legal Issues

WHAT ABOUT GENDER NON-CONFORMING (GNC) STUDENTS OR TRANSGENDER STUDENTS?

- Covered by DASA
- Names, Pronouns
- Privacy, Confidentiality and Student Records
- Bathrooms/Gym Class/Locker Rooms
- Sports



YOUTH LGBTQ Legal Issues

Transgender/Gender Nonconforming Students

DEPARTMENT OF EDUCATION JULY 2015: Guidance to School Districts for Creating a Safe and Supportive School Environment For Transgender and Gender Nonconforming Students:

- Schools should accept a student's assertion of his/her/their own gender identity.

Keep it simple:

- A student who says she is a girl and wishes to be regarded that way throughout the school day should be respected and treated like any other girl.
- So too with a student who says he is a boy and wishes to be regarded that way throughout the school day. Such a student should be respected and treated like any other boy.
- See also May 13, 2016 Guidance from US Department of Justice, Civil Rights Division



YOUTH LGBTQ Legal Issues

Transgender/Gender Nonconforming Students

- **Records**
 - NY State Education law prohibits unauthorized release of student's personally identifiable information
 - Family Education Rights and Privacy ACT (FERPA) also protects the Privacy of student records
 - Nonconsensual disclosure of personally identifiable information could be harmful to or invade the privacy of transgender student and may also violate FERPA and Title IX
- **WHAT DO TO?**
 - New Trans* or GNC : keep birth name confidential
 - Use student's chosen name, not birth name
 - Update all records (attendance, transcripts, IEP, etc.) to reflect chosen name
 - Do not circulate reports with birth name
 - Create two separate files if necessary
- Disclosure to parents?
- Health Safety of students paramount



YOUTH LGBTQ Legal Issues

Transgender/Gender Nonconforming Students

- **Bathrooms**

- US Dept. Of Ed: Prohibiting a student from accessing the restrooms that match the his/her gender identify is prohibited sex discrimination under Title IX.
- Gender neutral/unisex bathroom/private changing space
 - Should be made available to a trans*or GNC student, but should not be FORCED to use such a space
 - Students who have concerns/issues with a trans* or GNC student using same facility should be provided the unisex/gender neutral bathroom or private changing space



YOUTH LGBTQ Legal Issues

SPORTS

New York State Public High School Athletic Association (NYSPHSAA)

NYSPHSAA passed guidelines for students that desire to participate in a sporting activity that is aligned with his/her gender identity, which may be different than his/her sex assigned at birth. ***Guidelines, only, schools not required to follow.***

PROCEDURE:

1. The student and the parent(s)/guardian shall notify the Superintendent (or designee) that the student would like the opportunity to participate in interscholastic athletics consistent with the gender he/she identifies as.
2. The student's home school will determine the eligibility of a student seeking to participate in interscholastic athletics in a manner consistent with his/her gender identity where the student's gender identity does not correspond to his/her sex assigned at birth.
3. The Superintendent (or designee) will confirm the gender identity asserted for purposes of trying out for an interscholastic sports team through documentation from the parent, guardian, guidance counselor, or from a doctor, psychologist or other medical professional.



YOUTH LGBTQ Legal Issues

SPORTS

New York State Public High School Athletic Association (NYSPHSAA)

NYSPHSAA passed guidelines for students that desire to participate in a sporting activity that is aligned with his/her gender identity, which may be different than his/her sex assigned at birth.

PROCEDURE (con't.):

4. Once a member school has rendered a determination of eligibility to try out for an interscholastic sports team or teams which corresponds to the student's gender identity the eligibility is granted for the duration of the student's participation in interscholastic athletics. The student must meet all NYSPHSAA standards for eligibility for practice and competition.

5. The Athletic Director should notify the NYSPHSAA if any accommodations are needed.

Decision can be appealed to Commissioner of Education.



YOUTH LGBTQ Legal Issues

TITLE IX & SPORTS

- Title IX does not prohibit age-appropriate, tailored requirements based on sound, current, and research-based medical knowledge about the impact of the students' participation on the competitive fairness or physical safety of the sport. *Dear Colleague Letter*, US Department of Justice, Civil Rights Division (May 13, 2016).



YOUTH LGBTQ Legal Issues

LIABILITY FOR SCHOOLS UNDER:

- New York State Education Law § 3201-a (prohibits discrimination based on sex with respect to admission into or inclusion in courses of instruction and athletic teams in public schools); among other provisions
- Title IX of the Education Amendments of 1972 ("Title IX") specifically prohibits discrimination on the basis of sex in federally-funded education programs and activities; *See May 13, 2016 US Dept. of Justice, Civil Rights Division letter.*
- Federal and State Constitution (e.g. 14th Amendment equal protection violations)
- Federal and State Offices of Civil Rights can bring suit



YOUTH LGBTQ Legal Issues

What is Title IX?

Title IX, passed in 1972, is a federal law that prohibits discrimination on the basis of sex—including sex-based harassment and bullying, as well as sexual assault—in schools that receive federal funding.

Under Title IX, schools must protect students from sex-based harassment at school, on the school bus, and on field trips or at any school sponsored event.

If such harassment by your peers, teachers, or other adults is so serious that it interferes with your education and it is encouraged, tolerated, not adequately addressed, or simply ignored by school employees, your school may be violating Title IX.



YOUTH LGBTQ Legal Issues

Are LGBTQ and gender nonconforming students protected by Title IX?

The U.S. Department of Education's Office for Civil Rights (OCR), the agency that enforces Title IX, has explained that Title IX does not explicitly cover discrimination on the basis of sexual orientation, but it has not yet clarified whether Title IX covers discrimination on the basis of actual or perceived gender identity



YOUTH LGBTQ Legal Issues

What is covered by Title IX?

- bullying and harassment of LGBTQ or gender nonconforming students that is gender-based harassment—meaning harassment or bullying because a student does not conform to stereotyped notions of masculinity or femininity—is covered by Title IX.



YOUTH LGBTQ Legal Issues

What is harassment under Title IX?

- Conduct that you may think of as “bullying” may actually be harassment.
- Harassment can take many forms. It can be verbal acts, like name-calling; images and graphics; written statements; or other actions that may be physically threatening, harmful, or humiliating.
- Harassment can include the use of cell phones or the internet (sometimes known as “cyberbullying”).
- The harassing student and target do not have to be of the opposite sex



YOUTH LGBTQ Legal Issues

Examples of Harassment

- A female student, who has short hair and wears T-shirts, baggy jeans, and sneakers, had a relationship with another girl at school, and now a group of students are repeatedly texting her and tweeting about her at school, calling her a “slut,” “whore,” “dyke,” and “butch.”
- In the locker room at school a group of boys surround a younger boy, grab his genitals, and tell him that they “heard he liked that.”
- Students maliciously use “she” and “her” to refer to a transgender classmate, even though they know he identifies as a boy. The principal has told him to “just act like a girl.” The student enrolled in an auto shop class, and is being taunted by classmates, who make sexually suggestive jokes about the student’s “tool” and ask what’s “under the hood.”



YOUTH LGBTQ Legal Issues

Legal Options under Title IX

- Schools are responsible for complying with Title IX
- This responsibility can be enforced by the U.S. Department of Education's Office for Civil Rights
- A complaint can be filed with OCR online or through a lawsuit in federal court.



QUESTIONS



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The LGBTQ community and the Law: A Discussion on Youth, Transgender rights, and Legal Needs of Low-Income LGBT People

Transgender Legislative Rights

Legal Landscape of Transgender Rights + Best Practices and Policies for Serving Transgender Gender-Nonconforming Clients

Partnership Conference 2016

Milo Primeaux, Esq.
LGBT Rights Project
Empire Justice Center

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[2]

AGING

HEALTH CARE

DOMESTIC VIOLENCE

IDENTITY DOCUMENTS

RESTROOM ACCESS

HOUSING

DISABILITY

INCARCERATION

EDUCATION

POLICE HARASSMENT

FAMILY RELATIONS

WALKING WHILE TRANS

EMPLOYMENT

IMMIGRATION

PUBLIC ACCOMMODATIONS

Empire Justice Center

[3]

Federal & State Protections

Empire Justice Center

[4]

Federal Protections

- **Title VII**
 - Prohibits employment discrimination on the basis of sex
- **Executive Order 11246**
 - Prohibits employment discrimination by federal contractors, including in healthcare benefit design and plan coverage (according to a final rule effective August 14, 2016)
- **Title IX**
 - Prohibits sex discrimination in educational settings that receive federal funding (see May 2016 “Dear Colleague Letter”)
- **HUD Regulations & Fair Housing Act**
 - Prohibits sex discrimination in public housing (including shelters)
- **Affordable Care Act § 1557**
 - Healthcare and health insurance non-discrimination provision – May 2016 rule comprehensively protects transgender people!

NYS Human Rights Law (HRL)

- Protects against discrimination and harassment based on **actual or perceived** race, national origin, religion, **sex, sexual orientation, disability** in areas of:
 - Employment (4+ employees, unless domestic workers)
 - Housing (private or public)
 - Education (private only)
 - Access to credit
 - Public accommodations

2016 HRL Trans Regulation

- On January 22, 2016, the Division of Human Rights (DHR) promulgated a new regulation that explicitly protects TGNC people by:
 - Interpreting “**sex**” to include **gender identity, gender expression, and transgender status**
 - Interpreting “**disability**” to include **gender dysphoria**
- Supported by positive NYS court decisions that already considered TGNC people protected under the HRL
- Not an executive order!

Using the HRL Regulations

- **Two Options:**
 - **Go directly to court with civil law suit**
 - Statute of limitations typically 3 years, but may vary
 - **File a complaint with the Division of Human Rights (DHR)**
 - Must be filed within 1 year of discrimination/harassment
 - User-friendly, faster, and FREE process (including discovery)
 - Automatically cross-filed with EEOC or HUD
 - Attorney’s fees available in sex discrimination cases re: employment or access to credit, or housing discrim

Other Policies & Protections

- Local/County Non-Discrimination Ordinances
 - <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Mallory-Liebowitz-NY-local-laws-Jun-2013.pdf>
- NYSED Education Guidelines (including public schools)
 - http://www.p12.nysed.gov/dignityact/documents/Transg_GNCGuidanceFINAL.pdf
- Identity Documents Amendment Policies
 - <http://www.transequality.org/documents/state/new-york>
- NYC Human Rights Guidelines
 - http://www.nyc.gov/html/cchr/downloads/pdf/publications/GenderID_InterpretiveGuide_2015.pdf

Best Practices

This is not a *Where's Waldo?* Game:
 It is not about finding the LGBTQ-identified person in the crowd –
It's understanding that anyone may be, and being respectful, informed, and appropriate to everyone just in case!

Don't Assume

⊗ *Do not make assumptions about any individual's gender identity, sexual orientation, or family relationships based on their voice, personal appearance, manner, name, identity documents, etc.*

✓ **Honor every client's authentic name and pronoun**

- "What is the name you usually go by? Is that different from your legal name? Which name do you want me to use with you?"
- "What pronouns do you use, if any? For example, I use [he/him, she/her, they/their, etc.]"
- Always mirror the person's word choices
- If you make a mistake, acknowledge it, apologize once, correct yourself, then move on
- If you hear someone else make a mistake, correct them!

(11)

Be Respectful

✓ Rein in personal curiosity – it is NEVER ok to ask invasive personal questions about a person's identity, body, or gender transition experience

- *How would you feel if someone asked you the same questions?*

✓ If such information is necessary to the case at hand:

- ✓ Always provide context for your questions
- ✓ Limit scope of inquiry
- ✓ Always ask respectfully, and acknowledge when you don't know how

(12)

Combat Heterosexism

- ✓ Honor everyone's relationship status, even if it is outside of traditional "married, divorced, widowed or single"
 - Ask: "Are you in a committed relationship? Do you have one or more life partners?"
- ✓ Don't assume someone does or doesn't have children or supportive family/guardians

Best Policies

See e.g., Hon. Paula J. Hepner (Ret.),
Blueprint for Respect: Creating an Affirming Environment in the Courts for the Lesbian,
Gay, Bisexual, and Transgender Communities, 41 Wm. Mitchell L. Rev. 4 (2015)
 (explaining history and research of the NYC Family Court's Work Group, and
 enumerating many of the needs of LGBTQ individuals in courtroom settings)

More Welcoming & Affirming Intakes



- ✓ Provide space for a client's legal name as well as a surname, preferred name, or common law name
- ✓ Revising forms to be more gender neutral, *e.g.*:
 - ✓ Replace "mother" and "father" with "parent"
 - ✓ Replace "sex" with "gender" or "gender identity"
 - ✓ Avoid using gendered language (Mr./Mrs./Ms.) when speaking to a client on the phone or in the courthouse until you know their pronoun preference

[15]

Handling Mismatched IDs



- ✗ ***Do not permit*** security, clerks, probation, or judges to turn someone away from accessing legal services, government agencies or a court because of mismatched IDs
 - ✗ It is no one's job to police peoples' gender!
- ✓ Review any/all policies or processes that currently require proof of ID, and decide:
 - (a) Is it really necessary?
 - (b) Precisely what info needs to be gleaned from the ID?
 - (c) Whether alternative forms of proof are possible to accommodate individuals who cannot access the ID currently required?

[16]

Recording & Using Preferred Names/Pronouns



- ✓ If it doesn't exist already, add functions to electronic record-keeping systems that capture, *for internal purposes only*:
 - (1) A client's preferred name as well as legal name
 - (2) A client's preferred pronoun or title
- ✓ Train all staff to input this information upon initial interaction, and to routinely check this in the system before interacting with a party

[17]

Recording & Using Preferred Names/Pronouns



- ✓ Use a client's preferred name and pronoun in papers – there is legal precedent for this!
 - Cuoco v. Moritsugu, 222 F.3d 99, 113 n.1 (2d Cir. 2000)
 - Matter of E.P.L., 891 N.Y.S.2d 619, 621 (Sup. Ct. Westchester Co. 2009)
 - Matter of John Doe, [Index Number Redacted by Court], NYLJ 1202601879249, at *1 (Sup. Ct., Westchester Co., Decided May 16, 2013)
 - Brian L. v. Administration for Children's Services, 51 A.D.3d 488, 489 (1st Dept. 2008)
 - Ava v. NYP Holdings, Inc., 64 A.D.3d 407, 408 (1st Dept. 2009)

[18]

Safeguarding Privacy of Transgender People



- ✓ Require that judges be sensitive to a request to close the courtroom to prevent “outing” someone for safety concerns
- ✓ Ensure that LGBTQ-related info disclosed to Dept. of Probation, petition clerks, Corporation Counsel’s office, Ofc. Of Children and Family Services, Mental Health Services, etc. will not be mentioned in open court unless the person has given permission to disclose
- ✓ Be aware that a party may have done or will do a judicial name change (petitioner/respondent) just before, during or following court proceedings

[19]

Holding Areas for Youth & Adults in Custody



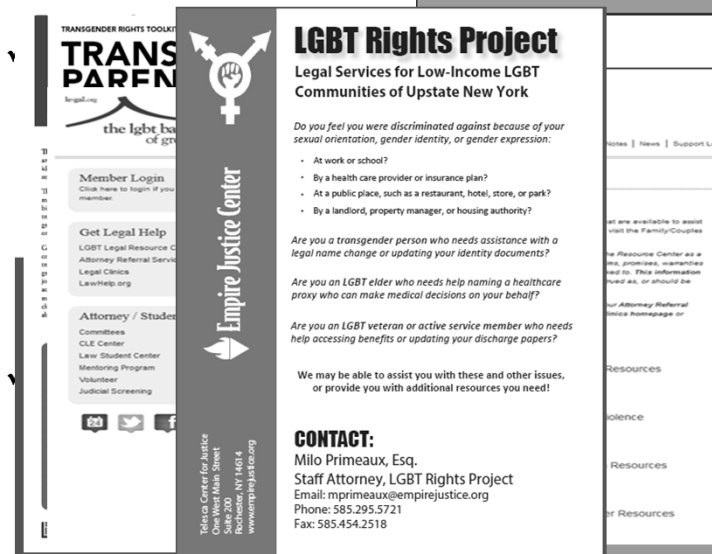
- ✓ Find out court’s policies on where a transgender or gender-nonconforming respondent/criminal defendant ought to be held while awaiting a courtroom appearance
- ✓ The individual’s own views with respect to safety should be given serious consideration
- ✗ Courts should NOT automatically assign individuals according to the gender marker on their ID, police records,
- ✗ Courts should NOT automatically seclude a transgender or gender-nonconforming person based on that status alone

[20]

Gender Appropriate Restroom Access

- ✓ Develop a policy that permits all persons to access and utilize the restroom that is appropriate to their gender identity – see OSHA guidance for model!
- ✗ Again, it's no one's job to police peoples' gender!
- ✓ Advertise this policy with appropriate signage
- ✓ Support individuals who use the restroom according to this policy! If someone else has a problem with it, that person can choose not to use the court restroom

Visible Signs of Support



TRANS
PAREN
the LGBT bar of gre

Member Login
Click here to login if you are a member

Get Legal Help
LGBT Legal Resource Center
Attorney Referral Service
Legal Clinics
Lawhelp.org

Attorney / Student
Committees
CLE Center
Law Student Center
Mentoring Program
Volunteer
Judicial Screening

Empire Justice Center
Telusca Center for Justice
One West Main Street
Suite 200
Albany, NY 12244
www.empirejustice.org

LGBT Rights Project
Legal Services for Low-Income LGBT Communities of Upstate New York

Do you feel you were discriminated against because of your sexual orientation, gender identity, or gender expression?

- At work or school?
- By a health care provider or insurance plan?
- At a public place, such as a restaurant, hotel, store, or park?
- By a landlord, property manager, or housing authority?

Are you a transgender person who needs assistance with a legal name change or updating your identity documents?

Are you an LGBT elder who needs help naming a healthcare proxy who can make medical decisions on your behalf?

Are you an LGBT veteran or active service member who needs help accessing benefits or updating your discharge papers?

We may be able to assist you with these and other issues, or provide you with additional resources you need!

CONTACT:
Milo Primeaux, Esq.
Staff Attorney, LGBT Rights Project
Email: mprimeaux@empirejustice.org
Phone: 585.295.5721
Fax: 585.454.2518

Notes | News | Support LeGal.

Let are available to assist visit the Family/Couples

he Resource Center as a his, principles, variations and to. This information would as, or should be

our Attorney Referral Office homepage or

Resources

Violence

Resources

er Resources

Employment Opportunities



- ✓ Hire transgender and gender-nonconforming people!
- ✓ Make sure your employee policies are welcoming and nondiscriminatory
- Resources:
 - "Model Transgender Employment Policy: Ensuring Inclusive Workplaces" (Transgender Law Center)
 - "Know Your Rights: Employment" (National Center for Transgender Equality)

[23]

Training & Accountability



- ✓ Mandate basic LGBTQ competency training for all staff, including contract workers, and incorporate such training into regular onboarding
- ✓ Equip staff with tools needed to intervene and take appropriate action when witnessing careless disrespect or overtly disparaging behaviors toward LGBTQ people
- ✓ Co-sponsor ongoing LGBTQ-focused programming
- ✓ Conduct periodic self-assessments to identify training opportunities
- ✓ Maintain regular contact with local bar associations and LGBTQ community organizations to get feedback and solicit suggestions for further improvement

[24]

The Benefits of Being Welcoming & Respectful

- Every time a staff person uses a pronoun and name that affirms a client's gender identity and expression...
- Every time a family seeking intervention is asked questions that affirm their relationship and family structure...
- Every time a LGBTQ person's identity is recognized and respected...

it creates trust and investment in the legal system!

A Closing Note

- This presentation cannot and should not replace a specific, thorough in-service training for all staff addressing sexual orientation & gender identity and expression
 - As well as more on intimate partner violence and LGBTQ communities!
- Bring what you learned back for specific action planning!
- Many local resources for this type of training, as well as other independent learning opportunities

Questions?



Milo Primeaux, Esq.

Staff Attorney, LGBT Rights Project

He/Him/His Pronouns

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mprimeaux@empirejustice.org

www.empirejustice.org

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This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

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**The LGBTQ community and the Law: A
Discussion on Youth, Transgender rights, and
Legal Needs of Low-Income LGBT People**

**Legal Needs of Low Income
LGBT People**



**POVERTY IS AN
LGBT ISSUE:**
AN ASSESSMENT OF
THE LEGAL NEEDS
OF LOW-INCOME
LGBT PEOPLE

1



WHO WE ARE

Legal Services NYC fights poverty and seeks racial, social, and economic justice for low-income New Yorkers. LSNYC is the largest civil legal services provider in the country, helping more than 80,000 New Yorkers annually.

5
Boroughs

450 Dedicated
Staff

80,000 New Yorkers
Helped Annually

2

LSNYC'S LGBT & HIV PRACTICE



- LGBT & HIV practice since the late 1980s
- Twelve staff across the city work on LGBT & HIV issues
- General practice units that handle benefits, housing, and other core civil legal practice areas
- Civil Rights Justice Unit additionally helps to cultivate impact cases related to LGBT and HIV discrimination, among other forms of oppression
- Internal LGBT Working Group made up of dozens of staff
- Founded citywide LGBT Roundtable for legal services attorneys and community groups

3

THE REPORT



- Comprehensive needs assessment
- Civil legal needs
- Low-income LGBT people
- Data and voices from the community
- Huge LSNYC effort among staff and volunteers



Housing

Income &
Disability
Assistance

Immigration



Healthcare



Family



Employment



Education



Veterans

4

WHY WE DID IT



1. Why a civil legal LGBT needs assessment?

- No data out there
- Ask directly
- Few talking about poverty among LGBT people

2. Why it matters.

- We can do more
- First of its kind in the nation
- Historic opportunity to shift the conversation

5

HOW WE DID IT



6

INTERVIEWS OF PROVIDERS

LEGAL SERVICES NYC INTERVIEWED THE FOLLOWING PROVIDERS

Anti Violence Project	Staten Island LGBT Center
APICHA	The Door
Audre Lorde Project	Community Healthcare Network - Shine Project (Sexual Health Initiative and Education Project)
BOOM!!Health	The LGBT Center – Community Services, Wellness, Recovery, Youth, Family directors
Bronx Pride House	SAGE
Brooklyn Community Pride Center	Urban Justice Center – DV Law Project
Callen-Lorde Community Health Center	Urban Justice Center – Peter Cicchino Youth Project
Good Shepherd Services - Safe Home Project	Urban Justice Center – Sex Worker Project
Immigration Equality	VOCAL-NY
Latino Commission on AIDS	Voces Latinas
Legal Aid Society	
NYCLU – LGBT project	
NYLAG – LGBT project	
Queens Pride House	

Legal
Services NYC

7

CONDUCTING THE SURVEY



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8

CONDUCTING THE SURVEY

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SURVEY SITES

Ali Forney	LGBT Center
BOOM!Health	Queens Pride House
Brooklyn Community Pride Center	Rainbow Heights Club
Bronx LGBTQ Center	SAGE
Callen-Lorde Community Health Center	Sylvia Rivera Law Project
Housing Works	Staten Island Pride Center
	VOCAL-NY

9

CONDUCTING THE SURVEY

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10

CONDUCTING THE SURVEY



Legal Services NYC
@LSNYCnews

Getting ready to survey! @CallenLorde
@LGBTCenterNYC @AliForneyCenter
@BxLGBTQCenter @sageusa @SRLP



Legal Services NYC @LSNYCnews · 19 Jul 2014

We'll be @CrotonaPark for #BronxPride today from 12-6. Come say hi and be one of the first to take our citywide #LGBT legal needs survey!

← ↻ ☆ ...



Legal Services NYC @LSNYCnews · 31 Jul 2014

Can't stop, won't stop! (LGBT surveying) Today we're at @CallenLorde 4-8pm and @VocalNewYork's membership mtg from 5-8pm. See you there?

← ↻ 1 ☆ 1 ...

11

WHO TOOK THE SURVEY?

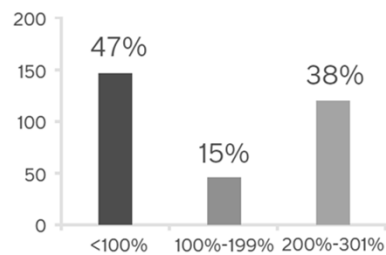
12

INCOME OF PARTICIPANTS

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Services NYC



HOUSEHOLD INCOME AS A % OF
POVERTY AMONG LOW-INCOME
LGBT SURVEY PARTICIPANTS

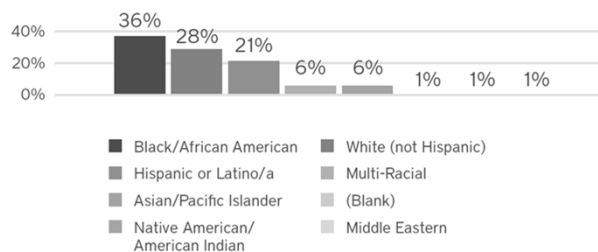


13

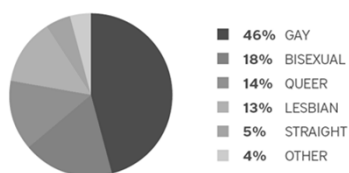
KEY DEMOGRAPHICS

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Services NYC

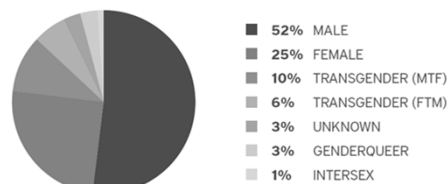
RACE OF SURVEY PARTICIPANTS



SEXUAL ORIENTATION
OF PARTICIPANTS



GENDER IDENTITY OF PARTICIPANTS



14

WHAT WE FOUND

15

KEY FINDINGS

1 POVERTY IS AN LGBT ISSUE.

62% of low-income LGBT New Yorkers had difficulty paying for a basic need in the past year



3 LOW-INCOME LGBT PEOPLE ARE IN DESPERATE NEED OF CIVIL LEGAL SERVICES.



Housing

Income &
Disability
Assistance

Immigration



Healthcare



Family



Employment



Education



Veterans

16

VIOLENCE AND DISCRIMINATION

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- 4 VIOLENCE AND HARASSMENT ARE SEVERE AND PERVERSIVE PROBLEMS THAT CREATE MAJOR LEGAL NEEDS FOR LOW-INCOME LGBT PEOPLE**

50% experienced some form of violence



- 5 LOW-INCOME TRANSGENDER PEOPLE FACE EVEN GREATER VIOLENCE AND HARASSMENT THAN LGB PEOPLE, GIVING RISE TO EVEN GREATER LEGAL NEEDS**

26% of the transgender respondents to our survey experienced problems with employment in the last year alone.

- 6 INTERSECTIONS BETWEEN RACE, POVERTY, SEXUAL ORIENTATION, AND GENDER IDENTITY POSE ADDITIONAL LEGAL CHALLENGES FOR MANY LOW-INCOME LGBT NEW YORKERS**

Legal services providers should be vigilant about and be prepared to aggressively challenge discrimination in all its forms.

POVERTY TRANSGENOBIA
RACISM
HOMOPHOBIA

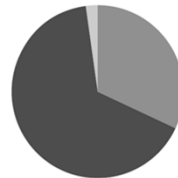
17

PROBLEMS WITH BENEFITS

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LOW-INCOME LGBT NEW YORKERS WHO HAD PROBLEMS WITH SOCIAL SECURITY OR PUBLIC ASSISTANCE

66% NO 32% YES
2% DON'T KNOW



PROBLEMS EXPERIENCED BY LOW-INCOME LGBT NEW YORKERS WHEN ACCESSING PUBLIC ASSISTANCE

46% I HAD PROBLEMS APPLYING FOR BENEFITS AT HRA/WELFARE

26% I'M NOT GETTING THE RIGHT AMOUNT OF FOOD STAMPS/SNAP

22% I WAS SANCTIONED OR MY HRA/WELFARE BENEFITS WERE TERMINATED

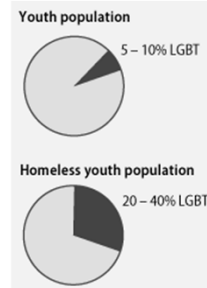
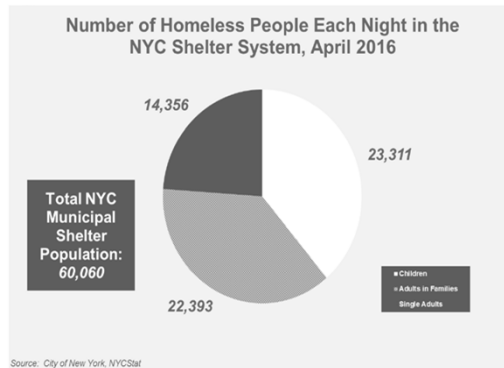
17% I'M NOT GETTING THE RIGHT AMOUNT OF PUBLIC ASSISTANCE BENEFITS FROM HRA

15% I HAVE BEEN TREATED BADLY BY HRA STAFF/SECURITY IN OTHER WAYS BECAUSE I AM LGBT

18

LGBT HOMELESSNESS

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- LGBTQ youth are 40% of the homeless youth population in NYC (about 3,500 LGBT Youth).
- There are no trans affirming adult shelters anywhere in New York City.

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LGBT TENANTS

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Explicit Discrimination

44% of Respondents could not get needed repairs in the past year alone.

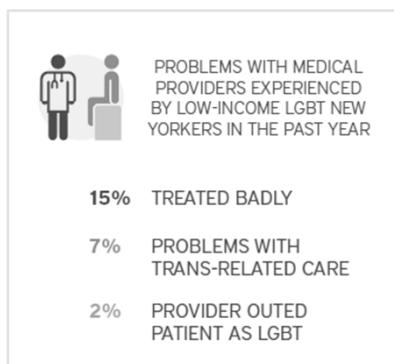
12% of Respondents experienced explicit anti-LGBT harassment (slurs, hate speech, etc.) in the past year alone.

Implicit Discrimination

- Many applicants are turned down for housing because they are LGBT.
- Even when housing is found, LGBT people tend to pay higher rent.

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LGBT HEALTHCARE



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- Nearly one quarter of Respondents report they have encountered problems with a medical provider in the past year.
- 15% of transgender respondents were treated with hostility.
- Another study found 17% of transgender individuals statewide were denied healthcare altogether.

21

KEY CONCLUSIONS (1)

1. Low Income LGBT people need representation in **every poverty law practice area.**
2. LGBT people face **discrimination, harassment and violence.** Legal Service organizations should pursue discrimination claims.
3. Legal service organizations must recognize and address the intersectionality of **poverty, racism, homophobia, transphobia, and other forms of oppression.**

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KEY CONCLUSIONS (2)



4. Legal service providers must learn to be **culturally competent** on LGBT issues.
5. Legal services organizations should take **visible** steps to welcome low-income LGBT people.
6. Legal service organizations should screen LGBT clients who have experienced **trauma** and ensure their **safety**.

23

WHAT'S NEXT?



1. Next steps at LSNYC.
2. What can you do at your organization to improve work on behalf of low-income LGBT people?
3. How can we work together?

PEOPLE WHO CARE ABOUT THE FIGHT FOR LGBT JUSTICE, AND THOSE WHO CARE ABOUT FIGHTING POVERTY, MUST TAKE ACTION.



24



QUESTIONS?

25

[illegible]

[illegible]

[illegible]

**The LGBTQ community and the Law: A
Discussion on Youth, Transgender rights, and
Legal Needs of Low-Income LGBT People**

**Guidance to School
Districts**



Guidance to School Districts for Creating a Safe and Supportive School Environment For Transgender and Gender Nonconforming Students JULY 2015

Introduction

The New York State Education Department (“NYSED”) is committed to providing all public school students, including transgender and gender nonconforming (“GNC”) students, with an environment free from discrimination and harassment, to fostering civility in public schools, and to ensuring that every student has equal access to educational programs and activities. The Dignity for All Students Act (“DASA”) illustrates the State’s commitment to ensuring that all students are educated in a safe and supportive school environment.¹

New York State Education Law § 3201-a prohibits discrimination based on sex with respect to admission into or inclusion in courses of instruction and athletic teams in public schools.² Furthermore, DASA specifically provides that “no student shall be subjected to harassment or bullying by employees or students on school property or at a school function; nor shall any student be subjected to discrimination based on a person’s actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (including gender identity or expression), or sex by school employees or students on school property or at a school function.”³ DASA includes gender as a protected category and defines gender as “a person’s actual or perceived sex and includes a person’s gender identity or expression.”⁴

Title IX of the Education Amendments of 1972 (“Title IX”) specifically prohibits discrimination on the basis of sex in federally-funded education programs and activities.⁵ The United States Department of Education’s Office for Civil Rights has issued guidance recognizing that Title IX protects transgender students against discrimination based on their gender identity.⁶

¹ N.Y. EDUC. LAW ART 2.

² N.Y. EDUC. LAW § 3201-a. Some states and local governments have adopted legislation providing explicit protections for transgender students in public schools. *See e.g.* CAL. EDUC. CODE § 221.5, MASS. GEN. L. CH. 76, § 5. *See also* NEW YORK CITY, N.Y. ADMIN. CODE §§ 8-101 TO 8-1103, BINGHAMTON, N.Y. CODE PT. I, §§ 45, 45-A.

³ N.Y. EDUC. LAW § 11(7); 8 NYCRR § 100.2[1][2].

⁴ N.Y. EDUC. LAW § 11(6). For an extensive resource on the implementation of DASA, please see the New York State Education Department’s (NYSED) publication: *The Dignity Act, A Resource and Promising Practices Guide for School Administrators & Faculty* available at <http://www.p12.nysed.gov/dignityact/resourceguide.html>

⁵ 20 U.S.C. § 1681(a); *see also* 34 C.F.R. § 106.31(a); 28 C.F.R. § 54.400(a)

⁶ *See* 20 U.S.C. §§ 1681-1688 (2006); 34 C.F.R. Part 106 (2010); 54 C.F.R. Part 54 (2000); United States Department of Education, Office for Civil Rights, *Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities* (December 1, 2014), available at

Additionally, the U.S. Departments of Education and Justice have stated that under Title IX, “discrimination based on a person’s gender identity, a person’s transgender status, or a person’s nonconformity to sex stereotypes constitutes discrimination based on sex” and asserted a significant interest in ensuring that all students, including transgender students, have the opportunity to learn in an environment free of sex discrimination in public schools.⁷

The purpose of this guidance is to assist school districts in fostering an educational environment for all students that is safe and free from discrimination—regardless of sex, gender identity, or expression—and to facilitate compliance with local, state and federal laws concerning bullying, harassment, discrimination, and student privacy. All students need a safe and supportive school environment to progress academically and developmentally. Administrators, faculty, staff, and students each play an important part in creating and sustaining that environment. This guidance document is intended as a resource guide to help school and district administrators continue to take proactive steps to create a culture in which transgender and GNC students feel safe, supported, and fully included, and to meet each school’s obligation to provide all students with an environment free from harassment, bullying and discrimination. This guidance is intended to be complimentary to the existing comprehensive resources made available by NYSED relating to the implementation of DASA.⁸

In order to make this document as helpful as possible, illustrative examples that highlight frequently-asked questions appear throughout in italics. These scenarios and remedies are based on real-life examples from New York-based students and schools, and are not meant to be exhaustive of all potential scenarios or remedies appropriate for each school community.

Definitions

Understanding the common terminology associated with gender identity is important to providing a safe and supportive school environment for students. The following terms appear in this document and we present the following definitions used by research, advocacy and governmental organizations to assist in understanding the guidance presented. Although these are the most commonly used terms, students may prefer other terms to describe their gender identity, appearance, or behavior. Terminology and language describing transgender and GNC individuals can differ based on region, language, race or ethnicity, age, culture, and many other factors. Generally speaking, we recommend that school staff and educators inquire which terms students prefer; a good general guideline is to employ those terms which the students use to describe themselves.

Assigned Sex at Birth: the sex designation, usually “male” or “female,” assigned to a person when they are born.⁹

<http://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf>, at 25; United States Department of Education, Office for Civil Rights, Questions and Answers on Title IX and Sexual Violence (April 29, 2014), available at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>, at 5.

⁷ Statement of Interest of the United States, *Grimm v. Gloucester County School Board*, Case No. 4:15cv54 (E.D. Virg. filed June 29, 2015), at 2, available at https://www.aclu.org/sites/default/files/field_document/stmtinterestunitedstatesecf28_redacted.pdf

⁸ N.Y. EDUC. LAW ART. 2.

⁹ See GLAAD Media Reference Guide – Transgender Issues, available at

<http://www.glaad.org/reference/transgender>, Trans Student Educational Resources (TSER) – Definitions, available

Cisgender: an adjective describing a person whose gender identity corresponds to their assigned sex at birth.

Gender expression: the manner in which a person represents or expresses gender to others, often through behavior, clothing, hairstyles, activities, voice, or mannerisms.¹⁰

Gender identity: a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth. Everyone has a gender identity.¹¹

Gender nonconforming (GNC): a term used to describe people whose gender expression differs from stereotypic expectations. The terms "gender variant" or "gender atypical" are also used. Gender nonconforming individuals may identify as male, female, some combination of both, or neither.¹²

Sexual Orientation: a person's emotional and sexual attraction to other people based on the gender of the other person. Sexual orientation is not the same as gender identity. Not all transgender youth identify as gay, lesbian or bisexual, and not all gay, lesbian and bisexual youth display gender-nonconforming characteristics.¹³

Transgender: an adjective describing a person whose gender identity does not correspond to their assigned sex at birth.¹⁴

Transition: the process by which a person socially and/or physically aligns their gender expression more closely to their actual gender identity and away from that associated with their assigned sex at birth.

Understanding School Climate and Transgender Students

Research indicates that transgender and GNC students are targeted with physical violence and experience a hostile school environment at an even higher rate than their Lesbian, Gay, and

at <http://transstudent.org/definitions>; see also Resolution Agreement Between Arcadia Unified Sch. Dist., the U.S. Dept. of Educ., and the U.S. Dept. of Justice, OCR Case No. 09-12-1020, DOJ Case No. 169-12C-70 (July 24, 2013).

¹⁰ GLSEN Model District Policy on Transgender and Gender Nonconforming Students, available at http://www.glsen.org/sites/default/files/Trans_ModelPolicy_2014.pdf; Massachusetts Dep't of Educ. Guidance, available at <http://www.doe.mass.edu/ssce/GenderIdentity.pdf>.

¹¹ Mass. Gen. Laws ch. 4, § 7; Massachusetts Dep't of Educ. Guidance.

¹² Massachusetts Dep't of Educ. Guidance; see also GLSEN Model District Policy on Transgender and Gender Nonconforming Students ("A term for people whose gender expression differs from stereotypical expectations...").

¹³ California School Board Association, *Policy Brief: Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students*, 1 (2014), available at <http://www.csba.org/~media/E68E16A652D34EADA2BFD9668B1C8F.ashx>.

¹⁴ See GLSEN Model District Policy on Transgender and Gender Nonconforming Students; Massachusetts Dep't of Educ. Guidance; Trans Student Educational Resources – Definitions; GLAAD Media Reference Guide – Transgender Issues.

Bisexual peers, both nationally and in New York State.¹⁵ In one 2013 national survey, 74.1% of LGBT students reported having been verbally harassed in the previous year, 36.2% physically harassed, and 16.5% physically assaulted.¹⁶ These high rates of bullying correspond to adverse health and educational consequences. Transgender and GNC experienced higher rates of verbal harassment and were twice as likely to report feeling unsafe at school than their cisgender peers.¹⁷ A different national survey, also conducted in 2011, found that 51% of respondents who were harassed or bullied in school reported attempting suicide, compared to 1.6% of the general population.¹⁸ Students also suffered harassment so severe that it led almost one-sixth (15%) to leave a school in K-12 settings or in higher education.¹⁹ Moreover, LGBTQ students who are bullied and harassed are more likely to miss days of school, feel excluded from the school community, and have lower academic achievement and stunted educational aspirations.²⁰

Both DASA, including its implementing regulations and guidance, and this guidance document reflect the reality that transgender and GNC students are enrolled in New York's public schools. These students, because of the possibility of misunderstanding and lack of knowledge about their lives, may be at a higher risk for peer ostracism, victimization, and bullying. Educators play an essential role in advocating for the well-being of students and creating a supportive school culture.

Understanding Gender Identity

Transgender youth are those whose assigned birth sex does not match their internalized sense of their gender (their "gender-related identity"), and GNC youth are those whose gender-related identity does not meet the stereotypically expected norms associated with their assigned sex at birth.²¹ A transgender boy, for example, is a youth who identifies as male, but was assigned the sex of female at birth.²² A transgender girl is a youth who identifies as female, but was assigned the sex of male at birth.²³ GNC youth vary in the ways in which they identify as male, female, some combination of both, or neither.²⁴

The person best situated to determine a student's gender identity is the individual student. In the case of very young students not yet able to advocate for themselves, the request to respect and

¹⁵ GLSEN (Gay, Lesbian, Straight Education Network), *School Climate in New York (State Snapshot)*, 2 (2013), available at <http://glsen.org/learn/research/local/state-snapshots> (finding the majority of New York K-12 students surveyed reported being verbally harassed based on their gender identity/expression and/or sexual orientation).

¹⁶ GLSEN, *2013 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation's Schools*, xvii (2014), available at http://www.glsen.org/sites/default/files/2013%20National%20School%20Climate%20Survey%20Full%20Report_0.pdf [hereinafter "National School Climate Survey"].

¹⁷ *National School Climate Survey*, *supra* note 16 at 88-90.

¹⁸ Jaime M. Grant, et al., National Center for Transgender Equality and National Gay and Lesbian Task Force, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, 3, 45 (2011), http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf

¹⁹ *Id.* at 3.

²⁰ *National School Climate Survey*, *supra* note 16, at 12, 24, 42, 47, 49, 52, 67.

²¹ See GLSEN Model District Policy on Transgender and Gender Nonconforming Students; Massachusetts Dep't of Educ. Guidance; Trans Student Educational Resources – Definitions; GLAAD Media Reference Guide – Transgender Issues.

²² See *id.*

²³ See *id.*

²⁴ See *id.*

affirm a student's identity will likely come from the student's parent or guardian.²⁵ One's gender identity is an innate, largely inflexible characteristic of each individual's personality that is generally established by age four, although the age at which individuals come to understand and express their gender identity may vary based on each person's social and familial development.²⁶

Schools should work closely with the student and family in devising an appropriate plan regarding the confidentiality of the student's transgender status. In some cases, transgender students may feel more supported and safe if other students are aware that they are transgender. In these cases, school staff should work closely with the student, families, and other staff members on a plan to inform and educate the student's peers. It may also be appropriate to engage with community resources to assist with educational efforts. However, in other cases, transgender students do not want their parents to know about their transgender status. These situations must be addressed on a case-by-case basis and will require schools to balance the goal of supporting the student with the requirement that parents be kept informed about their children. The paramount consideration in those situations is the health and safety of the student and making sure that the student's gender identity is affirmed in a manner in which the level of privacy and confidentiality is maintained necessary to protect the student's safety.

EXAMPLE:

The parents of a pre-school-age child who was assigned "female" at birth noted throughout the child's early years that their child identified as a boy. For as long as the parents could remember, the child preferred to play with boys rather than girls, wanted a short haircut, rejected wearing any clothing that the child identified as "something a girl would wear," and ignored anyone who called him by his stereotypically feminine name. When it was time for the child to enter kindergarten, the child said to his parents, "You have to tell them when I go to kindergarten that I'm a boy."

It is recommended that schools accept a student's assertion of his/her/their own gender identity. A student who says she is a girl and wishes to be regarded that way throughout the school day should be respected and treated like any other girl. So too with a student who says he is a boy and wishes to be regarded that way throughout the school day. Such a student should be respected and treated like any other boy.

Many transgender people experience discrimination and some experience violence due to their status. Some environments may feel safe and inclusive, and others less so, challenging a person's ability to live consistently with one gender identity in all aspects of life. For example, it is possible that a student assigned "male" at birth, with a female gender identity, who lives as a girl, is not able to express her female gender identity all the time.

²⁵ When used in this document, the term "parent" refers to parent as well as legal guardian.

²⁶ See Gerald P. Mallon, "Practice with Transgendered Children," in *Social Services with Transgendered Youth*, 49, 55-58 (Gerald P. Mallon ed., 1999). See also Stephanie Brill & Rachel Pepper, "Developmental Stages and the Transgender Child," in *The Transgender Child*, 61-64.

EXAMPLE:

In one case, a transgender female student agreed to present as a boy when visiting relatives until the student's parents could explain the student's transgender identity to them. The fact that the student did not exclusively assert her female identity did not alter the fact that she had a female gender identity.

Confirmation of a student's asserted gender identity is usually as simple as a statement from the student; it may also include a letter from an adult familiar with the student's situation, such as a parent, health care provider, school staff member familiar with the student (a teacher, guidance counselor, or school psychologist, among others), or other family members or friends. A letter from a social worker, doctor, nurse practitioner, or other health care provider stating that a student is being provided medical care or treatment relating to her/his/their gender identity is another form of confirmation of an asserted gender identity. Similarly, a letter from a clergy member, coach, family friend, or relative stating that the student has asked to be treated consistent with her/his/their asserted gender identity, or photographs at public events or family gatherings are other potential forms of confirmation. These examples are intended to be illustrative rather than comprehensive, and in most cases nothing beyond a statement from the student should be required. Transgender and GNC students form a diverse community, and they may differ in how they present, including differences in factors like their comfort level with being known as transgender or GNC, their transition status, their age, and their gender expression. Schools and districts should adopt a flexible approach in this area given that transgender students may not feel comfortable or safe being their authentic selves in all contexts.

EXAMPLE:

In one middle school, a student explained to her guidance counselor that she was a transgender girl who had heretofore only been able to express her female gender identity while at home. The stress associated with having to hide her female gender identity by presenting as male at school was having a negative impact on her mental health, as well as on her academic performance. The student and her parents asked if it would be okay if she expressed her female gender identity at school. The guidance counselor responded favorably to the request. The fact that the student presented no documentation to support her gender identity was not a concern since the school had no reason to believe the request was based on anything other than a sincerely held belief that she had a female gender identity.

Gender Transition

Many, though not all, transgender youth undergo the experience of gender transition. The term "gender transition" describes the experience by which a person socially and/or physically aligns their gender expression more closely to their true gender identity, and away from that associated with their assigned sex at birth. For most youth, and for all young children, the experience of gender transition is focused solely on "social transition," whereby they begin to live as the gender consistent with their gender-related identity.²⁷ Transgender youth who are in the process

²⁷ See, e.g., World Professional Association for Transgender Health (WPATH), Standards of Care 7, at 17 ("Social Transition in Early Childhood"), available at http://www.wpath.org/uploaded_files/140/files/Standards%20of%20Care,%20V7%20Full%20Book.pdf.

of social gender transition often choose a new name and gender pronouns that better reflect their gender identity, may begin to dress and style their hair in ways that better reflect their gender identity, and, as all young people do, seek social affirmation of their gender identity from peers and other important figures in their lives. Some transgender youth who are close to reaching puberty, or after commencing puberty, may complement social transition with medical intervention that may include hormone suppressants, cross-gender hormone therapy, and, for a small number of young people, a range of gender-confirming surgeries.²⁸ An individual's decision about whether and how to undergo gender transition is personal and it will depend on the unique circumstances of each student. There is no threshold medical or mental health diagnosis or treatment requirement that any student must meet in order to have his/her/their gender identity recognized and respected by a school.²⁹

Some transgender and GNC students have not talked to their families about their gender identity for reasons including safety concerns or a lack of acceptance.³⁰ School personnel should speak with the student first before discussing a student's gender nonconformity or transgender status with the student's parent or guardian. For the same reasons, school personnel should discuss with the student how the school should refer to the student, e.g., appropriate pronoun use, in written communication to the student's parent or guardian.³¹

Common Areas of Concern Relating to Transgender Students

1: Names and Pronouns

The matter of determining which name and pronoun to use in referring to a transgender student may be one of the first that schools must address in their efforts to create an environment in which that student feels safe and supported. Transgender students often choose to change the name assigned to them at birth to a name that is associated with their gender identity. As with most other issues involved with creating a safe and supportive environment for transgender students, the best course is to engage the student, and possibly the parent, with respect to name and pronoun use, and agree on a plan to reflect the individual needs of each student to initiate that name and pronoun use within the school. The plan also could include when and how this is communicated to students and their parents.

For those students who have been attending a school and undergo gender transition while attending the same school, it is important to develop a plan for initiating use of the chosen name and pronouns consistent with the student's gender identity.

EXAMPLE:

In one situation where a transgender girl was entering high school, she and her parent

²⁸ See *id.* at 18-21 ("Physical Interventions for Adolescents").

²⁹ See *id.*; see also GLSEN Model District Policy on Transgender and Gender Nonconforming Students, at 2 (*Medical Considerations and Identity Documents*).

³⁰ Jaime M. Grant, et al., National Center for Transgender Equality and National Gay and Lesbian Task Force, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (2011), at 88 (53% of transgender people surveyed had experienced family rejection, and 19% experienced domestic violence by a family member because they were transgender), http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf.

³¹ See *id.*

asked the principal to inform her teachers that even though her school records indicate that her name is John, she goes by the name Jane and uses female pronouns. With permission from Jane, the school principal sent the following memorandum to the student's classroom teachers: "The student John Smith wishes to be referred to by the name Jane Smith, a name that is consistent with the student's female gender identity. Please be certain to use the student's preferred name in all contexts, as well as the feminine pronouns. It is my expectation that students will similarly refer to the student by her chosen name and preferred pronouns. Your role modeling will help make a smooth transition for all concerned. Continued, repeated, and intentional misuse of names and pronouns may erode the educational environment for Jane. If you need any assistance to make sure that Jane Smith experiences a safe, nondiscriminatory classroom atmosphere, please contact me."

2: Privacy, Confidentiality, and Student Records

New York State Education Law § 2-d prohibits the unauthorized release of a student's personally identifiable information, including but not limited to the student's name, indirect identifiers, and other information that alone or in combination is linked or linkable to a specific student that would allow a reasonable person in the school community to identify the student.³² The federal Family Educational Rights and Privacy Act (FERPA)³³ also protects the privacy of student educational records and places restrictions on the release of students' personally identifiable information. For specific inquiries regarding what constitutes the unauthorized release of a student's personally identifiable information, school districts should consult their attorneys. For more information on student privacy, in general, see NYSED's Parents' Bill of Rights for Data Privacy and Security at <http://www.p12.nysed.gov/docs/parents-bill-of-rights.pdf>.

Within the school and school district, when a transgender or GNC student new to a school is using a chosen name, the birth name should be kept confidential by school and district staff. School districts are reminded that, while disclosure of personally identifiable information from a student's education record to other school officials, including teachers, within the district whom the district has determined to have legitimate educational interests may be permissible under FERPA, the district must, among other things, use reasonable methods to ensure that school officials obtain access to only those education records in which they have legitimate educational interests.³⁴

Generally, records with the student's birth name should be kept in a separate, confidential file. If the student has previously been known at school or in school records by his/her/their birth name, the principal should direct school personnel to use the student's chosen name and not the student's birth name. To ensure consistency among teachers, school administrators, substitute teachers and other staff, every effort should be made to immediately update student education records (for example, attendance records, transcripts, Individualized Education Programs, etc.) with the student's chosen name and appropriate gender markers and not circulate records with the student's birth name. A school's failure or refusal to amend such records could, for example,

³² N.Y. EDUC. LAW § 2-d.

³³ 20 U.S.C. 1232g; 34 C.F.R. Part 99.

³⁴ 34 C.F.R. § 99.31(a)(1).

lead to delays in the student's receipt of appropriate services or create problems related to the award of appropriate high school course credit, thereby imperiling a student's ability to graduate with his or her class.

With respect to student medical records, school nurses and other licensed professionals need accurate and reliable information to confirm a student's identity in order to ensure that the student receives appropriate care and to enable them to coordinate care with other health care providers or licensed professionals, as well as to file health insurance claims with other organizations, such as Medicaid. Nurses are legally required to maintain patient records that accurately document clinical information relating to their patients and must keep their patients' health records confidential.³⁵ In the case of a transgender student, a school nurse should use the student's chosen name, and should use the student's birth name only when necessary to ensure that the student receives appropriate care and to enable the school nurse to coordinate care for the student with other health care providers or licensed professionals, as well as to file health insurance claims. For more information on the maintenance and confidentiality of student medical records, please contact the New York State Education Department Office of Student Support Services or the New York State Statewide School Health Services Center.

EXAMPLE:

One school administrator dealt with information in the student's file by starting a new file with the student's chosen name, entered previous academic records under the student's chosen name, and created a separate, confidential folder that contained the student's past information and birth name.

3: Gender-Based Activities, Rules, Policies, and Practices

Gender-based policies, rules, and practices can have the effect of marginalizing, stigmatizing, stereotyping and excluding students, whether they are transgender or GNC or not. For these reasons, school districts should consult with their attorneys to review such policies, rules and practices, and should eliminate any that do not serve a clear pedagogical purpose.

EXAMPLE:

One school that previously had blue graduation gowns for boys and white ones for girls switched to blue gowns for all graduates. The school also changed its gender-based dress code for the National Honor Society ceremony, which had required girls to wear dresses.

School districts, as well as students and their families, may find the use of restrooms, changing facilities, and participation in extracurricular activities to be among the more important issues in this area. The United States Departments of Education and Justice have stated that:

[u]nder Title IX, discrimination based on a person's gender identity, a person's transgender status, or a person's nonconformity to sex stereotypes constitutes discrimination based on sex. As such, **prohibiting a student from accessing the restrooms that match his gender identity is prohibited sex discrimination under**

³⁵ See 8 NYCRR §29.1(b)(8), 29.2(a)(3).

Title IX. There is a public interest in ensuring that all students, including transgender students, have the opportunity to learn in an environment free of sex discrimination (emphasis added).³⁶

Alternative accommodations, such as a single “unisex” bathroom or private changing space, should be made available to students who request them, **but should never be forced upon students**, nor presented as the only option. The following are examples of ways in which school officials have responded to situations involving gender-segregated activities or spaces:

EXAMPLES:

In one elementary school, a transgender second-grader socially transitioned from female to male. After consultation with the student’s family and in accordance with the student’s wishes, the principal informed the staff: In order to foster an inclusive and supportive learning environment, the student will begin using male restrooms, in accordance with the student’s male gender identity and expression.

In one high school, a transgender female student was given access to the female changing facility, but the student was uncomfortable using the female changing facility with other female students because there were no private changing areas within the facility. The principal examined the changing facility and determined that curtains could easily be put up along one side of a row of benches near the group lockers, providing private changing areas for any students who wished to use them. After the school put up the curtains, the student was comfortable using the changing facility.

³⁶ Statement of Interest of the United States, *Grimm v. Gloucester County School Board*, Case No. 4:15cv54 (E.D. Virg. filed June 29, 2015), at 1, available at https://www.aclu.org/sites/default/files/field_document/stmtinterestunitedstatesecf28_redacted.pdf; See also Statement of Interest of the United States, *Tooley v. Van Buren Public Schools*, Case No. 2:14-cv-13466 (E.D. Mich. filed Sept. 5, 2014), at 18, available at <http://blogs.edweek.org/edweek/rulesforengagement/Tooley%20SOI%20-%202-24-15.pdf>; U.S. Dep’t. of Ed. Office for Civil Rights: *Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities*, 25 (Dec. 1, 2014) (schools “generally must treat transgender students consistent with their gender identity”), available at <http://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf>; *Downey Unified School District Resolution Agreement*, 1-3 (Oct. 8, 2014) (mandating “access to sex-designated facilities for female students at school, and at all District-sponsored activities, including overnight events, try-outs and participation in extracurricular activities on and off campus, consistent with her gender identity” for a transgender student), available at <http://www2.ed.gov/documents/press-releases/downey-school-district-agreement.pdf>; *Questions and Answers on Title IX and Sexual Violence*, (April 29, 2014), available at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>; *Arcadia Unified School District Resolution Agreement*, 3 (July 24, 2013) (mandating “access to sex-specific facilities designated for male students at school consistent with his gender identity” for transgender student), available at <http://www.justice.gov/crt/about/edu/documents/arcadiaagree.pdf>; “Dear Colleague” Letter of Russlynn Ali, Ass’t Sec’y for Civil Rights, 7 (Oct. 26, 2010), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>; see also *Lusardi v. McHugh et al.*, E.E.O.C. Appeal No. 0120133395 (April 1, 2015), at 8-11 (in the analogous context of Title VII sex discrimination, barring a transgender woman from the communal women’s room was “direct evidence of discrimination on the basis of sex,” since “where . . . a transgender female has notified her employer that she has begun living and working full-time as a woman, the agency must allow her access to the women’s restrooms,” and “supervisory or co-worker confusion or anxiety cannot justify discriminatory terms and conditions of employment”), available at <http://transgenderlawcenter.org/archives/11521>.

Similarly, physical education is a required part of the curriculum and an important part of many students' lives. Most physical education classes in New York's schools are coed, so the gender identity of students should not be an issue with respect to these classes. Where there are sex-segregated classes, students should be allowed to participate in a manner consistent with their gender identity.

Resources, Education, and Training for School Districts and Communities

The New York State Education Department continues to be committed to providing all public school students with an environment free from discrimination and harassment, to fostering civility in public schools, and to ensuring that every student has equal access to educational programs and activities. In order to ensure that all students—including transgender and GNC students—are provided with an environment free from discrimination and harassment and to foster civility in the school community, school districts are encouraged to provide this guidance document and other resources, such as trainings and information sessions, to the school community including, but not limited to, parents, students, staff and residents. Such efforts will help to ensure that the school community understands the importance of a safe and supportive school environment for all students and how community members can play an active role in fostering such an environment. Schools should refer to existing New York State Education Department Guidance for expanded resources for fostering an inclusive school community.³⁷

As with other efforts to promote a positive school culture, it is recommended that student leaders and school personnel, particularly school administrators, become familiar with applicable law, regulations, guidance, and related resources, and that they communicate and model respect for the gender identity of all students. We also encourage schools to continue to have an open dialogue with their school community when working together to foster an inclusive school environment.

This guidance cannot anticipate every situation in which questions may arise relating to transgender and gender non-conforming students. Therefore, the specific needs of each transgender or GNC student should be assessed and addressed on a case-by-case basis. NYSED will continue to provide assistance, support and resources as we work together to create a safe and supportive school environment for all students. For further information or questions about the content of this guidance, please contact the Student Support Services Office at (518) 486-6090.

For additional information and resources regarding transgender students in schools please see below for a small sample of available government and advocacy resources:

New York State Education Department:

The Dignity for All Students Act (DASA) seeks to provide the State's public elementary

³⁷ For an extensive resource on the implementation of DASA and information on creating an inclusive school community and fostering sensitivity to the school experience of lesbian, gay, bisexual, transgender, queer and questioning (LGBTQ) students, please see the New York State Education Department (NYSED), *The Dignity Act, A Resource and Promising Practices Guide for School Administrators & Faculty, Creating an Inclusive School Community: Sensitivity to the Experience of Specific Student Populations: LGBTQ Children*, Section II (Mar. 11, 2014), available at <http://www.p12.nysed.gov/dignityact/rgsection2.html> (defining LGBTQ as "individuals who self-identify as either lesbian, gay, bisexual, transgender, or questioning").

and secondary school students with a safe and supportive environment free from discrimination, intimidation, taunting, harassment, and bullying on school property, a school bus and/or at a school function.

<http://www.p12.nysed.gov/dignityact/>

New York City Department of Education:

Pursuant to the New York City Human Rights Law, the New York City Department of Education has issued guidance regarding transgender students within the jurisdiction of NYC DOE. While it does not apply statewide, it can be used as a reference as to what one New York district has adopted regarding accommodations for transgender students.

<http://schools.nyc.gov/RulesPolicies/TransgenderStudentGuidelines/default.htm>

Examples of Guidance and Related Materials from Other States With Specific Transgender Student Non-Discrimination Statutes:

Washington:

Prohibiting Discrimination in Washington Public Schools

<http://www.k12.wa.us/Equity/pubdocs/ProhibitingDiscriminationInPublicSchools.pdf>

Connecticut:

http://www.sde.ct.gov/sde/lib/sde/pdf/equity/title_ix/guidelines_for_schools_on_gender_identity_and_expression2012oct4.pdf

Massachusetts:

The Massachusetts Department of Elementary and Secondary Education,

<http://www.doe.mass.edu/ssce/GenderIdentity.pdf>

California: Arcadia USD, OCR, and DOJ Resolution Agreement: July, 2013

http://www.nclrights.org/wp-content/uploads/2013/09/Arcadia_Resolution_agreement_07.24.2013.pdf

California: Notification Letter to Arcadia USD from OCR/DOJ:

<http://www.justice.gov/crt/about/edu/documents/arcadialetter.pdf>

The Department supports the efforts of school communities to implement this guidance which is intended to be a resource for schools and districts. It includes links to websites that contain information, resources, and tools to assist schools and districts. Please evaluate each resource to determine if it is developmentally age appropriate for your school population. The State Education Department does not endorse any particular programs. The intent of this document is to provide information only. Schools, districts and BOCES should consult with their school attorneys regarding specific legal questions. Analyses of examples contained herein do not represent official determination(s) or interpretation(s) by the Department. Examples described in this guidance may be the subject of an appeal to the Commissioner of Education under section 310 of the Education Law; as a result, the information contained herein is advisory only and does not necessarily represent an official legal opinion of the Commissioner of Education or of the State Education Department.

**The LGBTQ community and the Law: A
Discussion on Youth, Transgender rights, and
Legal Needs of Low-Income LGBT People**

**Colleague Letter on
Transgender
Students**



U.S. Department of Justice
Civil Rights Division



U.S. Department of Education
Office for Civil Rights

Dear Colleague Letter on Transgender Students
Notice of Language Assistance

If you have difficulty understanding English, you may, free of charge, request language assistance services for this Department information by calling 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), or email us at: Ed.Language.Assistance@ed.gov.

Aviso a personas con dominio limitado del idioma inglés: Si usted tiene alguna dificultad en entender el idioma inglés, puede, sin costo alguno, solicitar asistencia lingüística con respecto a esta información llamando al 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o envíe un mensaje de correo electrónico a: Ed.Language.Assistance@ed.gov.

給英語能力有限人士的通知: 如果您不懂英語, 或者使用英語有困難, 您可以要求獲得向大眾提供的語言協助服務, 幫助您理解教育部資訊。這些語言協助服務均可免費提供。如果您需要有關口譯或筆譯服務的詳細資訊, 請致電 1-800-USA-LEARN (1-800-872-5327) (聽語障人士專線: 1-800-877-8339), 或電郵: Ed.Language.Assistance@ed.gov。

Thông báo dành cho những người có khả năng Anh ngữ hạn chế: Nếu quý vị gặp khó khăn trong việc hiểu Anh ngữ thì quý vị có thể yêu cầu các dịch vụ hỗ trợ ngôn ngữ cho các tin tức của Bộ dành cho công chúng. Các dịch vụ hỗ trợ ngôn ngữ này đều miễn phí. Nếu quý vị muốn biết thêm chi tiết về các dịch vụ phiên dịch hay thông dịch, xin vui lòng gọi số 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), hoặc email: Ed.Language.Assistance@ed.gov.

영어 미숙자를 위한 공고: 영어를 이해하는 데 어려움이 있으신 경우, 교육부 정보 센터에 일반인 대상 언어 지원 서비스를 요청하실 수 있습니다. 이러한 언어 지원 서비스는 무료로 제공됩니다. 통역이나 번역 서비스에 대해 자세한 정보가 필요하신 경우, 전화번호 1-800-USA-LEARN (1-800-872-5327) 또는 청각 장애인용 전화번호 1-800-877-8339 또는 이메일 주소 Ed.Language.Assistance@ed.gov 으로 연락하시기 바랍니다.

Paunawa sa mga Taong Limitado ang Kaalaman sa English: Kung nahihirapan kayong makaintindi ng English, maaari kayong humingi ng tulong ukol dito sa inpormasyon ng Kagawaran mula sa nagbibigay ng serbisyo na pagtulong kaugnay ng wika. Ang serbisyo na pagtulong kaugnay ng wika ay libre. Kung kailangan ninyo ng dagdag na impormasyon tungkol sa mga serbisyo kaugnay ng pagpapaliwanag o pagsasalin, mangyari lamang tumawag sa 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o mag-email sa: Ed.Language.Assistance@ed.gov.

Уведомление для лиц с ограниченным знанием английского языка: Если вы испытываете трудности в понимании английского языка, вы можете попросить, чтобы вам предоставили перевод информации, которую Министерство Образования доводит до всеобщего сведения. Этот перевод предоставляется бесплатно. Если вы хотите получить более подробную информацию об услугах устного и письменного перевода, звоните по телефону 1-800-USA-LEARN (1-800-872-5327) (служба для слабослышащих: 1-800-877-8339), или отправьте сообщение по адресу: Ed.Language.Assistance@ed.gov.



U.S. Department of Justice
Civil Rights Division



U.S. Department of Education
Office for Civil Rights

May 13, 2016

Dear Colleague:

Schools across the country strive to create and sustain inclusive, supportive, safe, and nondiscriminatory communities for all students. In recent years, we have received an increasing number of questions from parents, teachers, principals, and school superintendents about civil rights protections for transgender students. Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulations prohibit sex discrimination in educational programs and activities operated by recipients of Federal financial assistance.¹ This prohibition encompasses discrimination based on a student's gender identity, including discrimination based on a student's transgender status. This letter summarizes a school's Title IX obligations regarding transgender students and explains how the U.S. Department of Education (ED) and the U.S. Department of Justice (DOJ) evaluate a school's compliance with these obligations.

ED and DOJ (the Departments) have determined that this letter is *significant guidance*.² This guidance does not add requirements to applicable law, but provides information and examples to inform recipients about how the Departments evaluate whether covered entities are complying with their legal obligations. If you have questions or are interested in commenting on this guidance, please contact ED at ocr@ed.gov or 800-421-3481 (TDD 800-877-8339); or DOJ at education@usdoj.gov or 877-292-3804 (TTY: 800-514-0383).

Accompanying this letter is a separate document from ED's Office of Elementary and Secondary Education, *Examples of Policies and Emerging Practices for Supporting Transgender Students*. The examples in that document are taken from policies that school districts, state education agencies, and high school athletics associations around the country have adopted to help ensure that transgender students enjoy a supportive and nondiscriminatory school environment. Schools are encouraged to consult that document for practical ways to meet Title IX's requirements.³

Terminology

- ☐ *Gender identity* refers to an individual's internal sense of gender. A person's gender identity may be different from or the same as the person's sex assigned at birth.
- ☐ *Sex assigned at birth* refers to the sex designation recorded on an infant's birth certificate should such a record be provided at birth.
- ☐ *Transgender* describes those individuals whose gender identity is different from the sex they were assigned at birth. A *transgender male* is someone who identifies as male but was assigned the sex of female at birth; a *transgender female* is someone who identifies as female but was assigned the sex of male at birth.

- *Gender transition* refers to the process in which transgender individuals begin asserting the sex that corresponds to their gender identity instead of the sex they were assigned at birth. During gender transition, individuals begin to live and identify as the sex consistent with their gender identity and may dress differently, adopt a new name, and use pronouns consistent with their gender identity. Transgender individuals may undergo gender transition at any stage of their lives, and gender transition can happen swiftly or over a long duration of time.

Compliance with Title IX

As a condition of receiving Federal funds, a school agrees that it will not exclude, separate, deny benefits to, or otherwise treat differently on the basis of sex any person in its educational programs or activities unless expressly authorized to do so under Title IX or its implementing regulations.⁴ The Departments treat a student's gender identity as the student's sex for purposes of Title IX and its implementing regulations. This means that a school must not treat a transgender student differently from the way it treats other students of the same gender identity. The Departments' interpretation is consistent with courts' and other agencies' interpretations of Federal laws prohibiting sex discrimination.⁵

The Departments interpret Title IX to require that when a student or the student's parent or guardian, as appropriate, notifies the school administration that the student will assert a gender identity that differs from previous representations or records, the school will begin treating the student consistent with the student's gender identity. Under Title IX, there is no medical diagnosis or treatment requirement that students must meet as a prerequisite to being treated consistent with their gender identity.⁶ Because transgender students often are unable to obtain identification documents that reflect their gender identity (e.g., due to restrictions imposed by state or local law in their place of birth or residence),⁷ requiring students to produce such identification documents in order to treat them consistent with their gender identity may violate Title IX when doing so has the practical effect of limiting or denying students equal access to an educational program or activity.

A school's Title IX obligation to ensure nondiscrimination on the basis of sex requires schools to provide transgender students equal access to educational programs and activities even in circumstances in which other students, parents, or community members raise objections or concerns. As is consistently recognized in civil rights cases, the desire to accommodate others' discomfort cannot justify a policy that singles out and disadvantages a particular class of students.⁸

1. Safe and Nondiscriminatory Environment

Schools have a responsibility to provide a safe and nondiscriminatory environment for all students, including transgender students. Harassment that targets a student based on gender identity, transgender status, or gender transition is harassment based on sex, and the Departments enforce Title IX accordingly.⁹ If sex-based harassment creates a hostile environment, the school must take prompt and effective steps to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects. A school's failure to treat students consistent with their gender identity may create or contribute to a hostile environment in violation of Title IX. For a more detailed discussion of Title IX

requirements related to sex-based harassment, see guidance documents from ED's Office for Civil Rights (OCR) that are specific to this topic.¹⁰

2. Identification Documents, Names, and Pronouns

Under Title IX, a school must treat students consistent with their gender identity even if their education records or identification documents indicate a different sex. The Departments have resolved Title IX investigations with agreements committing that school staff and contractors will use pronouns and names consistent with a transgender student's gender identity.¹¹

3. Sex-Segregated Activities and Facilities

Title IX's implementing regulations permit a school to provide sex-segregated restrooms, locker rooms, shower facilities, housing, and athletic teams, as well as single-sex classes under certain circumstances.¹² When a school provides sex-segregated activities and facilities, transgender students must be allowed to participate in such activities and access such facilities consistent with their gender identity.¹³

- ☐ **Restrooms and Locker Rooms.** A school may provide separate facilities on the basis of sex, but must allow transgender students access to such facilities consistent with their gender identity.¹⁴ A school may not require transgender students to use facilities inconsistent with their gender identity or to use individual-user facilities when other students are not required to do so. A school may, however, make individual-user options available to all students who voluntarily seek additional privacy.¹⁵
- ☐ **Athletics.** Title IX regulations permit a school to operate or sponsor sex-segregated athletics teams when selection for such teams is based upon competitive skill or when the activity involved is a contact sport.¹⁶ A school may not, however, adopt or adhere to requirements that rely on overly broad generalizations or stereotypes about the differences between transgender students and other students of the same sex (*i.e.*, the same gender identity) or others' discomfort with transgender students.¹⁷ Title IX does not prohibit age-appropriate, tailored requirements based on sound, current, and research-based medical knowledge about the impact of the students' participation on the competitive fairness or physical safety of the sport.¹⁸
- ☐ **Single-Sex Classes.** Although separating students by sex in classes and activities is generally prohibited, nonvocational elementary and secondary schools may offer nonvocational single-sex classes and extracurricular activities under certain circumstances.¹⁹ When offering such classes and activities, a school must allow transgender students to participate consistent with their gender identity.
- ☐ **Single-Sex Schools.** Title IX does not apply to the admissions policies of certain educational institutions, including nonvocational elementary and secondary schools, and private undergraduate colleges.²⁰ Those schools are therefore permitted under Title IX to set their own

sex-based admissions policies. Nothing in Title IX prohibits a private undergraduate women's college from admitting transgender women if it so chooses.

- **Social Fraternities and Sororities.** Title IX does not apply to the membership practices of social fraternities and sororities.²¹ Those organizations are therefore permitted under Title IX to set their own policies regarding the sex, including gender identity, of their members. Nothing in Title IX prohibits a fraternity from admitting transgender men or a sorority from admitting transgender women if it so chooses.
- **Housing and Overnight Accommodations.** Title IX allows a school to provide separate housing on the basis of sex.²² But a school must allow transgender students to access housing consistent with their gender identity and may not require transgender students to stay in single-occupancy accommodations or to disclose personal information when not required of other students. Nothing in Title IX prohibits a school from honoring a student's voluntary request for single-occupancy accommodations if it so chooses.²³
- **Other Sex-Specific Activities and Rules.** Unless expressly authorized by Title IX or its implementing regulations, a school may not segregate or otherwise distinguish students on the basis of their sex, including gender identity, in any school activities or the application of any school rule. Likewise, a school may not discipline students or exclude them from participating in activities for appearing or behaving in a manner that is consistent with their gender identity or that does not conform to stereotypical notions of masculinity or femininity (e.g., in yearbook photographs, at school dances, or at graduation ceremonies).²⁴

4. Privacy and Education Records

Protecting transgender students' privacy is critical to ensuring they are treated consistent with their gender identity. The Departments may find a Title IX violation when a school limits students' educational rights or opportunities by failing to take reasonable steps to protect students' privacy related to their transgender status, including their birth name or sex assigned at birth.²⁵ Nonconsensual disclosure of personally identifiable information (PII), such as a student's birth name or sex assigned at birth, could be harmful to or invade the privacy of transgender students and may also violate the Family Educational Rights and Privacy Act (FERPA).²⁶ A school may maintain records with this information, but such records should be kept confidential.

- **Disclosure of Personally Identifiable Information from Education Records.** FERPA generally prevents the nonconsensual disclosure of PII from a student's education records; one exception is that records may be disclosed to individual school personnel who have been determined to have a legitimate educational interest in the information.²⁷ Even when a student has disclosed the student's transgender status to some members of the school community, schools may not rely on this FERPA exception to disclose PII from education records to other school personnel who do not have a legitimate educational interest in the information. Inappropriately disclosing (or requiring students or their parents to disclose) PII from education records to the school community may

violate FERPA and interfere with transgender students' right under Title IX to be treated consistent with their gender identity.

- **Disclosure of Directory Information.** Under FERPA's implementing regulations, a school may disclose appropriately designated directory information from a student's education record if disclosure would not generally be considered harmful or an invasion of privacy.²⁸ Directory information may include a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance.²⁹ School officials may not designate students' sex, including transgender status, as directory information because doing so could be harmful or an invasion of privacy.³⁰ A school also must allow eligible students (*i.e.*, students who have reached 18 years of age or are attending a postsecondary institution) or parents, as appropriate, a reasonable amount of time to request that the school not disclose a student's directory information.³¹
- **Amendment or Correction of Education Records.** A school may receive requests to correct a student's education records to make them consistent with the student's gender identity. Updating a transgender student's education records to reflect the student's gender identity and new name will help protect privacy and ensure personnel consistently use appropriate names and pronouns.
 - Under FERPA, a school must consider the request of an eligible student or parent to amend information in the student's education records that is inaccurate, misleading, or in violation of the student's privacy rights.³² If the school does not amend the record, it must inform the requestor of its decision and of the right to a hearing. If, after the hearing, the school does not amend the record, it must inform the requestor of the right to insert a statement in the record with the requestor's comments on the contested information, a statement that the requestor disagrees with the hearing decision, or both. That statement must be disclosed whenever the record to which the statement relates is disclosed.³³
 - Under Title IX, a school must respond to a request to amend information related to a student's transgender status consistent with its general practices for amending other students' records.³⁴ If a student or parent complains about the school's handling of such a request, the school must promptly and equitably resolve the complaint under the school's Title IX grievance procedures.³⁵

* * *

We appreciate the work that many schools, state agencies, and other organizations have undertaken to make educational programs and activities welcoming, safe, and inclusive for all students.

Sincerely,

/s/

Catherine E. Lhamon
Assistant Secretary for Civil Rights
U.S. Department of Education

/s/

Vanita Gupta
Principal Deputy Assistant Attorney General for Civil Rights
U.S. Department of Justice

¹ 20 U.S.C. §§ 1681–1688; 34 C.F.R. Pt. 106; 28 C.F.R. Pt. 54. In this letter, the term *schools* refers to recipients of Federal financial assistance at all educational levels, including school districts, colleges, and universities. An educational institution that is controlled by a religious organization is exempt from Title IX to the extent that compliance would not be consistent with the religious tenets of such organization. 20 U.S.C. § 1681(a)(3); 34 C.F.R. § 106.12(a).

² Office of Management and Budget, Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507_good_guidance.pdf.

³ ED, *Examples of Policies and Emerging Practices for Supporting Transgender Students* (May 13, 2016), www.ed.gov/oese/osh/emergeringpractices. OCR also posts many of its resolution agreements in cases involving transgender students online at www.ed.gov/ocr/lgbt.html. While these agreements address fact-specific cases, and therefore do not state general policy, they identify examples of ways OCR and recipients have resolved some issues addressed in this guidance.

⁴ 34 C.F.R. §§ 106.4, 106.31(a). For simplicity, this letter cites only to ED’s Title IX regulations. DOJ has also promulgated Title IX regulations. See 28 C.F.R. Pt. 54. For purposes of how the Title IX regulations at issue in this guidance apply to transgender individuals, DOJ interprets its regulations similarly to ED. State and local rules cannot limit or override the requirements of Federal laws. See 34 C.F.R. § 106.6(b).

⁵ See, e.g., *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989); *Oncale v. Sundowner Offshore Servs. Inc.*, 523 U.S. 75, 79 (1998); *G.G. v. Gloucester Cnty. Sch. Bd.*, No. 15-2056, 2016 WL 1567467, at *8 (4th Cir. Apr. 19, 2016); *Glenn v. Brumby*, 663 F.3d 1312, 1317 (11th Cir. 2011); *Smith v. City of Salem*, 378 F.3d 566, 572-75 (6th Cir. 2004); *Rosa v. Park W. Bank & Trust Co.*, 214 F.3d 213, 215–16 (1st Cir. 2000); *Schwenk v. Hartford*, 204 F.3d 1187, 1201–02 (9th Cir. 2000); *Schroer v. Billington*, 577 F. Supp. 2d 293, 306-08 (D.D.C. 2008); *Macy v. Dep’t of Justice*, Appeal No. 012012082 (U.S. Equal Emp’t Opportunity Comm’n Apr. 20, 2012). See also U.S. Dep’t of Labor (USDOL), Training and Employment Guidance Letter No. 37-14, *Update on Complying with Nondiscrimination Requirements: Discrimination Based on Gender Identity, Gender Expression and Sex Stereotyping are Prohibited Forms of Sex Discrimination in the Workforce Development System* (2015), wdr.doleta.gov/directives/attach/TEGL/TEGL_37-14.pdf; USDOL, Job Corps, Directive: Job Corps Program Instruction Notice No. 14-31, *Ensuring Equal Access for Transgender Applicants and Students to the Job Corps Program* (May 1, 2015), https://supportservices.jobcorps.gov/Program%20Instruction%20Notices/pi_14_31.pdf; DOJ, Memorandum from the Attorney General, *Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964* (2014), www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/18/title_vii_memo.pdf; USDOL, Office of Federal Contract Compliance Programs, Directive 2014-02, *Gender Identity and Sex Discrimination* (2014), www.dol.gov/ofccp/regs/compliance/directives/dir2014_02.html.

⁶ See *Lusardi v. Dep’t of the Army*, Appeal No. 0120133395 at 9 (U.S. Equal Emp’t Opportunity Comm’n Apr. 1, 2015) (“An agency may not condition access to facilities—or to other terms, conditions, or privileges of employment—on the completion of certain medical steps that the agency itself has unilaterally determined will somehow prove the bona fides of the individual’s gender identity.”).

⁷ See *G.G.*, 2016 WL 1567467, at *1 n.1 (noting that medical authorities “do not permit sex reassignment surgery for persons who are under the legal age of majority”).

⁸ 34 C.F.R. § 106.31(b)(4); see *G.G.*, 2016 WL 1567467, at *8 & n.10 (affirming that individuals have legitimate and important privacy interests and noting that these interests do not inherently conflict with nondiscrimination principles); *Cruzan v. Special Sch. Dist. No. 1*, 294 F.3d 981, 984 (8th Cir. 2002) (rejecting claim that allowing a transgender woman “merely [to be] present in the women’s faculty restroom” created a hostile environment); *Glenn*, 663 F.3d at 1321 (defendant’s proffered justification that “other women might object to [the plaintiff]’s restroom use” was “wholly irrelevant”). See also *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984) (“Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.”); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985) (recognizing that “mere negative attitudes, or fear . . . are not permissible bases for” government action).

⁹ See, e.g., Resolution Agreement, *In re Downey Unified Sch. Dist.*, CA, OCR Case No. 09-12-1095, (Oct. 8, 2014), www.ed.gov/documents/press-releases/downey-school-district-agreement.pdf (agreement to address harassment of transgender student, including allegations that peers continued to call her by her former name, shared pictures of her prior to her transition, and frequently asked questions about her anatomy and sexuality); Consent Decree, *Doe v. Anoka-Hennepin Sch. Dist. No. 11*, MN (D. Minn. Mar. 1, 2012), www.ed.gov/ocr/docs/investigations/05115901-d.pdf (consent decree to address sex-based harassment, including based on nonconformity with gender stereotypes); Resolution Agreement, *In re Tehachapi Unified Sch. Dist.*, CA, OCR Case No. 09-11-1031 (June 30, 2011), www.ed.gov/ocr/docs/investigations/09111031-b.pdf (agreement to address sexual and gender-based harassment, including harassment based on nonconformity with gender stereotypes). See also *Lusardi*, Appeal No. 0120133395, at *15 (“Persistent failure to use the employee’s correct name and pronoun may constitute unlawful, sex-based harassment if such conduct is either severe or pervasive enough to create a hostile work environment”).

¹⁰ See, e.g., OCR, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* (2001), www.ed.gov/ocr/docs/shguide.pdf; OCR, *Dear Colleague Letter: Harassment and Bullying* (Oct. 26, 2010), www.ed.gov/ocr/letters/colleague-201010.pdf; OCR, *Dear Colleague Letter: Sexual Violence* (Apr. 4, 2011), www.ed.gov/ocr/letters/colleague-201104.pdf; OCR, *Questions and Answers on Title IX and Sexual Violence* (Apr. 29, 2014), www.ed.gov/ocr/docs/qa-201404-title-ix.pdf.

¹¹ See, e.g., Resolution Agreement, *In re Cent. Piedmont Cmty. Coll.*, NC, OCR Case No. 11-14-2265 (Aug. 13, 2015), www.ed.gov/ocr/docs/investigations/more/11142265-b.pdf (agreement to use a transgender student’s preferred name and gender and change the student’s official record to reflect a name change).

¹² 34 C.F.R. §§ 106.32, 106.33, 106.34, 106.41(b).

¹³ See 34 C.F.R. § 106.31.

¹⁴ 34 C.F.R. § 106.33.

¹⁵ See, e.g., Resolution Agreement, *In re Township High Sch. Dist. 211*, IL, OCR Case No. 05-14-1055 (Dec. 2, 2015), www.ed.gov/ocr/docs/investigations/more/05141055-b.pdf (agreement to provide any student who requests additional privacy “access to a reasonable alternative, such as assignment of a student locker in near proximity to the office of a teacher or coach; use of another private area (such as a restroom stall) within the public area; use of a nearby private area (such as a single-use facility); or a separate schedule of use.”).

¹⁶ 34 C.F.R. § 106.41(b). Nothing in Title IX prohibits schools from offering coeducational athletic opportunities.

¹⁷ 34 C.F.R. § 106.6(b), (c). An interscholastic athletic association is subject to Title IX if (1) the association receives Federal financial assistance or (2) its members are recipients of Federal financial assistance and have ceded controlling authority over portions of their athletic program to the association. Where an athletic association is covered by Title IX, a school’s obligations regarding transgender athletes apply with equal force to the association.

¹⁸ The National Collegiate Athletic Association (NCAA), for example, reported that in developing its policy for participation by transgender students in college athletics, it consulted with medical experts, athletics officials, affected students, and a consensus report entitled *On the Team: Equal Opportunity for Transgender Student Athletes* (2010) by Dr. Pat Griffin & Helen J. Carroll (*On the Team*), [https://www.ncaa.org/sites/default/files/NCLR_TransStudentAthlete%2B\(2\).pdf](https://www.ncaa.org/sites/default/files/NCLR_TransStudentAthlete%2B(2).pdf). See NCAA Office of Inclusion, *NCAA Inclusion of Transgender Student-Athletes* 2, 30-31 (2011), https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf (citing *On the Team*). The *On the Team* report noted that policies that may be appropriate at the college level may “be unfair and too complicated for [the high school] level of competition.” *On the Team* at 26. After engaging in similar processes, some state interscholastic athletics associations have adopted policies for participation by transgender students in high school athletics that they determined were age-appropriate.

¹⁹ 34 C.F.R. § 106.34(a), (b). Schools may also separate students by sex in physical education classes during participation in contact sports. *Id.* § 106.34(a)(1).

²⁰ 20 U.S.C. § 1681(a)(1); 34 C.F.R. § 106.15(d); 34 C.F.R. § 106.34(c) (a recipient may offer a single-sex public nonvocational elementary and secondary school so long as it provides students of the excluded sex a “substantially

equal single-sex school or coeducational school”).

²¹ 20 U.S.C. § 1681(a)(6)(A); 34 C.F.R. § 106.14(a).

²² 20 U.S.C. § 1686; 34 C.F.R. § 106.32.

²³ See, e.g., Resolution Agreement, *In re Arcadia Unified Sch. Dist.*, CA, OCR Case No. 09-12-1020, DOJ Case No. 169-12C-70, (July 24, 2013), www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf (agreement to provide access to single-sex overnight events consistent with students’ gender identity, but allowing students to request access to private facilities).

²⁴ See 34 C.F.R. §§ 106.31(a), 106.31(b)(4). See also, *In re Downey Unified Sch. Dist.*, CA, *supra* n. 9; *In re Cent. Piedmont Cmty. Coll.*, NC, *supra* n. 11.

²⁵ 34 C.F.R. § 106.31(b)(7).

²⁶ 20 U.S.C. § 1232g; 34 C.F.R. Part 99. FERPA is administered by ED’s Family Policy Compliance Office (FPCO). Additional information about FERPA and FPCO is available at www.ed.gov/fpc.

²⁷ 20 U.S.C. § 1232g(b)(1)(A); 34 C.F.R. § 99.31(a)(1).

²⁸ 34 C.F.R. §§ 99.3, 99.31(a)(11), 99.37.

²⁹ 20 U.S.C. § 1232g(a)(5)(A); 34 C.F.R. § 99.3.

³⁰ Letter from FPCO to Institutions of Postsecondary Education 3 (Sept. 2009), www.ed.gov/policy/gen/guid/fpc/doc/censuslettertohighered091609.pdf.

³¹ 20 U.S.C. § 1232g(a)(5)(B); 34 C.F.R. §§ 99.3, 99.37(a)(3).

³² 34 C.F.R. § 99.20.

³³ 34 C.F.R. §§ 99.20-99.22.

³⁴ See 34 C.F.R. § 106.31(b)(4).

³⁵ 34 C.F.R. § 106.8(b).

**The LGBTQ community and the Law: A
Discussion on Youth, Transgender rights, and
Legal Needs of Low-Income LGBT People**

**Examples of
Policies and
Emerging Practices**

Examples of Policies and Emerging Practices for Supporting Transgender Students



U.S. Department of Education

Office of Elementary and Secondary Education

Office of Safe and Healthy Students

May 2016

U.S. Department of Education
Office of Elementary and Secondary Education
Office of Safe and Healthy Students

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May 2016

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Examples of Policies and Emerging Practices for Supporting Transgender Students

The U.S. Department of Education (“ED”) is committed to providing schools with the information they need to provide a safe, supportive, and nondiscriminatory learning environment for all students. It has come to ED’s attention that many transgender students (*i.e.*, students whose gender identity is different from the sex they were assigned at birth) report feeling unsafe and experiencing verbal and physical harassment or assault in school, and that these students may perform worse academically when they are harassed. School administrators, educators, students, and parents are asking questions about how to support transgender students and have requested clarity from ED. In response, ED developed two documents:

- ED’s Office for Civil Rights and the U.S. Department of Justice’s Civil Rights Division jointly issued a Dear Colleague Letter (“DCL”) about transgender students’ rights and schools’ legal obligations under Title IX of the Education Amendments of 1972.¹ Any school that has questions related to transgender students or wants to be prepared to address such issues if they arise should review the DCL.
- ED’s Office of Elementary and Secondary Education compiled the attached examples of policies² and emerging practices³ that some schools are already using to support transgender students. We share some common questions on topics such as school records, privacy, and terminology, and then explain how some state and school district policies have answered these questions. We present this information to illustrate how states and school districts are supporting transgender students. We also provide information about and links to those policies at the end of the document, along with other resources that may be helpful as educators develop policies and practices for their own schools.

¹ 20 U.S.C. §§ 1681-1688; Dear Colleague Letter: Transgender Students (May 13, 2016), www.ed.gov/ocr/letters/colleague-201605-title-ix-transgender.pdf.

² In this document, the term *policy* or *policies* refers generally to policies, guidance, guidelines, procedures, regulations, and resource guides issued by schools, school districts, and state educational agencies.

³ ED considers *emerging practices* to be operational activities or initiatives that contribute to successful outcomes or enhance agency performance capabilities. Emerging practices are those that have been successfully implemented and demonstrate the potential for replication by other agencies. Emerging practices typically have not been rigorously evaluated, but still offer ideas that work in specific situations.

Each person is unique, so the needs of individual transgender students vary. But a school policy setting forth general principles for supporting transgender students can help set clear expectations for students and staff and avoid unnecessary confusion, invasions of privacy, and other harms. The education community continues to develop and revise policies and practices to address the rights of transgender students and reflect our evolving understanding and the individualized nature of transgender students' needs.

This document contains information from some schools, school districts, and state and federal agencies. Inclusion of this information does not constitute an endorsement by ED of any policy or practice, educational product, service, curriculum or pedagogy. In addition, this document references websites that provide information created and maintained by other entities. These references are for the reader's convenience. ED does not control or guarantee the accuracy, relevance, timeliness, or completeness of this outside information. This document does not constitute legal advice, create legal obligations, or impose new requirements.

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Student Transitions

1. How do schools find out that a student will transition?

Typically, the student or the student's parent or guardian will tell the school and ask that the school start treating the student in a manner consistent with the student's gender identity. Some students transition over a school break, such as summer break. Other students may undergo a gender transition during the school year, and may ask (or their parents may ask on their behalf) teachers and other school employees to respect their identity as they begin expressing their gender identity, which may include changes to their dress and appearance. Some school district or state policies address how a student or parent might provide the relevant notice to the school.

- Alaska's Matanuska-Susitna Borough School District issued guidelines ("Mat-Su Borough Guidelines") advising that transgender students or their parents or guardians should contact the building administrator or the student's guidance counselor to schedule a meeting to develop a plan to address the student's particular circumstances and needs.
- The guidelines issued by Washington's Superintendent of Public Instruction ("Washington State Guidelines") offer an example of a student who first attended school as a boy and, about midway through a school year, she and her family decided that she would transition and begin presenting as a girl. She prefers to dress in stereotypically feminine attire such as dresses and skirts. Although she is growing her hair out and consistently presents as female at school, her hair is still in a rather short, typically boyish haircut. The student, her parents, and school administrators asked her friends and teachers to use female pronouns to address her.

2. How do schools confirm a student's gender identity?

Schools generally rely on students' (or in the case of younger students, their parents' or guardians') expression of their gender identity. Although schools sometimes request some form of confirmation, they generally accept the student's asserted gender identity. Some schools offer additional guidance on this issue.

- Los Angeles Unified School District issued a policy ("LAUSD Policy") noting that "[t]here is no medical or mental health diagnosis or treatment threshold that

students must meet in order to have their gender identity recognized and respected” and that evidence may include an expressed desire to be consistently recognized by their gender identity.

- The New York State Education Department issued guidance (“NYSED Guidance”) recommending that “schools accept a student’s assertion of his/her/their own gender identity” and provides examples of ways to confirm the assertion, such as a statement from the student or a letter from an adult familiar with the student’s situation. The same guidance also offers the following example: “In one middle school, a student explained to her guidance counselor that she was a transgender girl who had heretofore only been able to express her female gender identity while at home. The stress associated with having to hide her female gender identity by presenting as male at school was having a negative impact on her mental health, as well as on her academic performance. The student and her parents asked if it would be okay if she expressed her female gender identity at school. The guidance counselor responded favorably to the request. The fact that the student presented no documentation to support her gender identity was not a concern since the school had no reason to believe the request was based on anything other than a sincerely held belief that she had a female gender identity.”
- Alaska’s Anchorage School District developed administrative guidelines (“Anchorage Administrative Guidelines”) noting that being transgender “involves more than a casual declaration of gender identity or expression but does not require proof of a formal evaluation and diagnosis. Since individual circumstances, needs, programs, facilities and resources may differ; administrators and school staff are expected to consider the needs of the individual on a case-by-case basis.”

3. How do schools communicate with the parents of younger students compared to older transgender students?

Parents are often the first to initiate a conversation with the school when their child is transgender, particularly when younger children are involved. Parents may play less of a role in an older student’s transition. Some school policies recommend, with regard to an older student, that school staff consult with the student before reaching out to the student’s parents.

- The District of Columbia Public Schools issued guidance (“DCPS Guidance”) noting that “students may choose to have their parents participate in the transition process, but parental participation is not required.” The guidance further

recommends different developmentally appropriate protocols depending on grade level. The DCPS Guidance suggests that the school work with a young student's family to identify appropriate steps to support the student, but recommends working closely with older students prior to notification of family. The guidance also provides a model planning document with key issues to discuss with the student or the student's family.

- Similarly, the Massachusetts Department of Elementary and Secondary Education issued guidance ("Massachusetts Guidance") that notes: "Some transgender and gender nonconforming students are not openly so at home for reasons such as safety concerns or lack of acceptance. School personnel should speak with the student first before discussing a student's gender nonconformity or transgender status with the student's parent or guardian. For the same reasons, school personnel should discuss with the student how the school should refer to the student, *e.g.*, appropriate pronoun use, in written communication to the student's parent or guardian."
- Chicago Public Schools' guidelines ("Chicago Guidelines") provide: "When speaking with other staff members, parents, guardians, or third parties, school staff should not disclose a student's preferred name, pronoun, or other confidential information pertaining to the student's transgender or gender nonconforming status without the student's permission, unless authorized to do so by the Law Department."
- Oregon's Department of Education issued guidance stating, "In a case where a student is not yet able to self-advocate, the request to respect and affirm a student's identity will likely come from the student's parent. However, in other cases, transgender students may not want their parents to know about their transgender identity. These situations should be addressed on a case-by-case basis and school districts should balance the goal of supporting the student with the requirement that parents be kept informed about their children. The paramount consideration in such situations should be the health and safety of the student, while also making sure that the student's gender identity is affirmed in a manner that maintains privacy and confidentiality."

Privacy, Confidentiality, and Student Records

4. How do schools protect a transgender student's privacy regarding the student's transgender status?

There are a number of ways schools protect transgender students' interests in keeping their transgender status private, including taking steps to prepare staff to consistently use the appropriate name and pronouns. Using transgender students' birth names or pronouns that do not match their gender identity risks disclosing a student's transgender status. Some state and school district policies also address how federal and state privacy laws apply to transgender students and how to keep information about a student's transgender status confidential.

- California's El Rancho Unified School District issued a regulation ("El Rancho Regulation") that provides that students have the right to openly discuss and express their gender identity, but also reminds school personnel to be "mindful of the confidentiality and privacy rights of [transgender] students when contacting parents/legal guardians so as not to reveal, imply, or refer to a student's actual or perceived sexual orientation, gender identity, or gender expression."
- The Chicago Guidelines provide that the school should convene an administrative support team to work with transgender students and/or their parents or guardians to address each student's individual needs and supports. To protect the student's privacy, this team is limited to "the school principal, the student, individuals the student identifies as trusted adults, and individuals the principal determines may have a legitimate interest in the safety and healthy development of the student."
- The Mat-Su Borough Guidelines state: "In some cases, a student may want school staff and students to know, and in other cases the student may not want this information to be widely known. School staff should take care to follow the student's plan and not to inadvertently disclose information that is intended to be kept private or that is protected from disclosure (such as confidential medical information)."
- The Massachusetts Guidance advises schools "to collect or maintain information about students' gender only when necessary" and offers an example: "One school reviewed the documentation requests it sent out to families and noticed that field trip permission forms included a line to fill in indicating the student's gender. Upon consideration, the school determined that the requested information was irrelevant to the field trip activities and deleted the line with the gender marker request."

5. How do schools ensure that a transgender student is called by the appropriate name and pronouns?

One of the first issues that school officials may address when a student notifies them of a gender transition is determining which name and pronouns the student prefers. Some schools have adopted policies to prepare all school staff and students to use a student's newly adopted name, if any, and pronouns that are consistent with a student's gender identity.

- A regulation issued by Nevada's Washoe County School District ("Washoe County Regulation") provides that: "Students have the right to be addressed by the names and pronouns that correspond to their gender identity. Using the student's preferred name and pronoun promotes the safety and wellbeing of the student. When possible, the requested name shall be included in the District's electronic database in addition to the student's legal name, in order to inform faculty and staff of the name and pronoun to use when addressing the student."
- A procedure issued by Kansas City Public Schools in Missouri ("Kansas City Procedure") notes that: "The intentional or persistent refusal to respect the gender identity of an employee or student after notification of the preferred pronoun/name used by the employee or student is a violation of this procedure."
- The NYSED Guidance provides: "As with most other issues involved with creating a safe and supportive environment for transgender students, the best course is to engage the student, and possibly the parent, with respect to name and pronoun use, and agree on a plan to reflect the individual needs of each student to initiate that name and pronoun use within the school. The plan also could include when and how this is communicated to students and their parents."
- The DCPS Guidance includes a school planning guide for principals to review with transgender students as they plan how to ensure the school environment is safe and supportive. The school planning guide allows the student to identify the student's gender identity and preferred name, key contacts at home and at school, as well as develop plans for access to restrooms, locker rooms, and other school activities.

6. How do schools handle requests to change the name or sex designation on a student's records?

Some transgender students may legally change their names. However, transgender students often are unable to obtain identification documents that reflect their gender identity (*e.g.*, due to financial limitations or legal restrictions imposed by state or local law). Some school district policies specify that they will use the name a student identifies as consistent with the student's gender identity regardless of whether the student has completed a legal name change.

- The NYSED Guidance provides that school records, including attendance records, transcripts, and Individualized Education Programs, be updated with the student's chosen name and offers an example: "One school administrator dealt with information in the student's file by starting a new file with the student's chosen name, entered previous academic records under the student's chosen name, and created a separate, confidential folder that contained the student's past information and birth name."
- The DCPS Guidance notes: "A court-ordered name or gender change is not required, and the student does not need to change their official records. If a student wishes to go by another name, the school's registrar can enter that name into the 'Preferred First' name field of [the school's] database."
- The Kansas City Procedure recognizes that there are certain situations where school staff or administrators may need to report a transgender student's legal name or gender. The procedure notes that in these situations, "school staff and administrators shall adopt practices to avoid the inadvertent disclosure of such confidential information."
- The Chicago Guidelines state: "Students are not required to obtain a court order and/or gender change or to change their official records as a prerequisite to being addressed by the name and pronoun that corresponds to their gender identity."
- The Massachusetts Guidance also addresses requests to amend records after graduation: "Transgender students who transition after having completed high school may ask their previous schools to amend school records or a diploma or transcript that include the student's birth name and gender. When requested, and when satisfied with the gender identity information provided, schools should amend the student's record."

Sex-Segregated Activities and Facilities

7. How do schools ensure transgender students have access to facilities consistent with their gender identity?

Schools often segregate restrooms and locker rooms by sex, but some schools have policies that students must be permitted to access facilities consistent with their gender identity and not be required to use facilities inconsistent with their gender identity or alternative facilities.

- The Washington State Guidelines provide: “School districts should allow students to use the restroom that is consistent with their gender identity consistently asserted at school.” In addition, no student “should be required to use an alternative restroom because they are transgender or gender nonconforming.”
- The Washoe County Regulation provides: “Students shall have access to use facilities that correspond to their gender identity as expressed by the student and asserted at school, irrespective of the gender listed on the student’s records, including but not limited to locker rooms.”
- The Anchorage Administrative Guidelines emphasize the following provision: “However, staff should not require a transgender or gender nonconforming student/employee to use a separate, nonintegrated space unless requested by the individual student/employee.”

8. How do schools protect the privacy rights of all students in restrooms or locker rooms?

Many students seek additional privacy in school restrooms and locker rooms. Some schools have provided students increased privacy by making adjustments to sex-segregated facilities or providing all students with access to alternative facilities.

- The Washington State Guidelines provide that any student who wants increased privacy should be provided access to an alternative restroom or changing area. The guidelines explain: “This allows students who may feel uncomfortable sharing the facility with the transgender student(s) the option to make use of a separate restroom and have their concerns addressed without stigmatizing any individual student.”

- The NYSED Guidance gives an example of accommodating all students' interest in privacy: "In one high school, a transgender female student was given access to the female changing facility, but the student was uncomfortable using the female changing facility with other female students because there were no private changing areas within the facility. The principal examined the changing facility and determined that curtains could easily be put up along one side of a row of benches near the group lockers, providing private changing areas for any students who wished to use them. After the school put up the curtains, the student was comfortable using the changing facility."
- Atherton High School, in Jefferson County, Kentucky, issued a policy that offers examples of accommodations to address any student's request for increased privacy: "use of a private area within the public area of the locker room facility (e.g. nearby restroom stall with a door or an area separated by a curtain); use of a nearby private area (e.g. nearby restroom); or a separate changing schedule."
- The DCPS Guidance recommends talking to students to come up with an acceptable solution: "Ultimately, if a student expresses discomfort to any member of the school staff, that staff member should review these options with the student and ask the student permission to engage the school LGBTQ liaison or another designated ally in the building."

9. How do schools ensure transgender students have the opportunity to participate in physical education and athletics consistent with their gender identity?

Some school policies explain the procedures for establishing transgender students' eligibility to participate in athletics consistent with their gender identity. Many of those policies refer to procedures established by state athletics leagues or associations.

- The NYSED Guidance explains that "physical education is a required part of the curriculum and an important part of many students' lives. Most physical education classes in New York's schools are coed, so the gender identity of students should not be an issue with respect to these classes. Where there are sex-segregated classes, students should be allowed to participate in a manner consistent with their gender identity."
- The LAUSD Policy provides that "participation in competitive athletics, intramural sports, athletic teams, competitions, and contact sports shall be facilitated in a

manner consistent with the student's gender identity asserted at school and in accordance with the California Interscholastic Federation bylaws." The California Interscholastic Federation establishes a panel of professionals, including at least one person with training or expertise in gender identity health care or advocacy, to make eligibility decisions.

- The Rhode Island Interscholastic League's policy states that all students should have the opportunity to participate in athletics consistent with their gender identity, regardless of the gender listed on school records. The policy provides that the league will base its eligibility determination on the student's current transcript and school registration information, documentation of the student's consistent gender identification (*e.g.*, affirmed written statements from student, parent/guardian, or health care provider), and any other pertinent information.

10. How do schools treat transgender students when they participate in field trips and athletic trips that require overnight accommodations?

Schools often separate students by sex when providing overnight accommodations. Some school policies provide that students must be treated consistent with their gender identity in making such assignments.

- Colorado's Boulder Valley School District issued guidelines ("Boulder Valley Guidelines") providing that when a school plans overnight accommodations for a transgender student, it should consider "the goals of maximizing the student's social integration and equal opportunity to participate in overnight activity and athletic trips, ensuring the [transgender] student's safety and comfort, and minimizing stigmatization of the student."
- The Chicago Guidelines remind school staff: "In no case should a transgender student be denied the right to participate in an overnight field trip because of the student's transgender status."

Additional Practices to Support Transgender Students

11. What can schools do to make transgender students comfortable in the classroom?

Classroom practices that do not distinguish or differentiate students based on their gender are the most inclusive for all students, including transgender students.

- The DCPS Guidance suggests that “[w]herever arbitrary gender dividers can be avoided, they should be eliminated.”
- The Massachusetts Guidance states that “[a]s a general matter, schools should evaluate all gender-based policies, rules, and practices and maintain only those that have a clear and sound pedagogical purpose.”
- Minneapolis Public Schools issued a policy providing that students generally should not be grouped on the basis of sex for the purpose of instruction or study, but rather on bases such as student proficiency in the area of study, student interests, or educational needs for acceleration or enrichment.
- The Maryland State Department of Education issued guidelines that include an example of eliminating gender-based sorting of students: “Old Practice: boys line up over here.” New Practice: birthdays between January and June; everybody who is wearing something green, etc.”

12. How do school dress codes apply to transgender students?

Dress codes that apply the same requirements regardless of gender are the most inclusive for all students and avoid unnecessarily reinforcing sex stereotypes. To the extent a school has a dress code that applies different standards to male and female students, some schools have policies that allow transgender students to dress consistent with their gender identity.

- Wisconsin’s Shorewood School District issued guidelines (“Shorewood Guidelines”) that allow students to dress in accordance with their gender identity and remind school personnel that they must not enforce a dress code more strictly against transgender and gender nonconforming students than other students.
- The Washington State Guidelines encourage school districts to adopt gender-neutral dress codes that do not restrict a student’s clothing choices on the basis of gender: “Dress codes should be based on educationally relevant considerations, apply

consistently to all students, include consistent discipline for violations, and make reasonable accommodations when the situation requires an exception.”

13. How do schools address bullying and harassment of transgender students?

Unfortunately, bullying and harassment continue to be a problem facing many students, and transgender students are no exception. Some schools make clear in their nondiscrimination statements that prohibited sex discrimination includes discrimination based on gender identity and expression. Their policies also address this issue.

- The NYSED Guidance stresses the importance of protecting students from bullying and harassment because “[the] high rates experienced by transgender students correspond to adverse health and educational consequences,” including higher rates of absenteeism, lower academic achievement, and stunted educational aspirations.
- The Shorewood Guidelines specify that harassment based on a student’s actual or perceived transgender status or gender nonconformity is prohibited and notes that these complaints are to be handled in the same manner as other discrimination, harassment, and bullying complaints.
- The DCPS Guidance provides examples of prohibited harassment that transgender students sometimes experience, including misusing an individual’s preferred name or pronouns on purpose, asking personal questions about a person’s body or gender transition, and disclosing private information.

14. How do school psychologists, school counselors, school nurses, and school social workers support transgender students?

School counselors can help transgender students who may experience mental health disorders such as depression, anxiety, and posttraumatic stress. Mental health staff may also consult with school administrators to create inclusive policies, programs, and practices that prevent bullying and harassment and ensure classrooms and schools are safe, healthy, and supportive places where all students, including transgender students, are respected and can express themselves. Schools will be in a better position to support transgender students if they communicate to all students that resources are available, and that they are competent to provide support and services to any student who has questions related to gender identity.

- The NYSED Guidance suggests that counselors can serve as a point of contact for transgender students who seek to take initial steps to assert their gender identity in school.
- The Chicago Guidelines convene a student administrative support team to determine the appropriate supports for transgender students. The team consists of the school principal, the student, adults that the student trusts, and individuals the principal determines may have a legitimate interest in the safety and healthy development of the student.

15. How do schools foster respect for transgender students among members of the broader school community?

Developing a clear policy explaining how to support transgender students can help communicate the importance the school places on creating a safe, healthy, and nondiscriminatory school climate for all students. Schools can do this by providing educational programs aimed at staff, students, families, and other community members.

- The Massachusetts Guidance informs superintendents and principals that they “need to review existing policies, handbooks, and other written materials to ensure they are updated to reflect the inclusion of gender identity in the student antidiscrimination law, and may wish to inform all members of the school community, including school personnel, students, and families of the recent change to state law and its implications for school policy and practice. This could take the form of a letter that states the school’s commitment to being a supportive, inclusive environment for all students.”
- The NYSED Guidance states that “school districts are encouraged to provide this guidance document and other resources, such as trainings and information sessions, to the school community including, but not limited to, parents, students, staff and residents.”

16. What topics do schools address when training staff on issues related to transgender students?

Schools can reinforce commitments to providing safe, healthy, and nondiscriminatory school climates by training all school personnel about appropriate and respectful treatment of all students, including transgender students.

- The Massachusetts Guidance suggests including the following topics in faculty and staff training “key terms related to gender identity and expression; the development of gender identity; the experiences of transgender and other gender nonconforming students; risks and resilience data regarding transgender and gender nonconforming students; ways to support transgender students and to improve school climate for gender nonconforming students; [and] gender-neutral language and practices.”
- The El Rancho Regulation states that the superintendent or designee “shall provide to employees, volunteers, and parents/guardians training and information regarding the district’s nondiscrimination policy; what constitutes prohibited discrimination, harassment, intimidation, or bullying; how and to whom a report of an incident should be made; and how to guard against segregating or stereotyping students when providing instruction, guidance, supervision, or other services to them. Such training and information shall include guidelines for addressing issues related to transgender and gender-nonconforming students.”

17. How do schools respond to complaints about the way transgender students are treated?

School policies often provide that complaints from transgender students be handled under the same policy used to resolve other complaints of discrimination or harassment.

- The Boulder Valley Guidelines provide that “complaints alleging discrimination or harassment based on a person’s actual or perceived transgender status or gender nonconformity are to be handled in the same manner as other discrimination or harassment complaints.”
- The Anchorage Administrative Guidelines provide that “students may also use the Student Grievance Process to address any civil rights issue, including transgender issues at school.”

Terminology

18. What terms are defined in current school policies on transgender students?

Understanding the needs of transgender students includes understanding relevant terminology. Most school policies define commonly used terms to assist schools in understanding key concepts relevant to transgender students. The list below is not exhaustive, and only includes examples of some of the most common terms that school policies define.

- *Gender identity* refers to a person's deeply felt internal sense of being male or female, regardless of their sex assigned at birth. (Washington State Guidelines)
- *Sex assigned at birth* refers to the sex designation, usually "male" or "female," assigned to a person when they are born. (NYSED Guidance)
- *Gender expression* refers to the manner in which a person represents or expresses gender to others, often through behavior, clothing, hairstyles, activities, voice or mannerisms. (Washoe County Regulation)
- *Transgender* or *trans* describes a person whose gender identity does not correspond to their assigned sex at birth. (Massachusetts Guidance)
- *Gender transition* refers to the process in which a person goes from living and identifying as one gender to living and identifying as another. (Washoe County Regulation)
- *Cisgender* describes a person whose gender identity corresponds to their assigned sex at birth. (NYSED Guidance)
- *Gender nonconforming* describes people whose gender expression differs from stereotypic expectations. The terms *gender variant* or *gender atypical* are also used. Gender nonconforming individuals may identify as male, female, some combination of both, or neither. (NYSED Guidance)
- *Intersex* describes individuals born with chromosomes, hormones, genitalia and/or other sex characteristics that are not exclusively male or female as defined by the medical establishment in our society. (DCPS Guidance)
- *LGBTQ* is an acronym that stands for "lesbian, gay, bisexual, transgender, and queer/questioning." (LAUSD Policy)

- *Sexual orientation* refers to a person's emotional and sexual attraction to another person based on the gender of the other person. Common terms used to describe sexual orientation include, but are not limited to, heterosexual, lesbian, gay, and bisexual. Sexual orientation and gender identity are different. (LAUSD Policy)

19. How do schools account for individual preferences and the diverse ways that students describe and express their gender?

Some students may use different terms to identify themselves or describe their situations. For example, a transgender male student may identify simply as male, consistent with his gender identity. The same principles apply even if students use different terms. Some school policies directly address this question and provide additional guidance.

- The Washington State Guidelines recognize how “terminology can differ based on religion, language, race, ethnicity, age, culture and many other factors.”
- Washington’s Federal Way School District issued a resource guide that states: “Keep in mind that the meaning of gender conformity can vary from culture to culture, so these may not translate exactly to Western ideas of what it means to be transgender. Some of these identities include Hijra (South Asia), Fa’afafine (Samoa), Kathoey (Thailand), Travesti (South America), and Two-Spirit (Native American/First Nations).”
- The Washoe County Regulation, responding to cultural diversity within the state, offers examples of “ways in which transgender and gender nonconforming youth describe their lives and gendered experiences: trans, transsexual, transgender, male-to-female (MTF), female-to-male (FTM), bi-gender, two-spirit, trans man, and trans woman.”
- The DCPS Guidance provides this advice to staff: “If you are unsure about a student’s preferred name or pronouns, it is appropriate to privately and tactfully ask the student what they prefer to be called. Additionally, when speaking about a student it is rarely necessary to label them as being transgender, as they should be treated the same as the rest of their peers.”

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- Boulder Valley School District (CO), *Guidelines Regarding the Support of Students and Staff Who Are Transgender and/or Gender Nonconforming* (2016), <http://www.bvdsd.org/policies/Policies/AC-E3.pdf>
- California Interscholastic Federation, *Guidelines for Gender Identity Participation* (2015), [http://static.psb.in.com/m/5/0ndq7wwfgh2em9/Guidelines for Gender Identity Participation.pdf](http://static.psb.in.com/m/5/0ndq7wwfgh2em9/Guidelines%20for%20Gender%20Identity%20Participation.pdf)
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Select Federal Resources on Transgender Students

- U.S. Department of Education
 - Office for Civil Rights and U.S. Department of Justice's Civil Rights Division, *Dear Colleague Letter: Transgender Students* (May 13, 2016), www.ed.gov/ocr/letters/colleague-201605-title-ix-transgender.pdf
 - Office for Civil Rights, *Resources for Transgender and Gender-Nonconforming Students*, www.ed.gov/ocr/lgbt.html
 - Office for Civil Rights, *Publications on Title IX*, www.ed.gov/about/offices/list/ocr/publications.html#TitleIX
 - Office for Civil Rights, *How to File a Discrimination Complaint*, www.ed.gov/about/offices/list/ocr/docs/howto.html
 - National Center on Safe Supportive Learning Environments, safesupportivelearning.ed.gov
- U.S. Department of Health and Human Services
 - Administration for Children and Families, *Resources for Serving Lesbian, Gay, Bisexual and Transgender Youth*, <http://ncfy.acf.hhs.gov/features/serving-lesbian-gay-bisexual-transgender-and-questioning-youth-open-arms/resources-serving>
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 - Homelessness Resource Center, *Homeless Populations: LGBTQI2-S Youth*, <http://homeless.samhsa.gov/Channel/LGBTQ-153.aspx>
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**The LGBTQ community and the Law: A
Discussion on Youth, Transgender rights, and
Legal Needs of Low-Income LGBT People**

Know Your Rights

Know. Your. Rights.

A guide to understanding protections for transgender and gender-nonconforming people under the New York State Human Rights Law.

By: Milo Primeaux, Esq.
Eoghann Renfroe



Empire Justice Center
Making the law work for all New Yorkers

ABOUT EMPIRE JUSTICE CENTER

Empire Justice Center is a statewide, public interest law firm with offices in Albany, Rochester, White Plains, Yonkers and Central Islip (Long Island). Empire Justice focuses on changing the “systems” within which poor and low-income families live. With a focus on poverty law, Empire Justice undertakes research and training, acts as an informational clearinghouse, and provides litigation backup to local legal services programs and community based organizations. As an advocacy organization, Empire Justice engages in legislative and administrative advocacy on behalf of those impacted by poverty and discrimination. As a non-profit law firm, Empire Justice provides legal assistance to those in need and undertakes impact litigation in order to protect and defend the rights of disenfranchised New Yorkers.

ABOUT OUR LGBT RIGHTS PROJECT

Empire Justice Center is committed to fighting day-to-day and systemic discrimination faced by lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI) people around New York State. We do this by providing cultural competency and substantive legal trainings to attorneys, judges and court administrators, as well as giving “Know Your Rights” presentations to LGBTQI community members. We also advocate with policymakers and legislators to make laws more inclusive of LGBTQI people, and provide free legal services to low income LGBTQI clients in Western and Central New York who:

- Experience discrimination or harassment in employment, education, housing, access to credit or public accommodations
- Are denied access to LGBTQI-inclusive health care or health insurance coverage
- Need assistance obtaining a legal name change
- Need assistance preparing advance health directives and living wills
- Are aging/elderly and experience issues with caretakers, nursing homes or residential facilities that do not respect their sexual orientation, gender identity or gender expression
- Are veterans who need assistance updating a discharge status or the legal name on military records

To request more information or assistance from Empire Justice Center’s LGBT Rights Project, please contact:

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Transgender and gender-nonconforming people have historically experienced discrimination, harassment and violence at far higher rates than other people because of their gender identities and gender expression. After decades of advocacy, the legal landscape is finally starting to recognize transgender and gender-nonconforming people as a class that deserves protection under the law.

This guide explains how the New York State Human Rights Law (HRL), specifically, protects transgender and gender-nonconforming people. It describes what unlawful discrimination looks like, and what you can do if it happens to you. This guide also contains some information about your legal rights under other state and federal laws, and gives you contact information for legal advocates and attorneys across New York State that may be able to advise you about your rights.

PLEASE NOTE: This guide provides very general information about your rights and remedies under the law, and is not meant to be or replace legal advice. If you think you have been discriminated against, you should contact a lawyer who is familiar with legal protections for transgender and gender-nonconforming people. Some legal resources are listed at the end of this guide for your convenience.



WHAT IS THE NEW YORK STATE HUMAN RIGHTS LAW?

Discrimination means treating people differently or negatively, specifically because of a trait or characteristic. The **New York State Human Rights Law (HRL)** was explicitly created to protect groups of people who regularly face discrimination in the areas of employment, housing, education, access to credit and public accommodations based on protected traits like their disability, sex and sexual orientation, among many others. If you have one of the many protected traits, then you are considered a member of a “protected class” of people that this law is meant to help. Along with the courts, the **New York State Division of Human Rights (DHR)** is the state government agency that is responsible for interpreting and enforcing the protections provided under the HRL.

DOES THE HRL PROTECT TRANSGENDER AND GENDER-NONCONFORMING PEOPLE?

Yes! In January 2016, the DHR created a new regulation (9 N.Y.C.R.R. § 466.13) that explains that the HRL protects transgender and gender-nonconforming people in the following ways:

- Sex Discrimination includes treating someone differently or negatively because of their gender identity, gender expression and transgender status;
- Sexual Harassment includes harassment based on a person’s gender identity or transgender status;
- Disability Discrimination includes discrimination based on a person’s gender dysphoria.

In other words, if you have experienced discrimination or harassment in employment, housing, education, access to credit or public accommodations in New York State because you are transgender or gender-nonconforming, or have gender dysphoria, then you may have a legal claim under the HRL.

Did You Know?

There is a common misconception that these protections are based on an executive order issued by the Governor, and won’t last beyond his administration – but this is not true! Yes, executive leaders (including governors) can issue an executive order to make policy decisions without the input of the legislature (our elected officials), or even the public. However, the HRL protections discussed in this guide are based on a regulation, not an executive order. In order to create a new regulation, a government agency must go through a formal rulemaking process that involves gathering feedback from the general public before anything becomes law. This particular regulation interprets the HRL’s definitions of “sex” and “disability” in the same way that several courts have interpreted the law over the years: as protecting transgender and gender-nonconforming people. Therefore, this regulation is much stronger and longer-lasting than an executive order, and is not in danger of going anywhere any time soon.

WHAT IS ILLEGAL DISCRIMINATION UNDER THE HRL?

The HRL protects people in five major areas of life:

EMPLOYMENT, HOUSING, EDUCATION, ACCESS TO CREDIT, AND PUBLIC ACCOMMODATIONS.

Each of these categories are defined and explained in more detail below.

Generally speaking, it's sometimes obvious when illegal discrimination happens to you as a transgender or gender-nonconforming person, but other times it can be harder to figure out. If you aren't sure, a good place to start is by asking yourself, "Do I believe I was treated differently or negatively because of my gender identity and expression? Or because I am transgender? Or because of my gender dysphoria?" If you answer "yes" to any of these questions, then you may have experienced illegal sex or disability discrimination, and may have rights under the HRL.

Below we've included some examples of treatment that might be considered discrimination under the HRL. If possible, speak with an attorney about your particular situation so you can figure out what your rights are and how to exercise them.



EMPLOYMENT

You have the right to obtain or maintain employment that is free of discrimination or harassment based on your gender identity, gender expression, transgender status or gender dysphoria.

The HRL covers employers with at least four (4) employees. However, you may still be protected even if your employer has less than four employees if you are either a domestic worker (i.e., working in another person's home caring for children or an elderly person, cleaning, gardening, doing home repairs or other domestic jobs), or if the discrimination you experienced specifically involves sexual harassment.

Examples of unlawful employment discrimination could include:

- Asking about your gender or transgender status during a job interview
- Refusing to hire you because of your gender identity or expression
- Passing you up for promotion or demoting you
- Subjecting you to increased monitoring of your work or giving you negative performance reviews because of your actual or perceived transgender status
- Refusing to let you access a restroom (or other single-sex facility) appropriate to your gender identity
- Refusing to use your preferred name, pronouns or title (Ms., Mr., Mx., etc.)
- Failing to address sexual harassment, jokes, pranks, invasive or personal questions, touching, hostility or other actions by colleagues or supervisors that contribute to a disrespectful or hostile work environment
- Threatening to fire, demote or otherwise retaliate against you if you try to access health care to treat your gender dysphoria
- Setting different terms of employment for you than for non-transgender employees, including different benefits, work assignments or pay

Did You Know?

Transgender and gender-nonconforming people are also protected from employment discrimination by a federal law commonly known as Title VII, which is short for Title VII of the Civil Rights Act of 1964. Title VII applies to employers with 15 or more employees.

If you feel you have been discriminated against by an employer, you may file a complaint with the U.S. Equal Employment Opportunity Commission (EEOC) within 300 days of the discriminatory event. This is a shorter deadline than with the DHR, which is one year (365 days) from the date of the discriminatory event.

Whether you file with the EEOC or the DHR, your complaint will be automatically cross-filed with the other agency. To learn more about your rights under federal law, check out the EEOC website.¹

HOUSING

You have the right to obtain or maintain housing free of discrimination or harassment based on your gender identity, gender expression, transgender status or gender dysphoria. This includes buying, renting or leasing a home, apartment or business space. The protections apply to privately owned housing, as well as public or government subsidized housing.

Examples of unlawful discrimination in housing could include:

- Refusing to rent, lease or sell housing to you because of your gender identity or expression
- Evicting you upon finding out that you are transgender or gender-nonconforming
- Charging you more for rent than tenants who are not transgender or gender-nonconforming
- Experiencing harassment, assault or other punitive action from a landlord because of your gender identity or expression
- Refusing to allow you into a homeless or emergency shelter because of your gender identity or expression, or refusing to allow you to access a single-sex shelter appropriate to your gender identity
- Not allowing you to use or enjoy access to all the facilities appropriate to your gender identity, such as bathrooms, changing rooms or sleeping accommodations

Did You Know?

Transgender and gender-nonconforming people are also protected from housing discrimination by a federal law called the Fair Housing Act and regulations issued by the U.S. Department of Housing and Urban Development (HUD). A fair housing complaint must be filed with HUD within one year of when the discriminatory housing practice occurred or ended. Whether you file a complaint with HUD or the DHR, your complaint will be automatically cross-filed with the other agency so you don't risk missing any filing deadlines.

To learn more about your rights under this federal law, check out their website.²



EDUCATION

You have the right to obtain an education free of discrimination or harassment based on your gender identity, gender expression, transgender status or gender dysphoria.

Because of a 2012 New York State Court of Appeals decision, students at schools that receive at least some public funding are not currently protected by the HRL. This may include private kindergartens, elementary and secondary schools, academies, colleges, universities or professional schools. Students at private, non-religious, tax-exempt schools are protected, but that means only a very small fraction of New York State students are currently covered by the HRL.

The good news is that transgender and gender-nonconforming public school students do have rights under other laws. In May 2016, the U.S. Department of Education (DOE) issued significant guidance about how Title IX of the U.S. Education Amendments of 1972 protects transgender and gender-nonconforming public school students from discrimination and harassment in educational settings that receive federal funding.³ The DOE also issued a document called “Examples of Policies and Emerging Practices for Supporting Transgender Students,” which provides guidance to public school districts on how to treat transgender and gender-nonconforming students with respect and dignity.⁴ The DOE document heavily references a similar guide published in July 2015 by the New York State Education Department (NYSED) regarding transgender and gender-nonconforming students in New York State specifically, which can be found here.⁵

Also, the New York State Dignity for All Students Act (DASA) prohibits bullying and cyberbullying of all students, including transgender and gender-nonconforming students. Although there is no clear private right of action to sue under DASA, students can file DASA complaints with appropriate staff people at their schools in order to trigger investigations of instances as they occur.

Examples of unlawful education discrimination could include:

- Refusing access to a gender-appropriate restroom (or other single-sex facilities)
- Refusing to use your preferred name, pronouns or title (Ms., Mr., Mx., etc.)
- Refusing you access to the same educational programs, clubs, internships, activities and other opportunities available to students who are not transgender or gender-nonconforming
- Threatening to lower your grade, fail you or retaliate against you if you express your gender identity
- Failing to address sexual harassment, jokes, pranks, invasive or personal questions, touching, hostility or other actions by fellow students, teachers, administrators or other school staff that contribute to a disrespectful or hostile learning environment.

ACCESS TO CREDIT

You have the right to access credit and lending free of discrimination or harassment based on your gender identity, gender expression, transgender status or gender dysphoria.

“Credit” can include things such as a credit card, loan, mortgage, etc. You can still be denied credit or lending for other legal reasons that are not related your gender identity or expression, such as if your income is too low, your other debt is too high, you have too many delinquencies or late payments in your credit history, or you have little or no credit history.

Examples of unlawful credit discrimination could include:

- Refusing to grant you access to credit specifically because of your gender identity or expression
- Granting you a loan with less favorable terms (such as a higher interest rate, higher minimum payments, higher origination fees, etc.) specifically because of your gender identity or expression



PUBLIC ACCOMODATIONS

You have the right to access and use public spaces – otherwise known as “places of public accommodation” – free of discrimination or harassment based on your gender identity, gender expression, transgender status or gender dysphoria.

“Public accommodations” is a broad category of places, including but not limited to restaurants and bars, stores, public transportation, public libraries, hotels, theaters, places of public recreation, food banks, homeless and domestic violence shelters, pharmacies, hospitals, emergency rooms, clinics, many doctor’s offices, and any other place that is available to the general public. It also includes government offices, such as local Social Services Departments or Departments of Motor Vehicles.

Jails, prisons or other detention facilities are not places of public accommodation.

Examples of unlawful discrimination in places of public accommodation could include:

- Refusing to treat you at an emergency room because of your gender identity or expression
- Making you leave a restaurant or place of recreation because management is concerned that your presence as a transgender or gender-nonconforming person will make other patrons “uncomfortable”
- Requiring you to show identification with a gender marker before you are allowed to access to appropriately gendered facilities or programs
- Not allowing you access to a public space unless your clothing or grooming conform to certain gender stereotypes based on your legal name or gender marker
- Not allowing you to use the restroom or sex-specific facilities consistent with your gender identity, or forcing you to use a gender neutral or otherwise separate restroom when that is not your choice



WHAT SHOULD I DO IF I HAVE EXPERIENCED UNLAWFUL DISCRIMINATION OR HARASSMENT?

Harassment or discrimination can be traumatizing, and can leave you feeling angry, ashamed, afraid and vulnerable. You are not alone. If it happens to you, seek help and support from a friend or other trusted person or professional who can talk with you about what happened. This can make a world of difference while you decide on next steps.

Document everything. Write down as many details as possible while your memory is fresh. Who was involved? What did they do or say? When and where did it happen? Did anyone else see or hear what happened? Be sure to save and protect any proof you may have, such as letters, emails, voicemails, videos or photographs, texts, medical records, police reports, etc.

Weigh your options. There may be several approaches to addressing what happened to you, depending on the circumstances. For example, you may want to file a grievance internally with management, file a police report, ask a local community organization to advocate for you, file a formal complaint with a local, state, or federal government agency, and/or sue in court. Some options may cost money while others are free. Some options may be informal, while others may involve a legal filing with important deadlines to consider. Sometimes, simply knowing your rights and directly advocating for yourself can be enough to get what you want or need.

Although you do not need an attorney to file a complaint with government agencies like the DHR or the EEOC, it may be helpful to consult with an attorney about your rights and what next steps might be most useful for you in your specific situation.

Did You Know?

Thanks to **Section 1557 of the Affordable Care Act (ACA)**, transgender and gender-nonconforming people are also protected from discrimination by any hospitals, health care centers, clinics, etc., that receive federal funding from the U.S. Department of Health and Human Services (HHS), and by insurance companies that participate in the Marketplaces. A complaint can be filed with HHS Office of Civil Rights (OCR) within 180 days of when you knew that a discriminatory event happened. Complaints filed with HHS OCR will not be automatically cross-filed with the DHR. To learn more about your rights under this federal law, check out their website.⁶

HOW CAN THE HRL HELP ME?

If you believe you have experienced unlawful harassment or discrimination because you are transgender or gender-nonconforming, then you can use the HRL in two important ways:

1. File a DHR Complaint

The DHR complaint process is completely free, user-friendly and does not require that you hire an attorney (also known as filing “pro se”). A DHR complaint must be filed within one (1) year from the date that the discrimination or harassment occurred – or, if the discrimination or harassment occurred over a period of time, within one (1) year from the date that it finally ended.

OR

2. Sue in State or Federal Court

You have the option of skipping the DHR complaint process and filing a civil suit in court instead. This must be done within three (3) years from the date that the discrimination or harassment occurred – or, if the discrimination or harassment occurred over a period of time, within three (3) years from the date that it finally ended. Court actions are often long, complicated and expensive, and therefore difficult to do on your own without an attorney. We strongly recommend that you speak to an attorney about your case before pursuing this option.

The rest of this guide focuses the DHR complaint process because it’s more accessible for most transgender and gender-nonconforming New Yorkers, especially if an attorney is not available or able to represent you.

Did You Know?

There are several other laws in New York State that protect transgender and gender-nonconforming people, as well as lesbian, gay and bisexual people. For example, the Sexual Orientation Non-Discrimination Act (SONDA) added sexual orientation as a protected trait under to the HRL. The Dignity for All Students Act (DASA) aims to protect LGBT and other students from school bullying and cyberbullying. Prior to 2016 when the DHR clarified protections for transgender and gender-nonconforming people under the HRL, many cities and counties across New York State adopted local ordinances to protect LGBT people against discrimination. In 2015, New York City issued guidance clarifying how it would enforce its own citywide protections for transgender and gender-nonconforming people specifically.⁹

For more information about these and other laws, check out the New York State Attorney General’s website.¹⁰

HOW DO I FILE A COMPLAINT WITH THE DHR?

You can file a complaint in person, by mail or by fax at your nearest DHR office – there are 12 offices throughout the state. Call DHR toll-free at (888) 392-3644, or visit their website to download a complaint form and the address of your closest regional office.⁷

If you file the complaint on your own, try to be as detailed as possible when you fill out the complaint form. For each incident of discrimination you must provide the

- Date that the discriminatory event took place
- Location in which you experienced the event of discrimination or harassment
- Names of individuals who caused you harm or were witnesses to the discrimination or harassment
- Details of the incident

If you need help writing your complaint, staff members at the regional DHR office can provide free assistance in drafting and filing your complaint, either in person, by phone or by mail. You can also try contacting an attorney or a local community advocacy organization for assistance.

If you are filing a complaint without an attorney's help, we recommend that you use your current legal name when filling out the complaint, followed by your preferred name if it's different from your legal name. For example, you could list your name as "Legal Name (a.k.a. Preferred Name)". You should also include more information about your preferred name and pronouns, gender identity and gender expression, transgender status, and/or gender dysphoria in the body of the complaint, if it is important to your case.

Once your complaint is completed, you will need to swear that everything in it is true by signing it with your current legal name in front of a notary public – a person who officially stamps your document as a witness to your signature. The printed name and signature on your complaint must match the name on your valid photo identification, which you will need to show the notary public at the time you sign the complaint. Every DHR office has a notary public on duty to help you free of charge. You can also find notaries public at your local bank, town or city hall, county courthouse and other locations, though they may charge a small fee for the notary's services.

When you submit your complaint, be sure to attach copies of any documents that you think will help DHR investigate your case, such as records of discriminatory or harassing messages, paystubs, performance evaluations, disciplinary notices, a copy of your lease, school records or any other information that will support your claim of discrimination or harassment. Always keep a copy of your complaint and all attachments for your own records, and proof of the date you filed them with the DHR (like a receipt from the post office). To find the closest regional DHR office, [click here](#).⁸



WHAT HAPPENS AFTER I FILE A DHR COMPLAINT?

After you file your complaint, the DHR will complete an investigation of your case within 180 days (about 6 months). During this time, the DHR will require the respondent (the person or entity that you are writing the complaint about) to respond to your complaint and to send in documents and other information that helps the DHR's investigation. This process is free of cost.

The DHR will also facilitate settlement negotiations between you and the respondent. This gives both parties opportunities to agree on a way to quickly settle the issues in your complaint.

After DHR finishes its investigation, it will decide whether it found probable cause in your case. If the DHR finds probable cause, it means that it is more likely than not that you experienced illegal discrimination. At that point, your case will move forward to a public hearing to be decided by an Administrative Law Judge (ALJ). If you do not have an attorney representing you already, the DHR will assign one of their attorneys to present your case to the ALJ on your behalf. If the ALJ decides in your favor, you may be entitled to a variety of remedies (see below).

Keep in mind that your complaint may be dismissed at several points throughout the process. For example, your case will be dismissed after DHR's investigation if there is no probable cause finding, or if the ALJ doesn't think the DHR has authority to decide your case, or if the ALJ doesn't find illegal discrimination at the end of the public hearing. If your complaint is dismissed at any point, you can appeal that decision in a New York State Supreme Court. It is strongly recommended that you talk with an attorney about whether or not to appeal.

WHAT CAN I GET OUT OF THE DHR COMPLAINT PROCESS?

If the DHR Administrative Law Judge finds that unlawful discrimination occurred, you may be awarded a number of possible remedies, including but not limited to:

- An injunction, which requires the person or entity that discriminated against you to stop doing so
- Getting your job or housing back, if you lost them due to discrimination
- Compensatory damages for lost wages or harm you experienced (e.g., pain and suffering, emotional anguish, humiliation)
- Punitive damages, which is money the respondent has to pay strictly as a punishment for bad behavior – please note that punitive damages are only available in cases of housing discrimination
- Require the person or entity that discriminated against you to go through mandatory cultural competency or sensitivity training, and/or to develop transgender-inclusive policies and procedures

Keep in mind that this is a civil complaint, not a criminal charge, and so wrongdoers will not be sent to jail as a result of your complaint.



NEED ASSISTANCE OUTSIDE OF NEW YORK CITY?

Below is a list of legal services organizations and law projects that have helped transgender and gender-nonconforming people who have experienced discrimination.

Empire Justice Center

LGBT Rights Project (serves New York State outside New York City)
Rochester, NY
(585) 295-5721

Legal Services of the Hudson Valley

LGBTQ Legal Project
White Plains, NY
(914) 949-1305

Transgender Legal Defense & Education Fund (TLDEF)

New York, NY
(646) 862-9396

Volunteer Lawyers Project of Onondaga County, Inc.

Syracuse, NY
(315) 579-2576

NEED ASSISTANCE IN NEW YORK CITY?

Legal Services NYC

LGBTQ Advocacy
Queens, South Brooklyn, Manhattan
(917) 661-4500

New York Legal Assistance Group (NYLAG)

LGBTQ Law Project
New York, NY
(212) 613-5000 ext. 5107

Sylvia Rivera Law Project

New York, NY
(212) 337-8550

Urban Justice Center

Peter Cicchino Youth Project
New York, NY
(877) 542-8529

END NOTES

1. United States Equal Employment Opportunity Commission website: www.eeoc.gov
2. United States Department of Housing & Urban Development (HUD), Fair Housing and Equal Opportunity website: http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp
3. United States Department of Justice (DOJ) and United States Department of Education (DOE), Dear Colleague Letter on Transgender Students, May 13, 2016: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>
4. United States Department of Education (DOE), Examples of Policies and Emerging Practices for Supporting Transgender Students, May 2016: <http://www2.ed.gov/about/offices/list/oese/oshs/emergingpractices.pdf>
5. New York State Education Department (NYSED), Guidance to School Districts for Creating a Safe and Supportive School Environment for Transgender and Gender-Nonconforming Students, July 2015: http://www.p12.nysed.gov/dignityact/documents/Transg_GNCGuidanceFINAL.pdf
6. United States Department of Health & Human Services (HHS), Section 1557 of the Patient Protection and Affordable Care Act: <http://www.hhs.gov/civil-rights/for-individuals/section-1557/>
7. New York State Division of Human Rights (DHR): <http://www.dhr.ny.gov/>
8. New York State Division of Human Rights, Regional Office Contact Information: <http://www.dhr.ny.gov/contact-us>

ADDITIONAL RESOURCES

New York City Commission on Human Rights, Legal Enforcement Guidance on the Discrimination on the Basis of Gender Identity or Expression: Local Law No. 3 (2002); N.Y.C. Admin. Code § 8-102(23)2; New York City Admin. Code: http://www.nyc.gov/html/cchr/downloads/pdf/publications/GenderID_InterpretiveGuide_2015.pdf

New York State Office of the Attorney General, Laws Protection Lesbian, Gay, Bisexual, Transgender (LGBT) New Yorkers: <http://www.ag.ny.gov/civil-rights/lgbt-rights>

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**The LGBTQ community and the Law: A
Discussion on Youth, Transgender rights, and
Legal Needs of Low-Income LGBT People**

Biographies

PANELIST BIOS

Jose Abrigo, Esq.

Jose Abrigo is the staff attorney of the LGBTQ/HIV Advocacy Project at Queens Legal Services. Before becoming a lawyer Jose worked in classical archaeology and specialized in Ancient Greek statuary. During law school he devoted most of his work to public benefits advocacy, poverty law and representing clients at welfare fair hearings. He has also worked with the Sylvia Rivera Law Project and clerked for the New York State Supreme Court, Commercial Division. Before heading the LGBTQ/HIV Practice at Queens, Jose was a tenant attorney for almost three years and has practiced in almost all of the Housing Courts across New York City. As the LGBTQ/HIV Advocacy Project attorney he represents low income people in Queens in administrative hearings, Civil, Supreme and Federal Court on issues ranging from discrimination, housing, public benefits, social security, and name changes. He received a dual B.A. from UC Berkeley and his J.D. from CUNY School of Law.

Adam Heintz, Esq.

Adam Heintz is a primary author of Legal Services NYC's ground-breaking report, "Poverty is an LGBT Issue: The Civil Legal Needs of Low-Income LGBT People."

Mr. Heintz is the Director of Pro Bono Services for Legal Services NYC. He works with staff and pro bono partners to create and manage pro bono projects, place cases, access in-kind resources, and match individual volunteers with appropriate LSNYC offices. These include several pro bono projects focused on low-income LGBT clients. He also manages communications related to pro bono, builds and maintains relationships with private partners, and ensures that pro bono partners are adequately trained and supervised. Mr. Heintz has overseen a dramatic expansion of LSNYC's pro bono program, with most measures more than doubling year over year.

Prior to joining LSNYC, Mr. Heintz spent six years as a litigation associate at Morrison & Foerster, LLP, where he maintained an active pro bono docket. He clerked for the Hon. Cheryl L. Pollak, in the United States District Court, Eastern District of New York. Mr. Heintz has served on the Pro Bono Advisory Council for New York Lawyers for the Public Interest. He is also a founding member of the Brooklyn Family Defense Project's Associate Advisory Board. Previously, Mr. Heintz was employed as the HIV-Related Violence Program Coordinator at the New York City Gay and Lesbian Anti-Violence Project, and as Director of Education at the Gay Men's Domestic Violence Project. Mr. Heintz received his B.A. from Oberlin College, and J.D. from NYU Law School.

Katherine McGerald, Esq.

Katherine McGerald is a Senior Staff Attorney at Legal Services of the Hudson Valley in Newburgh, NY, with an expertise in intimate partner violence litigation, family court proceedings, and trial advocacy. For over 15 years, Ms. McGerald has worked with survivors of intimate partner violence, sexual assault and stalking. Currently, she is working under a Legal Assistance for Victims Grant (LAV) where Ms. McGerald provides direct legal services and advocacy to victims of intimate partner violence, sexual assault, and stalking in Family Court, Supreme Court, City/Town Courts, and meetings in family offense, custody, child support, housing, public benefits, title ix, divorce, and immigration matters in Orange, Sullivan and Dutchess Counties.

Prior to joining LSHV in March 2014, she worked The New York County DA's Office and The Pace Women's Justice Center. While at the Manhattan DA's Office, Ms. McGerald was a member of the Domestic Violence Unit and Sex Crimes Unit. At the Women's Justice Center she supervised attorneys and law students in the Family Court Externship. Ms. McGerald graduated from Pace University School of Law where she participated in the Prosecution of Domestic Violence Clinic and started the Family Court Externship whereby law students represented victims of domestic violence under the supervision of an attorney for the ex parte family offense proceeding.

Christopher Oldi, Esq.

Christopher Oldi is a Staff Attorney at Legal Services of the Hudson Valley (LSHV) based out of its White Plains, New York office. Mr. Oldi began at LSHV as a staff attorney in the HIV legal unit where he represented individuals infected and affected by HIV/AIDS. In June 2015 LSHV created the LGBTQ Legal Project and he transitioned into the designated staff attorney position. In that capacity, Mr. Oldi represents low-income Lesbian, Gay, Bi-Sexual, Transgender and Queer/Questioning individuals in a variety of legal issues throughout Westchester and the Hudson Valley, including discrimination, housing, government benefits, name changes and family law. Mr. Oldi will be honored in June 2016 by the Westchester County Board of Legislatures at its LGBTQ Heritage Celebration for his work with the LGBTQ community. He is also the chair of the LGBT Advisory Board of Westchester County. Mr. Oldi received his B.A. from Vassar College, and his J.D. from CUNY School of Law.

Milo Primeaux, Esq.

Milo Primeaux, Esq. (he/him/his) is a queer transgender man and long-time transgender rights advocate. As the LGBT Rights Staff Attorney at Empire Justice Center in Rochester, Milo provides direct legal services, cultural competency and legal trainings, and policy advocacy to advance the rights of low-income LGBTQ people across upstate New York. His Project focuses primarily on anti-LGBTQ discrimination occurring in employment, education, public accommodations, and access to health care and health insurance. Previously he served as an Equal Justice Works AmeriCorps Legal Fellow at Whitman-Walker Health in Washington, DC, where he managed a free monthly Name & Gender Change Legal Clinic and reduced legal barriers to employment for over 250 transgender residents of DC, Maryland, and Virginia. He is a graduate of CUNY School of Law.



POVERTY IS AN LGBT ISSUE:

A REPORT SNAPSHOT

READ THE FULL CIVIL LEGAL NEEDS ASSESSMENT HERE:
www.legalservicesnyc.org/LGBTreport

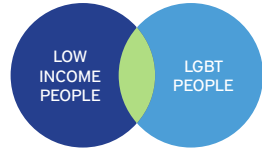
LEGAL SERVICES NYC AND THE LGBT COMMUNITY

Legal Services NYC (LSNYC) fights poverty and seeks racial, social, and economic justice for low-income New Yorkers. For almost 50 years, we have challenged systemic injustices that trap people in poverty and helped clients meet basic needs for housing, income and economic security, family and immigration stability, education, and health care. LSNYC is the largest civil legal services provider in the country. Our staff of nearly 400 people in neighborhood-based offices and outreach sites across all five boroughs helps more than 80,000 New Yorkers annually. We partner with scores of community-based organizations, elected officials, public agencies, pro bono lawyers, and the courts to maximize our effectiveness. Our work fights discrimination and helps to achieve equal opportunity and justice for all New Yorkers.

Legal Services NYC is also a leader in advocating for low-income Lesbian, Gay, Bisexual, and Transgender (LGBT) people. We have been dedicated to serving the LGBT community for more than 25 years. LSNYC represents hundreds of low-income LGBT clients every year, across all of our practice areas. LSNYC has filed lawsuits on behalf of transgender New Yorkers who were discriminated against by the City's welfare agency, HIV-positive New Yorkers discriminated against by employers and landlords, surviving spouses and children affected by laws that did not adequately recognize same-sex relationships, and more.

1 POVERTY IS AN LGBT ISSUE.

62% of low-income LGBT New Yorkers had difficulty paying for a basic need in the past year.



2 PEOPLE WHO CARE ABOUT THE FIGHT FOR LGBT JUSTICE, AND THOSE WHO CARE ABOUT FIGHTING POVERTY, MUST TAKE ACTION.



3 LOW-INCOME LGBT PEOPLE ARE IN DESPERATE NEED OF CIVIL LEGAL SERVICES.



Housing



Income &
Disability
Assistance



Immigration



Healthcare



Family



Employment



Education



Veterans

4 VIOLENCE AND HARASSMENT ARE SEVERE AND PERVERSIVE PROBLEMS THAT CREATE MAJOR LEGAL NEEDS FOR LOW-INCOME LGBT PEOPLE.

50% experienced some form of violence.



5 LOW-INCOME TRANSGENDER PEOPLE FACE EVEN GREATER VIOLENCE AND HARASSMENT THAN LGBT PEOPLE, GIVING RISE TO EVEN GREATER LEGAL NEEDS.

26% of the transgender respondents to our survey experienced problems with employment in the last year alone.

6 INTERSECTIONS BETWEEN RACE, POVERTY, SEXUAL ORIENTATION, AND GENDER IDENTITY POSE ADDITIONAL LEGAL CHALLENGES FOR MANY LOW-INCOME LGBT NEW YORKERS.

Legal services providers should be vigilant about and be prepared to aggressively challenge discrimination in all its forms.

**POVERTY TRANSPHOBIA
RACISM
HOMOPHOBIA**

CONNECT WITH US

Please go to www.legalservicesnyc.org to learn more about our work. You can also access an electronic copy of this report on our website.

Need Legal Assistance? Call our Hotline: 917-661-4500

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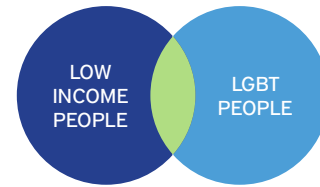


POVERTY IS AN LGBT ISSUE:

AN ASSESSMENT OF
THE LEGAL NEEDS
OF LOW-INCOME
LGBT PEOPLE

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THANK YOU

I am honored to introduce this hard-hitting report—the first of its kind in the country—that documents both the unrelenting discrimination and harassment faced by low-income LGBT New Yorkers, and the ways that bigotry compounds the many problems that poverty creates.

Legal Services NYC is dedicated to fighting poverty and seeking racial, social, and economic justice for low-income New Yorkers. Advocating for low-income LGBT people is a crucial part of that mission. This report is an important step in advancing this work both at LSNYC and, we hope, elsewhere.

Many thanks to our staff and partners who helped create this needs assessment. And special thanks to those LGBT New Yorkers who shared their knowledge and personal stories with us. This report is dedicated to them.

Raun Rasmussen

Executive Director, Legal Services NYC

Our goal with this needs assessment is to give voice to low-income LGBT New Yorkers, to identify their pressing civil legal needs, and to prompt action. The report is the result of extraordinary effort and collaboration from scores of individuals and organizations—all of whom generously offered their time, labor and support. We are deeply grateful.

- LSNYC's LGBT clients
- 500 individuals who took the survey
- The lead authors of this report—Cathy Bowman, Adam Heintz and Sonja Shield
- Scores of Legal Services NYC staff members
- Dozens of volunteers who facilitated the survey
- The LSNYC LGBT Working Group and its convenor, Nadya Rosen
- The LSNYC LGBT Working Group's Outreach Subcommittee and its chair, Sonja Shield
- LSNYC's Project Directors—Jane Aoyama-Martin (LSNYC-Bronx), Jennifer Ching (QLS), Peggy Earisman (MLS), Meghan Faux (BLS), Nancy Goldhill (SILS)
- LSNYC's borough point people on LGBT rights—Justin Haines (LSNYC-Bronx), Dan Pepitone (MLS), Cathy Bowman (BLS), Richard Saenz (QLS), Johane Severin (SILS)
- The Anti-Violence Project
- Apicha Community Health Center
- The Audre Lorde Project
- BOOM!Health
- Bronx LGBTQ Community Services Center
- Callen-Lorde Community Health Center
- Empire Justice Center
- Immigration Equality
- The Latino Commission on AIDS
- The Legal Aid Society
- New York Civil Liberties Union
- The New York Legal Assistance Group
- Queens Pride House
- The Staten Island LGBT Community Center
- The Door
- Community Healthcare Network
- The Lesbian, Gay, Bisexual & Transgender Community Center
- Services & Advocacy for Gay, Lesbian, Bisexual & Transgender Elders
- Skadden, Arps, Slate, Meagher & Flom LLP
- Stout Risius Ross
- The Urban Justice Center
- VOCAL-NY
- Voces Latinas

Andrea Zigman

Deputy Director, Legal Services NYC

POVERTY IS AN LGBT ISSUE: AN LGBT LOW-INCOME CIVIL LEGAL NEEDS ASSESSMENT

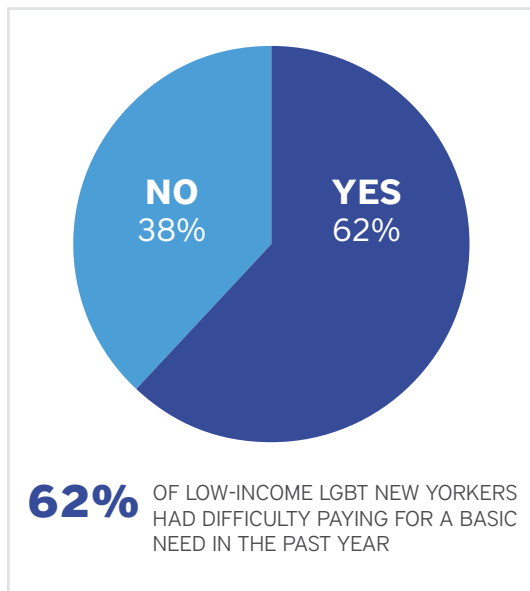
LEGAL SERVICES NYC AND THE LGBT COMMUNITY

Legal Services NYC (LSNYC) fights poverty and seeks racial, social, and economic justice for low-income New Yorkers. For almost 50 years, we have challenged systemic injustices that trap people in poverty and helped clients meet basic needs for housing, income and economic security, family and immigration stability, education, and health care. LSNYC is the largest civil legal services provider in the country. Our staff of nearly 400 people in neighborhood-based offices and outreach sites across all five boroughs helps more than 80,000 New Yorkers annually. We partner with scores of community-based organizations, elected officials, public agencies, pro bono lawyers, and the courts to maximize our effectiveness. Our work fights discrimination and helps to achieve equal opportunity and justice for all New Yorkers.

Legal Services NYC is also a leader in advocating for low-income Lesbian, Gay, Bisexual, and Transgender (LGBT) people. We have been dedicated to serving the LGBT community for more than 25 years. LSNYC represents hundreds of low-income LGBT clients every year, across all of our practice areas. LSNYC has filed lawsuits on behalf of transgender New Yorkers who were discriminated against by the City's welfare agency, HIV-positive New Yorkers discriminated against by employers and landlords, surviving spouses and children affected by laws that did not adequately recognize same-sex relationships, and more.

EXECUTIVE SUMMARY

Low-income LGBT people are in desperate need of civil legal services—a need made more acute by devastating levels of discrimination, harassment, and violence.



Like all of the people Legal Services NYC represents, our LGBT clients lack resources and power. But low-income LGBT people are too often also at the margins of efforts to provide help: at the margins of the legal services community because they are LGBT, and at the margins of the mainstream LGBT movement because they are poor. It is time to change the status quo. This document is part of that change—for all of us at Legal Services NYC and, we hope, for many others.

Our LGBT Low-Income Civil Legal Needs Assessment (the “Assessment”) gives low-income LGBT people a direct voice in identifying the legal challenges they face. It presents data and stories from hundreds of low-income LGBT New Yorkers and their advocates. And it offers a series of findings to enhance advocacy for all

low-income LGBT clients—including both overarching conclusions and specific findings in key poverty law practice areas: anti-discrimination, public assistance, housing, health care, immigration, family, employment, education, and veterans.

But here is our most important and most fundamental conclusion: Poverty is an LGBT issue. It is incumbent on those who care about the fight for LGBT justice, and those who care about fighting poverty, to take action.

CONCLUSIONS ON LEGAL NEEDS ACROSS PRACTICE AREAS

- **Every Area of Legal Practice.** Low-income LGBT people are buffeted by the same forces that all poor people face and need representation in every poverty law practice area.
- **Discrimination, Harassment, and Violence.** Civil legal needs are often made worse because of anti-LGBT discrimination, harassment, and violence. Discrimination and harassment against transgender people is generally more severe across the board than that directed at LGB people—especially so for people of color. Legal services providers helping low-income LGBT clients should identify, assess, and pursue related discrimination claims.
- **Poverty, racism, homophobia, transphobia, and other forms of oppression.** Low-income LGBT people of color experience racism, along with homophobia and transphobia. Institutional

racism and structural bias against people of color, immigrants, and others inform the experience of many LGBT people, as does discrimination against and mistreatment of low-income people in general. Work on behalf of these clients means recognizing and addressing these intersections. Legal services providers should be vigilant about and be prepared to aggressively challenge discrimination in all its forms.

- **Cultural Competence.** Lawyers for the poor must ensure that all staff and volunteers are trained to provide culturally competent services to low-income LGBT clients and to avoid re-victimizing clients who have likely experienced discrimination and abuse.
- **Visibility.** Legal services organizations should take visible steps to welcome low-income LGBT clients, because these clients may fear discrimination or harassment based on past experiences. It is incumbent on legal service providers to broadcast commitment to the LGBT community and to encourage LGBT clients to speak honestly with staff about their life experiences and legal needs. Failure to take affirmative steps in this direction may cause low-income LGBT clients to closet themselves or withhold important details when accessing services, fear and distress when working with attorneys and staff, or a decision to avoid legal services organizations entirely.
- **Trauma and safety.** Low-income LGBT New Yorkers experience high levels of violence and abuse. Legal services organizations should train staff on how to screen and serve LGBT clients who have experienced trauma. Social workers and counselors should be available for these clients when needed. Safety planning may be necessary for low-income LGBT clients—whether in relationships, at school, in public, or when dealing with the police.

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I. HOW AND WHY LSNYC CONDUCTED THE LGBT NEEDS ASSESSMENT

A. OBJECTIVES OF THE LGBT NEEDS ASSESSMENT

LSNYC undertook this assessment to identify the civil legal needs of low-income LGBT New Yorkers. We sought to understand which legal challenges are most important, how they are similar to those of other clients, and how they are different. Our goal is to use this information to improve our outreach, advocacy, and services for low-income LGBT people. We also hope that others—including funders, sister legal services organizations, and community groups—will use this report to expand and improve on legal support for LGBT people living in poverty.

To get a complete picture of the civil legal needs of the community, LSNYC turned to low-income LGBT New Yorkers themselves and the community groups closest to them.

B. BACKGROUND ON POVERTY IN THE LGBT COMMUNITY

New York City has the largest population of LGBT people in the country—estimated at more than 340,000.¹ Many LGBT people are not willing to identify as such to pollsters and census-takers, however, because of homophobic and transphobic discrimination, stigma, and shame. The actual size of the LGBT community in the City is, accordingly, likely considerably larger.²

LGBT New Yorkers reflect the City's racial and ethnic diversity.³ Twenty-three percent of New Yorkers are African-American, 29% are Latino, 13% are Asian, and 35% are White. We are also a city of immigrants: close to 36% of our residents were born outside of the United States.⁴ Forty-nine percent of New York City residents speak a language other than English at home and 24% are not English-proficient.⁵

Low-income New Yorkers face substantial challenges. More than 20% of NYC residents live below the federal poverty level ("FPL").⁶ This percentage dramatically undercounts New York City's actual poverty; the FPL measures only income and fails to account for our very high cost of living. New research from The Robin Hood Foundation reveals that in 2014 nearly 40% of New Yorkers faced a persistent shortage of critical resources or underwent an episode of acute deprivation, such as staying in a shelter, having utilities shut off, or being unable to pay for a doctor.⁷ Racial disparities are also acute. In Manhattan, for example, Latino and Black households earn just one-third the income of White households.⁸

For LGBT New Yorkers, the challenges of poverty and near-poverty are especially acute. Contrary to the stereotype that LGBT people are financially privileged, researchers have concluded that "LGBT Americans are **more** likely to be poor."⁹ In particular:

- According to a 2012 Gallup survey, 20.7% of LGBT people living alone had incomes below \$12,000—near the poverty level—compared to 17% of non-LGBT people living alone.¹⁰

- Single LGBT adults raising children are three times more likely to have incomes near the poverty level compared to single non-LGBT adults raising children.¹¹
- Similarly, married or partnered LGBT parents raising children are twice as likely to have household incomes near the poverty level compared to married or partnered non-LGBT parents.¹²
- A study of transgender Americans found that they are nearly four times more likely to have a household income under \$10,000 per year than the population as a whole (15% vs. 4%).¹³

For LGBT people of color, the reality is even worse. African-American children in gay male households have the highest poverty rate (52.3%) of any children in any household type. The rate for children living with lesbian couples is 37.7%.¹⁴ African-Americans in same-sex couples have poverty rates at least twice those for different-sex, married African-Americans and are more than **six** times more likely to be poor than White men in same-sex couples.¹⁵

C. METHODOLOGY OF THE LGBT NEEDS ASSESSMENT

Attorneys and staff at Legal Services NYC began meeting to discuss our work on behalf of low-income LGBT people and to enhance those efforts.¹⁶ We concluded that it was imperative that we hear directly from low-income LGBT New Yorkers and LGBT-serving organizations.¹⁷ To get that input, LSNYC created a plan to survey low-income LGBT individuals, conduct interviews of key organizations, and meet with small groups of low-income LGBT people. Ultimately, this undertaking relied on hundreds of people who generously donated thousands of hours of time. More than 300 low-income LGBT people took the survey or participated in focus groups. Scores of volunteer attorneys and law students administered surveys. Pro bono analysts reviewed the data free of charge. Dozens of community-based organizations met with LSNYC and made space for us to survey their clients. And dozens of LSNYC staff made room on weekends, evenings, and during their busy days to bring this project to fruition.



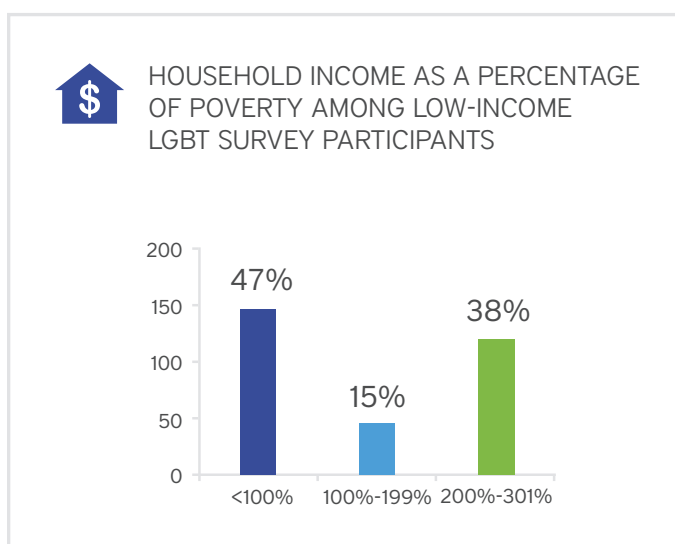
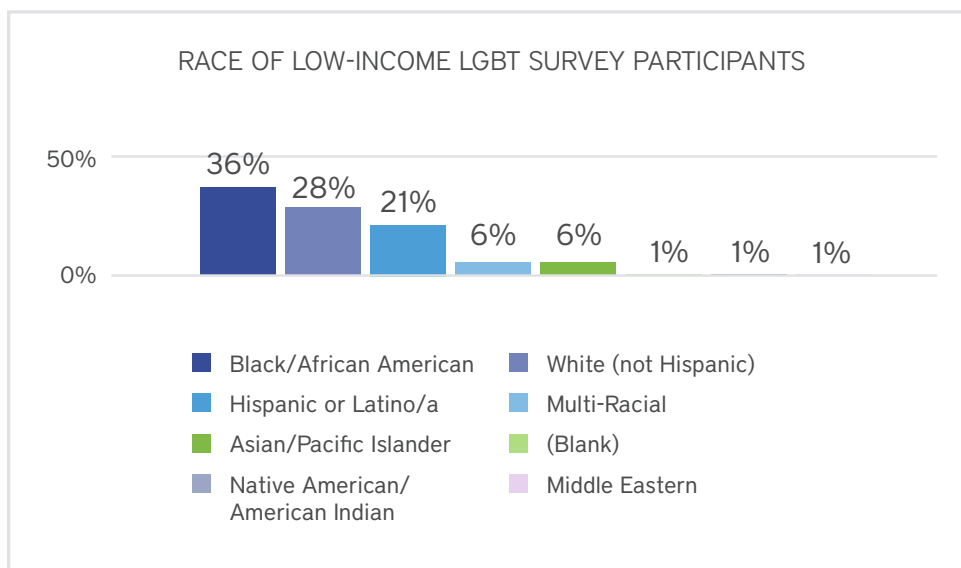
This needs assessment is the result of that collective effort. Our assessment had five key components: (1) interviews with providers and community-based organizations that work directly with low-income LGBT people; (2) a survey of low-income LGBT New Yorkers; (3) focus groups within subsets of the community; (4) analysis of research and demographic data; and (5) analysis by LSNYC attorneys and consulting data analysts.

You can review our methodology in greater detail in Appendix B.

D. DEMOGRAPHICS OF PARTICIPANTS IN THE NEEDS ASSESSMENT

Data for this needs assessment was gathered from a diverse pool of people within New York City's low-income LGBT community—diverse racially, in age, and in LGBT identity. As described above, there were three distinct stages of outreach during the assessment: (1) meetings with community-based organizations that serve large numbers of low-income LGBT people; (2) a survey of low-income LGBT people; and (3) focus groups targeting particular subsets of the LGBT community. Each stage was calibrated to draw input from people with a range of experiences and identities.

This report analyzes responses from 310 survey participants, all low-income LGBT people. Most are people of color, and nearly a third are transgender or gender-nonconforming.

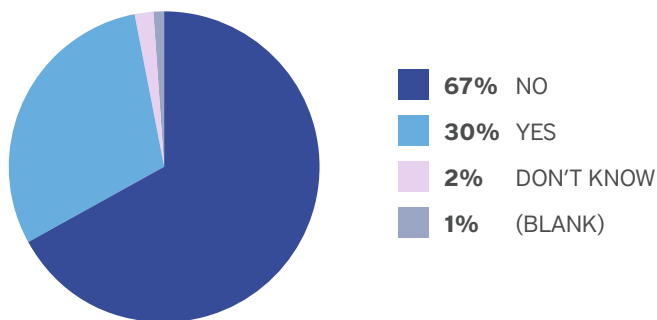


Taking account of the very high cost of living in New York City in a way that federal poverty calculations fail to, low-income was defined as at or below approximately 300% of the federal poverty level based on household size.

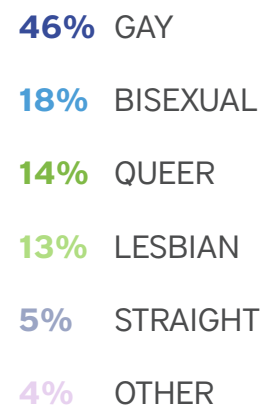
The vast majority of respondents to our survey are extremely low-income: 55% earned less than \$1,000 per month, putting them close to or below the official Federal Poverty Level (\$11,770 per year). Fully 62% of participants reported that they had difficulty paying for a basic need in the past year.

See Appendix C for greater detail on participant demographics.

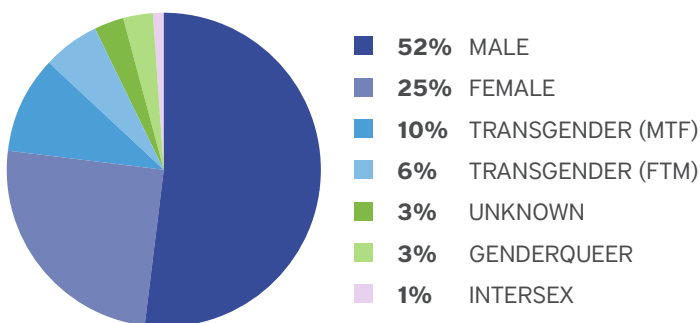
PERCENTAGE OF LOW-INCOME LGBT RESPONDENTS WHO IDENTIFIED AS TRANSGENDER OR GENDER-NONCONFORMING



SEXUAL ORIENTATION OF LOW-INCOME LGBT SURVEY PARTICIPANTS



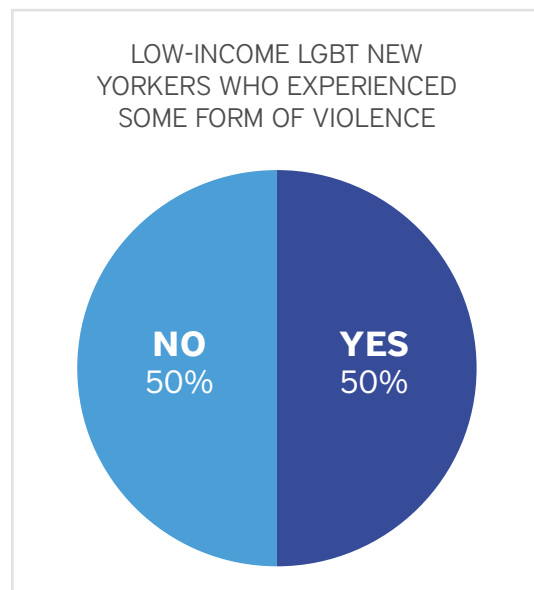
SELF-IDENTIFIED GENDER OF LOW-INCOME LGBT SURVEY PARTICIPANTS



II. FINDINGS ON CIVIL LEGAL NEEDS OF LOW-INCOME LGBT PEOPLE IN NEW YORK CITY

This section presents Legal Services NYC's core findings from the Needs Assessment, demonstrating that low-income LGBT people have significant legal needs in every major civil legal practice area. Like others living without means, low-income LGBT people are desperate to access affordable housing, secure needed benefits and services, and protect their safety, employment, families, and legal status. But all too often, low-income LGBT clients are in a worse position than others: subject to anti-LGBT violence and harassment; discriminated against by government agencies, employers, and landlords; and left in limbo by a legal system that has been slow to protect LGBT people, relationships, and families. At the end of each of the subsections below, we offer key findings and recommendations to address these injustices.

A. VIOLENCE AND HARASSMENT ARE SEVERE AND PERVASIVE PROBLEMS THAT CREATE MAJOR LEGAL NEEDS FOR LOW-INCOME LGBT PEOPLE



Low-income LGBT New Yorkers experience pervasive violence and harassment. These problems are compounded by racism and are often much worse for transgender people. In many instances, violence was motivated by anti-LGBT animus. While measuring the cumulative effect of the trauma from this abuse is beyond the scope of this report, it has far-reaching implications for legal services providers (and others) working with this community.

Without financial resources to escape these forces, low-income LGBT people find themselves exposed—often repeatedly—to trauma and bias. These facts inform every aspect of this legal needs assessment, because it is the context in which so many low-income LGBT people find themselves.

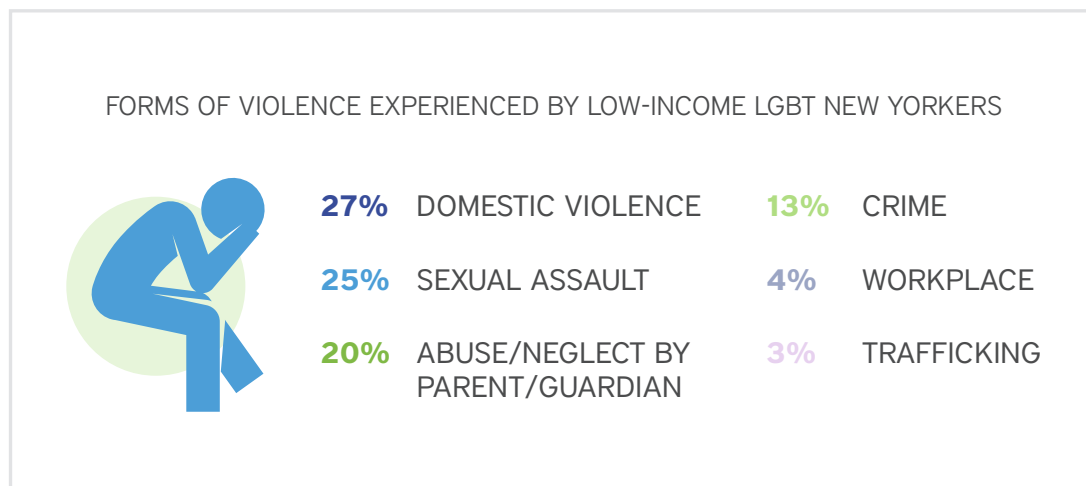
The discrimination and violence discussed in this section give rise to a range of associated civil legal needs. These include orders of protection, anti-discrimination work, and immigration relief, as described in greater detail below.

Just as important, our findings suggest that legal services organizations must take internal steps to work effectively with low-income LGBT people. In particular, providers helping low-income LGBT clients must be equipped to deal with people who have experienced severe and repeated bias and

trauma. Adequate service to low-income LGBT clients means knowing how to speak sensitively and empathetically about violence and abuse, having the skill to screen for intimate partner violence, and providing access to counseling and related supportive services for clients.

The pervasive discrimination and harassment faced by low-income LGBT people underscores the importance of offering culturally competent services that are visibly LGBT-friendly. It is incumbent on legal services providers to provide safe environments to LGBT clients, to broadcast commitment to the LGBT community, and to encourage LGBT clients to speak honestly with staff about their life experiences and legal needs. Failure to do so may cause clients to closet themselves or withhold important details when accessing services, fear working with attorneys and staff, or avoid legal services organizations entirely.

Our findings make clear that violence and harassment are recurring problems for low-income LGBT New Yorkers. Abuse occurs in many contexts, and from a number of different actors: intimate partners, parents, strangers, classmates or teachers, or the police. This section explores violence in each of these areas.



“Low-income LGBT folks are so used to being treated poorly by institutions that it’s our responsibility to affirmatively reach out. We need to let everyone know that we believe that the legal needs of people who are LGBT are important and that help is available in a safe and supportive environment.”

Cathy Bowman, LGBT & HIV Unit Director, Brooklyn Legal Services

1. ANTI-LGBT VIOLENCE AND HARASSMENT IS COMMON IN PUBLIC PLACES

Violence and harassment motivated by anti-LGBT animus occurs at troublingly high rates for low-income LGBT New Yorkers. **In just the past year**, 39% of survey respondents reported being verbally harassed in public because they are LGBT; 9% reported being physically harassed or assaulted; and 5% reported being sexually assaulted based on their LGBT identity. Other studies have found similar high rates of verbal harassment and violence in public places.¹⁸

This violence is overwhelmingly directed at people of color. A report by the National Coalition of Anti-Violence Programs found that 80% of those murdered because of anti-LGBT bias in 2014 were people of color.¹⁹ Transgender people are also subjected to a greatly disproportionate share of anti-LGBT violence and harassment.

The numbers alone demonstrate that many low-income LGBT people are victims of bias-related violence and harassment and that many others live with the constant threat of this abuse.²⁰

The impact of these threats and violence is powerfully illustrated by the words of survey participants. For example, fear of bias forces some respondents to hide who they are.

One participant explained,



"I portray myself as straight to evade persecution and harassment."

Others avoid public settings altogether:



"I tend to avoid a lot of public encounters that I don't know will be LGBT-friendly because of the fear of this sort of thing."

Some who are visibly LGBT reported regular verbal harassment in public and fear that worse might happen.



"I'm constantly verbally harassed and there's always the threat of physical violence. I'm lucky it hasn't happened yet. I expect it will at some point. I don't expect the police to help because they've pointed and laughed at me as well."

Others reported bias-related sexual harassment or assault.



"A taxi driver verbally harassed me for being a lesbian and tried to kiss me to 'turn me onto men.' He kept insisting I hold his hand and kiss him, and I feared it turning into a sexual assault if I didn't exit the cab immediately; before reaching my destination."

Focus groups yielded similar stories, including harassment on public transit, when trying to meet with attorneys, and in shelters.

*"I was harassed and bullied on the train by a performer who was making homophobic and transphobic comments. I thought MTA would help me but the MTA workers joined in."*²¹

*"I went to meet with my lawyer and the security guard was harassing me because I asked them to use my preferred name; thankfully my lawyer came in right after me."*²²

In Queens, participants reported that shelters are "hostile and filthy." They also feel that transgender women are not safe in shelters, even when they are placed in women's shelters. For some, it is safer to live on the streets²³

In Staten Island, participants shared many experiences of being harassed on the street and at school. One person admitted to changing his clothes four different times throughout the day just to feel comfortable at home, at school, and with his peers.²⁴

Transgender New Yorkers in particular face overwhelming discrimination, harassment, and violence in public places.²⁵ One respondent to our survey said:

"I am perpetually harassed on the street. It often leaves me afraid to leave the house."

2. VIOLENCE AND HARASSMENT BY THE POLICE REMAIN PERVASIVE, PARTICULARLY FOR LGBT PEOPLE OF COLOR AND IMMIGRANTS

Just during the past year, 8% of respondents reported that they have been verbally harassed by police, and 6% reported physical harassment or assault by the police. Peer legal service organizations also report hearing many complaints of sexual and physical assault by police officers, in particular against LGBT youth of color and transgender women of color.²⁶

"I have problems with the police just walking down the street."

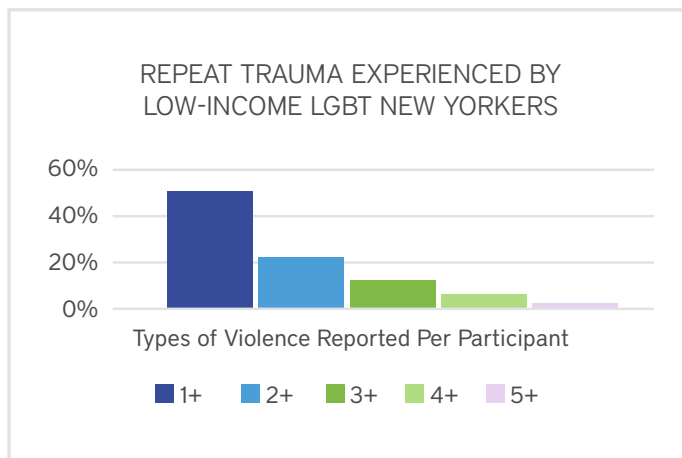
Focus group comments reflect fears and concerns about the police. Participants reported that they are often stopped by the police and searched. Many believe that the police would not help them if they self-identified as LGBT while placing a 911 call. Notably, a participant said that if she has an emergency, she calls 311 instead of 911 because 311 is more likely to be helpful than the police.²⁷

3. VIOLENCE AND HARASSMENT AT SCHOOL IS AN ONGOING CHALLENGE FOR MANY LGBT YOUNG PEOPLE

As described in greater detail below in section II (J), anti-LGBT violence and harassment at school are a common problem for young people.

4. INTIMATE PARTNER VIOLENCE AND SEXUAL ASSAULT OCCUR AT EPIDEMIC LEVELS—SIMILAR TO STATISTICS FOR HETEROSEXUALS AND NON-TRANSGENDER PEOPLE

Some 27% percent of respondents reported that they have been victims of intimate partner violence.²⁸ This number is consistent with other studies about intimate partner violence rates in the LGBT community.²⁹ A quarter of respondents reported that they have been victims of sexual assault. Other studies have found somewhat higher numbers.³⁰ A fifth of respondents reported abuse or neglect by a parent, guardian, or foster parent. Roughly 13% of respondents indicated that they had been a victim of criminal activity.



In total, half of respondents indicated that they have experienced at least one of these forms of violence. Although most respondents who experienced violence reported having experienced only one form, a substantial percentage experienced more than one type of abuse. Twenty-two percent of respondents reported experiencing two or more forms of violence, while 12% had experienced three or more forms of violence, and 6% experienced four or more forms of violence.

The tremendous violence experienced by low-income LGBT New Yorkers creates a range of legal needs. These include orders of protection, advocacy with the police, and access to shelter. It also suggests that LGBT people seeking help may fear additional harassment and abuse from service providers.

In the face of so much discrimination and violence, it is incumbent on service providers to create an LGBT-welcoming space. It is crucial that advocates recognize, plan for, and challenge the homophobia and transphobia that clients face.

KEY FINDINGS ON LEGAL NEEDS RELATED TO VIOLENCE AND HARASSMENT

- 1. Violence and harassment in public.** Low-income LGBT people report frequent violence and public harassment that causes fear, closeting, and isolation. These problems are particularly acute for low-income LGBT people of color and transgender people. Legal advocacy is needed to ensure that low-income LGBT people have equal access to public services without fear of mistreatment.
- 2. Police misconduct.** Police misconduct is a big problem for many low-income LGBT people, particularly LGBT people of color and transgender people. Legal advocacy is needed to ensure safe access to law enforcement when needed and to combat police misconduct.

- 3. Cultural competence.** Legal services organizations should take overt steps to welcome low-income LGBT clients because these clients may fear discrimination or harassment based on past experiences. Providers must ensure that staff and volunteers are trained to provide culturally competent services to low-income LGBT clients and to avoid re-victimizing a community that has experienced frequent harassment.
- 4. Interpersonal violence.** Low-income LGBT people experience rates of interpersonal violence similar to non-LGBT people. Legal services are necessary to help these individuals obtain orders of protection and other forms of relief from violence.
- 5. Trauma and safety.** Low-income LGBT New Yorkers experience high levels of violence and abuse. Legal services organizations should train staff on how to serve LGBT clients who have experienced trauma. Social workers and counselors should be available for these clients when needed. Safety planning may be necessary for low-income LGBT clients—whether in relationships, at school, in public, or when dealing with the police.

B. LOW-INCOME TRANSGENDER PEOPLE FACE EVEN GREATER VIOLENCE AND HARASSMENT THAN LGB PEOPLE, GIVING RISE TO EVEN GREATER LEGAL NEEDS

"It is dehumanizing to get policed and analyzed. Transphobia is rampant - limiting to me, my communities, and my future ... The trans community is being buried under transphobia and discrimination."

The severity of discrimination and violence faced by transgender people—combined with certain distinctions from anti-LGB abuse—is so extreme it warrants separate discussion.

Of survey participants, 30% identified as transgender or gender-nonconforming. Their participation in this needs assessment is particularly important because the estimated 58,000 transgender³¹ New Yorkers³² are much more likely to be extremely poor than the general population.³³

Even greater discrimination, harassment, and violence. Low-income transgender people and their advocates report discrimination, harassment, and violence even more pervasive than that faced by LGB people. This is particularly so in employment, when accessing healthcare, in public, and from the police. Clients told heart-wrenching stories in each of these areas. "I've had seven jobs in a year due to unfair and uncomfortable treatment [because I'm] transgender," said one client.

Challenges unique to transgender and gender-variant people: Low-income transgender and gender-variant people also experience two obstacles that are not usually problems for LGB clients: difficulty accessing sex-segregated facilities, and barriers to changing names and gender markers.

When trying to access sex-segregated facilities like bathrooms, locker rooms, and shelters, low-income transgender people report discrimination, harassment, and violence. About 53% of transgender respondents have been denied access to or treated badly while using a bathroom or locker room

that matches their gender identity. One respondent stated, “When I get kicked out of facilities like restrooms I feel that I don’t even have the right to ‘take a leak,’ much less to live and exist.” Advocates report that transgender people who are homeless have trouble accessing shelter facilities corresponding to their gender identity.

Low-income transgender people also need representation to secure name changes and gender marker changes. Obtaining these changes is essential for transgender clients living in poverty. It improves the chances that they will be called by the correct name and pronoun when they secure government benefits, look for work, sign leases, meet with caseworkers, or appear in court, thereby greatly reducing potential conflicts. On a profound level, it means that they are able to live their lives as themselves. These issues are explored in detail in Section K, below.

Such distinctions make it all the more crucial that low-income transgender people have zealous advocates to fight bias in every facet of their lives. It also suggests that service providers must work even harder to demonstrate to transgender clients that theirs is a safe and welcoming space.

KEY FINDINGS ON LEGAL NEEDS RELATED TO ANTI-TRANSGENDER VIOLENCE AND HARASSMENT

Each of the key findings discussed in Section II(A) apply to transgender and gender-variant people. The following are additional legal needs of low-income transgender clients.

- 1. Pervasive and severe discrimination.** Discrimination and harassment against transgender people is generally more severe and pervasive than that directed at LGB people—especially for people of color. Legal services providers should be particularly vigilant about the many settings in which transgender people experience discrimination and be prepared to aggressively fight for their health, safety, and rights.
- 2. Sex-segregated facilities.** Many transgender New Yorkers report harassment, discrimination, or violence in sex-segregated facilities. Legal advocacy is needed to ensure that low-income transgender people can safely access bathrooms and locker rooms that match their gender identity.
- 3. Changing identity documents.** Low-income transgender people need assistance securing gender marker and name changes on identity documents.

C. INTERSECTIONS BETWEEN RACE, POVERTY, SEXUAL ORIENTATION, AND GENDER IDENTITY POSE ADDITIONAL LEGAL CHALLENGES FOR MANY LOW-INCOME LGBT NEW YORKERS

LGBT identity does not occur in a vacuum. Some 63% of survey participants were LGBT people of color. Their voices, and those of their advocates, make clear that it is impossible to divorce LGBT discrimination from other forms of oppression and abuse. Racism, in particular, is a significant problem for low-income LGBT people of color. LGBT people of color reported especially severe housing discrimination. At school and with the police, many find it difficult to ascertain whether they are targeted because they are LGBT, because they are people of color or immigrants, or some combination of these factors. This assessment shows that discrimination and harassment frequently relate to more than one aspect of an individual's identity. In addition to challenging homophobia and transphobia, advocates should be vigilant about disparate treatment based on race and utilize the full complement of anti-discrimination laws to zealously confront racism and other forms of discrimination affecting low-income LGBT people.

KEY FINDINGS ON LEGAL NEEDS RELATED TO INTERSECTIONALITY

Poverty, racism, homophobia, transphobia, and other forms of oppression. Low-income LGBT people of color experience racism, along with homophobia and transphobia. Institutional racism and structural bias against people of color, immigrants, and others inform the experience of many LGBT people, as does discrimination against and mistreatment of low-income people in general. Work on behalf of these clients means recognizing and addressing these intersections. Legal services providers should be vigilant about and be prepared to aggressively challenge discrimination in all its forms.

D. HOUSING IS AN AREA OF CRISIS FOR LOW-INCOME LGBT NEW YORKERS THAT REQUIRES SIGNIFICANT LEGAL ASSISTANCE

"New York City's shortage of affordable housing has reached a crisis point," according to New York City's official Housing Plan.³⁴ Huge numbers of low-income people continue to be displaced as gentrification sweeps through dozens of neighborhoods in all five boroughs. Others are already homeless with about 60,000 sleeping in City-run shelters each night,³⁵ or are making due in unsafe and illegal units. Meanwhile, much of the stock of affordable housing in the City is in a state of terrible disrepair, with mold, vermin, broken appliances, and other problems. As of March 2015, more than 270,200 families were on the waiting list for New York City Public Housing, with another 121,356 families on the waiting list for Section 8 Housing.³⁶

This is the context in which low-income LGBT New Yorkers find themselves. In many instances, however, these problems are compounded by discrimination, harassment, and disparate access to benefits.

Key housing legal needs for low-income LGBT clients in New York City include representation to prevent eviction, pursue repairs, fight landlord harassment in gentrifying neighborhoods, access shelter, secure subsidies, and challenge discrimination.

1. HOMELESSNESS IS A COMMON SCOURGE FOR LGBT PEOPLE, PARTICULARLY LGBT YOUTH

LGBT people—particularly youth—are disproportionately homeless.³⁷ This is partly because many are kicked out of their family homes when they come out. Participants in a focus group on Staten Island noted that family hostility toward youth coming out as LGBT, along with the loss of affordable housing due to gentrification, lead to many local young people becoming homeless.

Homeless shelters present significant safety and health concerns, particularly for transgender people. Transgender Latina participants in a focus group in Queens described the hostility and filth in homeless shelters. Some shelters for women do not allow transgender women. But even when transgender women are allowed to stay at a women's shelter, many feel so unsafe that they prefer to live on the streets.

Representation can prevent homelessness for low-income LGBT clients—by halting illegal evictions, challenging harassment by landlords and neighbors, and securing access to income-support benefits.

2. UNSAFE APARTMENT CONDITIONS & HARASSMENT BY LANDLORDS ARE FREQUENTLY REPORTED BY LOW-INCOME LGBT PEOPLE

Many low-income New Yorkers live in unsafe apartments and are unable to get repairs made.³⁸ Living in poor conditions was the housing problem most frequently identified by survey respondents. Some 44% of respondents stated that in the last year alone they could not get needed repairs.

Some landlords of rent-stabilized buildings withhold necessary repairs or refuse to provide heat or hot water to force tenants out of their apartments so that they can dramatically increase rents. One respondent noted, "I didn't have heat all winter and repeatedly reported this issue to 311, but it was never resolved. My quality of life greatly suffered." Another long-term rent-stabilized tenant said, "The landlord has been harassing me to pay for repairs, which I believe is an attempt to get me out as I [have lived] in a rent stabilized apartment for 17 years now." A focus group participant at the AIDS Center of Queens County said that when he complained about the lack of heat in his apartment his landlord told him to use his gas stove to warm it up. He ended up in the hospital with pneumonia. He decided to withhold rent, and his landlord is now suing him in housing court.

Low-income New Yorkers have powerful tools available to compel landlords to make repairs and fight harassment. City law permits tenants to file actions in housing court to enforce the housing maintenance code, with stiff civil penalties and contempt judgments against landlords who fail to comply with court orders. Unfortunately, few low-income tenants are able to navigate this process without attorneys. Low-income LGBT New Yorkers need representation to fight unsafe and uninhabitable living conditions.

3. UNAFFORDABLE RENT IS A SIGNIFICANT PROBLEM FOR LOW-INCOME LGBT NEW YORKERS

The cost of housing in New York City is fast becoming prohibitive to low- and middle-income people. Many LGBT people who are searching for housing cannot find an affordable apartment. Many others who are tenants cannot afford high rents or face steep and sometimes illegal rent increases.

Many low-income LGBT tenants are struggling with unaffordable rents for their current apartments. The high cost of rent was the second most-frequent housing issue identified by survey respondents: 15% state their landlord had tried to evict them in the last year because they owed rent. Other tenants are victimized by rent overcharges. For example, one survey participant noted, “My apartment is rent-stabilized and my landlord probably charged more than the legal rent ...last year it was registered at \$713 and this year, \$2,200 [per month] ...”.

The subsidized housing programs that help defray out-of-pocket housing costs for tenants are strained and are increasingly unmoored from the real costs of housing in New York City. Public assistance, for example, provides a maximum of \$215 toward rent for a single adult, far below the cost of almost any apartment in New York.³⁹ Many of LSNYC’s clients have told us of desperate housing searches in which they call prospective landlord after prospective landlord, only to be told, when they disclose that they receive a subsidy, that the landlord “doesn’t take programs.” Such source-of-income discrimination is illegal in New York City, barred in 2008 by Local Law 10, Administrative Code §§ 8-101—but it continues to be a serious problem.

Legal representation is needed for low-income LGBT New Yorkers to advocate for access to subsidies and to fight source-of-income discrimination.

4. LGBT-SPECIFIC HOUSING ISSUES INCLUDE EXPLICIT AND IMPLICIT DISCRIMINATION

Of our survey respondents, 12% have experienced LGBT-specific housing issues. Examples include landlords who refused to rent to them or treated them badly because they are LGBT, and shelters that treated them badly or refused to house them with their same-sex partner. One respondent noted, “The super in my building. . . frequently uses anti-LGBT slurs. . . .” A recent study found that 25% of LGBT older adults have experienced housing discrimination.⁴⁰

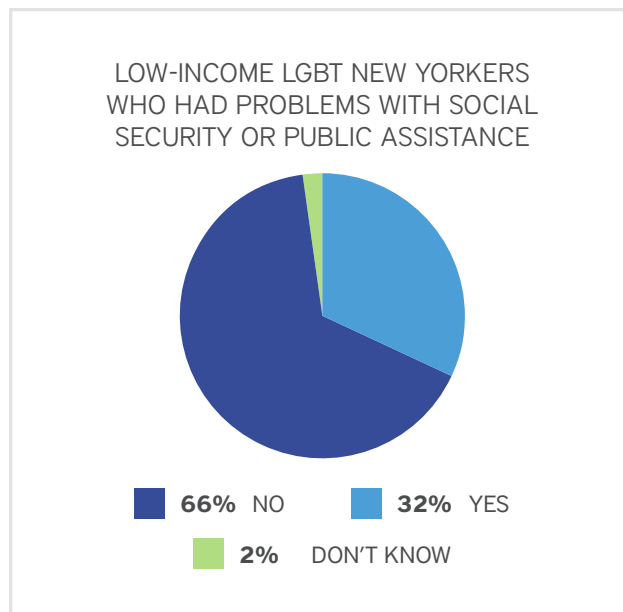
Some transgender respondents said they feel obligated to hide their transgender status in order to obtain or keep housing. About 14% of transgender respondents told us they have experienced housing problems in the last year alone that they attributed to being transgender.⁴¹ One survey participant stated: “I hid being transgender so we wouldn’t run into any problems. It wasn’t worth taking a chance.” Another noted, “I’m afraid of getting my name/gender changed in my [housing] contract for fear of discrimination.” Participants at a focus group in Queens that was primarily made up of Spanish-speaking transgender women told us that they have trouble finding housing because when their identity documents do not match each other or their appearance, the broker or prospective landlord asks intrusive personal questions about their personal life.

New York City has also been the site of a historic foreclosure crisis fueled by predatory lending that targeted communities of color. That crisis has affected LGBT borrowers in those communities. Analysis of annual 2012 Home Mortgage Disclosure Act data on mortgage lending has revealed that same-sex mortgage applicants face higher denial rates than mixed gender couple applicants.⁴² Along those lines, several large banks have settled LGBT discrimination complaints with HUD for sexual orientation and marital status discrimination. Because marriage equality is a recent development, many unmarried LGBT couples where only one owner is on the mortgage face problems if a partner dies leaving the remaining partner very vulnerable and without any rights to negotiate assumption of the mortgage.

KEY FINDINGS ON LEGAL NEEDS RELATED TO HOUSING FOR LOW-INCOME LGBT PEOPLE.

- 1. Representation on core housing matters.** Low-income LGBT people are suffering because of the affordable housing crisis in New York City. Representation is necessary to prevent eviction, fight landlord harassment, and secure apartment repairs.
- 2. Anti-LGBT discrimination.** Discrimination, harassment, and disparate access to benefits compound the crisis for New York City's low-income LGBT tenants. Legal advocacy is needed to confront anti-LGBT bias in housing.
- 3. Racism and anti-transgender discrimination.** Low-income LGBT people of color and transgender people face particularly severe housing discrimination. Advocates should be vigilant about prohibited discrimination and aggressively challenge it.

E. INCOME AND DISABILITY ASSISTANCE NEEDS AMONG LOW-INCOME LGBT PEOPLE OUTSTRIP EXISTING LEGAL RESOURCES



Public assistance benefits and Supplemental Security Income (SSI) disability benefits are designed to provide extremely low-income New Yorkers with essential subsistence income and benefits. LGBT people often encounter significant obstacles when trying to secure or maintain critically needed benefits—LGBT people of color even more so.

Key benefits-related legal needs for low-income LGBT people include representation to fight the denial, reduction, or termination of benefits; advocacy to secure essential housing and medical subsidies; and counsel to challenge discrimination and harassment within the government agencies that administer aid.

Low-income New Yorkers rely on public benefits:

- 36% of the respondents to our survey receive either public assistance⁴³ from New York City's Human Resources Administration (HRA) or Supplemental Security Income (SSI) and/or Social Security Disability (SSD)⁴⁴ from the Social Security Administration.
- 32% of our respondents receive Supplemental Nutrition Assistance Program (SNAP) benefits (also known as Food Stamps).
- Approximately a third of the respondents receiving benefits from either HRA or SSA have had problems with the agency in the last year.

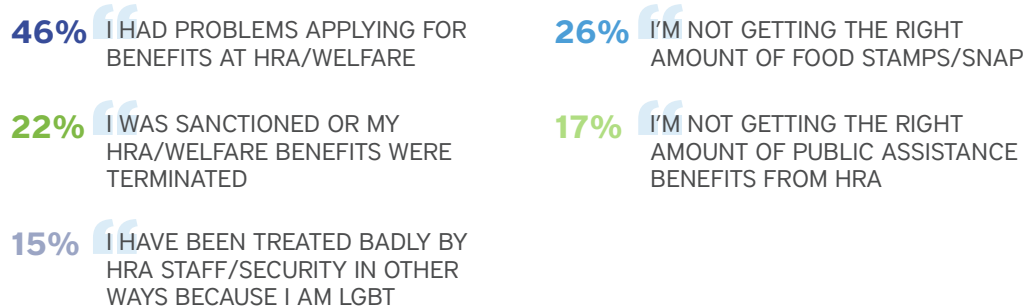
1. PUBLIC ASSISTANCE IS UTILIZED BY LARGE NUMBERS OF LOW-INCOME LGBT PEOPLE, AND MANY NEED REPRESENTATION TO GAIN OR MAINTAIN BENEFITS

Too many low-income LGBT people have problems getting the public assistance they need:

- 24% of all respondents state they experienced problems with public assistance in the last year.
- 46% of those who identified problems with public assistance had problems applying for benefits.
- Another 40% believe they are not getting the right amount of food stamps or public assistance.
- 22% had their public assistance case sanctioned or closed.



PROBLEMS EXPERIENCED BY LOW-INCOME LGBT NEW YORKERS WHEN ACCESSING PUBLIC ASSISTANCE



Of those who had problems with public assistance, 23% experienced LGBT-related issues, and 14% had been treated badly by HRA staff or security personnel. One person noted that “the security people [at HRA] are very disrespectful and degrading,” while another described the following incident:

“My former partner accompanied me to apply for benefits at the Staten Island HRA office, one of the security guards said something offensive to one of his coworkers about him kissing me good bye within earshot of us. When I calmly approached him and told him that certain words are disrespectful and that he should keep his opinions to himself whilst at work he threatened to escort me out for ‘starting trouble.’

Another respondent observed that he was treated disrespectfully by HRA staff when he was in the midst of his transition and his gender presentation did not fit neatly into a box:

“As my gender presentation/attribution has changed over the years (pre-T/post-T) my treatment has changed. I felt the most hostility when my gender was of great confusion to them but much less so when they could easily assign ‘woman’/‘man’ to me without hesitation.”

Some transgender respondents noted that they tried to change their name or gender on their benefits card, but HRA staff refused to make the administrative change.⁴⁵ Some said that HRA staff refuse to call them by their preferred name or pronoun.

Even some respondents who receive services through the HIV/AIDS Services Administration (“HASA”)—a specialized unit of HRA that provides a higher level of benefits and services to qualifying low-income people with HIV—reported discrimination and suboptimal services at that agency. LSNYC advocates represent clients whose HASA caseworkers have refused to process gender or name changes and who face roadblocks in applying for needed services.

Low-income LGBT clients need representation to challenge unfair benefits decisions through fair hearings and appeals and to advocate with—or litigate against—benefits agencies to challenge anti-LGBT discrimination.

2. ASSISTANCE WITH THE SOCIAL SECURITY ADMINISTRATION IS A SUBSTANTIAL LEGAL NEED FOR LOW-INCOME LGBT PEOPLE

Twelve percent of respondents have experienced problems at the Social Security Administration (SSA) in the past year. A number of the problems that respondents experienced at SSA are related to being LGBT, including being treated disrespectfully by SSA staff and/or security because they are LGBT. Some asked SSA to change their names or their gender markers and were refused. Others report problems obtaining benefits related to a same-sex partner.

Low-income LGBT clients need representation at SSI and SSD administrative hearings and appeals, both to secure benefits and to confront discrimination.

KEY FINDINGS ON LEGAL NEEDS RELATED TO INCOME AND DISABILITY ASSISTANCE

- 1. Accessing benefits.** Many low-income LGBT people are unable to secure or maintain desperately-needed public benefits that they are entitled to by law. Legal advocacy is needed to ensure that impoverished people are not homeless, hungry, and unable to get medical care.
- 2. Name changes and gender markers.** Although agency rules at both HRA and SSA allow for recipients to change their names and gender markers on identity documents, people still report problems. Continued advocacy is needed to ensure that agency rules are fully implemented.
- 3. Discrimination and harassment at agencies.** Some transgender, gender-nonconforming, and visibly gay people report being the target of harassment or discrimination by agency staff and security personnel. Legal representation is needed to combat this illegal and damaging treatment. Advocacy may be necessary to compel staff at benefits agencies to undergo training on how to treat LGBT people with respect and to comply with anti-discrimination laws.

F. IMMIGRATION PRESENTS VAST LEGAL CHALLENGES FOR MANY LOW-INCOME LGBT PEOPLE

Researchers estimate that there are more than 630,000 LGBT immigrants who have legal status in the U.S. and another 267,000 who are undocumented.⁴⁶ Many in this population are low-income and face a range of pressing legal needs.

“Low-income LGBT immigrants who are fleeing violence, persecution, and crime or who are married to U.S. citizens have legal rights that allow them to stabilize their lives in profound ways. However, without legal representation they are legal rights in name only. Access to quality legal help is essential.”

Audrey Carr, Legal Services NYC Director of Immigration and Special Programs

1. LARGE NUMBERS OF IMMIGRANTS ARE FLEEING ANTI-LGBT PERSECUTION AND MAY BE ELIGIBLE FOR ASYLUM

New York City is the new home of many low-income people fleeing anti-LGBT persecution in their countries of origin. Eighty countries have laws that criminalize people who are LGBT—with several applying the death penalty.⁴⁷ Many of these individuals arrive without money or assets and cannot afford legal counsel. Recent trends observed by Legal Services NYC immigration advocates and our sister organizations include many Russian immigrants and a steady volume of cases from Jamaica and other Caribbean nations, Central America, and a host of other regions.

Most of these immigrants have the legal right to asylum. Asylum results in transformational benefits for clients, including the ability to work legally, access to transition benefits, and the ability to sponsor family members. There are also significant risks and limitations when applying for asylum, however—asylum must generally be sought within one year of arrival in the U.S., and those whose applications are unsuccessful may be placed in removal proceedings. Other pathways to legal status may sometimes be preferable, when available.

2. MANY LGBT IMMIGRANTS ARE SURVIVORS OF DOMESTIC VIOLENCE AND CRIME AND MAY BE ELIGIBLE FOR RELATED IMMIGRATION RELIEF

Many low-income LGBT New Yorkers experience intimate partner violence and other crimes. Those who are undocumented immigrants may meet the legal requirements for obtaining legal status in the U.S.

Two special remedies are available to these immigrants. U Nonimmigrant Status—commonly known as a “U-Visa”—is available to an immigrant who is the victim of qualifying crimes that cause substantial physical and/or mental abuse (including intimate violence) and who aids law enforcement with the investigation or prosecution of the perpetrator. Self-petitions under the Violence Against Women Act (VAWA)—commonly called “VAWA Self-Petitions”—are available to immigrants who are or were married to abusers who are U.S. citizens or lawful permanent residents.

LSNYC and its sister organizations serve a number of clients who are victims of anti-LGBT hate crimes in the U.S. Many have problems when they tried to report crimes to the police. Sometimes they experience bias. In other cases, law enforcement refuses to classify anti-LGBT attacks as hate crimes. For some people, fear of the police is so strong that they decline to report any crimes—making it difficult to obtain related immigration relief because proof of cooperation with law enforcement is a requirement.

Mr. F. is an LSNYC client who was assaulted by his coworkers at a restaurant in Queens after they learned of his sexual orientation. Even though he reported their anti-gay bias to the Queens DA, his attackers were not charged with a hate crime, simply with a misdemeanor assault. This prevented him from receiving the necessary law enforcement certification for a U-Visa.

Intimate partner violence—which occurs at similar rates in both straight and LGBT relationships—is

another basis for both U-Visa applications and VAWA Self-Petitions for low-income LGBT immigrants.

Here too, LGBT clients face special challenges because of anti-LGBT bias from the police. In particular, LGBT people often report that not only are they not believed when they report intimate partner violence, they are sometimes ridiculed. This problem is compounded for transgender people, many of whom face police harassment motivated by anti-transgender bias. These individuals may accordingly find it difficult to consider going to the police for any problem they face, particularly when they are undocumented. When they are injured, terrified, and traumatized by an intimate partner, contacting law enforcement can loom as another trauma.

Mr. G. is an LSNYC client who was beaten into a coma by his abusive live-in boyfriend. When he recovered and reported the attack to the NYPD, it was classified as an assault by an “acquaintance.” Because assault is not a U-Visa qualifying crime, the NYPD’s failure to properly classify the crime as intimate partner violence denied Mr. G. access to immigration relief.

3. NUMBER OF LGBT IMMIGRANTS ARE VICTIMS OF HUMAN TRAFFICKING AND MAY QUALIFY FOR T-VISAS

Undocumented people who are victims of human trafficking may be eligible for T Nonimmigrant Status—commonly called T-Visas. (Trafficking includes crimes like involuntary servitude, debt bondage, and forced sex work, among other things.) T-Visas permit their holders to remain legally in the U.S. Advocates working with low-income LGBT immigrant populations in New York City frequently see trafficking, particularly among transgender clients. The level of violence encountered by these individuals is severe. Homophobia and transphobia, combined with being undocumented, puts some low-income LGBT people at greater risk from trafficking—they may be unable to find work, find a place to live, or safely report crimes to law enforcement.

Fear of law enforcement keeps many LGBT immigrants from reporting trafficking to the authorities. But because the trafficking must be reported to law enforcement for a victim to be eligible for a T-Visa, this form of relief is unavailable to these victims.

4. MARRIAGE RECOGNITION PRESENTS NEW OPPORTUNITIES FOR SOME LGBT IMMIGRANTS TO OBTAIN LEGAL STATUS

There are an estimated 24,700 same-sex couples in America that include one U.S. citizen and one non-citizen.⁴⁸ Beginning in 2013, citizens and legal residents married to non-citizens of the same sex became eligible to sponsor their spouses for lawful permanent residence, commonly known as “green cards.”⁴⁹ This form of immigration relief is commonly referred to as a “family-based petition.”

LSNYC and our sister organizations in New York City have already seen a rising number of LGBT clients seeking assistance with family-based petitions. The Supreme Court’s recent decision in *Obergefell*⁵⁰ legalizing same-sex marriage across the country is expected to increase this legal need further—both because more couples will be able to get married and because more couples are likely to learn that they are entitled to equal treatment under federal immigration law.

To succeed on family-based petitions, couples must show strong evidence of their relationship. Advocates report that the need for legal assistance is acute for many low-income LGBT couples, because they lack supporting documentation, such as shared bank accounts and shared property, to show that they are in marital relationships. Additionally, low-income same-sex couples who are raising children frequently have not established legal parental rights for both parents because of the legal hurdles and cost associated with doing so.⁵¹ Low-income people also face an extra hurdle when sponsoring a spouse: the requirement to prove that a spouse is not likely to become a “public charge.”

5. UNDOCUMENTED LGBT IMMIGRANTS FACE SPECIAL CHALLENGES

The challenges that undocumented immigrants face are often compounded by poverty, homophobia, and transphobia for low-income LGBT immigrants. At a focus group in Queens, participants reported that the lack of legal status significantly limited job opportunities and made them fearful of police.⁵² These concerns are echoed by local providers, who noted that the massive challenges for undocumented people, when combined with poverty and LGBT identity, make it extremely difficult to find work, shelter, and safety.

KEY FINDINGS ON LEGAL NEEDS RELATED TO IMMIGRATION

- 1. Immigration relief for victims of violence.** Many low-income LGBT immigrants have experienced violence or threats of violence—in their country of origin, while traveling to the U.S., and in this country. Legal representation is needed to apply for U-Visas, VAWA-self petitions, T-Visas, and asylum, when appropriate.
- 2. Screening and client sensitivity.** It is crucial that legal services organizations screen LGBT immigrants for every form of immigration relief for which they are eligible. This requires both expertise in immigration law and competency in talking about abuse and dealing with trauma for the many clients who have experienced violence. Providers must also take into account client fears about—and the potential for actual violence or discrimination by—law enforcement.
- 3. Abuse from law enforcement.** Abuse by law enforcement and the attendant fear of law enforcement are tremendous challenges that can impede access to immigration relief or give rise to additional legal needs. Violence and discrimination are particularly common against transgender immigrants. Legal advocacy is necessary to ensure that law enforcement treats LGBT immigrants fairly and to challenge instances of violence and discrimination.
- 4. Family-based petitions.** Many same-sex couples are now eligible for family-based petitions. Legal assistance is necessary to secure equal access to this legal status.

G. ADVOCACY IS OFTEN REQUIRED TO SECURE ACCESS TO SAFE HEALTH CARE FOR LOW-INCOME TRANSGENDER PEOPLE AND OTHERS

LGBT New Yorkers face serious challenges with health care. Key legal needs include help accessing health benefits and fighting discrimination from providers.

1. HOMOPHOBIA AND TRANSPHOBIA IS RAMPANT AMONG HEALTH CARE PROVIDERS



PROBLEMS WITH MEDICAL PROVIDERS EXPERIENCED BY LOW-INCOME LGBT NEW YORKERS IN THE PAST YEAR

- 15%** TREATED BADLY
- 7%** PROBLEMS WITH TRANS-RELATED CARE
- 2%** PROVIDER OUTED PATIENT AS LGBT

Nearly a quarter of survey respondents report that they have encountered problems with a medical provider in the past year. This alarming rate is even higher for low-income transgender people, who face multiple barriers when trying to access health care.

Many negative health care experiences are directly related to being LGBT. Approximately 15% of all respondents had been treated with hostility or asked inappropriate questions by a medical provider because they are LGBT.

One survey participant put it very simply: “I think they should be more open to us.” Another dis-

cussed the difficulty of patients’ fully assessing a provider’s cultural competence without putting themselves in a vulnerable position at the medical appointment:

“I always fully disclose with my health care providers: (1) because I’m not ashamed; (2) because it could impact their diagnosis/advice; (3) because a single side-eye is the only indication I need to never come back to that office. However, I wish there was a pre-screening available to avoid getting to #3 when I’m already shoe-less and in a paper dress.”

A 2011 study found that 17% of New York State transgender respondents had been refused medical care because of their gender identity or gender expression.⁵³

Transgender focus-group participants discussed the need for doctors and clinics to be trained to provide medical services to transgender women, including how to talk to patients and how to treat them fairly and respectfully. Survey respondents also described experiences of blatant disrespect and dehumanization by medical personnel. One stated:

“During my [surgery] three years ago I was stared at by a male orderly as nurses were giving me a sponge bath as I lay totally exposed while I had a tube down my throat and was unable to speak.”

Another survey participant described the questions and problems he is forced to navigate at the hospital or when seeing specialists outside of his LGBT health center:

"I go to Callen-Lorde where I receive mostly gender-affirming healthcare. However, when I am referred to see specialists for my respiratory issues and allergies or go to the hospital (which has happened twice in the past three months) there are always issues related to my legal and preferred name and gender both within their database systems and personnel using the wrong name or gender or simply making assumptions and then publicly asking me what my gender is, and having to explain that I am trans and my identity documents have not been corrected yet."

Experiences like this can cause people to avoid or delay necessary medical treatment. The 2011 National Transgender Discrimination Survey found that 28% of transgender respondents had experienced delayed medical treatment even though they were sick or injured.⁵⁴

Of transgender survey respondents, 11% note that they could not get the health care that they needed because they are transgender, and 7% were not able to obtain gender-specific or transgender health treatment. Hospitals and medical facilities can be particularly fraught sites. Patients are vulnerable, sometimes nearly naked, and are at the mercy of doctors, nurses, and other medical personnel. A respondent said:

"The most discrimination I face is in emergency rooms and hospitals; people will leave me alone for hours, mis-gender me, ask inappropriate questions that are not related to why I am there, and have lots and lots of students come through to see the freak show."

Medical providers also sometimes breach the confidentiality of LGBT patients. Some survey respondents reported being outed as transgender by their medical providers, having their HIV status revealed by a health care provider, or having other types of medical information disclosed without consent.

Low-income LGBT people need legal representation to fight discrimination by health care providers, litigate against illegal breaches of confidentiality, and secure access to care.

2. TRANSGENDER PEOPLE FACE PARTICULAR CHALLENGES SECURING INSURANCE COVERAGE

A number of transgender respondents identified problems with insurance failing to cover surgeries and hormones related to transitioning. At the time this survey was conducted, Medicaid and most private insurance companies did not provide transition-related care. Comments such as “private insurance will not cover my hormone replacement treatment,” “there is no transgender treatment coverage,” and “my health insurance doesn’t pay for a few surgeries that I need performed” were common. While coverage has increased significantly since then both generally (expanded Medicaid eligibility and new health plans under the Affordable Care Act) and in terms of transition-related care (regulatory changes regarding Medicaid, Medicare, and private health insurance), transgender patients need assistance accessing these new rights.

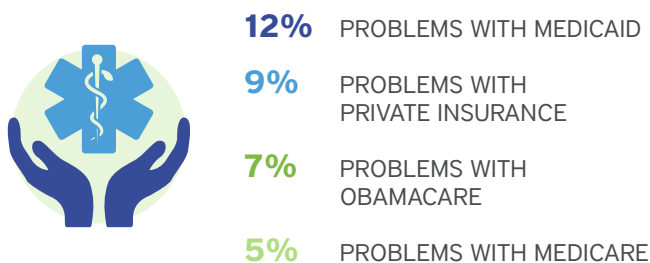
Even when transgender-related care is covered, a patient must still find a provider who is willing to accept the insurance plan. Many surgeons with expertise in transgender-related surgical procedures do not take Medicaid or Medicare. One respondent noted this dilemma:

“It’s great that Obama’s new executive order removed the blanket ban on Medicare covering trans-related surgeries, but the trick of course, is getting providers to accept Medicare. The ones who do the surgeries don’t take Medicare payments.”

The thicket of insurance regulations and bureaucracy also makes navigating insurance coverage difficult and can result in inappropriate denials of care. One transgender woman described how even though her gender marker has been changed to “F” for female, her insurance company is now refusing to pay for her Premarin estrogen hormones. Similarly, a transgender man stated, “Even though I don’t seek medical interactions often, without fail every time I do my insurance is a nightmare.”

Low-income transgender clients need attorneys to force insurers to provide access to care.

PROBLEMS WITH INSURANCE AMONG LOW-INCOME LGBT NEW YORKERS



*Percentages are based on the total number of respondents

3. LGBT PEOPLE WITHOUT MEANS CANNOT AFFORD MEDICAL TREATMENT

Low-income LGBT New Yorkers cannot always afford health care. Some survey respondents noted that they cannot meet the cost of insurance. One said simply, “I am financially unable to get health care.” Another commented that “health and dental insurance are too expensive.”

Even for those with insurance, lack of health care affordability is a common problem. This was reflected in the responses of survey respondents, 30% of whom reported experiencing problems with their insurance coverage within the past year alone.

One person said, “I was prescribed a medication for health reasons that my insurance will not cover for a senior. Also, the price of all prescriptions, thus copay[s], keeps skyrocketing.” He noted how serious this problem was for seniors or anyone on a fixed income. Another participant stated, “I have basic medical coverage through my employer, but I still cannot afford the services I need at times due to a high copayment.”

Others are acutely aware of the cascade of problems that could occur if they lose their health insurance. One survey participant said: “I’m in a Medicaid program that my housing subsidy is attached to. I’m constantly nervous that I will lose my eligibility and thus my housing.”

Low-income LGBT people need advocates to secure access to Medicaid and other medical benefit programs for people without means.

KEY FINDINGS ON LEGAL NEEDS RELATED TO HEALTH CARE

- 1. Discrimination by health care providers.** Low-income LGBT patients too often receive less, worse, or insensitive health care because they are LGBT; low-income transgender clients face particularly severe discrimination. Advocates should be vigilant about prohibited discrimination and aggressively confront health care bias. Health care providers may need to be compelled to undergo training on cultural competence and the legal consequences of discrimination.
- 2. Improper denial of coverage for transgender clients.** Transgender people are frequently improperly denied insurance coverage for trans-related care or for procedures associated with a particular gender—e.g., refusing gynecological coverage for a transgender man. Legal advocacy is needed to compel insurers and health care providers to comply with the law and treat transgender people fairly.
- 3. Lack of insurance.** LGBT patients may not be accessing medical coverage that is available to them. Legal providers need to ensure that LGBT clients are getting all health care insurance they are eligible to receive.

H. FAMILY LAW PRESENTS SPECIAL CHALLENGES FOR LOW-INCOME LGBT PEOPLE

Low-income LGBT people have a range of family-related legal needs. Millions of LGBT people are parents. Millions are in relationships. But despite the recent ruling in *Obergefell*, the law still has not caught up with LGBT families. As a result, LGBT people and their children face tremendous barriers and risks.

Key family legal needs for LGBT people include access to help for intimate-partner violence, protection for the parent-child relationship, access to divorce, and help navigating the impact of the historic exclusion from marriage.

1. INTIMATE-PARTNER VIOLENCE IS COMMON AMONG LOW-INCOME LGBT PEOPLE, WITH RATES SIMILAR TO OTHER GROUPS

LOW-INCOME LGBT NEW
YORKERS WHO EXPERIENCED
INTERPERSONAL VIOLENCE



27%

As discussed above, 27% of respondents reported that they had been victims of intimate-partner violence. The full range of legal services related to intimate-partner violence is essential for this community. These include orders of protection, divorces, custody, visitation, child support, and immigration relief.

Access to shelters for survivors of intimate-partner violence is another key need. In addition to providing a safe space for victims, shelters must also be safe and welcoming places for LGBT people. Advocates report that many shelters are unwelcoming to transgender people, who are sometimes incorrectly placed with people of the opposite sex. Others describe inadequate screening procedures to determine whether someone is a batterer—relying on gender stereotypes that are not helpful when dealing with LGBT couples.

2. MANY RESPONDENTS REPORTED NEGLECT AND ABUSE FROM PARENTS AND GUARDIANS

LOW-INCOME LGBT NEW
YORKERS WHO EXPERIENCED
PARENTAL ABUSE OR NEGLECT



20%

A fifth of survey respondents reported neglect or abuse by a parent, guardian, or foster parent. Although the survey did not ask additional questions on this topic, other data suggests that many low-income young people experience abuse and neglect from their families of origin based on homophobia and transphobia.⁵⁵

Advocates in the field report that LGBT youth who experience abuse at home face the full range of legal needs surrounding homelessness. But they also face additional challenges related to their LGBT identity. Particular challenges include locating shelters and foster homes that are safe and welcom-

ing for LGBT people, and, for transgender young people, accessing and paying for transition-related healthcare.

Advocates relay stories about young people who flee anti-LGBT parents and attempt to get public assistance—only to be told that the state will not provide benefits because the family of origin was willing to take them back ...but only if they stopped being gay or stopped identifying as transgender.

3. MARRIAGE EQUALITY PRESENTS NEW OPPORTUNITIES, BUT UNCERTAINTY AND CHALLENGES REMAIN

Same-sex couples face a range of legal problems caused by their historic exclusion from the institution of marriage. The legal gymnastics necessary to obtain some level of protection for couples and their children are complicated and rarely undertaken by people without means, resulting in a number of problems. Among other things, surviving same-sex partners faced the possibility of being excluded from their deceased partners' estates, evicted from their homes, barred from their partners' funerals, separated from their children, and denied federal surviving-spouse benefits from the Social Security Administration. Partners were banned from sick partners' hospital rooms. Children were denied a share of their non-biological parents' estates and unwillingly removed from their homes following the death of their biological parents.

Now that same-sex marriage is legal throughout the U.S., same-sex couples and their children find themselves in a dramatically improved environment. But it will take many years for the full benefits of access to marriage to accrue. In the wake of marriage equality, family law for LGBT people is in a state of flux, leaving clients with a number of uncertainties in this key practice area.

Low-income LGBT people already need help obtaining divorce. There are significant problems with equitable distribution. Some couples have been together for decades, had domestic partnerships for many years, civil unions for a few years, and marriage only recently. Courts sometimes fail to measure the duration of a relationship in a manner consistent with the history of the relationship, instead focusing on the more immediate legal marriage.

In other cases, people failed to dissolve a civil union or domestic partnership in one state before getting legally married to another person in a different state—partly because it was confusing and difficult to dissolve civil unions and domestic partnerships in many states, particularly after moving out of state—raising complicated questions about how to unwind these former relationships in order to secure their right to marriage equality.

4. LOW-INCOME LGBT PARENTS FACE MANY LEGAL BARRIERS

Some 37% of adults who identify as LGBT are parents—approximately 3 million people nationally.⁵⁶ Approximately 2 million more LGBT people nationally are interested in having children.⁵⁷

LGBT people who have—or are trying to have—children face several legal challenges. For example, parents of the same sex cannot both be genetically related to the child. Even when legally married, LGBT parents may face different treatment than their heterosexual counterparts. In particular, whether the presumption of parentage will apply to children of same-sex married couples is an open question. As a result, non-biological parents in New York still need a second-parent adoption, even when that couple is married.⁵⁸ Child support, custody, and visitation, among other things, are all destabilized when a parent does not have a legal relationship with his or her child.

Securing a second-parent adoption is expensive, invasive, and difficult to obtain for many low-income people. It is also insulting: non-biological parents have to get fingerprinted, have their homes inspected by the state, have criminal background checks, and have their names run through child neglect and abuse registries. Consequently, many same-sex parents do not have full parental rights to their children, with resulting risks for both parents and children.

Other LGBT couples hope to adopt children together or to access health benefits that will enable them to have a child biologically related to one parent. These options are often expensive and inaccessible to low-income people. Even the cheapest forms of adoption cost tens of thousands of dollars. In other instances, low-income lesbian couples may be unable to afford the cost of purchasing sperm from anonymous sperm banks, and instead turn to friends or others for sperm donation. This can lead to legal problems with a donor who later claims parental rights.

“My partner and I are trying to get pregnant and we need to understand what [is] required for sperm donor agreements and for second parent adoption. We have heard conflicting reports that we no longer need second parent adoption because marriage is legal, but I don’t buy it. We also need to know more about our insurance rights when it comes to artificial insemination.”

“I am a trans man; I would like to try to become pregnant using a known donor, and my partner and I need help figuring out how to have a legally protected family.”

KEY FINDINGS ON LEGAL NEEDS RELATED TO FAMILY

- 1. Representation on core family legal services.** Low-income LGBT people need family legal services on a broad spectrum of topics, including orders of protection, shelter, marriage, divorce, custody and visitation, child support, and adoption. These clients may also need life- and estate-planning documents, such as wills, health care proxies, and powers of attorney. Legal services providers should make an extra effort to provide services to LGBT people because of their historic exclusion from many aspects of family court.

2. **Interpersonal violence.** Low-income LGBT people experience rates of interpersonal violence similar to non-LGBT people. Legal services are necessary to help these individuals obtain orders of protection and other forms of relief.
3. **Legal uncertainty.** In the wake of marriage equality, family law for LGBT people is in a state of flux, leaving clients with a number of uncertainties. Legal representation for low-income LGBT families is particularly important at this historical juncture. Judges are publishing decisions on seemingly minor cases because they address novel issues for LGBT families. Advocates should carefully consider the wider impact on this nascent area of law when deciding what cases to bring and which legal strategies to employ.
4. **Screening and training.** The legal landscape for LGBT families varies significantly depending on the jurisdiction and the time period of significant family events—including relationship recognition and parental rights. Attorneys need to both be trained on these legal challenges and to carefully screen for those issues when working with low-income LGBT people. It is also particularly important that attorneys and staff provide safe and culturally competent services to LGBT people when dealing with the intimate subject of family law.

I. EMPLOYMENT DISCRIMINATION AND OTHER ISSUES AT WORK ARE COMMON FOR LOW-INCOME LGBT PEOPLE

Low-income LGBT people face particular challenges in obtaining and keeping employment. Many experience discrimination when they apply for a job or are discriminated against by coworkers or supervisors. Some are ultimately dismissed when their sexuality or gender identity is revealed at work. A large number of low-wage workers are employed in the service industry—particularly in food service. This presents particular challenges to the LGBT community because many employers discriminate as a result not only their own biases, but of the perceived biases of their customer base.

1. LOW-INCOME LGBT PEOPLE FACE DISCRIMINATION IN HIRING AND FIRING

Studies have found that 8% to 17% of LGB people have, at some point, not been hired or have been unfairly fired.⁵⁹ **In just the past year**, 8% of all respondents to our survey reported not being hired for a job they applied for because they are LGBT. These problems are particularly acute for transgender people. One study found that many transgender people have not been hired because they are transgender.⁶⁰

This leads to higher unemployment rates: LGB adults are 40% more likely to be unemployed than heterosexual adults.⁶¹ These disparities are even more pronounced for transgender adults, who are unemployed at twice the rates of cisgender adults.⁶² Transgender workers of color face even higher rates of unemployment: 28% of black transgender adults were unemployed, 24% of Native American transgender adults, 18% of Latino and multiracial transgender adults, 12% of white transgender adults, and 10% of Asian transgender adults, compared with 7% of the general population.

One respondent wrote:



"I have been on the job market for over a year, despite having a graduate-level degree from an Ivy-League school. Whether or not this is due to my queer/transgender identity is unclear but seems likely."

Another explained, "I have problem with trying to find employment because my gender is not changed on my ID." Because it is all but impossible to remain closeted while in the midst of a gender transition, or before all identity documents are congruent with each other and the worker's appearance, at least some low-wage workers may opt out of the legal workforce entirely until they can pass and are less likely to face workplace discrimination.

Transgender participants in a focus group held at Voces Latinas in Queens told us that they find they are often not hired for jobs because some employers already have a fixed belief that transwomen are only good for "being prostitutes or hairstylists." Some report being forced to rely on sex work to survive.

Those who have found employment have often run into obstacles when trying to transition on the job. For example, an LSNYC client was terminated from her job as a waitress when she began transitioning. Her employer explained that while he had no problem with her gender identity or expression, he felt that his customers are too transphobic to handle a transgender waitress. As a result, she lost her low-wage job and quickly slid into poverty. Another client interviewed for a job at a bodega and was immediately hired. She then walked back to her apartment, a few blocks away. In that short time span, the bodega owner learned from neighbors in the store that the client was transgender. Within the hour, she received a call telling her that the job offer was off the table. The owner indicated that his concern was his customer base—they simply could not handle a cashier who was transgender.

Overall, 26% of the transgender respondents to our survey experienced problems with employment in the last year alone. This figure includes only people seeking work, and does not include people who had already dropped out of the workforce because of problems obtaining work. Other studies have similarly documented high rates of employment and housing discrimination for transgender New Yorkers, with 47% of respondents reporting that they had been denied a job or promotion or had been fired based on their gender identity.⁶³

2. HOSTILE WORK-ENVIRONMENT DISCRIMINATION IS A SIGNIFICANT CHALLENGE FOR MANY LOW-INCOME LGBT PEOPLE

Eighteen percent of all respondents reported experiencing problems at work within the last year; 11% reported being treated badly or differently at work in the last year because they are LGBT. While many think of employment discrimination as primarily involving the hiring and firing of employees, even people who manage to find and keep employment may face a barrage of unwelcome comments, insults, and disparaging attitudes that can make life difficult, if not unbearable. This form of discrimination is known as "harassment" and/or "hostile work-environment discrimination."

For example, one respondent was told by his boss to “tone it down” and dress less “fem” at work. Others are harassed by coworkers who are then not disciplined for their behavior, giving their discrimination an implicit seal of approval. One survey participant stated, “Coworkers talk about me and supervisors don’t step in.”


It can be difficult for transgender employees to transition on the job, which requires the employee to out themselves to supervisors and coworkers. The employee may then be treated differently and, for example, prohibited from using the appropriate bathroom or wearing clothing that aligns with their gender identity. As one respondent explained, “Outing myself to HR has been quite humiliating and resulted in some confusion with pay and various procedures.”

To avoid the risk of being discriminated against because of their sexual orientation or gender identity, many people stayed closeted or tried to dress in conventionally gender-congruent ways. One survey respondent said, “I feel I need to present femininely at work to avoid employment discrimination.” Another noted,



“I was closeted at my previous job. I’m afraid I will have to stay that way in order to get and keep another.”

Another stated that “People at work ask you strange things, both colleagues and clients ask you very intimate questions or point out if you don’t conform to gender in some way.” A third commented that



“Co-workers are able to say derogatory and discriminatory things, and our boss does not discourage, and sometimes even encourages the behavior. When I try to correct co-workers, I am not taken seriously.”

To counter these pervasive problems, low-income LGBT New Yorkers need to be empowered to exercise their legal right to work free from discrimination, need legal services when those rights are violated and need to be able to count on advocates and government agencies to train employers, enforce these laws, and ensure that discrimination and harassment are not tolerated.

KEY FINDINGS ON LEGAL NEEDS RELATED TO EMPLOYMENT

- 1. Access to legal services.** Many low-income individuals have difficulty finding attorneys willing to take on employment discrimination claims, because low-wage work means relatively low damage awards. It is important that the nonprofit legal services community, as well as the New York City Commission on Human Rights, take active steps to reach out to the low-income LGBT community and to make sure low-income LGBT community members know their rights at the workplace.
- 2. Legal training for employers.** Despite New York City’s having one of the strongest anti-discrimination laws in the country, many small employers in the City are unaware of their responsibility not to discriminate, particularly against employees or job applicants who are transgender.

J. SCHOOL SAFETY IS A MAJOR ISSUE FOR LOW-INCOME LGBT STUDENTS

School presents serious challenges for low-income LGBT students. LGBT youth and their advocates report widespread discrimination and harassment. The consequences of this homophobia and transphobia in the schools are significant. LGBT students across all incomes who experience bias often stop attending classes regularly and may drop out.⁶⁴ Despite New York State's passage of the Dignity for All Students Act in 2010, anti-transgender discrimination in public schools has continued, due in part to the state's failure to provide guidance on applying the law to transgender youth.⁶⁵ LGBT students who are poor are more likely to face economic and racial disparities in the education system and to lack resources to transfer to more supportive schools.

Key legal needs for low-income LGBT students include advocacy to challenge discrimination from students, teachers, and administrators, including representation at suspension hearings. Advocates must ensure that the NYC Department of Education enforces regulations requiring school staff to take affirmative steps when made aware of bullying or harassment and force the State Education Department to provide guidance on applying the Dignity for All Students Act to transgender youth. Advocacy is needed to implement non-punitive solutions to address bullying and harassment, such as increased education and training for both students and staff. Just as with many other low-income students, LGBT youth with disabilities also need representation to fight for the special education benefits to which they are entitled.

1. MANY LOW-INCOME LGBT PEOPLE EXPERIENCE HOMOPHOBIA AND TRANSPHOBIA AT SCHOOL

Harassment or assault by other students is a common problem for low-income LGBT students. One young person described changing his clothes four different times throughout the day just to feel comfortable at home, at school, and with his peers. Respondents reported assault, bullying, and cyberbullying. Focus group members similarly said that they had been bullied at school because they identified as LGBT.

Problems are not confined to other students. As one respondent explained, "Often times student help centers make the one seeking help feel like the problem, calling attention to what they do to provoke others into the behavior that shouldn't be acceptable."

Said another: "I was put out of school for being transgender and had to finish at alternative school. The administration claimed I was a safety issue." Some respondents had actually been harassed or assaulted directly by school staff. It's no wonder students often refrain from reporting problems.

Some focus group participants said that counselors are clearly uncomfortable when participants came out to them, negated their feelings relating to their identity as LGBT, or tried to change the topic. A transgender student reported that he was prevented from registering for classes after he changed his name to reflect his gender identity. School officials also told him that they would not acknowledge his identity as a male. "Because of this, my education is delayed by at least four more months."

One respondent said that he felt like his life was threatened by a bully, but when he reported it to school staff, they did nothing to resolve the problem. Another was told: “What did you expect? You’re gay—this is what you chose.”

2. RACISM AND ANTI-LGBT BIAS ARE PROBLEMS IN SCHOOL DISCIPLINE

Many LGBT students find themselves the subject of unfair suspensions when they stand up to homophobic and transphobic bullies. This problem is compounded for students of color, who are disproportionately subject to discipline by schools. This fact is particularly troubling because of the high rates of school harassment of LGBT youth of color, with researchers reporting that 47% of Latino, 39% of African-American, and 35% of Asian/Pacific Islander LGBT youth have experienced harassment at school.⁶⁶

LSNYC education experts advocate for solutions that do not lead to increased discipline and suspensions, noting the value of “restorative practices” that provide positive school climates and help students learn from their mistakes rather than resorting immediately to punitive disciplinary procedures. Comprehensive bullying/harassment policies can help schools provide more effective protection to LGBT students. Students attending schools with such policies are more likely to report when they are being harassed or bullied, and school staff are more likely to intervene.⁶⁷

KEY CONCLUSIONS ON LEGAL NEEDS RELATED TO EDUCATION

- 1. Discrimination.** Many low-income LGBT New Yorkers experience discrimination at school, including harassment and assault. Legal representation is needed to challenge this discrimination so that low-income LGBT students can fully benefit from school.
- 2. Challenging disciplinary actions motivated by bias.** Legal services providers should be trained to assess and recognize whether school performance, attendance, discipline, or placement is the result of LGBT discrimination, racism, or another form of illegal bias. Legal advocacy is necessary to challenge this behavior.

K. IDENTITY DOCUMENTS ARE A SIGNIFICANT LEGAL NEED FOR TRANSGENDER CLIENTS

Low-income transgender people need representation to legally change their names and gender markers. These changes enable people to be known by their correct names and pronouns in all aspects of their lives, including obtaining government benefits, looking for work, signing leases, or appearing in court, thereby allowing them to live as their true selves and greatly reduce potential conflicts.

Of the low-income transgender respondents to our survey, 41% stated that they need to change their name legally and 12% need to change their legal gender marker (M/F). While legally changing one’s name is a relatively simple proceeding in New York City, the process for changing identity documents can be lengthy, bureaucratic, and confusing. There is no standard protocol or set of requirements. Instead, each governmental entity has different rules and standards for changing one’s identity documents, including birth certificate, driver’s license, Social Security card, passport, and benefits card.

For some, changing identity documents is impossible: many current New York residents were born in jurisdictions that do not allow transgender people to change their birth certificates. This is a fatal impediment to changing certain identity documents. For example, one transgender woman has been unable to change her name or gender marker on her birth certificate, because, as she explained, “I was born in a state where it is impossible to change my birth certificate in any way.” Another respondent stated:

“I have changed all of my legal documents, however, it was extremely difficult to change my birth certificate. It required me getting surgery before I normally would have and also required me going to my birth state of Texas to get a court ordered gender change because NY doesn’t supply those.”

At the time our survey was conducted, neither New York City nor New York State would change the gender marker on a birth certificate unless the applicant could show proof of gender reassignment surgery or hormone treatment. New York State modernized its rule for changing the gender marker on birth certificates in June 2014, and New York City in January 2015. As of May 1, 2015, the Human Resources Administration (HRA) removed the gender field from its identification cards.

Providing representation in name change proceedings can be a way to introduce transgender-friendly legal services to communities that are unsure whether legal providers will offer welcoming and culturally competent services to transgender clients.

KEY FINDING ON LEGAL NEEDS FOR IDENTITY DOCUMENTS

Changing identity documents. Low-income transgender people need assistance securing gender marker and name changes on identity documents.

L. LGBT VETERANS FACE A RANGE OF ADDITIONAL LEGAL CHALLENGES

Low-income LGBT veterans have a range of legal needs, including those described throughout this report. Like other low-income veterans, they need advocates to help them secure federal veterans benefits and access to benefits and preferences in housing and licenses under New York State law.⁶⁸ But the historic expulsion of LGB service members also gives rise to the additional need for legal help with discharge upgrades.

Roughly 100,000 service members were discharged from military service between World War II and September 2011 because of their sexual orientation. Between 1994 and 2011—the duration of Don’t Ask Don’t Tell (DADT)—more than 14,000 people were discharged due to their sexual orientation. Though women comprised roughly 15% of the military population, they were disproportionately affected by DADT, comprising 30% of those discharged under DADT.⁶⁹

Many discharged due to their sexual orientation received worse discharge statuses than they would otherwise have merited. Some received “Other than Honorable” discharges for offenses such as holding hands with their same-sex partner in public, which, as an act committed openly in public

view, was considered to be an “aggravating factor.” Others were given honorable discharges, but the narrative on their discharge paperwork identifies them as LGBT, opening them to discrimination from a potential employer or landlord who reviews the paperwork.

There are still many LGBT veterans with negative discharge statuses and discharge comments under DADT. These veterans would benefit from legal services to help them upgrade their discharge to a less pejorative status.

As of the date of this report, transgender people are still prohibited from enlisting in the military, and official military policy requires that transgender people are rejected if they apply and discharged from service if they are discovered. (Despite this explicit ban, transgender people enlist and serve at higher rates than the general population.⁷⁰) This policy is currently under review and may change soon, in which case transgender veterans who were discharged based on their gender identity will need legal services to obtain discharge upgrades.

KEY FINDINGS ON LEGAL NEEDS OF LOW-INCOME LGBT VETERANS

- 1. Across all legal practice areas.** Low-income LGBT veterans have a range of civil legal needs, including those described throughout this report.
- 2. Discharge upgrades and discharge transcripts.** Many veterans served during a time of de jure discrimination against LGBT service members, and many were discharged for being LGBT or under Don’t Ask Don’t Tell. Legal advocacy is needed to secure discharge upgrades and modify discharge certificates for these veterans.
- 3. Access to veterans’ benefits and services.** Legal advocacy is needed to secure the full range of veterans’ services for LGBT veterans, including access to VA benefits.

III. CONCLUSION

Low-income LGBT New Yorkers face the legal challenges that all people living in poverty do: housing insecurity; challenges securing benefits; and family safety and immigration needs. But they face significant additional risk caused by pervasive homophobia and transphobia, and because of the law's history of unequal treatment of LGBT people, relationships, and families. Without financial resources, they have little ability to avoid discrimination and violence or navigate a complicated legal landscape.

Free civil legal representation is essential for low-income LGBT people—whether through legal services providers, pro bono representation from the private bar, or LGBT organizations. Without an attorney, low-income LGBT people are far less likely to secure or maintain access to the fundamentals of life: housing, income, safety, and security. Advocates can also play a crucial role in identifying and challenging all-too-frequent discrimination based on sexual orientation and gender identity—often compounded by racism and other forms of bias.

Just as important, advocates must provide culturally competent, visibly LGBT-friendly services. Training for staff and outreach to LGBT communities are crucial for legal services providers. Without these steps, LGBT clients may assume bias or feel uncomfortable relating central elements of their lives to their advocates. Others will stay away entirely. Worse, without adequate training, legal services providers could themselves treat low-income LGBT clients unfairly.

Thankfully, there is no shortage of trainers, model policies, and program ideas to create an LGBT-friendly organization. Indeed, those that commit to providing LGBT-inclusive services may create a positive loop, with more and more LGBT clients coming to them, leading to even better advocacy and increased cultural competency.

The need for civil legal services among low-income LGBT people is vast. Poverty is an LGBT issue. Legal services are an LGBT issue. It is time for all of us who care about fighting poverty, and all of us who care about the LGBT community, to face this challenge together.

IV. APPENDIX A: SUMMARY OF KEY CONCLUSIONS AND FINDINGS

Our key conclusions and findings on each area of significant legal need for low-income LGBT New Yorkers are discussed within the context of each section. They are also summarized here.

CONCLUSIONS ON LEGAL NEEDS ACROSS PRACTICE AREAS

- 1. Every Area of Legal Practice.** Low-income LGBT people are buffeted by the same forces that all poor people face and need representation in every poverty law practice area.
- 2. Discrimination, Harassment, and Violence.** Civil legal needs are often made worse because of anti-LGBT discrimination, harassment, and violence. Discrimination and harassment against transgender people is generally more severe across the board than that directed at LGB people—especially so for people of color. Legal services providers helping low-income LGBT clients should identify, assess, and pursue related discrimination claims.
- 3. Poverty, racism, homophobia, transphobia, and other forms of oppression.** Low-income LGBT people of color experience racism, along with homophobia and transphobia. Institutional racism and structural bias against people of color, immigrants, and others inform the experience of many LGBT people, as does discrimination against and mistreatment of low-income people in general. Work on behalf of these clients means recognizing and addressing these intersections. Legal services providers should be vigilant about and be prepared to aggressively challenge discrimination in all its forms.
- 4. Cultural Competence.** Lawyers for the poor must ensure that all staff and volunteers are trained to provide culturally competent services to low-income LGBT clients and to avoid re-victimizing clients who have likely experienced discrimination and abuse.
- 5. Visibility.** Legal services organizations should take visible steps to welcome low-income LGBT clients, because these clients may fear discrimination or harassment based on past experiences. It is incumbent on legal service providers to broadcast commitment to the LGBT community and to encourage LGBT clients to speak honestly with staff about their life experiences and legal needs. Failure to take affirmative steps in this direction may cause low-income LGBT clients to closet themselves or withhold important details when accessing services, fear and distress when working with attorneys and staff, or a decision to avoid legal services organizations entirely.
- 6. Trauma and safety.** Low-income LGBT New Yorkers experience high levels of violence and abuse. Legal services organizations should train staff on how to screen and serve LGBT clients who have experienced trauma. Social workers and counselors should be available for these clients when needed. Safety planning may be necessary for low-income LGBT clients—whether in relationships, at school, in public, or when dealing with the police.

FINDINGS ON CIVIL LEGAL NEEDS OF LOW-INCOME PEOPLE IN NEW YORK CITY

A. VIOLENCE AND HARASSMENT ARE SEVERE AND PERVASIVE PROBLEMS THAT CREATE MAJOR LEGAL NEEDS FOR LOW-INCOME LGBT PEOPLE

- 1. Violence and harassment in public.** Low-income LGBT people report frequent violence and public harassment that causes fear, closeting, and isolation. These problems are particularly acute for low-income LGBT people of color and transgender people. Legal advocacy is needed to ensure that low-income LGBT people have equal access to public services without fear of mistreatment.
- 2. Police misconduct.** Police misconduct is a big problem for many low-income LGBT people, particularly LGBT people of color and transgender people. Legal advocacy is needed to ensure safe access to law enforcement when needed and to combat police misconduct.
- 3. Cultural competence.** Legal services organizations should take overt steps to welcome low-income LGBT clients because these clients may fear discrimination or harassment based on past experiences. Providers must ensure that staff and volunteers are trained to provide culturally competent services to low-income LGBT clients and to avoid re-victimizing a community that has experienced frequent harassment.
- 4. Interpersonal violence.** Low-income LGBT people experience rates of interpersonal violence similar to non-LGBT people. Legal services are necessary to help these individuals obtain orders of protection and other forms of relief from violence.
- 5. Trauma and safety.** Low-income LGBT New Yorkers experience high levels of violence and abuse. Legal services organizations should train staff on how to serve LGBT clients who have experienced trauma. Social workers and counselors should be available for these clients when needed. Safety planning may be necessary for low-income LGBT clients—whether in relationships, at school, in public, or when dealing with the police.

B. LOW-INCOME TRANSGENDER PEOPLE FACE EVEN GREATER VIOLENCE AND HARASSMENT THAN LGB PEOPLE, GIVING RISE TO EVEN GREATER LEGAL NEEDS

- 1. Pervasive and severe discrimination.** . Discrimination and harassment against transgender people is generally more severe and pervasive than that directed at LGB people—especially for people of color. Legal services providers should be particularly vigilant about the many settings in which transgender people experience discrimination and be prepared to aggressively fight for their health, safety, and rights.
- 2. Sex-segregated facilities.** Many transgender New Yorkers report harassment, discrimination, or violence in sex-segregated facilities. Legal advocacy is needed to ensure that low-income transgender people can safely access bathrooms and locker rooms that match their gender identity.
- 3. Changing identity documents.** Low-income transgender people need assistance securing gender marker and name changes on identity documents.

C. INTERSECTIONS BETWEEN RACE, POVERTY, SEXUAL ORIENTATION, AND GENDER IDENTITY POSE ADDITIONAL LEGAL CHALLENGES FOR MANY LOW-INCOME LGBT NEW YORKERS

Poverty, racism, homophobia, transphobia, and other forms of oppression. Low-income LGBT people of color experience racism, along with homophobia and transphobia. Institutional racism and structural bias against people of color, immigrants, and others inform the experience of many LGBT people, as does discrimination against and mistreatment of low-income people in general. Work on behalf of these clients means recognizing and addressing these intersections. Legal services providers should be vigilant about and be prepared to aggressively challenge discrimination in all its forms.

D. HOUSING IS AN AREA OF CRISIS FOR LOW-INCOME LGBT NEW YORKERS THAT REQUIRES SIGNIFICANT LEGAL ASSISTANCE

- 1. Representation on core housing matters.** Low-income LGBT people are suffering because of the affordable housing crisis in New York City. Representation is necessary to prevent eviction, fight landlord harassment, and secure apartment repairs.
- 2. Anti-LGBT discrimination.** Discrimination, harassment, and disparate access to benefits compound the crisis for New York City's low-income LGBT tenants. Legal advocacy is needed to confront anti-LGBT bias in housing.
- 3. Racism and anti-transgender discrimination.** Low-income LGBT people of color and transgender people face particularly severe housing discrimination. Advocates should be vigilant about prohibited discrimination and aggressively challenge it.

E. INCOME AND DISABILITY ASSISTANCE NEEDS AMONG LOW-INCOME LGBT PEOPLE OUTSTRIP EXISTING LEGAL RESOURCES

- 1. Accessing benefits.** Many low-income LGBT people are unable to secure or maintain desperately-needed public benefits that they are entitled to by law. Legal advocacy is needed to ensure that impoverished people are not homeless, hungry, and unable to get medical care.
- 2. Name changes and gender markers.** Although agency rules at both HRA and SSA allow for recipients to change their names and gender markers on identity documents, people still report problems. Continued advocacy is needed to ensure that agency rules are fully implemented.
- 3. Discrimination and harassment at agencies.** Some transgender, gender-nonconforming, and visibly gay people report being the target of harassment or discrimination by agency staff and security personnel. Legal representation is needed to combat this illegal and damaging treatment. Advocacy may be necessary to compel staff at benefits agencies to undergo training on how to treat LGBT people with respect and to comply with anti-discrimination laws.

F. IMMIGRATION PRESENTS VAST LEGAL CHALLENGES FOR MANY LOW-INCOME LGBT PEOPLE

- 1. Immigration relief for victims of violence.** Many low-income LGBT immigrants have experienced violence or threats of violence—in their country of origin, while traveling to the U.S., and in this country. Legal representation is needed to apply for U-Visas, VAWA-self petitions, T-Visas, and asylum, when appropriate.
- 2. Screening and client sensitivity.** It is crucial that legal services organizations screen LGBT immigrants for every form of immigration relief for which they are eligible. This requires both expertise in immigration law and competency in talking about abuse and dealing with trauma for the many clients who have experienced violence. Providers must also take into account client fears about—and the potential for actual violence or discrimination by—law enforcement.
- 3. Abuse from law enforcement.** Abuse by law enforcement and the attendant fear of law enforcement are tremendous challenges that can impede access to immigration relief or give rise to additional legal needs. Violence and discrimination are particularly common against transgender immigrants. Legal advocacy is necessary to ensure that law enforcement treats LGBT immigrants fairly and to challenge instances of violence and discrimination.
- 4. Family-based petitions.** Many same-sex couples are now eligible for family-based petitions. Legal assistance is necessary to secure equal access to this legal status.

G. ADVOCACY IS OFTEN REQUIRED TO SECURE ACCESS TO SAFE HEALTH CARE FOR LOW-INCOME TRANSGENDER PEOPLE AND OTHERS

- 1. Discrimination by health care providers.** Low-income LGBT patients too often receive less, worse, or insensitive health care because they are LGBT; low-income transgender clients face particularly severe discrimination. Advocates should be vigilant about prohibited discrimination and aggressively confront health care bias. Health care providers may need to be compelled to undergo training on cultural competence and the legal consequences of discrimination.
- 2. Improper denial of coverage for transgender clients.** Transgender people are frequently improperly denied insurance coverage for trans-related care or for procedures associated with a particular gender—e.g., refusing gynecological coverage for a transgender man. Legal advocacy is needed to compel insurers and health care providers to comply with the law and treat transgender people fairly.
- 3. Lack of insurance.** LGBT patients may not be accessing medical coverage that is available to them. Legal providers need to ensure that LGBT clients are getting all health care insurance they are eligible to receive.

H. FAMILY LAW PRESENTS SPECIAL CHALLENGES FOR LOW-INCOME LGBT PEOPLE

- 1. Representation on core family legal services.** Low-income LGBT people need family legal services on a broad spectrum of topics, including orders of protection, shelter, marriage, divorce, custody and visitation, child support, and adoption. These clients may also need life- and estate-planning documents, such as wills, health care proxies, and powers of attorney. Legal services providers should make an extra effort to provide services to LGBT people because of their historic exclusion from many aspects of family court.
- 2. Interpersonal violence.** Low-income LGBT people experience rates of interpersonal violence similar to non-LGBT people. Legal services are necessary to help these individuals obtain orders of protection and other forms of relief.
- 3. Legal uncertainty.** In the wake of marriage equality, family law for LGBT people is in a state of flux, leaving clients with a number of uncertainties. Legal representation for low-income LGBT families is particularly important at this historical juncture. Judges are publishing decisions on seemingly minor cases because they address novel issues for LGBT families. Advocates should carefully consider the wider impact on this nascent area of law when deciding what cases to bring and which legal strategies to employ.
- 4. Screening and training.** The legal landscape for LGBT families varies significantly depending on the jurisdiction and the time period of significant family events—including relationship recognition and parental rights. Attorneys need to both be trained on these legal challenges and to carefully screen for those issues when working with low-income LGBT people. It is also particularly important that attorneys and staff provide safe and culturally competent services to LGBT people when dealing with the intimate subject of family law.

I. EMPLOYMENT DISCRIMINATION AND OTHER ISSUES AT WORK ARE COMMON FOR LOW-INCOME LGBT PEOPLE

- 1. Access to legal services.** Many low-income individuals have difficulty finding attorneys willing to take on employment discrimination claims, because low-wage work means relatively low damage awards. It is important that the nonprofit legal services community, as well as the New York City Commission on Human Rights, take active steps to reach out to the low-income LGBT community and to make sure low-income LGBT community members know their rights at the workplace.
- 2. Legal training for employers.** Despite New York City's having one of the strongest anti-discrimination laws in the country, many small employers in the City are unaware of their responsibility not to discriminate, particularly against employees or job applicants who are transgender.

J. SCHOOL SAFETY IS A MAJOR ISSUE FOR LOW-INCOME LGBT STUDENTS

- 1. Discrimination.** Many low-income LGBT New Yorkers experience discrimination at school, including harassment and assault. Legal representation is needed to challenge this discrimination so that low-income LGBT students can fully benefit from school.
- 2. Challenging disciplinary actions motivated by bias.** Legal services providers should be trained to assess and recognize whether school performance, attendance, discipline, or placement is the result of LGBT discrimination, racism, or another form of illegal bias. Legal advocacy is necessary to challenge this behavior.

K. IDENTITY DOCUMENTS ARE A SIGNIFICANT LEGAL NEED FOR TRANSGENDER CLIENTS

Changing identity documents. Low-income transgender people need assistance securing gender marker and name changes on identity documents.

L. LGBT VETERANS FACE A RANGE OF ADDITIONAL LEGAL CHALLENGES

- 1. All legal practice areas.** Low-income LGBT veterans have a range of civil legal needs, including those described throughout this report.
- 2. Discharge upgrades and discharge transcripts.** Many veterans served during a time of de jure discrimination against LGBT service members, and many were discharged for being LGBT or under Don't Ask Don't Tell. Legal advocacy is needed to secure discharge upgrades and modify discharge certificates for these veterans.
- 3. Access to veterans' benefits and services.** Legal advocacy is needed to secure the full range of veterans' services for LGBT veterans, including access to VA benefits.

V. APPENDIX B: METHODOLOGY

This appendix sets forth in detail Legal Services NYC's methodology for this needs assessment, from interviews with providers and low-income LGBT New Yorkers to data analysis.

A. PROVIDER INTERVIEWS

As a first step, LSNYC held a series of meetings with organizations in New York City that serve the LGBT community. We met with key staff members at dozens of community-based organizations that serve low-income LGBT people. The client populations, mission, expertise, and area of focus of these organizations varied, providing a broad representation of LGBT client concerns.

LEGAL SERVICES NYC INTERVIEWED THE FOLLOWING PROVIDERS	
Anti Violence Project	Staten Island LGBT Center
APICHA	The Door
Audre Lorde Project	Community Healthcare Network - Shine Project (Sexual Health Initiative and Education Project)
BOOM!Health	
Bronx Pride House	The LGBT Center – Community Services, Wellness, Recovery, Youth, Family directors
Brooklyn Community Pride Center	
Callen-Lorde Community Health Center	SAGE
Good Shepherd Services - Safe Home Project	Urban Justice Center – DV Law Project
Immigration Equality	Urban Justice Center – Peter Cicchino Youth Project
Latino Commission on AIDS	Urban Justice Center – Sex Worker Project
Legal Aid Society	VOCAL-NY
NYCLU – LGBT project	Voces Latinas
NYLAG – LGBT project	
Queens Pride House	

When meeting with these organizations, we asked about:

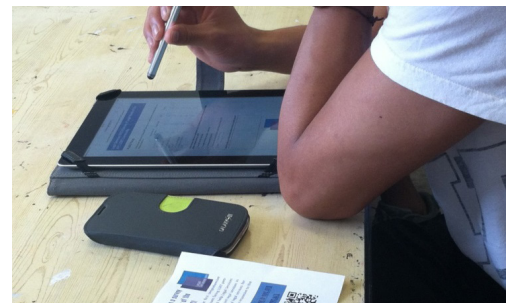
- Their mission and structure
- How clients find them
- Client demographics
- Which legal providers they partner with
- The reputation of Legal Services NYC among their staff and clients
- The most common problems facing their low-income clients
- How lawyers could be helpful in addressing those problems

These conversations gave LSNYC a good sense of the civil legal landscape for LGBT people living at or near the federal poverty level in New York City. That information, in turn, informed the next stage of our needs assessment: a client survey.⁷¹

B. CLIENT SURVEY

1. DEVELOPING THE SURVEY INSTRUMENT

LSNYC constructed a survey to gather direct input from low-income LGBT New Yorkers. The needs assessment asked about a range of key civil practice areas, including: income, public benefits, housing, health care, employment, education, policing, violence, immigration, family, and military issues. We also asked about harassment in public places, discrimination, and issues facing the transgender community.



Because LSNYC is dedicated to providing civil legal services, we intentionally spotlighted civil legal issues and did not include sections dedicated to criminal justice issues. However, because the practice of policing affects the daily experience of low-income LGBT people and people of color, we formulated questions about interactions with the police and governmental actors. We asked about both LGBT-specific issues and poverty-specific issues.

2. STAFFING AND TRAINING OF SURVEY-FACILITATORS

Most surveys were completed at community organizations around New York City using volunteers to staff survey tables. Volunteers included LSNYC staff and summer interns and law student members of Outlaw organizations, among others. Ultimately, 60 survey facilitators took part.

All survey facilitators attended training at Legal Services NYC. The training ensured that they were familiar with the questions asked in the survey, had fundamental cultural



competency in LGBTQ issues and poverty issues, and could navigate the survey in electronic form and troubleshoot any problems. At least one LSNYC staff member was present at each outreach event to provide oversight and assistance to volunteers.

3. CONDUCTING THE SURVEY

Surveys were conducted in July and August 2014. LSNYC supplied iPads and facilitators to provide assistance to participants as needed. Paper surveys were also available for those who preferred them. The survey was additionally available electronically using Google Forms and could be taken anywhere with an Internet connection. The survey was translated from English into Spanish and could be taken in either language.

LSNYC administered the survey at a dozen sites across all five boroughs, returning repeatedly to many sites. Survey sites were hosted by organizations serving the LGBT community, such as the New York City LGBT Community Center, HIV-specific organizations, like Housing Works and VOCAL, organizations focusing on LGBT youth, like Ali Forney, and elders, including SAGE. LSNYC sent two or three volunteers to each site.



Please participate in a survey about the legal needs of the LGBT community in NYC!

This survey will provide the first comprehensive understanding of the legal issues facing LGBT people in New York City, and will help Legal Services NYC, the largest provider of civil legal services in the country, provide respectful legal services for low-income people that are fully responsive to the needs of the LGBT community.

Take the survey at www.survey.ls-nyc.org
En Espanol: www.encuesta.ls-nyc.org

English Español

SURVEY SITES

Ali Forney	LGBT Center
BOOM!Health	Queens Pride House
Brooklyn Community Pride Center	Rainbow Heights Club
Bronx LGBTQ Center	SAGE
Callen-Lorde Community Health Center	Sylvia Rivera Law Project
Housing Works	Staten Island Pride Center
	VOCAL-NY

LSNYC brought signs and flyers to identify the project, plus palm cards for people to take if they wished to take the survey later or tell a friend about it.

The signs stated simply, "Take the LGBT Legal Needs Survey!" and did not specifically state that we wished to survey low-income people. We were concerned that asking people to self-identify as low-income might exclude some people in our target population and might also be read pejoratively.

Participants were not required to give their names, and they were given privacy to fill out the survey confidentially, while our volunteers were available to assist in case of problems—for example, if someone had trouble navigating the electronic format or did not understand a question.



In addition to making the survey available through outreach events at community organizations, we also made the survey available online through the Legal Services NYC website and social media platforms. Peer organizations assisted us by disseminating information about the survey to their networks.

We received 482 completed surveys (471 in English and 11 in Spanish).⁷²

4. ANALYSIS

To analyze survey data, LSNYC utilized pro bono services from Stout Risius Ross (“SRR”), a company with expertise in a range of investigation and data analysis. With SRR’s help, we eliminated responses from higher-income people, people living outside of New York City, and heterosexual cisgender people. After the over-income, outside-NYC, and non-LGBT respondents were removed, we were left with a participant pool of 310 people. SRR kindly ran many different analyses on the final participant pool.

C. FOCUS GROUPS

LSNYC utilized focus groups to further supplement its information about particular populations. Data from these groups enriched the needs assessment with data about members of the low-income LGBT community in New York City who were not sufficiently represented among survey participants. Although the survey was offered in Spanish, only 7% of respondents listed Spanish as their primary language. Focus groups offered in Spanish with members of the Translatina Network at Voces Latinas in Queens and clients of the AIDS Center of Queens County (ACQC) supplemented this data. Focus groups with the Golden Rainbow Group and youth members of the Staten Island LGBT Community Center provided additional information on senior and youth LGBT communities, respectively. These groups also provided increased representation of LGBT residents of Queens and Staten Island.



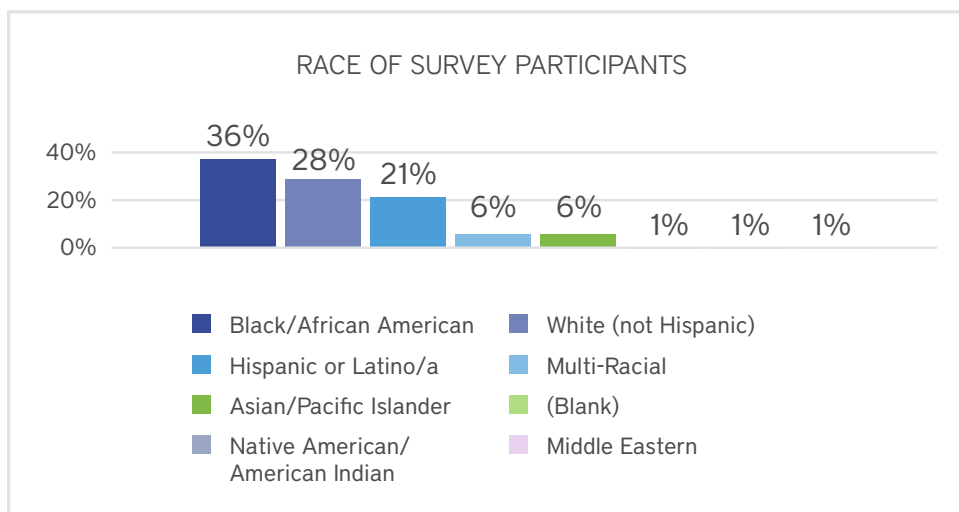
VI. APPENDIX C: SURVEY DEMOGRAPHICS

Data for this needs assessment was gathered from a diverse pool of people within New York City's low-income LGBT community—racially diverse, diverse in age, and diverse in LGBT identity. As described above, there were three distinct stages of outreach during the assessment: (1) meetings with community-based organizations that serve large numbers of low-income LGBT people; (2) a survey of low-income LGBT people; and (3) focus groups targeting particular subsets of the LGBT community. Each stage was calibrated to draw input from people with a range of experiences and identities.

The analysis in this report covers 310 survey participants, all low-income LGBT people.

A. RACE

Survey participants were racially diverse, with 36% identifying as Black or African-American, 28% identifying as non-Hispanic White, 21% identifying as Latino or Hispanic, 6% identifying as multiracial, and 6% identifying as Asian or Pacific Islander.

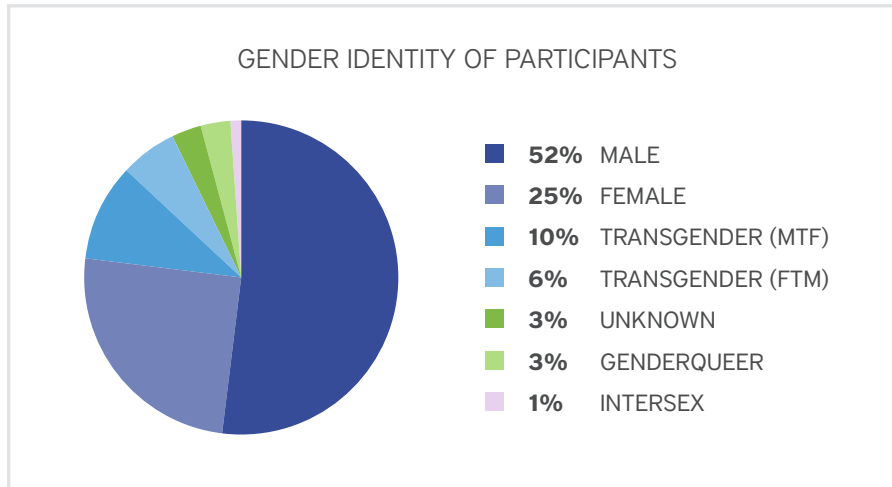


B. GENDER/SEX

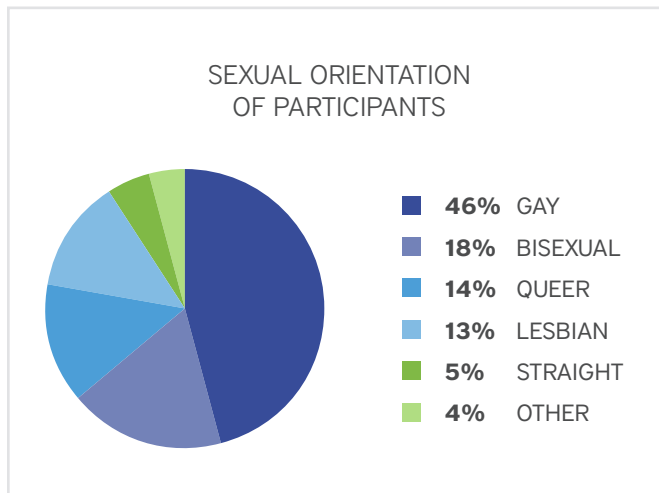
More men than women participated in the survey, with 51% of participants identified as male and 5% identified as FTM transgender men. A quarter of participants identified as female, along with 10 who identified as MTF transgender women. About 9% of participants either identified as something other than male or female or chose not to identify.

Some 30% of survey participants identified as either transgender or gender-nonconforming. In this analysis, we will refer to all such respondents as transgender, although we recognize that trans and gender-nonconforming people identify in many different ways. There were a range of identities that participants identified. The most common were participants identifying as MTF (10% of total partici-

pants), FTM (5% of total participants), and genderqueer (3% of total respondents). Note that survey participants were permitted to identify their gender however they saw fit. Some transgender people prefer to identify simply as “male” or “female” without modifying that identity related to their transgender experience.



C. SEXUAL ORIENTATION



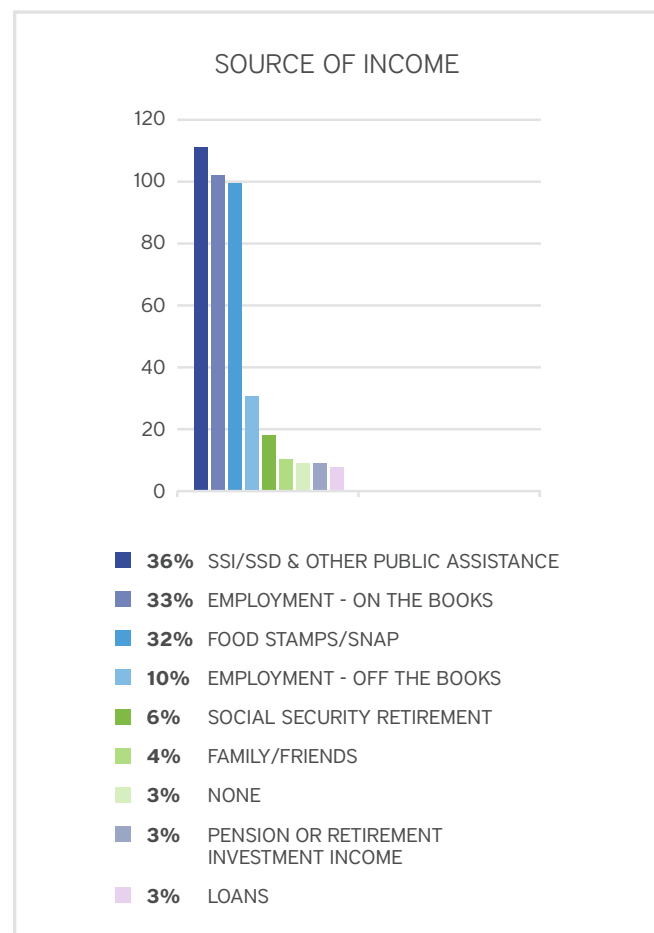
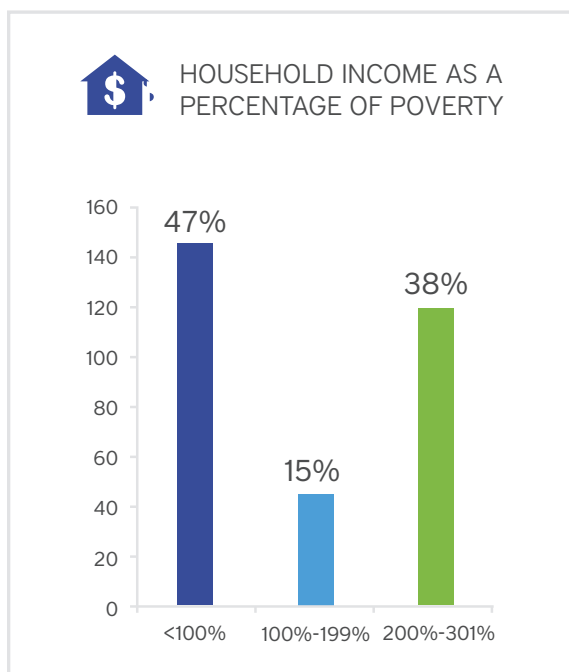
Survey participants came from across the spectrum of LGBT identities, with 46% identifying as gay, 18% identifying as bisexual, 14% identifying as queer, 13% identifying as lesbian, 5% identifying as straight, and 4% identifying as something else. Those identifying as straight also identified as transgender. Some of those identifying as lesbian, gay, bisexual, queer, or something else similarly identified as transgender. Moreover, some who identified as women (whether transgender or not) also identified as gay.

D. INCOME

All 310 analyzed surveys came from low-income participants. For these purposes—and taking account of the very high cost of living in New York City in a way that federal poverty calculations fail to—low-income was defined as at or below approximately 300% of the federal poverty level based on household size.

The vast majority of respondents to our survey were extremely low-income. About 55% percent earned less than \$1,000 per month—putting them close to or below the official Federal Poverty Level (\$11,770 per year). These numbers far exceed the national poverty rates. In 2013 (the most recent year for which data is available), the U.S. Census Bureau estimated that 14.5% of U.S. residents (45.3 million people) are in this lowest income category.⁷³ The source of income of 36% of respondents was SSI, SSD, or public assistance. Roughly 43% of respondents were employed, either on or off the books, but made less than \$3,000 per month.

Fully 62% of participants reported that they had difficulty paying for a basic need in the past year.



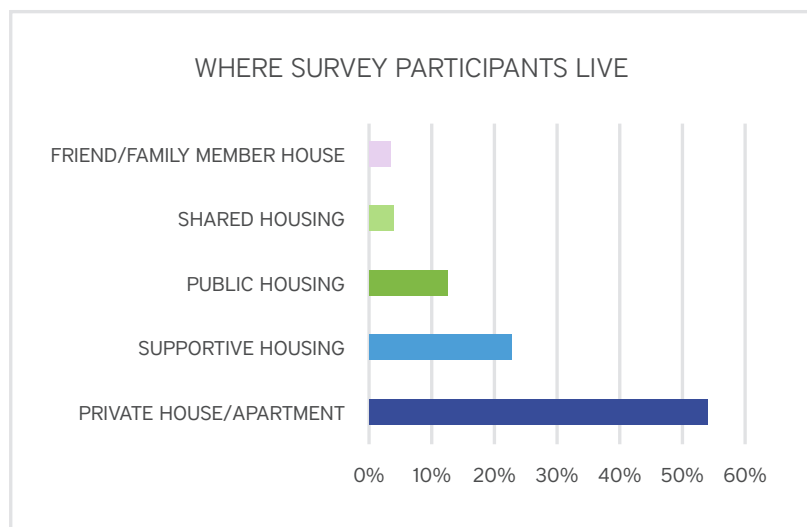
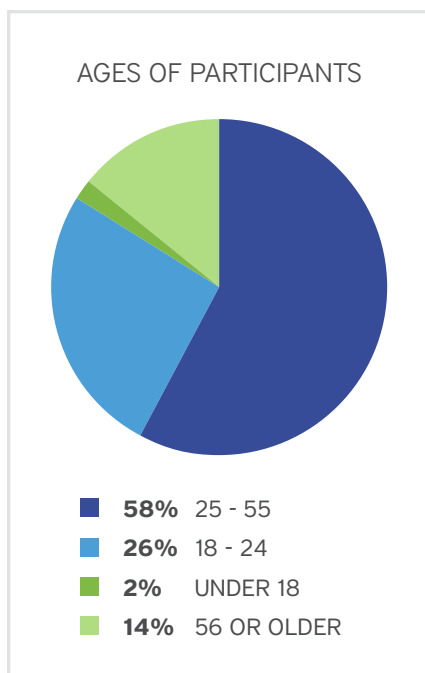
E. AGE

The largest group of survey participants—58%—ranged from ages 25 to 55. Fourteen percent were 56 or older and 26% were young adults between 18 and 24. Only 2% of participants were under 18.

F. GEOGRAPHY & TYPE OF HOUSING

All survey participants were located in New York City. A third resided in Manhattan, 32% in Brooklyn, 17% in the Bronx, 9% in Queens, and 7% in Staten Island, with 2% unknown. (Boroughs with fewer respondents—Queens and Staten Island—were supplemented by focus groups, as discussed above.)

Survey participants resided in a range of housing arrangements, with the majority in private apartments or houses, but significant numbers in supportive housing and public housing.



ENDNOTES

- 1 Compare http://www.gallup.com/poll/182051/san-francisco-metro-area-ranks-highest-lgbt-percentage.aspx?utm_source=Social%20Issues&utm_medium=newsfeed&utm_campaign=tiles (2012 data noting that 4% of respondents in the NYC metro area identify as LGBT) with <http://quickfacts.census.gov/qfd/states/36/3651000.html> (8.5 million people live in NYC).
- 2 Research supports this probability, showing for example that young adults (aged 18-64) are more than three times more likely than seniors (aged 65 and older) to identify as LGBT. <http://www.gallup.com/poll/158066/special-report-adults-identify-lgbt.aspx>.
- 3 Most national surveys have shown that there were no statistically significant racial or ethnic differences found between heterosexual and LGB populations. See Gary Gates, LGBT Demographics: Comparisons Among Population-Based Surveys (September 2014) <http://williamsinstitute.law.ucla.edu/wp-content/uploads/lgbt-demogs-sep-2014.pdf>.
- 4 *The Newest New Yorkers: Characteristics of the City's Foreign-born Population*. Department of City Planning, City of New York, (2013), http://www.nyc.gov/html/dcp/pdf/census/nnny2013/nnny_2013.pdf.
- 5 NYC Mayor's Office of Immigrant Affairs, <http://www.nyc.gov/html/imm/html/news/stats.shtml>.
- 6 United States Census Bureau, <http://quickfacts.census.gov/qfd/states/36/3651000.html>.
- 7 Robin Hood: Poverty Tracker: Monitoring Poverty and Well-Being in NYC: *Meeting Needs of Low-Income New Yorkers*, (2014), https://www.robinhood.org/sites/default/files/user-uploaded-images/RH_PovertyTracker_121214.pdf.
- 8 Alliance For A Greater New York, *Poverty in New York City: Analysis of Data from the US Census Bureau 2010 American Community Survey*, <http://www.alignny.org/wp-content/uploads/2011/09/Poverty-In-NYC-September-2011.pdf>.
- 9 *Paying An Unfair Price: The Financial Penalty for Being LGBT in America*, available at <http://www.lgbtmap.org/file/paying-an-unfair-price-full-report.pdf> at 6 (emphasis added).
- 10 *Id.* at 4.
- 11 *Id.*
- 12 *Id.*
- 13 *Id.*
- 14 M.V. Lee Badgett, Laura E. Durso & Alyssa Schneebaum, The Williams Institute: *New Patterns of Poverty in Lesbian, Gay and Bisexual Community*, (June 2013), 2, <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGB-Poverty-Update-Jun-2013.pdf>.
- 15 *Id.*
- 16 LSNYC has had an active LGBT practice for years, but we knew that we could do more. LSNYC was an early leader in legal efforts on behalf of people living with HIV. Much of our initial LGBT work grew out our response to the epidemic. We continue to serve many HIV-affected clients, along with many LGBT clients.
- 17 The efforts of this group also motivated LSNYC to improve efforts to de-bias our own organization and create a culturally competent and welcoming space for LGBT staff and clients. That includes training in each of our offices on LGBT issues, a nondiscrimination policy that extends to sexual orientation and gender identity, and an active working group on LGBT issues.
- 18 Stop Street Harassment, *Unsafe and Harassed in Public Spaces: A National Street Harassment Report* (Spring 2014), 15, <http://www.stopstreetharassment.org/wp-content/uploads/2012/08/2014-National-SSH-Street-Harassment-Report.pdf> (57% of LGBTQ respondents reported verbal street harassment; 45% of LGBTQ respondents reported physically aggressive street harassment).
- 19 National Coalition of Anti-Violence Programs: *Lesbian, Gay, Bisexual, transgender, Queer, and HIV-Affected: Hate Violence in 2014*, (2015), 9, http://www.avp.org/storage/documents/Reports/2014_HV_Report-Final.pdf.
- 20 Human Rights Campaign, *Hate Crimes and Violence against Lesbian, Gay, Bisexual, and Transgender People*, (May, 2009), 10, http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/Hatecrimesandviolenceagainstlgbtpeople_2009.pdf (54% of LGBTQ people are concerned that they will be a victim of a hate crime) (citing a national online survey of 324 LGBT adults conducted Sept. 7-14, 2006, by Harris Interactive in conjunction with Witeck-Combs Communications Inc.).
- 21 Focus group held in Spanish at Voces Latinas, Jackson Heights, Queens, on May 19, 2015. Fifteen community members present, nearly all transgender women.
- 22 *Id.*
- 23 Focus group held in Spanish at Voces Latinas, Jackson Heights, Queens, on May 19, 2015. Fifteen community members present, nearly all transgender women.
- 24 Focus group at the Pride Center of Staten Island on April 2, 2015, with eight LGBT youth.
- 25 Indeed, murders of transgender people are at terrifyingly high levels. There were a record 19 reported murders of transgender people in the U.S. in 2015 as of Aug. 26. This included only known murders and did not include assaults, rapes, and other transpho-

- bic acts. Anti-Violence Project: NCAVP Mourns the Deaths of Jasmine Collins of Kansas City, MO, and Keyshia Blige of Aurora, IL, (Aug. 26, 2015), <http://www.avp.org/resources/avp-resources/430-ncavp-mourns-the-deaths-of-jasmine-collins-of-kansas-city-mo-and-keyshia-blige-of-aurora-il-these-are-the-18th-and-19th-reported-homicides-of-a-transgender-nonconforming-person-ncavp-has-responded-to-in-2015->.
- 26 Advocates reported that police sometimes profile transgender women of color as sex workers and arrest them if they are found to have any condoms in their possession.
 - 27 Focus group held at Voces Latinas, Jackson Heights, Queens, the evening of May 19, 2015, in Spanish. Fifteen community members present, nearly all transgender women.
 - 28 Unlike many other questions in this survey, survey participants were asked about each of these forms of violence in interpersonal relationships without a time limitation—i.e., it was not limited to violence that occurred “in the past year.”
 - 29 Kevin L. Ard, MD, and Harvey J. Makadon, MD, *Addressing Intimate Partner Violence in Lesbian, Gay, Bisexual, and Transgender Patients*, J Gen Intern Med. 2011 Aug; 26(8):930-933 (21.5% of men and 35.4% of women living with a same-sex partner experienced intimate-partner physical violence in their lifetimes; 34.6% of transgender respondents reported intimate partner violence at least once in their lifetime).
 - 30 Centers for Disease Control and Prevention, The National Intimate Partner and Sexual Violence Survey, 2010 Findings on Victimization by Sexual Orientation, (January 2013), 11, http://www.cdc.gov/violenceprevention/pdf/nisvs_sofindings.pdf (46.4% of lesbian women, 74.9% of bisexual women, 40.2% of gay men, and 47.4% of bisexual men reported other sexual violence by any perpetrator throughout their lifetime).
 - 31 Thirty-one percent of survey respondents identified as transgender or gender-nonconforming. In this analysis, we refer to all such respondents as transgender, although we recognize that trans and gender-nonconforming people identify in many different ways.
 - 32 Herman, J., April 2013, *The Cost of Employment and Housing Discrimination against Transgender Residents of New York*. Los Angeles: The Williams Institute (Stating that the population of New York in the 2010 census was just under 19.4 million, and according to Gates, 0.3% of New Yorkers identify as transgender). See also U.S. Census Bureau, Decennial Census, 2010, data available through American FactFinder’s Community Facts search engine, available at <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>; Gates, G. J., April 2011, *How Many People are Lesbian, Gay, Bisexual, and Transgender?* Los Angeles: The Williams Institute, available at <http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/how-many-people-are-lesbian-gay-bisexual-and-transgender/>.
 - 33 A study of transgender Americans found that they are nearly four times more likely to have a household income under \$10,000 per year than the population as a whole (15% vs. 4%), (November 2014), ii, <http://www.lgbtmap.org/file/paying-an-unfair-price-full-report.pdf>.
 - 34 Housing New York A Five-Borough Ten-Year Plan: Executive Summary, 5, http://www.nyc.gov/html/housing/assets/downloads/pdf/housing_plan.pdf.
 - 35 Coalition for the Homeless: Number of Homeless People in NYC Shelters Each Night, September 2015, <http://www.coalitionforthehomeless.org/pages/basic-facts-about-homelessness-new-york-city-data-and-charts> (March, 2015).
 - 36 New York Housing Authority, <http://www1.nyc.gov/assets/nycha/downloads/pdf/factsheet.pdf>.
 - 37 Williams Institute, *Serving Our Youth: Findings from a National Survey of Services Providers Working with Lesbian, Gay, Bisexual and Transgender Youth Who Are Homeless or At Risk of Becoming Homeless*, (2012) available at: <file:///C:/Users/ahointz/Downloads/eScholarship%20UC%20item%2080x75033.pdf> (“LGBT youth comprise approximately 40%” of clients at youth homeless shelters”).
 - 38 In just one example, the City and State have a plan to repair roofs at mold-infested NYCHA buildings that have been left unrepaired for many years. The first year of the plan targets 13,000 affected tenants in 66 buildings. <http://www1.nyc.gov/office-of-the-mayor/news/301-15/de-blasio-administration-300-million-nycha-roof-replacement-the-next-three-years>.
 - 39 The New York City HIV/AIDS Services Administration (“HASA”) and Section 8 require tenants to pay 30% of their income toward rent and subsidize the remainder, but will not enable a single person to live in an apartment that costs more than \$1,279 per month. As the price of housing rises, this rules out an increasing number of apartments. One gay Latino male noted that when he lost his job and had to rely on HASA to cover his housing expenses, his landlord pressured him to move out because HASA would only pay \$1,150 of his \$1,650 rent.
 - 40 Center for American Progress and Movement Advancement Project, *Paying an Unfair Price, The Financial Penalty for LGBT People of Color in America*, April 2015.
 - 41 In a similar survey, 19% of respondents to the 2011 National Transgender Discrimination Survey reported they were denied a home or apartment, and 8% reported being evicted due to anti-transgender bias.
 - 42 National Mortgage News, *HMDA Data Offers Clues on Discrimination Against Gays*, June 4, 2014, <http://www.nationalmortgage-news.com/blogs/hearing/hmda-data-offers-clues-on-discrimination-against-gays-1041913-1.html>.

- 43 Low-income residents of New York City may receive assistance through the Human Resources Administration's public assistance program. A single individual with no other source of income would receive public assistance of \$215 toward rent, up to \$194 from the Supplemental Needs Assistance Program (formerly known as food stamps), and \$183.10 in cash each month. People living with symptomatic HIV may be eligible for benefits from the HIV/AIDS Services Administration (HASA), which provides \$376 in cash each month and significantly higher shelter amounts than regular public assistance.
- 44 The federal Social Security Administration (SSA) provides benefits to people with disabilities who are unable to work through Social Security disability benefits and Supplemental Security Income (SSI). Many disabled individuals are completely reliant on these benefits for financial support. A single individual in NYS receiving SSI receives \$820 each month for all expenses.
- 45 As of May 1, 2015, HRA no longer uses a gender field on benefits identification cards.
- 46 The Williams Institute, *LGBT Adult Immigrants in the United States*, March 2013, <http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/us-lgbt-immigrants-mar-2013/>.
- 47 Center for American Progress, *Living in Dual Shadows: LGBT Undocumented Immigrants*, March 2013, 24, available at <https://www.americanprogress.org/wp-content/uploads/2013/03/LGBTUndocumentedReport-5.pdf>.
- 48 The Williams Institute, *LGBT Adult Immigrants in the United States*, March 2013, <http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/us-lgbt-immigrants-mar-2013/>.
- 49 The Supreme Court struck down the Defense of Marriage Act ("DOMA") in 2013, and the federal government consequently recognized the marriages of same-sex couples from states that had legalized marriage equality. New York legalized same-sex marriage in 2011; the entire country gained marriage equality in 2015.
- 50 *Obergefell v. Hodges*, 576 U.S. __ (2015).
- 51 This topic is discussed more in the section on Family Law.
- 52 A focus group in Spanish at Voces Latinas, Jackson Heights, Queens.
- 53 The National Center for Transgender Equality and the National Gay and Lesbian Task Force, *The National Transgender Discrimination Survey*, New York Results, 2011, http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_state/ntds_state_ny.pdf.
- 54 Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, (2011), 6.
- 55 Williams Institute, *Serving Our Youth: Findings from a National Survey of Services Providers Working with Lesbian, Gay, Bisexual and Transgender Youth Who Are Homeless or At Risk of Becoming Homeless*, (2012) ("LGBT youth comprise approximately 40% of clients at youth homeless shelters"), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Durso-Gates-LGBT-Homeless-Youth-Survey-July-2012.pdf>.
- 56 See The Williams Institute, *LGBT Parenting in the United States* (February, 2013), <http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lgbt-parenting-in-the-united-states/>.
- 57 The Williams Institute and the Urban Institute, *Adoption and Foster Care by Gay and Lesbian Parents in the United States* (March 27, 2007), 5-6, http://www.urban.org/research/publication/adoption-and-foster-care-lesbian-and-gay-parents-united-states/view/full_report, (52% of gay men and 41% of lesbian women want to have a child.)
- 58 See, e.g., *Matter of Paczkowski v Paczkowski*, 128 A.D.3d 968 (2d Dep't 2015) ("Contrary to the petitioner's contention, FCA § 417 and DRL § 24 do not provide her with standing as a parent, since the presumption of legitimacy they create is one of a biological relationship, not of legal status ... and, as the non-gestational spouse in a same-sex marriage, there is no possibility that she is the child's biological parent"); *Matter of Q.M. v. B.C.*, 46 Misc.3d 594 (N.Y. Fam. Ct, Monroe Co. 2014) (non-biological spouse not a legal parent to child born during marriage).
- 59 Movement Advancement Project, Center for American Progress, Human Rights Campaign, *A Broken Bargain: Discrimination, Fewer Benefits, and More Taxes for LGBT Workers*, 2013, <http://www.lgbtmap.org/file/a-broken-bargain-full-report.pdf>.
- 60 *Id.*
- 61 *A Broken Bargain: Discrimination, Fewer Benefits and More Taxes For LGBT Workers*, June 2013, <http://www.lgbtmap.org/file/a-broken-bargain-full-report.pdf>.
- 62 Jaime M. Grant, Lisa A. Mottee, and Justin Tanis, *Injustice At Every Turn: A Report of the National Transgender Discrimination Survey*, Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011, http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf.
- 63 Jaime M. Grant, M.D., Lisa A. Mottet, J.D., and Justin Tanis, D.Min., *Injustice At Every Turn: A Report of the National Transgender Discrimination Survey*, Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011, <http://>

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- 65 *Dignity For All? Discrimination Against Transgender and Gender Nonconforming Students in New York State*, New York Civil Liberties Union, (June 2015), <http://www.nyclu.org/transyouth>.
- 66 Human Rights Campaign/LULAC, *Supporting and Caring for our Latino LGBT Youth*, (2012), <http://lulac.org/assets/pdfs/LGBT-LatinoYouthReport.pdf>.
- 67 Joseph Kosciw, Ph.D., Emily A. Greytak, Ph.D., Neal A. Palmer, Ph.D., Madelyn J. Boesen, M.A., *The 2013 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation's Schools*, (2014), 77, https://www.glsen.org/sites/default/files/2013%20National%20School%20Climate%20Survey%20Full%20Report_0.pdf.
- 68 The breakdown for recent cases handled by LSNYC's Veterans Justice Project is: 45% housing, 18% family, 16% income, 8% consumer and education, 8% employment, and 5% other.
- 69 Williams Institute, *Discharges Under the Don't Ask Don't Tell Policy: Women and Racial/Ethnic Minorities*, (2010), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-Discharges2009-Military-Sept-2010.pdf>.
- 70 Gary J. Gates and Jody L. Herman, *Transgender Military Service in the United States*, The Williams Institute, (May 2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Transgender-Military-Service-May-2014.pdf>. These calculations are based on answers to the 2008 National Transgender Discrimination Survey (NTDS).
- 71 LSNYC conducted supplemental interviews with select LGBT service providers to obtain additional expert input into certain subject areas, particularly where respondents offered limited data.
- 72 Despite our best efforts to reach as broad a range of low-income LGBT New Yorkers as possible, we inevitably over- or under-sampled some communities, neighborhoods, and language groups. A participant pool of 310 people may not be sufficient to draw conclusions in some areas. Participation in the survey required a basic level of technological literacy and reading proficiency, which may have discouraged or prevented some people from filling out the survey. The program used for the survey, Google Forms, only saved entries once the survey was fully completed, so any partial responses were not captured. This is a community legal needs assessment and is not designed to be an academic document. We make no representations about the statistical significance of our findings.

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Please go to www.legalservicesnyc.org to learn more about our work. You can also access an electronic copy of this report on our website.

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