

TRANSGENDER CHILDREN AND ADOLESCENTS: Mental Health, Legal and Ethical Issues

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TRANSGENDER DEFINITION

American Psychological Association (APA)

Transgender is an umbrella term for persons whose gender identity, gender expression or behavior does not conform to that typically associated with the sex to which they were assigned at birth.

Gender identity refers to a person's internal sense of being male, female or something else; gender expression refers to the way a person communicates gender identity to others through behavior, clothing, hairstyles, voice or body characteristics.

“Trans” is sometimes used as shorthand for “transgender.” While transgender is generally a good term to use, not everyone whose appearance or behavior is gender-nonconforming will identify as a transgender person.

The ways that transgender people are talked about in popular culture, academia and science are constantly changing, particularly as individuals' awareness, knowledge and openness about transgender people and their experiences grow.

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GENDER DYSPHORIA DEFINITION

Gender dysphoria involves a conflict between a person's physical or assigned gender and the gender with which he/she/they identify.

People with gender dysphoria may be very uncomfortable with the gender they were assigned, sometimes described as being uncomfortable with their body (particularly developments during puberty) or being uncomfortable with the expected roles of their assigned gender.

People with gender dysphoria may often experience significant distress and/or problems functioning associated with this conflict between the way they feel and think of themselves (referred to as experienced or expressed gender) and their physical or assigned gender.

The gender conflict affects people in different ways. It can change the way a person wants to express their gender and can influence behavior, dress and self-image.

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GENDER DYSPHORIA – CHILDREN

Children with gender dysphoria may express the wish to be of the opposite gender and may assert they are (or will grow up to be) of the opposite gender.

They prefer, or demand, clothing, hairstyles and to be called a name of the opposite gender. (Medical transition is only relevant at and after the onset of puberty.)

While some children express feelings and behaviors relating to gender dysphoria at 4 years old or younger, many may not express feelings and behaviors until puberty or much later.

For some children, when they experience puberty, they suddenly find themselves unable to identify with their own body.

Some adolescents become unable to shower or wear a bathing suit and/or undertake self-harm behaviors.

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Diagnostic and Statistical Manual of Mental Disorders (DSM-5), Fifth Edition. American Psychiatric Association. 2013

DSM-5 provides for one overarching diagnosis of gender dysphoria with separate specific criteria for children and for adolescents and adults. In adolescents and adults gender dysphoria diagnosis involves a difference between one's experienced/expressed gender and assigned gender, and significant distress or problems functioning. It lasts at least six months and is shown by at least two of the following:

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DSM-5 GENDER DYSPHORIA IN CHILDREN: CRITERIA

In children, gender dysphoria diagnosis involves at least six of the following and an associated significant distress or impairment in function, lasting at least six months.

A strong desire to be of the other gender or an insistence that one is the other gender

A strong preference for wearing clothes typical of the opposite gender

A strong preference for cross-gender roles in make-believe play or fantasy play

A strong preference for the toys, games or activities stereotypically used or engaged in by the other gender

A strong preference for playmates of the other gender

A strong rejection of toys, games and activities typical of one's assigned gender

A strong dislike of one's sexual anatomy

A strong desire for the physical sex characteristics that match one's experienced

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Transgender Youth & Mental Health

Issues: American Pediatric Association

Adolescents and adults who identify as transgender have high rates of depression, anxiety, eating disorders, self-harm, and suicide.

Evidence suggests that an identity of TGD has an increased prevalence among individuals with autism spectrum disorder, but this association is not yet well understood.

In 1 retrospective cohort study, 56% of youth who identified as transgender reported previous suicidal ideation, and 31% reported a previous suicide attempt, compared with 20% and 11% among matched youth who identified as cisgender, respectively.

Some youth who identify as TGD also experience gender dysphoria, which is a specific diagnosis given to those who experience impairment in peer and/or family relationships, school performance, or other aspects of their life as a consequence.

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Transgender Youth and Mental Health Issues, Cont'd

Youth who identify as TGD often confront stigma and discrimination, which contribute to feelings of rejection and isolation that can adversely affect physical and emotional well-being.

For example, many youth believe that they must hide their gender identity and expression to avoid bullying, harassment, or victimization.

Youth who identify as TGD experience disproportionately high rates of homelessness, physical violence (at home and in the community), substance abuse, and high-risk sexual behaviors

Policy Statement: Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents, American Academy of Pediatrics Journal, October 2018, vol. 142, Issue 4.

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AMERICAN PSYCHOLOGICAL ASSOCIATION (APA) ADVICE FOR PARENTS

What should parents do if their child appears to be transgender or gender nonconforming? Parents may be concerned about a child who appears to be gender-nonconforming for a variety of reasons.

Some children express a great deal of distress about their assigned sex at birth or the gender roles they are expected to follow. Some children experience difficult social interactions with peers and adults because of their gender expression.

Parents may become concerned when what they believed to be a “phase” does not pass.

Parents of gender-nonconforming children may need to work with schools and other institutions to address their children’s particular needs and ensure their children’s safety.

It is helpful to consult with mental health and medical professionals familiar with gender issues in children to decide how to best address these concerns.

It is not helpful to force the child to act in a more gender conforming way. Peer support from other parents of gender-nonconforming children may also be helpful.

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GENDER DYSPHORIA DIAGNOSIS: DOES IT HELP OR HARM?

According to the DSM-5, people who experience intense, persistent gender incongruence can be given the diagnosis of gender dysphoria.

Some contend that the diagnosis inappropriately pathologizes gender noncongruence and should be eliminated.

Others argue it is essential to retain the diagnosis to ensure access to care.

The International Classification of Diseases (ICD) is under revision, and there may be changes to its current classification of intense persistent gender incongruence as gender identity disorder.

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DIAGNOSIS USED IN SCHOOL RESTROOM ACCESS CASE: *Whitaker v. Kenosha Unified School District*, 858 F.3d 1034 (7th Cir, 2017)

Ashton Whitaker, 17 years old, with the support of his mother acting as his “next friend,” sued the school district.

He was barred from using the facilities other boys used and was relegated instead to the girls’ restroom or a gender-neutral bathroom in the main office.

This singling out, Whitaker’s lawsuit maintained, violated both the Fourteenth Amendment and [Title IX of the Education Amendments of 1972](#),

which forbids sex discrimination by school entities receiving federal funding.

The 7th Circuit agreed with both claims and upheld an injunction that directed the school to accommodate the student.

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7TH CIRCUIT'S RELIANCE ON DSM DIAGNOSIS

While Ash's birth certificate designates him as "female," he does not identify as one. Rather, in the spring of 2013, when Ash was in eighth grade, he told his parents that he is transgender and a boy. He began to openly identify as a boy during the 2013-2014 school year, when he entered Tremper as a freshman. He cut his hair, began to wear more masculine clothing, and began to use the name Ashton and male pronouns. In the fall of 2014, the beginning of his sophomore year, he told his teachers and his classmates that he is a boy and asked them to refer to him as Ashton or Ash and to use male pronouns.

In addition to publicly transitioning, Ash began to see a therapist, who diagnosed him with Gender Dysphoria, which the American Psychiatric Association defines as "a marked incongruence between one's experienced/expressed gender and assigned gender...."⁴ *Am. Psychiatric Ass'n, Diagnostic & Statistical Manual of Mental Disorders* 452 (5th ed. 2013).

In July 2016, under the supervision of an endocrinologist at Children's Hospital of Wisconsin, Ash began hormone replacement therapy.

A month later, he filed a petition to legally change his name to Ashton Whitaker, which was granted in September 2016.

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RELIANCE ON MENTAL HEALTH EXPERT TESTIMONY

The district court was presented with expert opinions that supported Ash's assertion that he would suffer irreparable harm absent preliminary relief. These experts opined that use of the boys' restrooms is integral to Ash's transition and emotional well-being. Dr. Stephanie Budge, a psychologist who specializes in working with adolescents and adults who have Gender Dysphoria, met with Ash and his mother, and in her report noted that the treatment Ash faced at school "significantly and negatively impacted his mental health and overall well-being."

Dr. Budge also noted that Ash reported current thoughts of suicide and that his depression worsened each time he had to meet with school officials regarding his bathroom usage. Ultimately, she opined that the School District's actions, including its bathroom policy, which identified Ash as transgender and therefore, "different," were "directly causing significant psychological distress and place [Ash] at risk for experiencing life-long diminished well-being and life-functioning." The district court did not clearly err in relying upon these findings when it concluded that Ash would suffer irreparable harm absent preliminary injunctive relief.

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CALIFORNIA SAFE SCHOOLS ACT: PROTECTION OF TRANSGENDER CHILDREN

California Education Code 220. No person shall be subjected to discrimination on the basis of disability, *gender, gender identity, gender expression*, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance or enrolls pupils who receive state student financial aid.

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CALIFORNIA LEGAL GENDER CHANGE – INCLUDING MINORS

Two laws signed into law in 2017 enable Californians to legally change their gender by simplifying the process of obtaining state-issued documents and court orders for the identity designation.

[Senate Bill 179](#) allows people who petition for a gender change, **including minors**, to identify as male, female or nonbinary. Under SB 179, Californians who change their gender have a more streamlined process for aligning their name with their identity or getting a matching birth certificate. Starting Jan. 1, 2108 they can apply to alter the gender listed on their driver's license without any additional documents.

“Mindful of all the people I know who are gender-nonconforming, and the families I know with transgender children, I wanted to make sure that California continued to be a leader in gender-identity equality,” the author of the bills, state Senate President Pro Tem Toni Atkins (D-San Diego) said.

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California Gender Nondiscrimination Law: Housing, Employment or Public Accommodation

A person can make a complaint about housing, employment or public accommodations (business or retail establishment) to the California Department of Fair Employment and Housing (DFEH).

Typically, the DFEH will investigate and make a finding as to whether a complaint of discrimination can be substantiated and can authorize a broad range of remedies.

To make a complaint to the DFEH about discrimination, call 800-884-1684 or visit the DFEH

website: http://www.dfeh.ca.gov/Complaints_ComplaintProcess.htm

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California Non-Discrimination Law - Regulations: Transitioning

<https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2017/06/FinalTextRegTransge>

“Transgender” is a general term that refers to a person whose gender identity differs from the person’s sex assigned at birth. A transgender person may or may not have a gender expression that is different from the social expectations of the sex assigned at birth. A transgender person may or may not identify as “transsexual.”

Transitioning” is a process some transgender people go through to begin living as the gender with which they identify, rather than the sex assigned to them at birth. This process may include, but is not limited to, changes in name and pronoun usage, facility usage, participation in 2 employer-sponsored activities (e.g. sports teams, team-building projects, or volunteering), or undergoing hormone therapy, surgeries, or other medical procedures.

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NON-BINARY OPTION - CALIFORNIA DMV

Governor Brown signed Senate Bill (SB) 179 (Atkins, Ch. 853, Stats. 2017) on October 15, 2017.

Effective January 1, 2019, this legislation allows individuals applying for an original or renewal Driver License (DL) or Identification card (ID) to self-certify to their chosen gender category of male, female, or nonbinary.

www.dmv.ca.gov/portal/dmv/detail/dl/gender_id

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Transgender Rights Under Cal Law in Homeless Shelter

Do I have the right to use the correct restroom and sleeping facilities in a homeless shelter? And what if a shelter or group home's dress code requires that I wear clothing that is not consistent with my gender identity?

Homeless shelters are subject to both federal and state anti-discrimination laws and therefore cannot discriminate based on gender identity or expression.

This means that under California law, a homeless shelter cannot compel a person to dress in accordance with their birth gender, nor can it compel a person to be housed with or use the restrooms associated with members of their birth gender.

Best practice that they be housed with members of the sex they identify as, but if this is not possible then they must be provided with a reasonable accommodation, such as a private bedroom or restroom.

A housing shelter also cannot compel a person to dress in a manner that does not comport with the person's gender identity.

<https://transgenderlawcenter.org/resources/know-your-rights/faq-the-gender-nondiscrimination-act>

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Right Under LPS Act: Cal Welf & Inst Code 5325, 5325.1

5325(a) right to wear one's own clothes [gender affirming]

5325(b) right to storage for personal items [make-up, gender affirming items to use]

5325(h) right to see a patient's rights advocate

and

5325.1

(a) right to treatment services that promote potential for person to live independently

(b) right to dignity, privacy and humane care [pronoun use or legal name]

(d) right to prompt medical treatment [can this be hormone treatment? Continue it? begin it?]

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