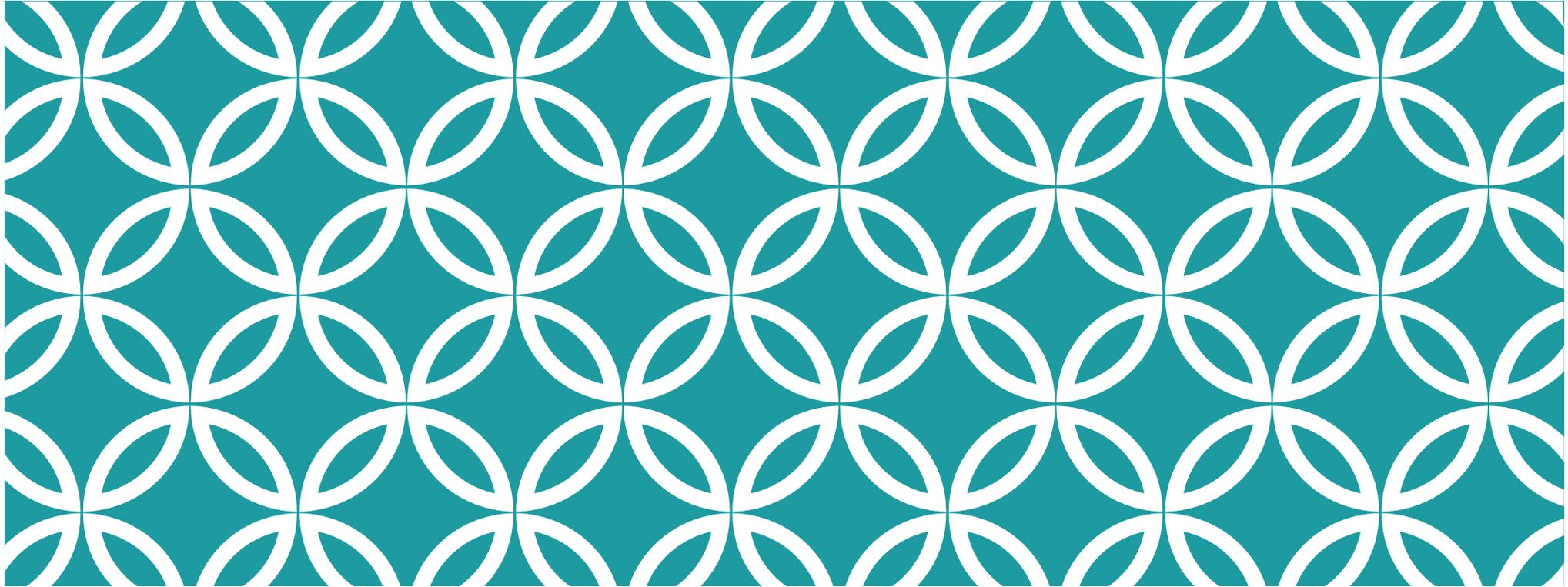


**LEGAL REQUIREMENTS:  
TRANSGENDER POLICY  
CONSIDERATIONS FOR SCHOOLS**

ISCA  
November 5, 2018



**TRANSGENDER & LGBT** |

# TRANSGENDER

“Transgender” means an individual whose gender identity does not match his or her assigned birth gender.

# ADDITIONAL DEFINITIONS

## Cisgender

- Individuals whose gender identity is the same as their assigned sex at birth.

## Gender Expression

- The manner in which an individual expresses gender to others, which may include clothing, hairstyle, or activities.

## Gender Fluid

- Individuals whose gender identification shifts.

## Gender Identity

- the gender-related identity of a person, regardless of the person's assigned sex at birth.

## Gender Non-conforming

- Persons with behaviors, appearances, or identities that are incongruent to those culturally assigned with their birth sex.

# ADDITIONAL DEFINITIONS

## Sex Assigned at Birth:

- The sex designation recorded on the infants birth certificate provided at birth.

## Transgender Male

- An individual who identifies as male but was assigned the sex of female at birth.

## Transgender Female

- An individual who identifies as female but was assigned the sex of male at birth.

## LGBTQ

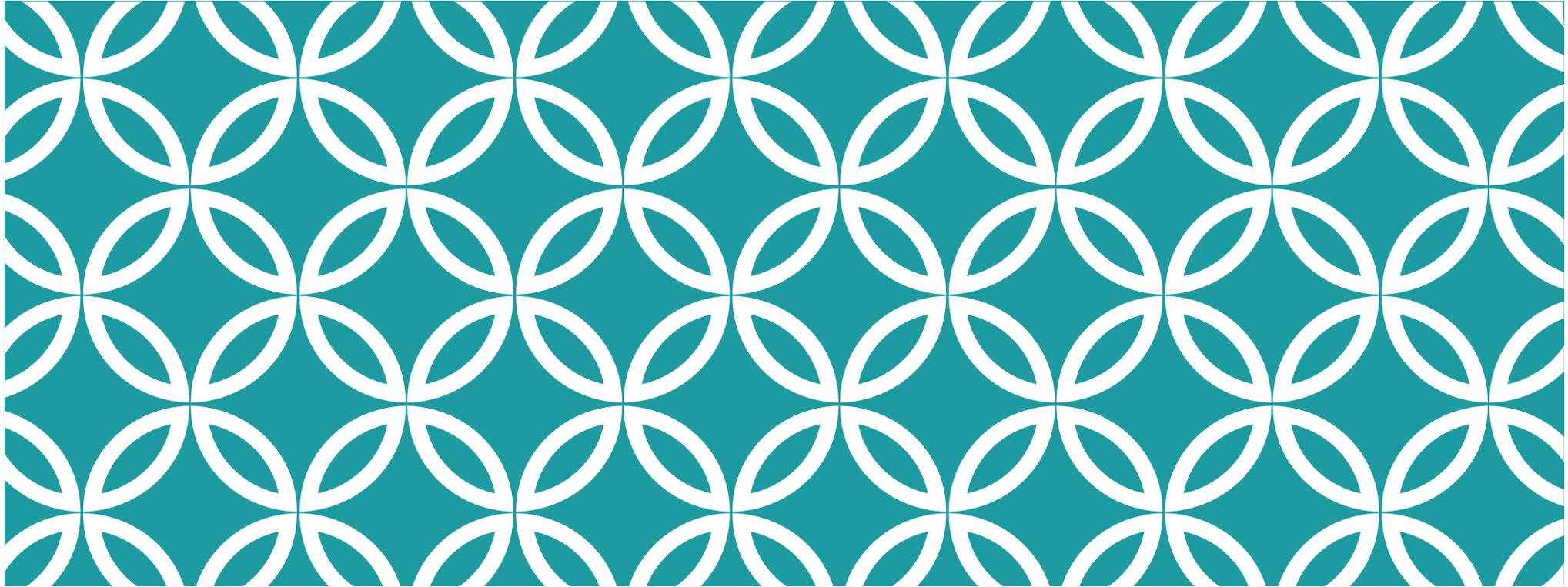
- **L**esbian, **G**ay, **B**isexual, **T**ransgender, **Q**uestioning

## Sexual Orientation

- IS NOT GENDER IDENTITY

## Transition

- Process by which a transgender individual lives consistent with his or her gender identity (social, hormonal, surgical)



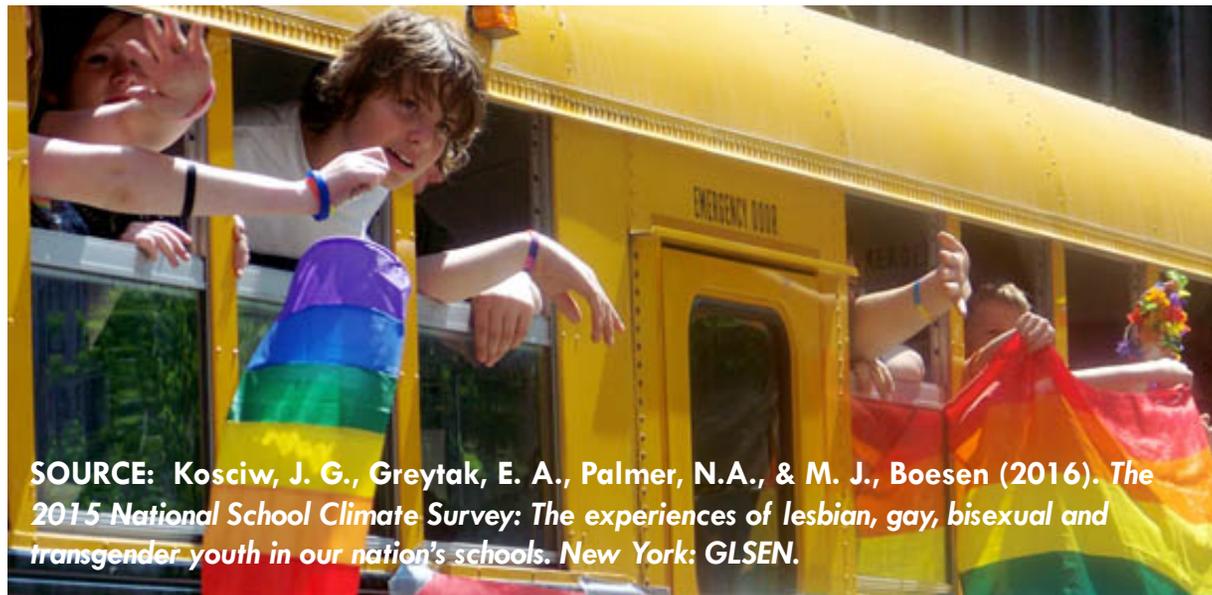
**NATIONAL SCHOOL CLIMATE SURVEY**

**2015**

# STATS ON LGBTQ IN SCHOOLS

2015 National School Climate Survey:

*The experiences of lesbian, gay, bisexual and transgender youth in our nation's schools.*



**SOURCE:** Kosciw, J. G., Greytak, E. A., Palmer, N.A., & M. J., Boesen (2016). *The 2015 National School Climate Survey: The experiences of lesbian, gay, bisexual and transgender youth in our nation's schools.* New York: GLSEN.

# SURVEY

- Examines experiences of LGBTQ students in regard to indicators of negative school climate.
- Including:
  - Hearing biased remarks
  - Feeling unsafe because of characteristics
  - Missing school
  - Experiencing harassment or assault in school
  - Experiencing discriminatory practices in school

# STATS ON LGBTQ SCHOOL SAFETY IN SCHOOLS

- ❖ 57.6 % (up 2.1%) of LGBT students felt unsafe at school because of their sexual orientation, and 43.3% (up 5.5%) because of their gender expression.
- ❖ 31.8% (up 1.5%) of LGBT students missed at least one entire day of school in the past month because they felt unsafe or uncomfortable, and over a tenth (10.0%) (down .6%) missed four or more days in the past month.
- ❖ Over a third avoided gender-segregated spaces in school because they felt unsafe or uncomfortable (bathrooms: 39.4% (up 4 %), locker rooms: 37.9 % (up 2.6%).
- ❖ Most reported avoiding school functions and extracurricular activities 71.5% (up 3.4%) and 65.7 % (up 4.5%), respectively) because they felt unsafe or uncomfortable.

# STATS ON LGBTQ HARASSMENT & ASSAULT IN SCHOOLS

- ❖ 85.2% experienced verbal harassment based on sexual orientation or gender expression.
- ❖ 27% were physically harassed in the past year based on sexual orientation of gender expression
- ❖ 13% were physically assaulted in the past year based on sexual orientation of gender expression
- ❖ 48.6% experienced cyberbullying
- ❖ 49.6% were sexually harassed in the past year at school
- ❖ 57.6% of students harassed didn't report it; 63.5% who reported it reported the school did nothing in response

# STATS ON LGBTQ **ANTI LGBT REMARKS** IN SCHOOLS

- ❖ 98.1% heard the term “gay” in a negative way
- ❖ 95.8% heard other remarks “dyke” “Faggot”
- ❖ 95.7% heard negative remarks about gender expression
- ❖ 85.7 % heard negative remarks about transgender students
- ❖ 56.2% reported hearing these remarks from their teachers or other staff

# STATS ON LGBTQ DISCRIMINATORY SCHOOL POLICIES AND PRACTICES

- ❖ 66.2% (55.5%) of LGBT students reported personally experiencing any LGBT-related discriminatory policies or practices at school (see below), and almost three-fourths 74% (65.2%) said other students had experienced these policies and practices at school.
- ❖ 29.8% of students reported being disciplined for public displays of affection that were not disciplined among non-LGBTQ students.
- ❖ 22.2% of students had been prevented from wearing clothes considered inappropriate based on their legal sex.
- ❖ 16.7% of students were prohibited from discussing or writing about LGBT topics in school assignments, and 16.3% were prohibited from doing so in school extracurricular activities.

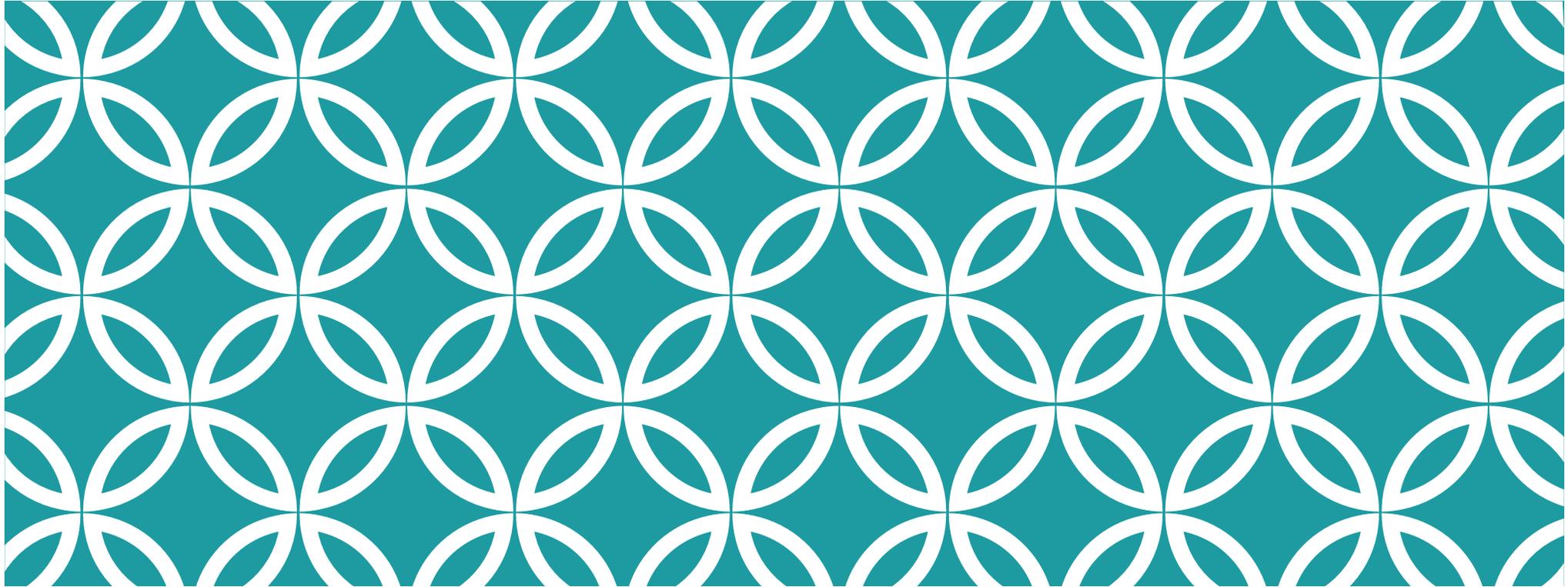
# STATS ON LGBTQ DISCRIMINATORY SCHOOL POLICIES AND PRACTICES

- ❖ 15.6% of students were prevented from attending a dance or function with someone of the same gender.
- ❖ 14.1% of students were restricted from forming or promoting a GSA.
- ❖ 13.2% of students were prevented from wearing clothing or items supporting LGBT issues.
- ❖ 10.8% were prevented or discouraged from participating in school sports because they were LGBTQ.

# STATS ON LGBTQ DISCRIMINATORY SCHOOL POLICIES AND PRACTICES

Some policies particularly targeted transgender students:

- ❖ 50.9% of transgender students had been prevented from using their preferred name or pronoun (19.9% of LGBTQ students overall), and –
- ❖ 60.0% of transgender students had been required to use a bathroom or locker room of their legal sex (22.6% of students overall).
- ❖ 71.2% of LGBTQ students reported that their schools engaged in some form of gendered practice in school activities (e.g., graduation attire, homecoming courts, school photographs).



## APPLICABLE LAWS IN IOWA



# APPLICABLE LAWS IN IOWA

Title IX - 20 U.S.C. § 1681

Civil Rights – Iowa Code section 216.9

Bullying and Harassment – Iowa Code section 280.28

FERPA

Confidential Information – Iowa Code section 22.1



## TITLE IX

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

## WHO IS COVERED BY TITLE IX?

Recipients of Federal financial assistance – to include schools, school districts, AEAs, SEAs, Community Colleges, Colleges, and other Universities

## DEAR COLLEAGUE LETTER OCTOBER 26, 2010: HARASSMENT AND BULLYING

“Although Title IX does not prohibit discrimination based solely on sexual orientation Title IX does protect all students, including lesbian, gay, bisexual, and transgender (LGBT) students, from sex discrimination.”

# DEAR COLLEAGUE LETTER MAY 16, 2016: 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. This prohibition encompasses discrimination based on a student’s gender identity, including discrimination based on a student’s transgender status.”

**These decision shall be left to the states.**



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# IOWA CIVIL RIGHTS - DISCRIMINATION

Iowa Code § 216.9 states that

“it is an unfair or discriminatory practice for any educational institution to discriminate on the basis of . . . gender identity . . . in any program or activity.”

# BULLY & HARASSMENT

Iowa Code § 280.28 states that

“school employees, volunteers, and students shall not engage in harassing or bullying behavior” against students. i. Harassment and bullying are defined as “any electronic, written, verbal, or physical act or conduct toward a student which is based on any actual or perceived trait or characteristic of the student and which creates an objectively hostile school environment . . . .” ii. Trait or characteristic of the student includes but is not limited to “sex, sexual orientation, gender identity, physical attributes . . . .”

# FERPA

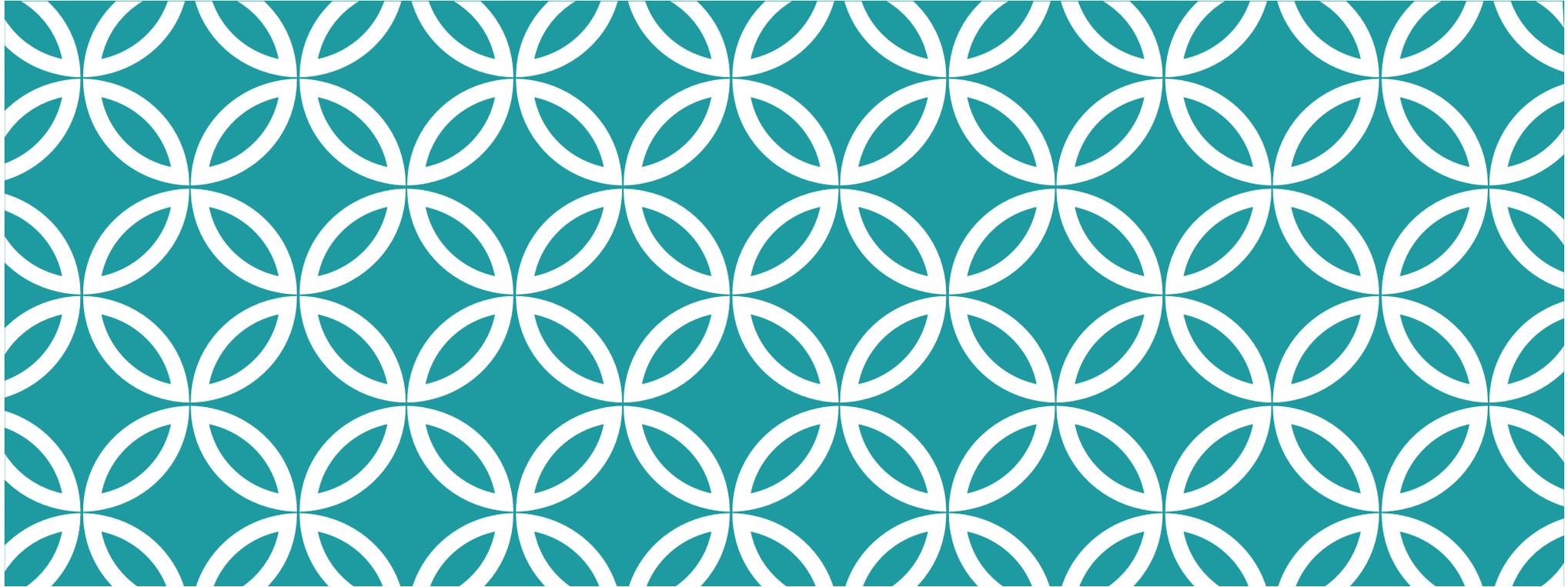
The **Federal Family Educational Rights and Privacy Act (FERPA)** – Students education records cannot be released without the consent of the student parent(s) unless an exception applies.

## **Directory information may be disclosed.**

**“Directory Information”** - information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed.

- Directory information **does not include** SSN, Student Identifiers.
- **Local Policy** - Schools determine their own directory information by policies.

**“Education Records”** – A record maintained by the educational institution or agency working at their request.



## **POLICY CONSIDERATIONS**



# SAFE & NONDISCRIMINATORY ENVIRONMENT

Schools must offer a safe environment free from discrimination or harassment for all students.

- ✓ If sex based harassment leads to hostile environment the school must take prompt action to remedy.
- ✓ Failure to remedy may create or contribute to a hostile environment

# CASE BY CASE DETERMINATION

What is appropriate for each student must be determined on a case by case basis.

- ✓ Communication with the student and the student's parent is key.
- ✓ Schools should make a case-by-case determination about appropriate arrangements for transgender students regarding dress code, restroom and locker facilities, overnight accommodations on school trips, and participation in activities.
- ✓ These arrangements should be based on the student's or parents' wishes, be minimally burdensome, and be appropriate under the circumstances.

# CONFIDENTIALITY

A student has a right to keep their status as a transgendered student private at school.

- ✓ The district should keep this information confidential and staff should not disclose this unless legally required to.
- ✓ Even if the student has disclosed their status to other staff or students it is not the schools information to share.
- ✓ Medical information of the student should also be kept confidential.

# PROTECTION FROM DISCLOSURE

- ✓ Protecting transgender student privacy is critical to ensuring they are treated consistent with their gender identity.
- ✓ Schools must take reasonable steps to protect privacy related to transgender status.
- ✓ Nonconsensual disclosure could be harmful and a violation of FERPA.
- ✓ Directory information may be disclosed if not harmful to disclose.
- ✓ Schools may not designate sex as directory information.

# COMMUNICATIONS AND PUBLICATIONS: PRONOUNS AND NAME CHANGES

Must treat students consistent with their gender identity even if legal records indicate a different sex.

- ✓ The preference for the use of masculine or gender-neutral pronouns should be the choice of the student.
- ✓ A legal name change is not required for a student to use the preferred name for class lists, student activities, yearbook publications, etc. However, a student's legal name must be indicated in the student's official records. The district may list the student's preferred name in the official records by listing it next to the student's legal name with asterisks next to it until a legal name change is made.

# STUDENT DRESS

Allow the student to in accordance with the student's identified gender for school or other extracurricular activities including prom, graduation, yearbook, or other activities.

# RESTROOM AND LOCKER FACILITIES

- ✓ A school may provide separate facilities on the basis of sex, but must allow transgender students access to facilities consistent with their gender identity.
- ✓ All students should have access to locker room, bathroom, and shower facilities that are safe, comfortable, and convenient. Absent a concern for safety schools should permit a student to use the restrooms or locker rooms for which they identify with.
- ✓ If private or separate facilities are requested by any transgendered or non-transgendered student, the student should be provided with those facilities.
- ✓ Remember a student cannot be forced to use a restroom for which they do not identify.

# OVERNIGHT ACCOMMODATIONS

Transgendered students should be assigned to rooms based on their gender identity, accommodating additional privacy needs as requested.

# SPORTS

- ✓ Title IX permits sex segregated athletic teams when selection is based on skill or if a contact sport is involved.
- ✓ Schools may not be overly board about the differences between transgender students and other students of the same sex or other's discomfort with transgender students.
- ✓ A student must be permitted to participate in interscholastic activities for the gender with which that student identifies (assuming the student is eligible otherwise).
- ✓ The Iowa High School Athletic Association has a Statement protecting these students.

“ON THE TEAM”  
GUIDANCE FROM NCAA

*Ensure transgender student athletes  
**fair, respectful, and legal access**  
to school sports teams*

# “ON THE TEAM” GUIDANCE FROM NCAA

**Changing Areas, Toilets, Showers:** Allow the transgender student to use the facility in accordance with his or her gender identity.

**Hotel Rooms:** Allow the transgender student to share hotel room based on gender identity, “with a recognition that any student who needs extra privacy should be accommodated whenever possible.”

**Dress Codes:** Allow the transgender student to dress according to his or her gender identity.

# SCHOOL POLICIES AND PROCEDURES

## ✓ Key Points

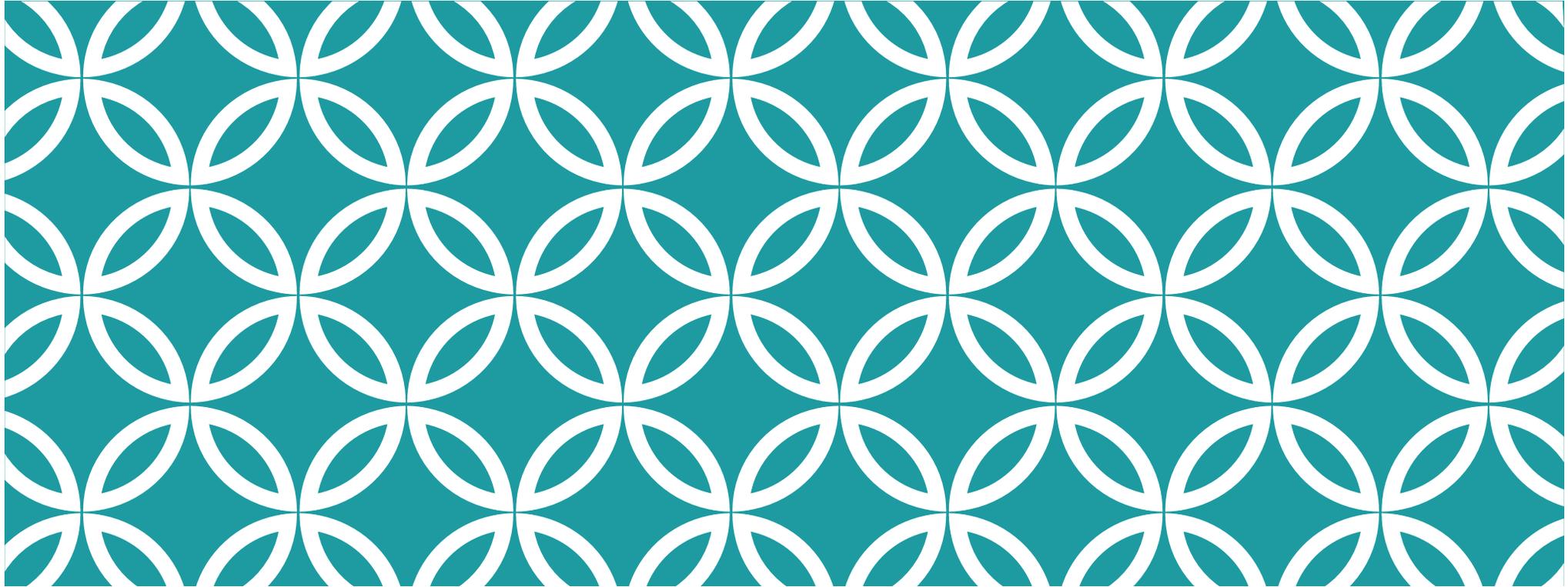
- ✓ Make sure your anti-discrimination policies include gender identity discrimination – It's the law in Iowa.
- ✓ Make sure you train your staff about gender identity issues in your anti-discrimination, bullying and harassment trainings.
- ✓ All students should feel safe in the school environment.
- ✓ Be proactive in your efforts to create a safe and welcoming environment.

# GENDER NEUTRAL

Some schools and businesses are adopting gender neutral bathroom policies.

- Des Moines Roosevelt High School
- University of Iowa
- Iowa City businesses





**ANY QUESTIONS**

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