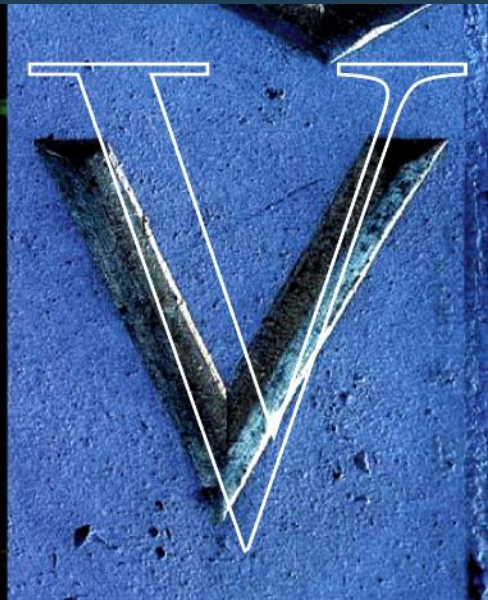
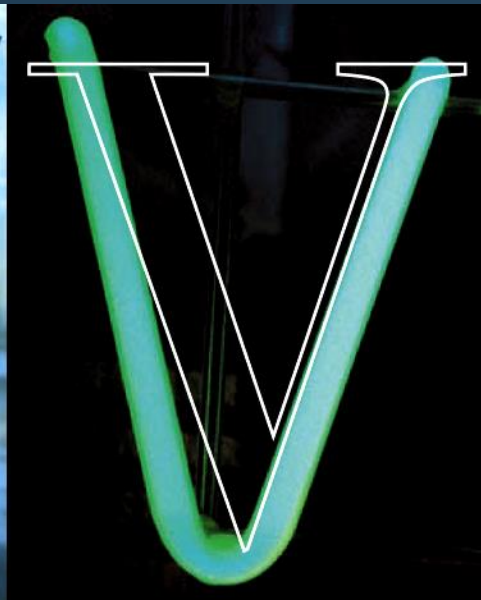
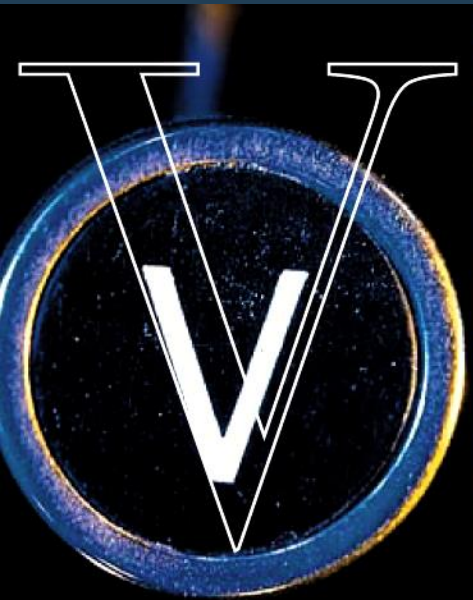


# VENABLE<sup>®</sup><sub>LLP</sub>

It's A Trans New World:  
Creating Safe Space for Transgender Students

*Caryn Pass & Megan Mann, Venable, LLP  
NBOA Annual Conference 2016*



## transgender students

- students increasingly self identifying
  - transgender, gender non-conforming other gender based identities
- identifying at younger ages than in years past
  - 2014/15 school year: 25 out of 40 students “k-3”
- experience high levels of harassment and bullying both in their school in their non-school communities.
- authentically identify and express their feelings in a self selecting manner
  - more fully participate in school community
  - higher performance
  - lower feelings of isolation and depression
- fully and safely incorporate into the school community



## legal claims

- asserted against schools by students and their parents
- most common claim = negligence on the part of the school
  - bullying
    - failing to address behavior (failure to act or supervise)
    - by other students, faculty, staff and parents
    - results from comments, actions behavior of others (not invited to parties, play dates)
  - failure to take actions ensuring safe space i.e.
    - appropriate **physical facilities**
    - treat students based on his/her self identified gender
    - training and educating faculty and staff
    - educating parents, students, members of community
- other claims
  - **failure to educate:** hostile environment prevented student from receiving an education
  - **misrepresentation and detrimental reliance:** claims of “welcoming”, “open”, “accepting” environment inaccurate
    - return of tuition; payment of other expenses including counseling



## terms of identification

- wide range of terms
- students self select; avoid **requiring** preferred self definition
- **Gender Identity\***:
  - deeply held sense or psychological knowledge of own gender
  - same or different than the gender assigned at birth.
- **Gender Expression\***:
  - manner a person represents or expresses gender to others
  - through behavior, clothing, hairstyles, activities, voice or mannerisms.
- **Transgender\***:
  - gender identity or expression different than traditionally associated with assigned sex at birth
  - transsexual and trans
- **Transition\***:
  - living and identifying as one gender to living and identifying as another.
- **Gender Nonconforming\***:
  - gender expression differs from stereotypical expectations
  - “feminine” boys, “masculine” girls, androgynous.
  - identify outside traditional gender categories
  - identify as both genders.
  - *gender diverse, gender expansive, gender binary*

*Wise In The  
School World*



\*“Model District Policy on Transgender and Gender Nonconforming Students” Gay Lesbian and Straight Education Network (GLSEN) & National Center for Transgender and Equality

## creating a safe space

- transgender student response varies
  - listen closely to the individual student(s)
  - regularly evaluate and re-evaluate needs and concerns of transgender students
- community response varies
  - be prepared for the unexpected
- consider all factors that may impact school's response
  - age of the transgender and non transgender students
  - culture of school
  - geography of school
  - learning styles/learning differences
  - religious or other philosophy and beliefs
  - single sex
  - boarding/day



## training, communicating, educating

- Employee Training
  - include all employees, consultants others in school
  - do not identify or discuss specific student(s)
  - discuss how to:
    - speak about gender issues, support all students, speak to all students
    - Speak to other members of community (parents, trustees, applicants)
    - Identify, respond to and report bullying, responding to bullying
- Students: communicating and educating
  - all students in school, students in division, in grade, in class
  - consider age of students
  - Consider form of program and follow up
  - Discuss bullying and creating safe spaces
  - Student clubs: Gay Straight Alliance (GSA), Pride, Student Diversity Leadership Conference (SDLC)
- Parents: communicating
  - communicate on basic level with parents
    - what will be communicated to students
    - behavior expected of parents; including in community, protecting privacy of student,



## names, pronouns, records etc

- student selected name of choice
  - what is the name chosen by the student?
- dress code/style chosen by student
- sports teams and participation
  - does student play on team of gender of choice or gender of birth?
  - school's position
  - regional, league or other regulating entity
- student selected pronoun: He, she, it, they, them
  - may be applicable to other students in school
- Use of name in written format (birth name or selected name)
  - “Official/Legal” documents – Transcripts, birth certificate, Medical Records, ACT/SAT
  - “Non-official” documents - Class lists, yearbooks, school work & tests
- use of name orally (birth name or selected name)
  - in classroom,
  - during graduation
  - other school activities
  - with colleges



## privacy and confidentiality issues

- sharing identity of student with members of the community
  - students, faculty, staff, other members of community (parents of other students)
  - Other entities: college, testing agencies, department of education, courts (guardian ad litem)
- speaking with parents of transgender/gender non-conforming student
- student communications with counselor or nurse
- maintaining and access to records related to transgender/gender non-conforming identity
  - registrar, nurse, testers or other professionals, counselors, division head, teachers
- medical issues
  - hormone therapy and other related medical strategies
  - medication and or treatment for anxiety or depression





## safe physical space

- use of bathrooms throughout the school
  - identified gender
    - use of bathroom in gender of choice or gender of birth
  - gender neutral
  - specific locations/convenient to student
- locker rooms
  - gender of choice or gender of birth
  - other options not in locker room
  - who decides?
- restrooms in sports fields or other out of the way campus locations
- other locations where students dress or use facilities
  - theatre, pool, ice rink
- field trips and other off site overnight sleeping arrangements
  - sport trips
  - international trips



## supporting transgender and gender non-conforming student

- meet with student (and parent or guardian if appropriate)
  - discuss name choice, pronoun choice, dressing choice, disclosing to others in community, facilities, and sports
- determine whether student will communicate change and in what format
  - some make public comment, some do nothing
  - younger students often speak in matter of fact manner
- school “contact”
  - identify a school “contact”
  - “contact” regularly checks in with student and assists in other ways
  - if appropriate, communicate with parents
  - consider impact if counselor is “contact”
- confirm strategy for reporting and responding to allegations of bullying or other concerns.
  - avoid over and under reacting



## applications and admissions process

- identification on application
  - he, she, other
  - male, female, transgender
- “Additional information that may assist increasing a positive learning environment”
- memorializing conversations with parents, student
  - discussions in admissions meetings
  - preparations prior to visit of student (especially younger students)
- responding to disclosure by parent or student
  - discuss with caution; allow parent/student to share as they deem appropriate
  - consider in advance how school will respond
    - policy guidelines



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