

September 10, 2025

**Re: Notice Regarding S.B. 12's Social Transition Ban**

Dear School Administrator,

We<sup>1</sup> write to urge your school district not to implement Texas Senate Bill 12 (“S.B. 12”) in ways that violate federal and state law while potentially harming your students and running afoul of S.B. 12 itself. As we recently explained in a federal lawsuit challenging the constitutionality of four sections of the law, S.B. 12’s (1) GSA Ban; (2) Inclusivity Ban; (3) Social Transition Ban; and (4) Don’t Say LGBTQ+ Ban are unconstitutionally vague, overbroad, viewpoint-discriminatory, and operate as a prior restraint on speech, among other infirmities.<sup>2</sup> In particular, the Social Transition Ban does not define its key terms, including what it means for a school employee to “assist” a student’s social transition.<sup>3</sup> Your district should not interpret this provision to require deadnaming<sup>4</sup> and/or misgendering<sup>5</sup> transgender students, which is not mandated by S.B. 12 and likely violates other federal and state laws, as well as the Texas Educators’ Code of Ethics.

Regardless of any new requirements imposed by S.B. 12, school employees have long been prohibited by both federal and state law from discriminating against students based on sex, disregarding parents’ rights, disclosing students’ private medical information, and failing to provide reasonable accommodations to students who need them. School employees should thus not deadname or misgender students, particularly when doing so defies a parent or student’s specific request and/or reveals confidential information. **We ask that you ensure that all employees in your district respect every student’s chosen name and pronouns, not defy any parent’s request to respect their student’s chosen name and pronouns, and not reveal any student’s private information.** We would be happy to speak more about these issues and will keep you updated as our broader constitutional challenge to S.B. 12’s challenged provisions against the Commissioner of the Texas Education Agency (“TEA”), Houston ISD, Katy ISD, and Plano ISD makes its way through the courts.

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<sup>1</sup> The ACLU of Texas is a leading civil rights organization in the Lone Star State. It works with communities, at the State Capitol, and in the courts to protect and advance civil rights and civil liberties for every Texan, no exceptions. The Transgender Law Center is the largest national trans-led organization advocating self-determination for all people. It champions the right of all transgender and gender-nonconforming people to make their own choices and live freely, safely, and authentically.

<sup>2</sup> See *GSA Network, et al. v. Morath, et al.*, Case No. 4:25-cv-04090 (S.D. Tex.), available at [https://www.aclutx.org/sites/default/files/gsa\\_network\\_et\\_al\\_v.\\_morath\\_et\\_al\\_-\\_complaint.pdf](https://www.aclutx.org/sites/default/files/gsa_network_et_al_v._morath_et_al_-_complaint.pdf).

<sup>3</sup> See S.B. 12 § 7, <https://capitol.texas.gov/tlodocs/89R/billtext/pdf/SB00012F.pdf#navpanes=0>.

<sup>4</sup> A “deadname” is the name that a transgender person was given at birth and no longer uses upon transitioning. *Deadname*, MERRIAM-WEBSTER ONLINE, <https://www.merriam-webster.com/dictionary/deadname#1> (last visited Aug. 21, 2025); see also *Deadname (verb)*, *id.* (“to speak of or address (someone) by their deadname”).

<sup>5</sup> “Misgender” means “to identify the gender of (a person, such as a nonbinary or transgender person) incorrectly (as by using an incorrect label or pronoun).” *Misgender*, MERRIAM-WEBSTER ONLINE, <https://www.merriam-webster.com/dictionary/misgender> (last visited Aug. 21, 2025).

## Background

Transgender students have a gender identity that is different from the gender they were assigned at birth. Gender identity is a person's deeply held sense of their own gender. Everyone has a gender identity, and cisgender people are those whose gender identity aligns with the gender they were assigned at birth. Non-binary students have a gender identity that is not exclusively male or female but is sometimes in between or outside of the gender binary.<sup>6</sup> Medical opinion is clear that gender identity is not a choice. Many people in school—or sometimes even before they reach school age—have expressed a clearly established gender identity that is different from the gender they were assigned at birth.<sup>7</sup>

Countless transgender people thrive in our society and lead both ordinary and extraordinary lives,<sup>8</sup> and there are at least 13,800 transgender teenagers in Texas.<sup>9</sup> Due to social stigma and a variety of factors, some transgender people experience gender dysphoria, which is a condition characterized by clinically significant distress associated with the incongruence between one's gender identity and gender assigned at birth. Gender dysphoria is recognized as a serious medical condition, including by the American Medical Association, the Texas Medical Association, the American Psychiatric Association, the American Psychological Association, the Endocrine Society, the World Professional Association for Transgender Health, and courts across the country.<sup>10</sup>

There is medical consensus that appropriate treatment for gender dysphoria includes living in accordance with one's gender identity in all aspects of life, which is known as social transition. Social transition often includes things like changing names, pronouns, hairstyle, and clothing to match one's gender identity, but it is not limited to these things and has no fixed definition in state or federal law. For most transgender youth, being able to socially transition and live in accordance with their gender identity provides tremendous relief, allowing them to flourish socially, emotionally, and academically.<sup>11</sup>

A student's need to socially transition at school is part of the essential process of living consistently with their authentic self, including through use of gender-affirming names and

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<sup>6</sup> See *Glossary of Terms*, HRC, <https://www.hrc.org/resources/glossary-of-terms>.

<sup>7</sup> See WORLD PROF'L ASS'N FOR TRANSGENDER HEALTH ("WPATH"), WPATH Clarification on Medical Necessity of Treatment, Sex Reassignment, and Insurance Coverage in the U.S.A. at 1-2 (Dec. 21, 2016) <https://www.wpath.org/newsroom/medical-necessity-statement> (explaining that treatment for people with gender dysphoria is medically necessary and "not optional in any meaningful sense").

<sup>8</sup> See Brief of Elliot Page, Major Griffin-Gracy, Gwendolyn Herzig, Jazz Jennings, and Fifty-Four Others as Amici Curiae In Support of Plaintiffs-Appellees, *Brandt v. Rutledge*, Case No. 21-2875 (8th Cir. Jan. 19, 2022), available at <https://www.aclu.org/legal-document/brandt-et-al-v-rutledge-et-al-amicus-brief-trans-adult-voices>.

<sup>9</sup> Kerith J. Conron, Prohibiting Gender-Affirming Medical Care for Youth, UCLA SCHOOL OF LAW WILLIAMS INSTITUTE (March 2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Youth-Health-Bans-Mar-2022.pdf>.

<sup>10</sup> See, e.g., *Gender Dysphoria*, MAYO CLINIC (Jan. 1, 2025), <https://www.mayoclinic.org/diseases-conditions/gender-dysphoria/symptoms-causes/syc-20475255>.

<sup>11</sup> *Schools in Transition: A Guide for Supporting Transgender Students in K-12 Schools*, GENDER SPECTRUM (Oct. 2015), [https://gender-spectrum.cdn.prismic.io/gender-spectrum%2F7c4c63b2-52f2-4cb0-a48f-dd049bf6962c\\_schools-in-transition-2015-min.pdf](https://gender-spectrum.cdn.prismic.io/gender-spectrum%2F7c4c63b2-52f2-4cb0-a48f-dd049bf6962c_schools-in-transition-2015-min.pdf).

pronouns.<sup>12</sup> When transgender students are able to use their affirming name at school, they are 29% less likely to experience suicidal ideation and 56% less likely to attempt suicide.<sup>13</sup> School administrators' decisions have a direct and immediate impact on students' mental health, and you have an obligation to keep your students safe from harm and to respect their names and pronouns under both Texas and federal law.

### **S.B. 12's Social Transition Ban Does Not Bar Use of Affirming Names and Pronouns**

Senate Bill 12 was signed into law on June 20, 2025. The Social Transition Ban amends Section 11.401 of the Texas Education Code to require every school district to “adopt a policy prohibiting an employee of the district from assisting a student enrolled in the district with social transitioning, including by providing any information about social transitioning or providing guidelines intended to assist a person with social transitioning.”<sup>14</sup> “[S]ocial transitioning” is defined by S.B. 12 as “a person’s transition from the person’s biological sex at birth to the opposite biological sex through the adoption of a different name, different pronouns, or other expressions of gender that deny or encourage a denial of the person’s biological sex at birth.”<sup>15</sup> Critically, the word “assist” is not defined in S.B. 12 or elsewhere in Texas law.

As described in our lawsuit and motion for preliminary injunction,<sup>16</sup> this section is unconstitutionally vague since it fails to give school employees sufficient notice of what is prohibited and will lead to arbitrary and discriminatory enforcement.<sup>17</sup> But even by its own terms, S.B. 12's Social Transition Ban does not clearly bar school employees from respecting students' chosen names and pronouns. Because this section is unconstitutionally vague, what is actually prohibited is ambiguous, but the law does not explicitly say that school employees may not refer to students by their chosen name or pronouns. Referring to someone in the way that they want to be addressed is a matter of basic human decency and respect<sup>18</sup>—and arguably not a form of “assist[ance].” While this section is subject to competing interpretations, school districts should not implement it in ways that violate other federal and state laws and harm their students—especially while litigation against this section of S.B. 12 remains pending.

The Social Transition Ban should especially not be interpreted to override a parent or guardian's request to use their child's chosen name and pronouns, since this arguably violates other aspects of S.B. 12. Section 1 of the law states that parents and guardians have a

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<sup>12</sup> *Id.* at 9.

<sup>13</sup> Stephen T. Russell, et al., *Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior Among Transgender Youth*, J. ADOLESC. HEALTH (Oct. 2018), <https://pubmed.ncbi.nlm.nih.gov/29609917/>.

<sup>14</sup> S.B. 12 § 7(b).

<sup>15</sup> *Id.* § 7(a).

<sup>16</sup> *See supra* note 2.

<sup>17</sup> A law is unconstitutionally vague when it (1) fails to provide a “person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly,” or (2) fails to provide “explicit standards” for applying the law “to avoid arbitrary and discriminatory applications.” *Roark & Hardee LP v. City of Austin*, 522 F.3d 533, 551 (5th Cir. 2008) (citation omitted).

<sup>18</sup> *See Foote v. Town of Ludlow*, No. CV 22-30041-MGM, 2022 WL 18356421, at \*5 (D. Mass. Dec. 14, 2022) (“Addressing a person using their preferred name and pronouns simply accords the person the basic level of respect expected in a civil society”).

“fundamental right[] . . . [to] make decisions concerning the child’s education.”<sup>19</sup> This fundamental right “may not be infringed on by any public elementary or secondary school” unless it is “necessary to further a compelling state interest” and “narrowly tailored using the least restrictive means to achieve that compelling state interest.”<sup>20</sup>

Here, there is no compelling state interest in overriding a parent’s request to refer to their student by their chosen name and pronouns, let alone one that is narrowly tailored. Although S.B. 12 prohibits school employees from “assisting” a student’s social transition, this undefined term cannot override parents’ fundamental right to make decisions concerning their children’s education, nor can it supersede other requirements of federal and state law that prevent Texas educators from deadnaming or misgendering any student or disclosing their private information.

### **Permitting Educators to Misgender or Deadname Students Violates Other Aspects of Federal and State Law, As Well as Ethical Requirements**

Beyond an erroneous interpretation of S.B. 12, federal and state law do not permit school employees to misgender or deadname transgender students. Under Section 25.0021 of the Texas Education Code, students must only be identified “by the student’s legal surname.”<sup>21</sup> This means that school districts are free to use students’ affirming first names and pronouns in class and at all school events, in yearbooks and clubs, and in all non-official documents or records.<sup>22</sup>

Refusing to use a student’s affirming name and pronouns can trigger significant legal liability for school districts under the Constitution and Title IX. Courts across the country have recognized that deliberately refusing to address transgender individuals by the name and pronouns consistent with their gender identity can constitute gender-based harassment under the Constitution and Title IX.<sup>23</sup> Refusing to respect a student’s gender or non-conformance to gender stereotypes is also gender-based harassment as defined by school districts’ Freedom From Harassment policies that protect students from discrimination.

If school administrators use students’ deadnames or misgender them in front of other students or parents, this can also severely violate federal privacy laws by “outing” the student as transgender and causing or exacerbating bullying and harassment. Students have the right to

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<sup>19</sup> S.B. 12 § 1(b).

<sup>20</sup> *Id.*

<sup>21</sup> Tex. Educ. Code §25.0021.

<sup>22</sup> The Texas Association of School Boards (TASB) has also recognized that transgender and non-binary students have a right to express themselves and be who they are at school. While a student’s legal name is used in official school records, such as a student’s academic achievement record, TASB explained that a “transgender student’s preferred first name and gender should be used in speaking with the student and for class rosters, identification badges, awards, and any other similar purpose.” *Legal Issues Related to Transgender Students*, TASB at 6 (Oct. 2021).

<sup>23</sup> See, e.g., *Doe v. City of New York*, 976 N.Y.S.2d 360 (N.Y. Sup. Ct. 2013) (holding transgender woman had sufficiently alleged discrimination under state sex discrimination law when the state HIV/AIDS Service Administration continued to address her by her former male name and male pronouns); *Burns v. Johnson*, 829 F.3d 1 (1st Cir. 2016) (plaintiff’s allegations, including employer’s purposeful and condescending use of the pronoun “she” to a male transgender employee, supported a reasonable inference of discrimination on the basis of sex).

share or withhold information about their gender identity under federal law.<sup>24</sup> As the National Association of Secondary School Principals (NASSP) advises, “transgender status, legal name or sex assigned at birth is confidential medical information and considered ‘personally identifiable information’ under the Family Educational Rights Privacy Act (FERPA). Disclosure of that information to other school staff or parents could violate the school’s obligations under FERPA or constitutional privacy protections.”<sup>25</sup>

The Texas Educator Code of Ethics also prohibits all educators from “reveal[ing] confidential information concerning students unless disclosure serves lawful professional purposes or is required by law” and bars them from “intentionally, knowingly, or recklessly treat[ing] a student or minor in a manner that adversely affects or endangers the learning, physical health, mental health, or safety of the student or minor.”<sup>26</sup> But “outing” a student as transgender by refusing to respect their chosen name and pronouns risks revealing confidential information and is also likely to adversely affect and endanger them.<sup>27</sup>

S.B. 12 also cannot be interpreted to override Section 504 of the Rehabilitation Act, the Individuals with Disabilities Education Act, or any other federal or state requirement for students with disabilities. Your district is legally required to follow procedures to grant and maintain reasonable accommodations for any student with a disability, including students with gender dysphoria.<sup>28</sup> Because deadnaming and/or misgendering a student can severely exacerbate their gender dysphoria, it violates federal and state disability laws for your district to refuse to make reasonable accommodations for students to be called by their chosen name and pronouns.

## Conclusions

It is critical for your district not to interpret S.B. 12 in ways that override or violate other obligations under federal and state law. We urge you to take immediate action to ensure that all school employees respect students’ chosen names and pronouns. Please let us know if you would

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<sup>24</sup> See Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. §§ 99.00 et seq. Disclosure of private information related to sex or gender can also violate sex discrimination laws. *See Roberts v. Clark Cty. Sch. Dist.*, 215 F.Supp.3d 1001 (D. Nev. 2016) (disclosure of private information about employee’s transgender status in an email established a prima facie case for harassment/hostile environment under Title VII’s sex discrimination prohibition).

<sup>25</sup> *Transgender Students*, NAT’L ASS’N OF SECONDARY SCH. PRINCIPALS (May 10, 2016), <https://www.nassp.org/news/nassp-states-support-for-rights-of-transgender-students/>.

<sup>26</sup> Tex. Admin. Code § 247.2(3)(A)-(B).

<sup>27</sup> For example, a student’s ability to keep their sexual orientation or gender identity discrete from their parents can be, and often has been, the difference between having a place to come home to or not. The Williams Institute at UCLA School of Law reported in 2020 that LGBTQ+ youth comprise up to 45% of homeless youth. *See LGBT people are more likely than non-LGBT people to face housing instability*, WILLIAMS INSTITUTE (April 2, 2020), <https://williamsinstitute.law.ucla.edu/press/lgbt-housing-press-release/>. Family rejection is a significant factor—40% of LGBTQ+ youth that were kicked out of the home or abandoned by their families report that they were kicked out or abandoned because of their LGBTQ+ identity, contributing to LGBTQ+ youth homelessness. *See Homelessness and Housing Instability Among LGBTQ Youth*, TREVOR PROJECT (Feb. 3, 2022), <https://www.thetrevorproject.org/research-briefs/homelessness-and-housing-instability-among-lgbtq-youth-feb-2022/>.

<sup>28</sup> *See Williams v. Kincaid*, 45 F.4th 759, 769 (4th Cir. 2022) (recognizing that gender dysphoria may be a disability for purposes of the Americans with Disabilities Act).

like to discuss this matter and we will keep you updated as our lawsuit against four challenged provisions of S.B. 12 makes its way through the courts.

Respectfully,

ACLU of Texas  
Transgender Law Center