

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT ON DISABILITY SERVICES**



<b>POLICY</b>	
Department on Disability Services	Subject: Gender Identity & Expression
Responsible Program or Office: Developmental Disabilities Administration	Policy Number: 2017-DDS-POL002
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Supersedes Policy Dated: N/A	
Cross References, Related Policies and Procedures, and Related Documents:	

**1. PURPOSE**

This purpose of this policy is to establish a policy prohibiting discrimination against individuals based on their gender identity or expression.

**2. APPLICABILITY**

This policy applies to all DDS employees, subcontractors, providers, vendors, consultants, volunteers, and governmental agencies that provide services and supports to individuals with disabilities.

**3. AUTHORITY**

The authority for this policy for this policy is established in the DDS as set forth in D.C. Law 16-264, the "Department on Disability Services Establishment Act of 2006," effective March 14, 2007 (D.C. Official Code § 7-761.01 et seq.); and D.C. Law 2-137, the "Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act of 1978," effective March 3, 1979 (D.C. Official Code §7-1301.01 et seq.).

**4. POLICY**

It is the policy of DDS to prohibit discrimination against any person based on their gender identity or expression.

## 5. STANDARDS

### **A. General Prohibitions of Gender Identity or Expression (4 DCMR § 801(e))**

It is unlawful for any person or entity, including agencies of the District of Columbia government and its contractors, to discriminate against a person in employment, housing, public accommodations, or educational institutions on the basis of that person's *actual or perceived gender identity or expression*. For example, in District agencies and in facilities operated by the District or its contractors, it is unlawful for the District or its contractors to:

- i. Refuse to provide any facility, service, program, or benefit of the District of Columbia government;
- ii. Engage in verbal or physical harassment based on an individual's gender identity or expression;
- iii. Create a hostile environment based on an individual's gender identity or expression; or
- iv. Deny access to restroom facilities and other gender specific facilities that are consistent with a person's gender identity or expression.

### **B. Access to facilities consistent with Gender Identity or Expression (4 DCMR §§ 802, 805)**

All district agencies and offices must allow individuals the right to use gender-specific restrooms and other gender-specific facilities such as dressing rooms, homeless shelters, and group homes that are consistent with their gender identity or expression. Additionally, all single occupancy restrooms must be gender-neutral and use gender-neutral signage, such as "Restroom," Rather than "Men" or "Women." It is important to note that even if a gender-neutral restroom is available, individuals must be able to use the restroom and other gender-segregated facilities (such as locker rooms) that they request to use at all times. Refusing to allow individuals to use the bathroom that is congruent with their gender identity or expression is a form of discrimination under the District of Columbia Human Rights Act.

### **C. Accommodations for Health Care needs (4 DCMR § 803)**

When requested, employers must make reasonable accommodations (including medical leave) for transgender-related health care needs. Such needs may include, but are not limited to, medical or counseling appointments, surgery, recovery from surgery, and any other related procedures. This process should be consistent with accommodations that are provided for other medical needs.

### **D. Implementation of gender-neutral dress codes (4 DCMR § 804)**

Individuals must be able to dress and groom themselves according to their gender identity or expression. It is unlawful for District agencies, offices, or contractors to

require individuals to dress or groom themselves in a manner inconsistent with their gender identity or expression. Agencies must ensure that dress codes or uniforms do not specifically impose disparate rules based on gender identity or expression. For example, a dress code that requires “dress pants and dress shirts,” is preferable to one that requires “slacks for men, and dresses and skirts for women.” However, District agencies, offices, or contractors may prescribe standards of dress that serve a reasonable business purpose, as long as such standards do not discriminate or have a discriminatory impact on the basis of an individual's gender identity or expression.

**E. Gender-specific facilities where nudity in the presence of others is customary (4 DCMR § 805)**

All District agencies, offices, and contractors working within and/or on behalf of the District shall provide individuals with access to, and the safe use of, facilities that are segregated by gender. In gender-specific facilities where nudity in the presence of others is customary, the agency shall make reasonable accommodations to allow an individual access to, and the use of, the facility that is consistent with that individual's gender identity or expression, *regardless of whether the individual has provided identification or other documentation* of their gender identity or expression. Efforts shall be made to provide private spaces, through the use of curtains or partitions, to any customer that does not want to be fully nude in such open environments. No agency shall require documentation or other proof of an individual's gender, except in situations where all persons are asked to provide documentation, or other proof of their gender, for a reasonable business or medical purpose.

**F. Recording of gender and name (4 DCMR § 806)**

It is unlawful for District agencies, offices, or contractors to require an applicant to state whether the individual is transgender. If an application form asks for the applicant to identify as male or female, an applicant may choose the sex they identify with, rather than the applicant's assigned or presumed gender. Additionally, an applicant may choose to identify as neither male nor female. Such designations shall not be considered, without more, to be fraudulent or to be a misrepresentation for the purpose of adverse action on the application. An applicant's giving of a name publicly and consistently used by the applicant, even when the name given is not the applicant's legal name, shall not be grounds for adverse action, if the name given is consistent with the applicant's gender identity or expression. Where use of a person's legal name is required by law or for a reasonable business purpose, such as verification of education or employment history, the applicant may be required to disclose it. However, an applicant's failure to disclose a change of gender or name (unless specifically required as part of an application process for a reasonable business purpose) shall not be considered grounds for an adverse action.

**G. Background checks & Confidentiality (4 DCMR § 807)**

Information regarding a person's gender transition or modification is confidential.

Thus, if a District agency, office, or contractor working within and/or on behalf of the District learns through a background check or other means that a person is transgender, the entity must take reasonable measures to preserve the confidentiality of that information and must not, without more, take an adverse action against the individual on the basis of the learned information. Regardless of how an agency learns of an individual's gender identity or expression, or transition to a new gender, it must preserve the confidentiality of this sensitive information. See Victoria M. Rodriguez-Roldan & Elliot E. Imse, *Valuing Transgender Applicants and Employees: A Best Practices Guide for Employers* (2016). Disclosure, if it must occur, should be limited and only if it is necessary for a legitimate business reason, or the individual has given permission. Any information shared in a public setting, such as announcing the individual's name in a waiting room or referring to an individual among other employees, must reflect the preferred name and pronouns of the individual. No person within a District agency or office may "out" an individual against their will, or without obtaining their consent. In protecting an individual's confidentiality, an agency must avoid asking objectively irrelevant questions about their gender identity or expression.

#### **H. Use of proper names and pronouns (4 DCMR§ 808)**

Regardless of the legal name and gender of an individual, District agencies, offices, and contractors doing business within and/or on behalf of the District must use the individual's desired name and pronouns when communicating with them, and when talking about them to third parties. If an entity is unclear about which pronoun to use, they should ask the individual what they prefer, e.g. him/her, she/he or they. The entity must ensure employees respect and use a transgender individual's preferred names and pronouns, as repeated failure to do so can be considered harassment under the District of Columbia Human Rights Act. If a District entity must know an individual's legal name for HR-related legal necessities, the information should be maintained as a confidential part of their employee file.

#### **I. Prohibition on harassment and hostile environment (4 DCMR § 808)**

All District agencies, offices, and contractors must ensure that all harassment, or actions that create a hostile environment based on gender identity or expression, are strictly prohibited. The following behaviors by supervisors or coworkers may constitute unlawful harassment, or a hostile environment, based upon an individuals' gender identity or expression:

- i. Deliberately misusing an individual's preferred name or gender-related pronoun;
- ii. Asking personal questions about an individual's body, gender identity or expression, or gender transition;
- iii. Causing distress to an individual by disclosing to others that the individual is transgender; and
- iv. Posting offensive pictures, or sending offensive electronic or other communications.

**J. Definitions (4 DCMR § 899.1)**

Gender identity or expression is defined as a gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual's assigned sex at birth.

Transgender is an adjective that refers to any individual whose identity or behavior differs from stereotypical or traditional gender expectations, including transsexual individuals, cross-dressers, androgynous individuals, and others whose appearance or characteristic are perceived to be gender-atypical. (**NOTE:** Transgender is correctly used as an adjective; hence the terms “transgender people” can be used but “transgenders” or “transgendered” is often viewed as disrespectful).



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Andrew P. Reese, Director



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Date

