

## **Oppose SB 272 – Don’t Single Out Transgender Youth for a Special Tier of Surveillance in Schools**

**Bill Summary:** This bill requires that parents be “completely and truthfully informed” if a student is being identified by a different name, gender, or pronouns than those used when they were initially enrolled, subjecting transgender students to a higher level of surveillance than their cisgender peers. It also requires that parents be informed of the extracurricular activities, clubs, or organizations in which their student participates.

**SB 272 singles out transgender youth for a special tier of surveillance in schools.** The bill would require that parents be “completely and truthfully informed” if a student is being identified by a different name or gender, or uses pronouns that differ from those used in their enrollment documentation. Teens explore their identity in many different ways, whether it be their religious beliefs and practices, political views, sexuality, or professional aspirations. Yet, the bill’s language specifically targets transgender individuals by prompting educators and school staff to survey teens’ behaviors and preferences deeply linked to gender expression and identity. This “forced outing” of students that identify with a gender different from that assigned at birth violates a student’s privacy rights, as the Supreme Court has long recognized a federal constitutional right to privacy, specifically the release of personal matters such as bodily autonomy and sexual associations, even if the student is open about their sexual orientation or gender identity with friends at school. (*Whalen v. Roe*, 429 U.S. 589, 599-600 (1977), and *Sterling v. Borough of Minersville*, 232 F.3d 190, 196 (3d Cir. 2000)). School officials may think they’re doing the right thing, but revealing a student’s sexual orientation or gender identity to their parents not only violates the student’s privacy rights, but can open an LGBTQ child to hostility, rejection, and even violence from their parents. This right to informational privacy extends to students in a school setting. The Family Educational Rights and Privacy Act (“FERPA”), also protects students against the disclosure of personally identifiable information.<sup>i</sup>

**SB 272 undermines existing state and federal protections afforded to Granite Staters.** New Hampshire offers constitutional and statutory protections for transgender individuals to be free from discrimination on the basis of sex and gender identity. Further, there have been numerous federal and state court rulings nationwide that set precedent individuals of all gender identities shall be free of discrimination. For example, in 2020, the U.S. Supreme Court decision in *Bostock v. Clayton County* recognized that it is impossible to discriminate against a person based on their sexual orientation or gender identity without discriminating against that person based on sex. This ruling has been interpreted as applicable to numerous spheres of life. In 2021, influenced by the decision, the U.S. Department of Education’s Office for Civil Rights issued a Notice of Interpretation explaining that it would enforce Title IX’s prohibition on discrimination on the basis of sex to include: (1) discrimination based on sexual orientation; and (2) discrimination based on gender identity. As the proposed legislation is written, transgender students are subject to a distinct level of surveillance and an unconsented disclosure of private, personal information based upon their gender identity. Legislators should respect that students have free expression rights when they’re at school and this targeted surveillance and reporting will only make transgender students feel they can’t be their full selves.

**SB 272’s disclosure requirement concerning extracurricular activities may also leave LGBTQ+ students without access to a safe or affirming environment.** SB 272 requires that parents be informed about which extracurricular activities, clubs, or organizations in which their child is participating. This disclosure could result in LGBTQ+ students who attend Gender-Sexuality Alliance clubs (GSAs) or other clubs to no longer view those places as a safe place to get the support they need. Research has found that GSAs have had a demonstrated positive effect on students’ mental health and sense self-empowerment<sup>ii</sup> and that compared to LGBTQ students who do not have a GSA in their school, students with access to a GSA were less likely to: hear negative remarks about gender expression or being transgender, feel unsafe about their identity, or miss school because of safety concerns. Moreover, students with access to GSAs experience lower levels of victimization related to their identity and report a greater sense of belonging to their school community.<sup>iii,iv</sup> According to a 2018 survey conducted by the Human Rights Campaign,

“only 24% [respondents] of LGBTQ youth can 'definitely' be themselves as an LGBTQ person at home.”<sup>v</sup> School may be the only place where they feel safe expressing their true identity. Forcing teachers and guidance counselors to inform students' parents about GSA involvement will could put LGBTQ at further risk of isolation.

**SB 272 puts educators at risk of not complying with vague reporting requirements.** Teachers are required to answer parents' questions about their child's gender identity in school “truthfully and completely.” While we do not believe a teacher would ever lie to a parent, the standard is vague and leaves the teacher and school at risk of facing litigation from a parent. The bill also permits lawsuits against school districts and school boards more broadly. The bill's definition of compelling interest makes it difficult for a teacher to prove that not reporting something to a parent may protect a student from harm, as they are required to present evidence. Additionally, right now the New Hampshire Department of Education is investing heavily to take part in the “One Trusted Adult” campaign that lets students know that if they say something to a teacher, they can trust the teacher will keep it confidential and support the student. This bill makes it clear that the teacher cannot keep information confidential about a student's gender, even if the student isn't ready to have that conversation with their parents. Schools work best when parents and educators work together to help students achieve their goals and potential. Bills like SB 272, that open teachers and school districts to liability and make it seem like teachers are purposely hiding information from parents, cause a distrust in the school community that is not warranted or helpful. Elected officials should trust educators and ensure gender diverse youth can be treated with dignity and respect.

**SB 272 unjustly targets transgender youth.** For transgender youth, especially those who cannot be safe at home, school may be one of the few places to be themselves.<sup>vi</sup> Our schools should protect all students, including LGBTQ+ students, so they can learn and thrive in a safe environment as their most authentic selves.

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<sup>i</sup> See Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. §§ 99.00, et seq.

<sup>ii</sup> Poteat, V. P., Calzo, J. P., Yoshikawa, H., Lipkin, A., Ceccolini, C. J., Rosenbach, S. B., O'Brien, M. D., Marx, R. A., Murchison, G. R., & Burson, E. (2019). [Greater engagement in Gender-Sexuality Alliances \(GSAs\) and GSA characteristics predict youth empowerment and reduced mental health concerns](#). *Child Development*, 1–20. Advance online publication. <https://doi.org/10.1111/cdev.13345>

<sup>iii</sup> Toomey, Russell B., et al. "High school gay–straight alliances (GSAs) and young adult well-being: An examination of GSA presence, participation, and perceived effectiveness." *Applied developmental science* 15.4 (2011): 175-185. Available at <https://www.tandfonline.com/doi/abs/10.1080/10888691.2011.607378>

<sup>iv</sup> Kosciw, J. G., Clark, C. M., Truong, N. L., & Zongrone, A. D. (2020). The 2019 National School Climate Survey: The experiences of lesbian, gay, bisexual, transgender, and queer youth in our nation's schools. New York: GLSEN, available at [https://www.glsen.org/sites/default/files/2021-04/NSCS19-FullReport-032421-Web\\_0.pdf](https://www.glsen.org/sites/default/files/2021-04/NSCS19-FullReport-032421-Web_0.pdf)

<sup>v</sup> Human Rights Campaign, *2018 LGBTQ Youth Report*, available at <https://assets2.hrc.org/files/assets/resources/2018-YouthReport-NoVid.pdf>

<sup>vi</sup> Ibid.