Approved by Faculty Council 3-13-07

Second Ad Hoc Gender Identity Committee
Report to the Academic Council: Executive Summary

In November 2002, the Executive Committee of the Academic Council (ECAC) charged an ad hoc committee to study an ASMSU proposal to add gender identity to MSU’s anti-discrimination policy (ADP). The report of this first gender identity committee led to questions from then-President McPherson concerning the implications of including gender identity in the ADP. In December 2003, the Board of Trustees modified the ADP to include gender identity in the University’s anti-harassment clause, but not in the anti-discrimination clause, pending further study of the implications of such a change. In November 2003, the Academic Council (AC) charged a new ad hoc committee (the GI-2 committee) to review the work of the first gender identity committee and respond to these questions.

Since December 2005, the GI-2 committee has researched the questions raised by McPherson and considered the implications of events since 2003 concerning gender identity discrimination. Notably, universities that serve as benchmarks for MSU have adopted gender identity protections, including Big Ten universities such as Ohio State University and the University of Michigan, and Michigan universities such as Western Michigan University. In addition, recent federal case law has extended legal protections against gender stereotyping to transgender individuals in the employment context.

In light of its investigation, the GI-2 committee has concluded that:

1) Modification of the University’s ADP to include gender identity would require few changes in existing University policy or practice. In particular, University practices in areas of concern raised by McPherson are either consistent with appropriate limitations to the ADP or are already in need of modification to comply with new case law on gender nondiscrimination.

2) Modification of the University’s ADP to include gender identity is not only consistent with the University’s mission of “advancing knowledge and transforming lives,” but serves the University’s interests in recruiting talented faculty, staff, and students and in competing for external grants.

3) Modification of the University’s ADP to include gender identity will only partially address the needs of transgender members of the University community. The University can implement measures that will address the concerns not only of transgender faculty, staff, and students, but also of other members of the University community, such as persons with disabilities. Adoption of these measures can be considered independently of a decision on whether to modify the University’s ADP.

Based on these conclusions, the GI-2 committee recommends that the University include gender identity as part of the anti-discrimination clause as well as the anti-harassment clause.
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I. Background

In February 2002, the Associated Students of Michigan State University (ASMSU) sent a proposal to the Executive Committee of Academic Council (ECAC) to add the term “gender identity” to the list of categories that are protected under Article II of the University’s antidiscrimination policy (ADP). In April 2002, ECAC formed an ad hoc committee to give further study to the proposal, to determine whether ECAC should endorse its adoption, and, if so, to advise ECAC on implementation of the proposal. The first gender identity committee (GI I or GI-1) issued its report in November of 2002 (Appendix A). The report concluded that gender identity warranted protection under the University’s ADP, recommended that the ADP be modified to include a footnote extending the definition of the gender category to include gender identity, and recommended that implementation include an “educational effort” for administrators and that administrators take a “measured approach” to the resolution of discrimination complaints under the modified ADP.

Following a meeting with the first gender identity committee to discuss its report, University President Peter McPherson replied to the report in an April 2003 memo to ECAC (Appendix B). Though the memo acknowledged the significance of the committee’s work, it raised a set of questions concerning the proposal’s implementation. In particular, the McPherson memo asked for greater clarity on the definition of gender identity and asked for analysis of circumstances in which the University may impose appropriate limitations on a claim to discrimination in order to serve “legitimate University purposes,” particularly in the areas of restroom facilities and student housing assignments. In light of the concerns raised by the McPherson memo, ECAC recommended a proposal to add gender identity to the anti-harassment clause of the University’s ADP, but not to the anti-discrimination clause. This amended proposal was approved by the Academic Council in September 2003 and adopted by the Board of Trustees in December 2003.

In the intervening period between the addition of gender identity to the anti-harassment clause and the first meeting of the second gender identity committee in December 2005, several universities that serve as benchmarks for MSU, including other Big Ten universities such as Ohio State University and the University of Michigan, and other Michigan universities such as Western Michigan University, have adopted gender identity anti-discrimination protection. In addition, federal case law on gender identity discrimination has changed significantly. In August 2004, the U.S. Sixth Circuit Court of Appeals, whose jurisdiction includes Michigan, found that employment discrimination against a transgender individual on the basis of gender stereotyping constitutes sex discrimination and is prohibited under the equal protection clause of the Fourteenth amendment (Smith v. City of Salem; see Appendix C). This case has implications for University practices in employment opportunity, such as hiring, promotion, tenure, and termination, but it does not address other aspects of University life covered under the ADP, such as access to residential facilities or participation in educational or other University activities.
II. Charge to the Committee

In order to respond to the questions raised by President McPherson, the Academic Council created the second Ad Hoc Gender Identity Committee (GI-2; see Appendix D) and approved this charge at its November 11, 2003 meeting:

1) To review the work of the first Ad Hoc GI Committee.

2) To review and study the questions raised in President McPherson’s Memorandum of April 8, 2003 to the ECAC related to the proposed change in the antidiscrimination policy (ADP) and to gender identity.

3) To develop an acceptable implementation plan for issues of discrimination in an inclusive and open manner.

4) To identify individuals to serve as a resource and provide expertise to the committee.

5) To have the committee functioning by January, 2004 or before.

First, this report of the GI-2 committee briefly responds to the questions raised by President McPherson’s memo (Section III). It then discusses the GI-2 committee’s conclusions and recommendations, drawing from the work of the first gender identity committee and from its own research (Section IV). Section V of the report discusses the rationale for the committee’s recommendations. Section VI of the report defines gender identity and gender expression. Section VII of the report discusses the implications of the GI-2 committee’s recommendations for particular areas of University activity, namely employment, residence halls, restrooms, university records, academic affairs, student organizations, and sports. Section VII also discusses the committee’s recommendations for additional changes in University policy or practices that would better address the concerns of faculty, staff, and students affected by the addition of gender identity to the ADP. Section VIII discusses implementation of the policy, including memorializing the committee’s intent and recommendations for training and education on gender identity issues for University faculty, staff, and students.

III. Response to President McPherson’s memo

In his memo of April 8, 2003 responding to the first gender identity committee’s report, President Peter McPherson raised the following questions:

1) In the definition, what is the meaning of “ambiguous or fluid” found in subsection (b)?

2) Relative to the language “incremental approach to implementation,” what facility modifications would be required by this amendment to the ADP?
3) How is the assignment of students in residence halls to be handled and is there an expectation that accommodations would have to be made in every residence hall when requested?

4) If a student’s gender is in question for housing assignment, or after housing has been assigned, will University Housing have the ability to gain information from the student to make the best assignment or a change in assignment without being subject to a charge of discrimination?

5) What is the definition of gender stereotyping, and are there situations where there are “appropriate limitations” on employment opportunity, access to University residential facilities, or participation in other ADP-enumerated activities based on gender stereotyping?

The GI-2 committee came to the following responses to these questions. This report more completely discusses the implications of the GI-2 committee’s recommendations in section VII, below.

1) In the definition, what is the meaning of “ambiguous or fluid” found in subsection (b)?

The question refers to the definition of a transgender person offered in footnote 4 of the proposed ADP by the first gender identity committee (see Appendix A), which in part describes a transgender person as a person whose gender or perceived gender is “ambiguous or fluid.” Though the proposed ADP of the GI-2 committee does not include this phrase, the GI-2 committee recognizes that President McPherson’s question more broadly seeks clarification on the criteria by which one may be considered to be transgender.

We can distinguish between at least three dimensions to gender: a biological dimension, a psychological dimension (gender identity), and a social dimension (gender expression). For most people, these three dimensions of gender are consistent with each other. For some people, however, biological gender, gender identity and gender expression are inconsistent. Such people often identify themselves as being transgender.

For some people, biological gender may be fluid or ambiguous. As an example, some people are intersexed, having genetic characteristics of both genders, as in the case of a person with Klinefelter’s syndrome (a male with an extra X sex chromosome). Likewise, some, but by no means all, transgender people at some point seek to undergo a medical reassignment surgery to the biological gender matching their gender identity. Biological gender during this transition may therefore be said to be fluid or ambiguous.

In other cases, one’s gender identity, to varying degrees, differs from one’s biological gender. In many cases, a person has a well-defined psychological sense of being male, but is biologically female, or vice versa. In other cases, one’s gender identity is more androgynous, falling somewhere on (or even outside) a continuum between the two poles of male and female identity.

Moreover, the degree to which a person expresses gender identity in social situations, through dress, grooming, and conformance to social gender norms, may vary from person to person. Some may express in a manner completely consistent with their gender identity, others may do so consistent with their biological gender, and others may fall somewhere in between.
Consequently, a person’s gender may be “ambiguous or fluid” in several ways. One’s biological gender may be ambiguous, in the case of an intersex person or a person undergoing a medically-supervised gender transition. One’s psychological sense of gender, or gender identity, might be male or female or may fall on or outside a continuum between those two extremes. And one’s social expression or presentation of gender, in dress, grooming, and conformance to gender roles, may be distinctly male or female or fall somewhere along or outside a continuum between these extremes. We discuss these and other dimensions associated with gender below in the definitions section of the implementation plan.

2) Relative to the language “incremental approach to implementation,” what facility modifications would be required by this amendment to the ADP?

The first gender identity committee’s report recommended that campus restroom and locker rooms facilities be modified to include single-stall unisex restrooms that would also be wheelchair accessible. The report suggested that this process of retrofitting unisex restrooms into existing buildings could be implemented gradually, with planned building modifications.

While the GI-2 committee endorses these recommendations, it also recognizes that gender-segregated restrooms may serve a legitimate University purpose in accommodating the safety and privacy concerns of all members of the University community. Moreover, it recognizes that the University’s obligation under an ADP modified to include gender identity is to provide some facility accommodation to all persons regardless of gender identity, but not necessarily that person’s most preferred restroom or locker room accommodation. Since providing a restroom and locker room accommodation for transgender persons is consistent with current University policy and practices, the University would not be required to make any facility modifications or changes in policy by this amendment to the ADP.

3) How is the assignment of students in residence halls to be handled and is there an expectation that accommodations would have to be made in every residence hall when requested?

Current University Housing practice is to make an initial assignment of a student to a residence hall on the basis of the gender indicated on the housing application. In cases where a transgender person’s biological gender\(^1\) differs from that indicated on the housing application, University Housing has generally reassigned that student on the basis of biological gender.

Under the recommended ADP, the University would have an obligation to offer an appropriate housing option to any eligible applicant without respect to gender identity. That is, the University could not deny housing altogether to an eligible student because he or she is transgender. This is consistent with current University policy and practices. At the same time, the University would not have an obligation to offer a particular housing option or accommodation to a transgender

\(^1\) As recognized on a person’s birth certificate or driver’s license.
student. That is, as with any other student, there would be no expectation that the University is required to honor the specific housing request of a transgender resident.

4) If a student’s gender is in question for housing assignment, or after housing has been assigned, will University Housing have the ability to gain information from the student to make the best assignment or a change in assignment without being subject to a charge of discrimination?

Yes, University Housing will have that ability. Under the recommended ADP, the University may not deny housing altogether to a transgender applicant who is otherwise eligible. However, this does not mean that the University would have an obligation to make a housing assignment that is most preferred by a transgender applicant. Making student room and floor assignments on the basis of biological gender or other appropriate factors serves legitimate University purposes, such as the safety and privacy concerns of other residents. Consequently, the University may, under the modified ADP, make changes in room assignments on the basis of biological gender or other appropriate criteria as needed to accommodate such purposes.

5) What is the definition of gender stereotyping, and are there situations where there are “appropriate limitations” on employment opportunity, access to University residential facilities, or participation in other ADP enumerated activities based on gender stereotyping?

The phrase “gender stereotyping,” like the phrase “ambiguous or fluid,” appears in footnote four of the first gender identity committee’s proposed change to the ADP (see Appendix A). The GI-2 committee’s recommended ADP does not refer specifically to gender stereotyping, nor does it offer a definition. The most relevant definitions of gender stereotyping and related concepts for the University are defined under case law pertaining to gender discrimination (see Appendix C).

The second part of question 5 asks the committee to define appropriate limitations on “employment opportunity, access to University residential facilities, or participation in educational, athletic, social, cultural, or other University activities” with respect to gender identity. We discuss appropriate limitations in each of these areas in detail in section VII below. To summarize, new case law since the time of the first gender identity committee’s report obliges the University to meet a standard of employment nondiscrimination with respect to gender identity that would match or exceed the standard implied by the GI-2 committee’s recommended ADP. Appropriate limitations under the recommended ADP in the other ADP-enumerated activities would be largely consistent with current University policy and practices. In this sense, the GI-2 committee echoes the conclusions of the first gender identity committee on the practical implications of the recommended ADP:

…the Committee has somewhat reluctantly concluded that it will often be necessary or appropriate for the University to have a measured approach to resolving (through mediation or adjudication) complaints alleging violations of the ADP on gender
identity grounds. In this regard, the Committee notes that Article II of the ADP prohibits discrimination “through inappropriate limitation of employment opportunity, access to University residential facilities, or participation in educational, athletic, social, cultural, or other University activities” (emphasis added). The ADP defines “inappropriate limitations” as follows: “Limitations are inappropriate if they are not directly related to a legitimate University purpose.” The Committee believes the “inappropriate limitation” clause should be interpreted to provide administrators and, especially, the ADJB and the President with broad discretion to craft nuanced resolutions to complaints alleging violations of the ADP on gender identity grounds. In general, their goal should be to respond to the needs of the complainant in ways that do not cause unnecessary disruption to other members of the University community or excessive expense to the University. In other words, the Committee believes that inverting the “inappropriate limitation” concept presently included in the ADP should yield a sense of what constitutes an “appropriate limitation” in resolving gender identity based complaints. Thus, those charged with interpreting the ADP in gender identity complaints should weigh carefully whether the particular remedy sought by the complainant would cause unnecessary disruption or excessive expense (avoiding such a disruption or expense is a “legitimate University purpose”); if it would, it may be possible for them to craft another remedy that would not. (First Gender Identity Committee Report pp. 10-11, see Appendix A)

In short, addition of gender identity to the University’s anti-discrimination policy is not expected to require significant changes in current University policies and practices. The University will retain its flexibility in adopting policies and practices that balance the concerns of all members of the University community.

IV. Recommendations of the GI-2 committee

The GI-2 committee has reviewed the report and documentation of the first gender identity committee and in addition has conducted its own research into the concerns of transgender staff, students and faculty and of other stakeholders on related issues. Based on this work, the GI-2 committee has reached the following conclusions:

1) Modification of the University’s antidiscrimination policy (ADP) to include gender identity would require few to no changes in existing University policy or practice. In particular, current University practices in those areas of concern raised in President McPherson’s April 2003 memo are either consistent with appropriate limitations to the ADP or are already in need of modification to comply with existing case law on gender nondiscrimination (see Smith v. City of Salem, Appendix C).
2) Modification of the University’s ADP to include gender identity is not only consistent with the University’s mission of “advancing knowledge and transforming lives,” but also serves the University’s interests in recruiting talented faculty, staff, and students and in competing for external grants.

3) Modification of the University’s ADP to include gender identity will only partially address the needs of transgender members of the University community. The University can implement measures that will address the concerns not only of transgender faculty, staff, and students, but also of other members of the University community, such as persons with disabilities. Adoption of these measures can be considered independently of a decision on whether to modify the University’s ADP.

Based on these conclusions, the GI-2 committee recommends:

**Recommendation 1:** The GI-2 committee recommends that the ADP provide protection against discrimination on gender identity grounds.

**Recommendation 2:** To do so, the GI-2 committee recommends that Article II of the ADP be amended as shown in (b) below.

For clarity, two versions of Article II of the ADP follow: (a) the current version of MSU’s ADP (as amended by the Board of Trustees following the first gender identity report); and (b) the amended version recommended by the GI-2 committee.

(a) Current version of ADP Article II (text deleted in the GI-2’s proposed ADP is underlined)

Unlawful acts of discrimination or harassment are prohibited.

In addition, the University community holds itself to certain standards of conduct more stringent than those mandated by law. Thus, even if not illegal, acts are prohibited under this policy if they:

1. Discriminate against any University community member(s) through inappropriate limitation of employment opportunity, access to University residential facilities, or participation in educational, athletic, social, cultural, or other University activities on the basis of age, color, gender, disability status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, veteran status, or weight; or
2. Harass any University community member(s) on the basis of age, color, gender, gender identity, disability status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, veteran status, or weight.

These prohibitions are not intended to abridge University community members' rights of free expression or other civil rights.
\[2 \text{ Limitations are inappropriate if they are not directly related to a legitimate University purpose.}\\
\]

\[3 \text{For purpose of this policy, "employment opportunity" is defined as job access and placement, retention, promotion, professional development, and salary.}\\
\]

\[4 \text{University ordinances, written regulations and policies, and published ADJB decisions approved by the President, provide guidance on the harassing acts prohibited by Section 2 and the discriminatory acts prohibited by Section 2.}\\
\]

\[5 \text{For the purposes of the harassment clause of Article II, the reference to "gender identity" prohibits harassment based on (a) any gender-specific behavior, appearance or expression of an individual that departs from the harasser's expectations for gender-specific behavior, appearance or expression or (b) any change of gender, completed or in process.}\\
\]

(b) GI-2’s proposed ADP article II (Revised, with new text bolded)

Unlawful acts of discrimination or harassment are prohibited.

In addition, the University community holds itself to certain standards of conduct more stringent than those mandated by law. Thus, even if not illegal, acts are prohibited under this policy if they\[2:\]

1. Discriminate against any University community member(s) through inappropriate limitation\[3:\] of employment opportunity\[4:\], access to University residential facilities, or participation in educational, athletic, social, cultural, or other University activities on the basis of age, color, gender, gender identity\[5:\], disability status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, veteran status, or weight; or

2. Harass any University community member(s) on the basis of age, color, gender, gender identity, disability status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, veteran status, or weight.

These prohibitions are not intended to abridge University community members’ right of free expression or other civil rights.

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\[2 \text{The Anti-Discrimination Policy Users’ Manual, University ordinances, written regulations and policies, and published ADJB decisions approved by the President, provide guidance on the conduct prohibited by Article II of this Policy.}\\
\]

\[3 \text{Limitations are inappropriate if they are not directly related to a legitimate University purpose. The Anti-Discrimination Policy User’s Manual provides additional guidance on inappropriate limitation as defined by this Policy.}\\
\]

\[4 \text{For purpose of this Policy, “employment opportunity” is defined as job access and placement, retention, promotion, professional development, and salary.}\\
\]

\[5 \text{For the purposes of this Policy, the reference to “gender identity” shall be interpreted to include protection against gender stereotyping based on a person’s gender expression. In other words, gender stereotyping is impermissible discrimination or harassment based on a failure to conform to stereotypical gender norms.}\\
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V. Rationale for the recommendation

Michigan State University sums up its mission as “Advancing Knowledge. Transforming Lives.” This phrase acknowledges the University’s special capacity to affect the lives of all Michigan’s residents through its research, educational and community service functions. A crucial part of the University’s mission, then, is to remain at the forefront of advances in knowledge, to remain ready to adapt to scientific and social change, and to use the talents of all members of the University community to carry out its mission. Indeed, an important rationale for the University’s antidiscrimination policy (ADP) in the first place is that it contributes to the open and inclusive environment that scholarly knowledge requires to advance. Consequently, it is in the University’s interest to change its policies and practices in ways that make best use of all its students, staff and faculty when it becomes clear that current practices fail in some respect to do so.

Over the course of both the first and second gender identity committees’ meetings, we have learned, from our research and from accounts of University students and staff, that some of the University’s policies and practices create difficulties for people who are transgender. Matters that most people give little thought to in their daily lives, such as using a restroom, pose serious dilemmas for transgender employees and students. Indeed, any circumstance that involves gender segregation, such as residence hall assignment and sports team participation, poses such dilemmas for transgender people. These situations hurt the University as a whole insofar as it means that transgender people are unable to contribute fully to University life, and in that they impair the University’s ability to attract talented staff and students or to serve all of Michigan’s residents effectively.

The GI-2 committee’s work also indicates that several adaptations could be made to University policies and practices that would alleviate some of the difficulties transgender staff and students face while at the same time responding to the concerns of other members of the University community, with little disruption and at minimal cost. The single most important change the University could make is incorporation of gender identity into the University’s ADP. (Other recommendations, which may be considered independently of a change in the ADP, are discussed later in this report.) Beemyn (2003) and Beemyn, Curtis, Davis and Tibbs (2005) find that non-inclusion under anti-discrimination policies is a leading concern of transgender staff and students at universities.

Consistent with this research, our committee has found through interviews with transgender faculty, staff, and students that this addition would reduce uncertainty for transgender faculty, staff, and students with respect to employment and other transactions with the University. Moreover, this addition to the ADP would recognize their value and contribution to the University and its mission.

Furthermore, adding gender identity to the University’s ADP likely will enhance the University’s capacity to attract talented staff, faculty and students. Inclusion of gender identity into an employer’s ADP is of course an important consideration for a transgender job recruit. Beyond
this, however, the breadth of a workplace’s ADP, including gender identity, is an important signal to non-transgender job candidates about a workplace’s commitment to diversity and openness to new ideas and creative thinking in general (Florida 2002).

Moreover, inclusion of gender identity in the University’s ADP will assist the University in obtaining external grants. For instance, the director of the University’s Office of Lesbian, Bisexual, Gay and Transgender (LBGT) Concerns, Brent Bilodeau, has stated to the committee that some private foundations now require that gender identity be part of an institution’s ADP as a condition of eligibility. As a consequence, his office is currently ineligible for thousands of dollars in external grants for which it would otherwise be competitive.

At the same time, addition of gender identity to the University’s ADP by itself will not require significant new expenditures or significant changes in current University policies or practices. Indeed, a recent survey of universities that have incorporated gender identity into their ADPs finds that the change generally has not prompted significant alterations in university practices (Beemyn and Pettitt 2006). We discuss in more detail, in section VII below, the implications of this change in the ADP for specific University policies and practices, including employment opportunity, access to University residence halls, and educational, athletic, social, cultural, and other University activities. In summary, however, we conclude that current University practices that require gender segregation serve legitimate University purposes under the ADP, such as providing for the safety and privacy of all members of the University community. Therefore the University in general must have a high degree of flexibility in weighing the needs of transgender faculty, staff, and students with the needs of other members of the University community.

Consequently, our committee’s recommended ADP change will not impose significant new costs on the University nor reduce its ability to flexibly respond to the needs of all members of the University community. At the same time, our recommendation will help to address some of the concerns of transgender faculty, staff, and students and enhance the University’s capacity to recruit talented employees and students and compete for external funding. For these reasons, we recommend adoption of gender identity into the University’s ADP.

VI. Definitions

A) Definitions of gender identity and gender expression.

Definitions of gender identity, and the closely related gender expression, have varied considerably in the past, partly because of differences among those writing the definitions and partly because of differences among the intended readers of the definitions. Members of the GI-1 committee responded to that variability by presenting several examples of definitions, by selecting elements of these definitions that seem particularly apropos for the MSU community, and by stressing that the MSU community will need to be educated as to the meanings and implications of the terms involved.

Since the presentation of the GI-1 report there has evolved a greater agreement as to the meanings of gender identity and expression. Several such definitions are presented in Appendix
E. On the basis of that research, we have formed the following definitions that are consistent with the current MSU anti-discrimination policy (ADP), that are likely to be accepted by a considerable majority of the affected persons, and that would serve as a basis for discussion in the wider MSU community:

Gender identity is generally defined as a person’s felt sense of maleness or femaleness, or something in between or altogether different.

Gender expression is generally defined as the expression of the characteristics and behaviors often culturally associated with maleness or femaleness.

B) MSU’s ADP, current and proposed.

The relevant portion of MSU’s Anti-Discrimination Policy currently reads as follows (http://www.hr.msu.edu/HRsite/Documents/Faculty/Handbooks/Faculty/UnivPolicies/Univ+Pol+-+Anti-Discrimination+Policy):

**Article II. Prohibited Discrimination**

Unlawful acts of discrimination or harassment are prohibited.

In addition, the University community holds itself to certain standards of conduct more stringent than those mandated by law. Thus, even if not illegal, acts are prohibited under this policy if they:

1. Discriminate against any University community member(s) through inappropriate limitation of employment opportunity, access to University residential facilities, or participation in educational, athletic, social, cultural, or other University activities on the basis of age, color, gender, disability status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, veteran status, or weight; or

2. Harass any University community member(s) on the basis of age, color, gender, gender identity, disability status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, veteran status, or weight.

These prohibitions are not intended to abridge University community members' rights of free expression or other civil rights.

As may be seen from the above, item 1 of Article II prohibits discrimination on the basis of gender or sexual orientation, but not gender identity. Item 2 does prohibit harassment on the basis of gender identity, which is described in footnote 5 as follows:

For the purposes of the harassment clause of Article II, the reference to “gender identity” prohibits harassment based on (a) any gender-specific behavior, appearance or expression of an individual that departs from the harasser’s expectations for gender-specific behavior, appearance or expression or (b) any change of gender, completed or in process.

The definitions presented in this footnote are somewhat at variance with the commonly accepted definitions of gender identity and expression given earlier. Part (a) of the footnote corresponds to what we have defined above as gender expression, dealing as it does with behaviors and appearances. However, part (b) refers only to a “change of gender” and so is narrower than our current understanding of gender identity.
The GI-2 committee has found that the meaning of “gender identity” evolves in case law and in practical application. In its most restrictive definitions, gender identity encompasses one’s psychological or felt sense of gender. For clarity’s sake, the GI-2 committee also recommends the addition of a footnote to the term gender identity in the ADP to make clear its intent that the term extends protections to individuals based on gender expression and their nonconformance with stereotypical gender norms. This addition is consistent with current legal understanding of gender stereotyping, as discussed in Smith v. Salem (see appendix C). Thus, to bring MSU’s ADP into line with those of other institutions of higher education, including many of our fellow CIC universities, would require (1) inserting the phrase gender identity into the list of items protected from both discrimination and harassment, and (2) altering the accompanying footnote as shown below.

Article II. Prohibited Discrimination (Revised, with new text bolded)

Unlawful acts of discrimination or harassment are prohibited.

In addition, the University community holds itself to certain standards of conduct more stringent than those mandated by law. Thus, even if not illegal, acts are prohibited under this policy if they:

1. Discriminate against any University community member(s) through inappropriate limitation of employment opportunity, access to University residential facilities, or participation in educational, athletic, social, cultural, or other University activities on the basis of age, color, gender, gender identity, disability status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, veteran status, or weight; or

2. Harass any University community member(s) on the basis of age, color, gender, gender identity, disability status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, veteran status, or weight.

These prohibitions are not intended to abridge University community members' rights of free expression or other civil rights.

\textsuperscript{4} For the purposes of this Policy, the reference to “gender identity” shall be interpreted to include protection against gender stereotyping based on a person’s gender expression. In other words, gender stereotyping is impermissible discrimination or harassment based on a failure to conform to stereotypical gender norms.

C) Further discussion of gender identity and transgender.

In his memorandum of April 8, 2003, responding to the GI-I report, then-President McPherson expressed concern with the phrase “ambiguous or fluid,” suggesting that administrators might have difficulty protecting the rights of affected individuals whose characteristics are not clearly defined. The GI-2 committee recognizes the validity of this concern. Gender identity continues to be recognized as not always being clear-cut in all cases. As Brown and Rounsley (1996, p. 20) write:
From a sexological point of view, there are at least eight factors—five biological and three social and psychological—to be considered in determining sex. The biological determinants are chromosomes, hormones, gonads (glands that produce sex hormones), internal sexual and reproductive organs, and external sex organs. The social and psychological determinants are gender or rearing, gender role, and gender identity.

With so many factors involved, misalignments can give rise to gender identities that span the normal dichotomy of male and female.

*Gender identity* and *gender expression* are terms often used in relationship to transgender individuals. The term *transgender* refers to individuals whose gender identity and/or gender expression differs from biological sex assignment at birth. Transgender terminology has included identities such as transsexuals, male-to-female (MTF) persons, female to male (FTM) persons, transvestites, cross-dressers, gender benders, gender variant, genderqueer, gender nonconforming and ambiguously gendered (see Appendix E for additional definitions). While some transgender individuals, such as transsexuals, often seek gender reassignment surgery, not all do. Others, such as individuals who identify as genderqueer, experience gender in more fluid ways, existing outside traditional, binary, notions of male or female identities. Many transgender individuals also challenge norms surrounding socially constructed, binary gender systems, which categorize all identities and related behaviors into one of two, narrowly defined “male” or “female” options. In a recent study of transgender college students, one participant, “Jordan,” used such fluid, non-binary terms to describe self (Bilodeau 2005, pp. 33-34):

I’d use the word “transgender.” I’d also use “non-operational female to male.” I’d also use the word “genderqueer.” I identified as a feminist before identifying as trans. It was really imbedded in me. It played a big part in my decision not to have surgery. I’ve tried with my identity not to reinforce the gender binary system, and options have been limited to the trans community by focusing so much on transsexualism. The only option is if you’re male to become female, or vice-versa. Transgender youth have felt the binary gender system is not for them.

In a majority of cases, transgender individuals have a well-defined sense of their male or female gender, which in these cases lies at the opposite pole of the dichotomy from their biological sex. The gender identity of such individuals would not likely fall under the heading of “ambiguous or fluid” referred to above. However, in some cases an individual’s felt sense of gender is neither male nor female, at least not all of the time.

Here are two additional self-reports, from “Joan” and “Pat” (Bolin, 1997, p. 464):

Joan: I’m a transsexual. I’m different from many in that I do not, at this time at least, feel a need to “fade into” society and hide my past. Rather, I have come out to all around me, family, friends and co-workers…. I am not yet living as a woman full time, but I am just starting a part-time job where I’ll be doing a…job as Joan. On my regular job (three days a week) I’m still Jerry…. I don’t really believe that I’m a “woman trapped in a man’s body,” I’m not sure what I am, only that making this transition is more important to me than anything else in my life.

Pat: I currently maintain a full-time androgynous persona, eliciting as many “ma’ams” as I do “sir” responses. My goal is to be free to present myself full female all the time, while still expressing a healthy degree of androgyny. Living as a woman gives me a much fuller range of expression than as a man. In time, I may feel more comfortable confronting the world with the unabashed ambiguity of total androgyny.
It is apparent from these examples that the variable nature of the felt gender identity of some individuals makes it impossible to remove the ambiguity to which McPherson referred. However, we can state that, over the intervening years between the addition of gender identity to the ADP of numerous other institutions of higher learning, no problem of implementation has arisen that might be ascribed to this variability. Addressing the needs of such individuals on a case-by-case basis has apparently been successful.

VII. Implications of a revised ADP for University policies and practices

Question five of the McPherson memo requests that ECAC explore the implications of the addition of gender identity to the University’s anti-discrimination policy (ADP) on “employment opportunity, access to University residential facilities, or participation in other ADP-enumerated activities.” The question specifically requests guidance on what situations would constitute an appropriate limitation on a claim to gender identity discrimination. According to the ADP, a limitation in any of these areas is inappropriate if it does not serve a “legitimate University purpose.”

The definition of a legitimate University purpose and appropriate limitations is specific to the context of each area of University activity. Thus, the GI-2 committee approached the task of defining appropriate limitations by analyzing specific areas of University activity in which a charge of gender identity discrimination would most likely occur: employment opportunity, assignment to University housing, access to restroom and locker room facilities, University records, academic affairs, participation in student organizations, and participation in varsity and intramural athletics. For each of these activities, we discuss current University policies and practices, the GI-2 committee’s assessment of appropriate limitations, and additional recommendations beyond revising the ADP that this committee makes concerning university policies and practices to better accommodate the needs of transgender faculty, staff, and students.

A) Employment

1) Current Legal Protections.

On August 5th, 2004, the Sixth Circuit Court of Appeals\(^6\) issued a decision that broadened the scope of sex discrimination claims based on Title VII of the Civil Rights Act of 1964\(^7\) and the Equal Protection Clause of the United States Constitution.\(^8\) In this case, Smith v. City of Salem, the Court held that a transgender Ohio firefighter was discriminated against on the basis of his sex because his gender-related expression failed to conform to his employer’s stereotypical assumptions about masculinity. In reaching its decision, the Court recognized that “Title VII’s reference to ‘sex’ encompasses both the biological differences between men and women and

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\(^6\) The Sixth Circuit Court of Appeals includes Michigan within its jurisdiction.

\(^7\) Title VII prohibits discrimination in employment based on race, color, religion, sex, or national origin.

\(^8\) “Under the Equal Protection Clause of the Fourteenth Amendment, individuals have a right to be free from employment discrimination on the basis of sex in public employment.” 378 F.3d.
gender discrimination, that is, discrimination based on a failure to conform to stereotypical gender norms.” Accordingly, the Court ruled that “sex stereotyping based on a person’s gender non-conforming behavior is impermissible discrimination, irrespective of the cause of that behavior; a label, such as ‘transsexual,’ is not fatal to a sex discrimination claim where the victim has suffered discrimination because of his or her gender non-conformity.”

2) University Policy Considerations.

Consistent with the Smith case, it is the Committee’s view that the current prohibition against gender discrimination contained in the ADP includes a prohibition against sex stereotyping in employment. As articulated in Smith, gender discrimination can be defined as “discrimination based on a failure to conform to stereotypical gender norms.” While the Sixth Circuit has not yet extended such protections beyond the employment context, the Committee believes that similar protections should be enacted for the other protected activities in the ADP: access to University residential facilities and participation in educational, athletic, social, cultural, or other University activities.

3) Appropriate Limitations.

If the category of gender identity is included within the protections of the ADP, discrimination based on gender identity will be prohibited. Discrimination is defined in the ADP as an “inappropriate limitation,” in other words, a limitation that is not directly related to a legitimate University purpose. In determining what an appropriate limitation in the employment context is, the Committee believes that the University should be governed by applicable case law interpreting gender discrimination in employment, where such case law exists. Where there is an absence of case law or an ambiguity within the case law, the Committee looks to the definition of “inappropriate limitation” contained within the ADP. Where an employing unit can articulate a limitation on employment that is related to a legitimate University purpose, the unit will not be found to have engaged in discrimination under the ADP.

4) Student Residence Life Employees (Mentors).

After long debate, the Committee decided to write a separate section regarding the application of Smith to student residence life employees, particularly mentors. The Committee felt that, although covered under Smith, this grouping of employees merited special attention because of the particular sensitivity to the employee’s living in the residence halls.

As discussed above, the Smith case prohibits discrimination against prospective or existing employees, including mentors, based on sex-stereotyping. A reasonable interpretation of Smith is that the University cannot refuse to hire or take adverse employment action against a mentor for being transgender. What Smith does not provide is clear guidance on the degree to which the University has discretion to determine the appropriate assignment of a transgender mentor.

MSU’s residence halls currently offer several different housing options, with varying degrees of sex-segregation. These options include single sex buildings (i.e., Van Hoosen), single sex floors, single sex wings (i.e., each floor will have a "men's wing" and a "women's wing,") and co-ed
floor living options. Residence Life assigns mentors of the same sex for each floor or wing of each residence hall that is sex segregated, as applicable. Co-ed wings of floors have only one mentor, which means that the mentor can be of either sex.

The Committee has learned that Residence Life reviews each mentor assignment on a case-by-case basis. Residence Life takes into consideration the residential preferences of all mentors, and transgender mentors often seek assignment to a co-ed floor. While Residence Life often honors such requests, the department retains the right as employer to make assignments it deems most appropriate for its staff. This is based on the legitimate University interests of responding to resident privacy concerns. While recognizing the importance of making every reasonable effort to accommodate the desires and needs of transgender mentors, the GI-2 committee feels that the current Residence Life practice is consistent with the relevant case law and would remain acceptable if the proposed amendment to the ADP is approved.

B) Assignment to University Housing

President McPherson’s memo (Appendix B) calls for clarification of the original GI-1 report on three points with respect to residence halls: a) “how is the assignment of students in residence halls to be handled and is there an expectation that accommodations would have to be made in every residence hall when requested,” b) “if a student’s gender is in question for housing assignment, or after housing has been assigned, will University Housing have the ability to gain information from the student to make the best assignment or a change in assignment without being subject to a charge of discrimination”; and c) in what situations would there be appropriate limitations on housing assignments and residence life concerns generally for transgender students in University housing. In addition to these questions, the Committee has considered modifications to University housing arrangements that would better serve its transgender constituency and hence serve the long-run interests of the University.

This section of the report first discusses current University policies and practices in assigning students, and particularly transgender students, to campus housing. It then discusses the implications of adding gender identity to the University’s ADP for housing services and residence life, suggesting appropriate limitations for implementation of the modified ADP. Finally, it makes recommendations for changes in University practices in accommodating transgender students, whether or not the proposed ADP modification is adopted.

1) Current University policies and practices

Michigan State University offers a wide variety of housing options for undergraduate and graduate students and faculty, including both residence halls and apartments. Procedures for assignment to residence halls and apartments differ, but both may involve assignment in part on the basis of gender and hence may raise issues for the assignment of transgender students.

i) Gender and housing assignment for University Apartments

The University offers apartment housing for both faculty and staff and for graduate and undergraduate students with sophomore standing and above. Most University apartment housing
is not gender-segregated, with the exception of Van Hoosen Hall, which is an all-female apartment complex. Students may request a roommate for an apartment, but the University does not assign roommates. However, the University does require that roommates be of the same gender. The Student Apartment application includes a gender question (see Appendix F).

ii) Gender and housing assignment to residence halls

With the exception of Owen Graduate Center, the University’s residence halls house undergraduate students. Freshmen- and sophomore-level students are required to live in campus housing (though this requirement is currently waived for sophomore students). Freshmen are not eligible to apply for housing in University apartments and hence are expected to live in the residence halls. In addition, many upper-class undergraduate students choose to continue living in residence halls after their freshmen year.

All University residence hall buildings are co-ed. However, university residence halls offer both single-sex and co-ed floors. Single-sex floors may have either a suite-style bathroom arrangement (a shared bathroom by two adjacent rooms) or community bathrooms (a shared floor bathroom). Co-ed floors have a suite-style bathroom arrangement. Rooms and suites are never co-ed. Most student rooms are designed for two roommates. Typically, single rooms are available only for resident assistants and other residence hall staff.

Owen Graduate Center provides dormitory-style housing for graduate students and for undergraduate students over 21 years old. Though most rooms are singles housing one student each, some rooms are doubles, and the building uses a suite-style bathroom arrangement. Most floors are co-ed by suite, but some floors are maintained as single-sex floors.

Room assignments are made on the basis of a housing application which each student planning to live in a University residence hall must complete (see Appendix G). Students applying must indicate their gender (male or female) on the application. The undergraduate application also includes an option for indicating “any health- or disability-related needs,” but no place is given to indicate gender identity status in particular. Students may also indicate preferences on room assignment, including living-learning requests, roommate preferences (by name), and environmental preferences (smoke-free, alcohol-free, quiet housing, and single-sex or co-ed floor). Room assignments are made giving priority first to living-learning requests, then roommate preferences, and finally environmental preferences. Gender-based considerations in assignment are determined on the basis of the gender indicated by the student on the housing application’s gender question. Applications from students who indicate a special need related to health or disability are referred to the Resource Center for Persons with Disabilities for follow up to determine housing arrangements on a case-by-case basis.

University Housing has no mechanism for determining whether a student identifies as transgender before assignment and move-in, nor has it any written policy on assigning transgender students to rooms. To date, University Housing also has no record of cases of transgender students requesting special housing arrangements before move-in. Consequently, such needs have been addressed on a case-by-case basis by Housing staff at the floor or building level after assignment and move-in.
Instances have been reported, however, to the Office of LBGT Concerns of transgender students who have responded to the housing application’s gender question with their identity gender and hence been assigned to a room on the basis of gender identity rather than biological gender. In these instances, Housing’s practice has been to reassign these students to a housing option on the basis of the person’s biological gender.

2) Appropriate limitations

Under a version of the University’s anti-discrimination policy that includes gender identity, the University would have an obligation to offer a housing assignment to transgender students. At the same time, the University would retain the prerogative to offer housing assignments to students, including transgender students, on the basis of factors that it deems appropriate, including biological gender. This prerogative includes both initial housing assignments, on the basis of information provided by the student before move-in, and changes in housing assignment after initial assignment and move-in. In the GI-2 committee’s opinion, making room and floor assignments on the basis of biological gender or other appropriate factors serves a legitimate University purpose, insofar as it provides University Housing with the flexibility needed to accommodate the privacy concerns of all the residents it serves.

3) Additional recommendations

That said, the Committee also recommends that the University adopt reasonable policies and practices that will better accommodate the housing and residential life needs of transgender students. These recommendations may be adopted independently of any consideration of a change in the ADP, and include:

a) Continued support for current practices in University Housing and Residential Life to identify reasonable, appropriate and mutually agreeable housing options for transgender students on a case-by-case basis.

b) Encouraging University Housing and Residential Life to identify and work with transgender students to make the best possible arrangement for that student before a housing assignment is made. This may include alteration of the housing application form to provide space for indicating transgender status, and making information available on a University Housing web page on housing options open to transgender students.

c) Following the practice of such other CIC institutions as Indiana University, we encourage University Housing and Residential Life to work with stakeholders, student organizations and appropriate University units, such as the Office of LBGT Concerns, both to identify campus housing arrangements that best meet the needs of transgender students and to explore means by which Housing and Residential Life can make reasonable alterations to current policies and practices to better serve the needs of its transgender residents.
C) Implications for restroom and locker room facilities

President McPherson’s memo (Appendix B) calls for clarification of the original gender identity report on two points with respect to restroom and locker room facilities: “what facility modifications would be required by this amendment to the ADP,” and in what situations would there be appropriate limitations on access to University restroom and locker room facilities by transgender faculty, staff, and students. In addition to these questions, the Committee has also considered modifications to facilities that would better serve its transgender constituency and hence serve the long-run interests of the University.

This section of the report first discusses present University obligations in providing restroom facilities to faculty, staff, and students, and how the University meets those obligations, and then suggests criteria by which facilities policy can be evaluated. It goes on to discuss the implications of the proposed addition of gender identity to the anti-discrimination policy for facilities, suggesting appropriate limitations for implementation of the modified ADP and making recommendations for facility modification that would better accommodate the needs of transgender students, whether or not the GI-2 committee’s recommended ADP is adopted.

1) Current University obligations

Because the University provides restroom and locker room facilities for staff, faculty, and students, it has an obligation to be sure that these facilities are open to all of its employees and students. That is, the University cannot provide restrooms to some employees and students and not others.

Consequently, transgender faculty, staff, and students must be allowed access to campus restrooms and locker rooms. In practice, this means that a University employee or student who identifies as transgender cannot be denied access to both the men’s room and to the women’s room.

2) Current University arrangements

The University currently provides three types of public restroom facilities to faculty, staff, and students:

a) Multi-stall same-sex facilities
b) Same-sex locker room facilities
c) Single-stall unisex (or “family”) facilities

Multi-stall same-sex facilities are the most common facility on campus, available in almost every building that houses faculty, staff, and/or students on a continuing basis. Locker rooms exist in campus buildings with intramural recreation facilities. Access to same sex restrooms and locker rooms is regulated by the University’s restroom ordinance, which prohibits persons in most circumstances from using the restroom designated for the opposite sex. The ordinance does not make clear whether “sex” is with reference to a person’s biological gender or to one’s identity gender, and it is thus ambiguous in its implications for transgender persons. Based on interviews
with staff enforcing the policy at campus recreational facilities, however, the guiding rule has been to interpret this provision in terms of legally-recognized gender (such as birth certificate or driver’s license).

Unisex facilities are available in many campus buildings but are notably absent from many heavily-trafficked buildings, such as the Hannah Administration Building, the Main Library, and the MSU Union (see Appendix H). However, the University’s latest construction standards call for the installation of at least one unisex facility on each floor of new campus buildings. As the name implies, these facilities are open to any person in the University community, without respect to gender.

3) Criteria for evaluating policy

Restroom facility arrangements touch on three areas of concern: convenience, safety, and privacy. In discussing facilities, the GI-2 committee also recognizes that MSU policy also reflects broader social standards for public restroom use in the United States. Current policy responds to those concerns for much (but not all) of the University community:

i) Convenience

Convenience in using facilities refers to the number and availability of facilities. Most campus buildings meet this criterion for most faculty, staff, and students by providing at least one facility in the building and usually facilities on every floor.

ii) Safety

Safety in using restroom facilities is of paramount concern for many if not most faculty, staff, and students. Providing segregated facilities for women and men and providing lockable doors on single-stall facilities adequately address these safety concerns for most employees and students.

iii) Privacy

Privacy in using restroom facilities is also a concern to many if not most faculty, staff, and students. Both men and women may be uncomfortable being observed by members of the other gender (or by others, period) in using facilities. Again, sex-segregated facilities, with lockable stalls, and lockable doors on single-stall facilities have proven to be an adequate response for the university to these concerns for most employees and students.

In addition, the University has worked to accommodate the special needs of disabled persons for restroom and locker room facilities. The construction and regulation of campus restroom facilities generally comply with the Americans with Disabilities Act, which sets standards for accommodating the needs of those who are disabled in the workplace and in public accommodations. These arrangements include: modification of multi-stall facilities for wheelchair accessibility; modification of locker room facilities to include showers that accommodate persons with disabilities; single-stall, wheelchair accessible facilities where multi-
stall facilities cannot be modified; and alteration of the University restroom ordinance to permit opposite-sex caregivers to access the facility of their charge in order to provide assistance.

4) Difficulties posed by current University policies for transgender faculty, staff, and students

Though current University policies regarding construction, modification and regulation of restrooms and locker rooms respond adequately to the needs of most of the University population, they respond less well to the needs of transgender faculty, staff, and students. The same three types of concerns noted above also concern transgender persons: convenience, safety, and privacy.

i) Convenience

Transgender faculty, staff, and students are often in the position of working or taking classes in a campus building that does not have a restroom facility that is reasonably safe and private for them, such as a single-stall unisex restroom. Consequently, they must often leave a building to find a facility. Many transgender students are even in a position of having to plan their schedule around being able to find an acceptable restroom, or else they are forced to wait until they are in their residence to use the restroom.

ii) Safety

Transgender faculty, staff, and students who present themselves in their identity gender rather than their biological gender may face harassment or even assault when using the restroom facility of their biological gender (Beemyn 2005). Consequently, transgender persons voice safety in using same-sex restroom facilities as a top concern (Beemyn, Domingue, Pettitt, & Smith 2005). The ambiguity of the University’s restroom ordinance and the absence of unisex facilities in many campus buildings mean that University faculty, staff, and students who are transgender often must choose between risking harassment and risking violation of the University’s restroom ordinance.

iii) Privacy

Because of social stigma, many transgender persons wish to keep their transgender status private. However, some restroom, locker, and shower room arrangements pose the potential for one’s gender identity to be revealed, because of evident anatomical differences or the use of prostheses. Common University arrangements, such as open shower areas and restroom stall barriers that do not reach the floor, then, pose privacy difficulties for many transgender persons.

In addition, transgender persons undergoing a gender transition face particular needs for restroom facilities that may not be readily accommodated. Some (but by no means all) transgender persons eventually seek to transition to living life in their identity gender, a transition which may eventually include sex reassignment surgery. Transgender persons choosing this route typically do so under the care and supervision of a physician and/or a mental health professional. The most widely accepted standards of care for persons with a diagnosed
gender identity disorder are established by the Harry Benjamin International Gender Dysphoria Association (2001) and may include psychotherapy, hormone therapy and/or sex reassignment surgery. These standards of care call for patients to undergo “real life experience” as a member of their identity gender before undergoing surgery or other permanent alterations, in order to experience life as fully as possible as a member of their identity gender. This includes, when possible, using the restroom facility appropriate to the identity gender. Current University policy makes this impossible without violating the University’s restroom ordinance and so fails to accommodate persons undergoing a medically supervised gender transition.

5) Appropriate limitations

The first paragraph of the University’s ADP states that the University may not “discriminate against any University community member(s) through inappropriate limitation of employment opportunity, access to University residential facilities, or participation in educational, athletic, social, cultural or other University activities” on the basis of those categories included within the ADP. Appropriate limitations are defined to be those that “are not directly related to a legitimate University purpose.”

There is some question as to what constitutes an inappropriate limitation, if gender identity is included in the University’s ADP, with respect to access to restroom and locker room facilities. It can be reasonably argued that access to restroom facilities is necessary in order to participate fully as a member of the MSU community. However, current restroom arrangements in many campus buildings do not meet reasonable standards of convenience, safety and privacy for transgender persons.

At the same time, the Committee recognizes the need for the University to accommodate the safety and privacy concerns of other members of the University community. Some may have religious or privacy objections to sharing a restroom with a person who differs in biological gender from their own. To the extent this is the case, maintaining same-sex restroom and locker-room facilities and restricting access on the basis of biological gender may serve a legitimate University purpose. Consequently, the existence of same-sex restroom facilities and an ordinance such as the MSU restroom ordinance need not contradict an ADP modified to include gender identity.

6) Additional recommendations

Though the Committee believes that an ADP change would not require any modifications, the Committee recommends that the University pursue facility modifications and/or policy changes that will better meet the convenience, safety, and privacy concerns of transgender faculty, staff, and students. These recommendations may be adopted independently of any consideration of a change in the ADP. Moreover, many of these recommendations will better serve the needs of many other members of the campus community, particularly people living with disabilities and families with young children:

- Continue support for campus building construction standards that place a unisex/family restroom on each floor of new buildings.
• Retrofit existing campus buildings with additional unisex/family restrooms. Unisex or “family” restrooms, particularly those that are single-stall with lockable doors, provide adequate safety and privacy for transgender persons, as well as for disabled persons with opposite-sex caregivers and families with young children. This could be done on a time frame that accommodates planned building renovations. The GI-2 committee recommends that highly-trafficked buildings be given priority over peripheral buildings.

• Modify locker room facilities to include unisex or “family” changing areas. As with restrooms, unisex facilities can accommodate the safety and privacy needs of transgender persons, as well as those of disabled persons with opposite-sex caregivers and families with small children. Other university campuses, including the University of Maryland at College Park, have recently made such modifications, thereby providing a standard which the University may adopt for guidance. Such changing areas could be accommodated at the IM West through existing auxiliary locker rooms and in the IM East with planned building modifications.

• Encourage University supervisors and managers to work with employees with special restroom needs to identify solutions on a case-by-case basis that satisfy all interested parties.

• Encourage the formation of a campus working group on restroom and locker room facility modifications and arrangements, operating in conjunction with Physical Plant, the Office of LBGT Concerns, and the Resource Center for Persons with Disabilities, to advise Physical Plant and other appropriate University units on modifications to facilities that better meet privacy and safety concerns of everyone on campus.

• Include privacy barriers or curtains in locker room shower areas. Open shower areas present obvious privacy concerns for persons who are transgender. Moreover, many fitness center participants, both male and female, prefer private shower arrangements to an open shower area.

• Interpret the University’s restroom ordinance to allow use of the facility corresponding to one’s gender expression. As currently interpreted, the University’s restroom ordinance requires that a transgender person use the facility corresponding to his/her driver’s license gender. This poses privacy difficulties for the transgender person who expresses gender (through dress and behavior) in a manner consistent with personal gender identity, rather than biological gender. In that circumstance, using the restroom of one’s biological gender will likely reveal that the individual is transgender. Moreover, in that circumstance, other facility users might find discomfort or a privacy violation with a person dressed and presenting as a member of the opposite gender within the facility. Interpreting the restroom ordinance to allow use of the facility based on one’s gender expression would help to reduce the discomfort and privacy concerns of both transgender and other facility users.
D) Identification and University records

Both in the literature (e.g. Beemyn, Curtis, Davis and Tibbs 2005) and in interviews, the Committee has found that identification and University records are a chief concern to transgender faculty, staff, and students at MSU. Transgender students have reported that some MSU faculty have persisted in using the student’s name as it appeared on the class roster, even when the roster name was inconsistent with the student’s gender expression. Other faculty, staff, and students express the fear that use of their legal name on records will “out” or reveal their status as a transgender person, thereby violating their privacy. At the same time, some students report that the expense of a legal name change (about $150 in Michigan) and the possibility that a legal name change would be revealed to family deters them from altering their name that way. Consequently, many transgender students seek University identification by a preferred name that is consistent with their gender expression, without the requirement of a legal name change.

1) Current policy and practices

Michigan State University identifies faculty, staff, and students by legal name (and often legal gender) on official records and on many other documents, including diplomas, transcripts, ID cards, e-mail, and class rosters. The University establishes legal name and gender from government-issued documents, such as a social security card, birth certificate, driver’s license, passport, or court records.

Faculty, staff, and students who obtain a legal name change or gender change may alter their name and/or gender on University records through the Registrar’s office. According to Dugald McMillan, the University’s Senior Associate Registrar, faculty, staff, and students may obtain a name or gender change in University records and a new ID card with no charge upon presenting a government-issued document that establishes a legal name or gender change. For students, the name change takes effect immediately after the Registrar’s office enters the change into the Student Information System. The University charges a $50 fee for issuing a new diploma, even in cases of a legal name change.

Faculty, staff, and students may alter their MSU net ID free of charge with a legal name change, or for a $10 charge otherwise (see http://help.msu.edu/downloads/netidservices/netidchangeform.pdf)

2) Appropriate limitations

If the category of gender identity is included within the protections of the ADP, discrimination based on gender identity will be prohibited. Discrimination is defined in the ADP as an “inappropriate limitation,” in other words, a limitation that is not directly related to a legitimate University purpose. In determining what an appropriate limitation in the context of identification and University records is, the Committee believes that the University may set limitations on identification and record changes that serve to reduce the likelihood of fraud and to enhance public safety. Thus, consistent with current University practices, the Committee believes that the
University may require documentation of a legal name and/or gender change before altering any University records.

3) Additional recommendations

While the Committee recognizes that use of a person’s legal name in University records may serve legitimate University purposes, we also believe that for many types of University documents (e.g., class rosters), the use of a person’s preferred name poses little apparent security concern. At the same time, use of one’s preferred name on records and documents such as class rosters and University ID cards can respond to the privacy concerns expressed by transgender faculty, staff, and students. Moreover, allowing the substitution of a preferred name on at least some University documents holds benefits for many who are not transgender. For instance, substitution of a preferred name on class rosters can ease the task many faculty face in learning students’ preferred names.

Indeed, the Transgender Law and Policy Institute (2006) describes a number of institutions that have introduced streamlined procedures for assisting transgender students in changing gender designation and name on all campus records, such as electronic and print directories, identification cards, and files in financial aid, admissions, registrar’s office, and the health center. Transgender students at Ohio State University who legally change their names can complete a form with the registrar to alter the gender and name on all college records. At the University of Maryland, transgender students may change records provided that they obtain a letter of support from a mental health professional. The University of Vermont allows transgender students who may not be in a position to change their name and/or gender legally to obtain an ID card with a name other than their birth name.

Consequently, the Committee recommends that the University, in consultation with appropriate units and stakeholders, investigate the possibility of allowing students, staff and faculty the option of adopting a preferred name on some University records, such as student ID cards, class rosters, and residence life documents.

E) Academic Affairs

The University’s primary instrument for “advancing knowledge and transforming lives” is its academic function: that is, educating its students. In this section, the committee discusses the implications of its recommendations for academic affairs.

1) University policy considerations

Consistent with principles of academic freedom, the University gives broad discretion to University academic units and faculty in the planning and management of University degree programs and courses. Even so, academic units and faculty are expected to carry out their functions in a manner consistent with the University’s ADP. Since gender identity is not currently included in the University’s ADP, an academic unit or faculty member could adopt practices that discriminate on the basis of gender identity, so long as the practice did not constitute gender identity harassment.
The committee has learned from the testimony of transgender students and faculty that, in some circumstance, allegations have been made that University faculty have indeed acted on biases regarding gender identity in grading students and in course practices. One student, for instance, reported that a professor had refused to grade the exam of a transgender student who had used his preferred name rather than his legal name on the exam. Though perhaps rare, such instances raise questions about the implications of an ADP change for how faculty may evaluate students and manage their courses.

2) Appropriate limitations

If the category of gender identity is included within the protections of the ADP, discrimination based on gender identity will be prohibited. Discrimination is defined in the ADP as an “inappropriate limitation,” in this context a limitation that is not directly related to a legitimate University purpose. Consequently, academic units and faculty would have an obligation to adopt policies and practices in degree and course planning and management that provide students with educational opportunities and that grade student performance without respect to student gender identity, unless those practices serve a legitimate University purpose.

3) Internships and experiential learning

To respond to specific concerns raised by the University administration, the GI-2 committee decided to write a separate section addressing the implications of an ADP change for University degree programs with internship and experiential learning requirements. Of particular concern is how the University’s obligation to transgender students changes under a revised ADP with respect to placement in internships and service and experiential-learning opportunities. The concern arises because external organizations are not bound by University policies on nondiscrimination and harassment. Hence questions arise as to appropriate limitations on University response when a student experiences difficulties in finding or completing an internship because of gender identity.

To get a better sense of how University academic units presently handle gender identity issues in internship placement, members of the GI-2 committee spoke with Cassandra Book, associate dean for external relations and student affairs in the College of Education. This college routinely requires service learning experiences and a student-teaching internship for its degree and teacher certification. Though the college has not yet, to Dr. Book’s knowledge, had a transgender student reach the internship stage of the program, the college does on occasion have students who are rejected or dismissed from internships because of personal dress or behavioral issues. Dr. Book indicated that the college’s practice in those cases is to inform the student of the difficulty with the initial placement and to work with the student to find an alternative placement. Because of the volume of possible internship placements available, finding an initial or alternative placement has rarely proven problematic, except in cases where a student has a very narrow content specialization (e.g. Chinese language). Dr. Book did not feel it would be difficult to place or find an alternative placement for a student on the basis of gender identity. It is worth noting too that a check by the committee with the LGBT offices of three campuses that include
gender identity nondiscrimination policies (University of Massachusetts, Ohio State, and New York University) revealed no instances at those campuses where transgender students have reported difficulties in finding internship placements to fill program requirements.

That said, there remains the possibility that a future transgender student may encounter difficulties at an internship placement on the basis of dress or other aspects of gender expression. This may be particularly true for a student who is inexperienced at expressing their identity gender, or “passing”. In this case, the education college can work to find a suitable alternative placement, as in other cases in which dress and expression pose problems on an initial placement. Alternatively, the college can offer the option of deferring internship placement until the student is practiced in gender expression.

The committee also spoke with Julie Navarre, internship coordinator for the School of Social Work. The School of Social Work has had experience in placing transgender students in off-campus internships. Based on this experience and on the range of internships available, the school does not anticipate any difficulties in continuing to place transgender students. On the one occasion where concerns arose over a student in gender transition, the school was able to work with the student and agency to identify the student’s personal needs and to assure those could be accommodated in the internship context. In addition, the school has an established protocol for addressing cases in which a student reports discrimination or harassment during the internship.

If the category of gender identity is included within the protections of the ADP, academic units and faculty would have an obligation to provide students with access to educational opportunities, including assistance in identifying internship placements, without respect to gender identity. In the rare circumstance where gender identity precludes participation in an internship or other experiential learning opportunity, a determination will have to be made as to whether that situation constitutes an inappropriate limitation on a student’s educational opportunities under the ADP.

In determining what an appropriate limitation is in the context of internship and experiential learning placements, the committee believes the University may consider constraints such as the availability and willingness of external organizations to accept student applicants. In addition, upholding academic standards to assure educational quality serves a legitimate University purpose. Thus, in the context of internship placement, the University must offer the same opportunities to identify an internship placement to students regardless of gender identity, but need not guarantee any particular placement, or the student’s most preferred placement.

F) Participation in registered student organizations

1) Current MSU Policy

Students may form groups that are or are not registered student organizations (RSOs). Student groups that become RSOs receive benefits that non-registered groups do not, such as preferred access to University rooms and facilities and program funding from ASMSU (see http://studentlife.msu.edu/current_students/rso/benefits.htm). As a condition of registration, MSU’s Department of Student Life requires that RSOs include a provision in their constitution
that the organization does not discriminate in ways inconsistent with the University’s ADP (see
Consequently, RSOs, like units of the University, may not limit the participation of students in
the organization or the organization’s events on the basis of characteristics protected under the
ADP, unless doing so serves a “legitimate University purpose.”

Student organizations may, if they wish, include provisions in their constitutions that prohibit
discrimination on the basis of characteristics not covered under the University’s ADP. The
Committee notes that several student organizations have already extended such protection with
respect to gender identity.

That said, decisions on the registration of student organizations and on ASMSU funding for
RSO-sponsored events are content-neutral. That is, RSOs are not limited in their eligibility for
RSO status or their eligibility for ASMSU program funding on the basis of the organization’s
speech.

RSOs or MSU community members who believe that they have been unjustly discriminated
against (i.e., have been denied RSO status, funding, or access to a university-sponsored event)
because of membership in a protected category listed in MSU’s ADP can appeal to the MSU
Anti-Discrimination Judicial Board (ADJB) (see the GI-1 Committee’s report for more
information on the ADJB).

2) Fraternities and sororities

Fraternities and sororities at MSU may be either RSOs or private, off-campus organizations.
Fraternities and sororities that are not RSOs are not bound by the University’s ADP, and they set
non-discrimination policies at their own discretion or that of national organizations with which
they affiliate.

Fraternities and sororities that choose to become RSOs are required, like other RSOs, to include
a statement of non-discrimination in their constitution that is consistent with the University’s
ADP. Consequently, fraternities and sororities that are RSOs may not limit the participation of
students in the organization or the organization’s events on the basis of characteristics protected
under the ADP, unless doing so serves a “legitimate University purpose.”

3) Appropriate limitations

If the category of gender identity is included within the protections of the ADP, discrimination
based on gender identity will be prohibited. Discrimination is defined in the ADP as an
“inappropriate limitation,” in other words a limitation that is not directly related to a legitimate
University purpose. In circumstances in which an RSO can articulate a limitation on student
participation in the organization, or its activities, that is related to a legitimate University
purpose, the RSO will not be found to have engaged in discrimination under the ADP.

In determining what constitutes an appropriate limitation for student participation in an RSO’s
activities with respect to gender identity, the University and the RSO may be guided by the
provisions of Title IX, a federal law governing gender discrimination. Among other things, Title IX describes circumstances in which participation in athletics and service organizations such as fraternities and sororities may be limited on the basis of gender.

4) Additional recommendations

The GI-2 committee recommends that, as participants in the MSU campus community, RSOs and both RSO and non-RSO fraternities and sororities be eligible for training and education programs on gender identity and ways their organizations can be inclusive of transgender students.

G) Participation in varsity and intramural athletics

1) Varsity athletics

   i) Current situation and policy

At present, all of MSU’s varsity sports teams are gender-segregated. This segregation is not held to violate the University’s ADP with respect to gender because they comply with standards set for intercollegiate competition by the National Collegiate Athletic Association (NCAA) and therefore serve a legitimate University purpose. Consistent with Title IX, the NCAA standards provide for gender segregated teams “where selection for such teams is based upon competitive skill or the activity involved is a contact sport.” That is, gender segregation in teams promotes safe and fair athletic competition, in that it controls for biological gender advantages in athletic competition.

Though the committee is unaware of any transgender student participating in varsity athletics at present, in general MSU varsity athletic teams are guided by NCAA standards on the participation of transgender students. Currently, those standards allow a transgender person to participate on a varsity sports team corresponding to the person’s legal gender, as indicated on birth certificate or driver’s license. It should be noted that the NCAA is actively considering a change in this policy to conform to new standards adopted by the International Olympic Committee (IOC) in 2004 (see Appendix I).

   ii) Appropriate limitations

The first paragraph of the University’s ADP states that the University may not “discriminate against any University community member(s) through inappropriate limitation of employment opportunity, access to University residential facilities, or participation in educational, athletic, social, cultural or other University activities” on the basis of those categories included within the ADP. Appropriate limitations are defined to be those that “are not directly related to a legitimate University purpose.”

Should gender identity be added to the University’s anti-discrimination policy, this committee would consider compliance with NCAA standards on the participation of transgender students to be an appropriate limitation, to the extent that NCAA standards are set to assure safety (in the case of contact sports) and to assure fair athletic competition by controlling for gender
advantages. In the committee’s opinion, compliance with NCAA rules serves a legitimate University purpose.

2) Intramural/recreational athletics and club sports

   i) Current situation and policy

At present, MSU has at least nine registered club sports teams that are gender-segregated: dodgeball, ice hockey, lacrosse, rugby, soccer, tennis, ultimate Frisbee, volleyball and water polo (http://www.imsports.msu.edu/clubs/club_sports.php). Club sports, like other recognized student organizations, must register with the Department of Student Life each year. Registration requirements for student groups are set by the Vice President for Student Affairs and Services, in consultation with the ASMSU, COGS, and “other appropriate student groups” (http://www.studentlife.msu.edu/current_students/rso/documents/registering_organization.pdf) Registered groups must have a constitution that specifies how the organization is to be governed and that explicitly requires the organization to conform to the University’s ADP (Department of Student Life, “Procedures for Registering Your Student Organization on Campus,” http://www.studentlife.msu.edu/current_students/rso/documents/registering_organization.pdf). These procedures, then, currently provide student organizations, including club sports, with the discretion to form their own policies regarding the participation of transgender students, as this is not a category currently covered in the University’s ADP.

   ii) Appropriate limitations

Should gender identity be added to the University’s ADP, registered student organizations, including club sports, would be obliged to avoid inappropriate limitations on the participation of transgender students, i.e., limitations that do not serve a legitimate University purpose. Consequently, club sports wishing to limit participation by transgender students would be obliged to demonstrate that such restriction serves a legitimate University purpose. Title IX and the University’s experience in allowing gender-segregated club sports organizations suggests at least two circumstances under which appropriate limitations may exist.

a) Contact sports teams: Title IX allows gender-segregated teams for contact sports, which include “boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.”

b) Competitive club sports: A number of campus club sports teams are gender segregated to comply with the competition requirements of a national club sport organization. The University permits gender-segregated club sports teams because intramural competition rules require that teams be gender-segregated. Such rules are consistent with Title IX because they serve legitimate competition purposes (such as providing a way to account for differing athletic abilities between men and women).

Consequently, many national club sports organizations may adopt their own standards and guidelines regarding the participation of transgender athletes. Since transgender persons who transition after puberty may have some of the athletic qualities of their biological gender rather
than their identity gender, these guidelines may restrict their participation on a gender-segregated team in order to assure fairness in athletic competition. Compliance with such rules serves a legitimate University purpose, insofar as these rules serve the interests of student athletes and are based on reasonable considerations of athletic competition, consistent with Title IX.

At present, the NCAA and the IOC have somewhat differing guidelines on what restrictions are reasonable with respect to transgender persons. The NCAA allows competition on the basis of one’s gender as specified on state identifying documents (e.g. birth certificate or driver’s license). Consequently, a transgender person could compete in their identity gender only after completing gender transition and obtaining changes in birth certificate and other documents (if allowed under state law). The IOC’s standards are described in Appendix I, below. In the committee’s opinion, the University may appropriately limit participation on the basis of gender identity to conform to either prevailing NCAA or IOC standards. It should be noted that the NCAA is actively considering adoption of the IOC standards.

VIII. Implementation

A) Memorializing the intent

The GI-2 committee recognizes that questions may arise in interpreting and applying the revised ADP in individual cases and that as an ad hoc committee, it will not be available to provide administrators with guidance in those cases as to the committee’s intent. Thus, in addition to referring to this report, the GI-2 committee recommends that the University produce an Anti-Discrimination Policy User’s Manual to provide guidance on the conduct prohibited by Article II of this policy.

B) Education

The MSU community must be appropriately educated as to the meaning of gender identity and the implications of its protection in our antidiscrimination policy (ADP). However, different groups of students, staff, and faculty differ in the kinds of information they need, and they also differ in the ease with which educational programs can be delivered to them.

For purposes of this report, we distinguish five groups on the basis of the information required and the ease with which it can be delivered. The five groups are: (1) undergraduate students; (2) graduate students; (3) teaching assistants; (4) faculty; and (5) staff. Undergraduates require basic information on gender issues, human rights, socially acceptable behavior, and the law, and they are accessible through orientation and other campus-wide programs. Graduate students also need the same sort of information, but there are currently no programs for delivering this information to graduate students campus-wide. Teaching assistants are a special subset of graduate students, in that they need additional information on the implications of the ADP for any interactions they may have with students in courses they assist, and they are also more accessible to educational programs by virtue of their contractual responsibilities. Faculty deserve a complete package of information on gender identity, but delivery of this information will have to be organized on a unit-by-unit basis; campus-wide compliance can be mandated, but each unit should be able to
determine its own method of attaining that compliance. Finally, university staff will require differing educational packages, depending on the roles they play in university life. Because of their contractual relationship to the university, however, the university can mandate appropriately tailored educational programs for these employees.

Given this great diversity across our campus, we do not expect that a one-size-fits-all approach would be successful. Nevertheless, certain basic information can probably be usefully packaged for all target groups. This information would include: (1) the emergence of gender identity as a legitimate socio-cultural phenomenon, especially in institutions of higher learning; (2) definitions of gender identity and gender expression, especially as distinct from sexual orientation; (3) current applicable laws; (4) the MSU ADP, as well as the ADPs of other CIC universities; and (5) several examples of problems that could arise at MSU related to gender identity and how these problems might be appropriately addressed. Typical example problems could include restrooms, locker rooms, recreational sports, housing and roommates, residence hall advisors, classroom behavior, grade discrimination, and employment discrimination.

1) Format of educational programming

Educational programming can take on multiple formats and may be tailored to the needs of the various groups. MSU currently supports The Office of Lesbian, Bisexual, Gay, and Transgender Concerns; various other offices, including Academic Human Resources/Faculty Organizational Development, Office of Inclusion and Intercultural Initiatives, and Office of Human Resources/Human Resources Development, coordinate the delivery of resources and services to all members of the university community.

2) Suggestions for future programming:

To provide ongoing support and resources we suggest the implementation of annual, quarterly, weekly, and one-time educational and cultural events for the entire campus community and for targeted groups. Such activities might include:

- Annual programs that provide an opportunity for all individuals to gain knowledge and awareness of issues related to gender identity.

- A Speaker’s Bureau, building on current panel discussions administered by the Office of LBGT Concerns, that educates the campus and community about gender identity through panel discussions in classes, residence halls, Greek houses, and other university and local settings. Presentations might employ a combination of personal stories and educational information.

- Making resources available to campus and community on the topic of gender identity. Books and videos are currently available at www.lib.msu.edu/diversity/lgbt.htm.

- Development of informational videos, designed to inform and educate specific groups.
Development of interactive theatre workshops that are experiential in nature and involve four elements: (1) performance of provocative scenes that depict real experiences of an MSU student, staff, or faculty member; (2) interaction with audience members, who become participants as they question and at times replace the performers by becoming actors in a revised playing of the scene; (3) discussion, led by a trained facilitator, that is used to illuminate and clarify issues raised; and (4) follow-up support, in the form of educational materials or additional workshops, based on facilitator evaluation of the workshop.

Possible strategies for accomplishing the educational programming include:

- Lilly Program
- MULTI Workshops
- New Faculty Orientation
- AOP – Undergraduate Orientation
- Faculty and Organizational Development Website
- Office of Human Resources
- Office of Inclusion and Intercultural Initiatives – Prohibited Harassment
- Office of LBGT Concerns – current Gender Identity training programs.

In sum, the educational and cultural programs for gender identity issues should build on current Michigan State University networks and programs with the goal of positively changing behavior of students (undergraduate and graduate), staff, faculty and graduate teaching assistants. This can be accomplished by developing, implementing and assessing a variety of programs created specifically for the target groups.

**IX. Appendices**

- **Appendix A**: The report to ECAC of the first gender identity committee
- **Appendix B**: President McPherson’s Memo
- **Appendix C**: Smith v. Salem
- **Appendix D**: Names, Titles, and Affiliations of the Committee Members of the Second Ad Hoc Gender Identity Committee
- **Appendix E**: Some current definitions of gender identity and gender expression
- **Appendix F**: University Apartments student/grad student application
- **Appendix G**: University Residence Halls application
- **Appendix H**: Unisex restrooms on campus
- **Appendix I**: International Olympic Committee Press Release
- **Appendix J**: List of Meeting Dates
- **Appendix K**: List of Individuals the Committee Contacted for Consultation
Appendix L: List of Colleges and Universities by State that Have Added Gender Identity to Their Anti-Discrimination Policies, 1996-2006

Appendix M: Policy Changes to Include Transgender Students at Various American Colleges and Universities

Appendix N: Inclusion of Gender Identity by Other Big-10 Universities
Appendix A: The report to ECAC of the first gender identity committee
AD HOC GENDER IDENTITY COMMITTEE
Report to ECAC: Executive Summary

Last February, the ASMSU proposed that “gender identity” be added to the list of categories which provide the basis for protection against discrimination and harassment under the University’s Anti-Discrimination Policy. The standing committees of the Academic Governance system to which ECAC submitted the proposal for comment raised a number of questions about it. As a result, ECAC referred the proposal to an ad hoc committee composed of three faculty and three students for further study.

The Ad Hoc Committee on Gender Identity has studied the ASMSU proposal and related issues for the last five months. Its Report and recommendations are attached. The Committee’s recommendations were unanimous.

In sum:

1. Although the Committee was sympathetic to the ASMSU proposal, it concluded that the phrase “gender identity” lacks a standard and accessible definition and is poorly understood in the University community. Therefore, the Committee did not recommend that the ASMSU proposal be adopted.

2. (i) After careful study, the Committee determined that gender variant individuals should receive protection against discrimination and harassment under the Anti-Discrimination Policy. The Committee recommends that a footnote be added to the Anti-Discrimination Policy that would provide protection against gender stereotyping and for persons who are, or are assumed to be, transgender. For purposes of the Anti-Discrimination Policy, the Committee suggests that “transgender” persons include “(a) an individual whose gender self-image may be different from his/her biological sex or assigned sex at birth, whether or not that individual has taken any action to change his/her behavior or appearance (face, body, dress) to conform to the gender with which he/she identifies; and (b) an individual whose gender is, or is perceived to be, ambiguous or fluid.” The footnote would be attached to the word “gender” in the present text of the Anti-Discrimination Policy, and would have the effect of extending “gender” to encompass the set of issues faced by individuals who identify as desiring protection based on gender identity.

(ii) The Committee feels that the practical implications of making the amendments that it proposes to the Anti-Discrimination Policy warrant educational efforts at MSU about gender identity issues and, in most cases, a measured approach to resolving complaints alleging violations of the Anti-Discrimination Policy on gender identity grounds.
Ad Hoc Committee on Gender Identity, Report to ECAC

AD HOC GENDER IDENTITY COMMITTEE
Report to ECAC

1. Charge to the Committee

The Ad Hoc Committee on Gender Identity (to be called the Committee throughout this Report) acted under a charge from the Executive Committee of Academic Council (ECAC) of MSU. At its meeting of February 5, 2002, ECAC received a formal proposal from the Associated Students of Michigan State University (ASMSU) to include the phrase “gender identity” in the list of categories which provide the basis for protection against discrimination and harassment under the Michigan State University Anti-Discrimination Policy (ADP). (See Appendix I: ASMSU Proposal.)

ECAC referred the matter for comment to a number of standing committees in the MSU Academic Governance system. At the ECAC meeting of April 9, 2002, following receipt of reactions from these standing committees, the Committee was constituted by ECAC, with specific membership to be selected by Prof. Norm Abeles, then-Chairperson of ECAC. In consultation with student groups and others, Prof. Abeles selected a group of three MSU faculty members and three MSU students to serve on the Committee. (See Appendix II: Committee Members and Advisors.)

Prof. Abeles issued the following charge to the members of the Committee. (See Appendix III: Charge to the Committee.)

Charge 1. Consider the ASMSU proposal to amend the ADP to include a reference to "gender identity".

Charge 2. Advise whether it is appropriate to provide protection against discrimination and harassment on gender identity grounds under the ADP and, if so, how best to do so.

Charge 3. Select a chairperson for the Committee.

At the first meeting of the Committee, held on May 31, 2002, the Committee’s members selected Prof. Karen Chou as its Chairperson.

2. Goals and Activities of the Committee, May 31, 2002 to Present

Since its organizational meeting on May 31, 2002, the Committee has undertaken a thorough examination of the issues under its charge. In doing so, the Committee sought:

- to develop an understanding of the complex issues of gender identity;
- to learn the scope and nature of problems at MSU against which the inclusion of “gender identity” in the ADP would provide protection;
- to determine whether it is appropriate to provide protection against discrimination and harassment on gender identity grounds under the ADP;
• to determine how best to change the ADP to provide such protection, should such protection be, in concept, recommended;
• to ascertain the practical implications of providing such protection, should such protection be, in concept, recommended; and
• to provide commentary and suggestions to ECAC on related issues that might merit its future attention.

The Committee convened in a total of 31 meetings to consider issues under its charge. (See Appendix IV: Record of Committee Meetings.) From May through late August, these meetings generally occurred once a week. From August 23, 2002 until mid-October, the Committee typically met twice weekly. Thereafter, it met intermittently to review drafts of this Report.

In its meetings, the Committee consulted many individuals, most from the University community, who offered a broad range of perspectives on the issues before the Committee. (See Appendix V: Faculty, Administrator, Community Resources.) In all, 28 individuals were contacted. They either met with the Committee, for an average time of one hour, or spoke with a member of the Committee or one of the Committee’s advisors.

Written materials examined by the Committee included the following. (See Appendix VI: Written Materials Examined by the Committee.)

• UCFA commentary on the ASMSU proposal,
• UCSA commentary on the ASMSU proposal,
• UGC commentary on the ASMSU proposal,
• COGS commentary on the ASMSU proposal,
• CIC nondiscrimination policies and a survey of CIC institutions on gender identity/transgender issues prepared by the Office of Affirmative Action Compliance and Monitoring,
• ordinances and policies from a number of communities and universities that have chosen to provide protection against discrimination on gender identity grounds,
• a variety of magazine and newspaper articles,
• an educational packet of materials assembled by ASMSU, and
• several legal cases involving gender identity issues.

3. The Committee’s Understanding of “Gender Identity” and Related Terminology

In order to discuss the proposal by ASMSU, the Committee examined various definitions of gender identity. Gender identity has been defined broadly in some cases and very specifically in others; each definition appears to be crafted to meet the intentions of the governing body creating the policy. Examples of some of these definitions include:
"GENDER IDENTITY. Manifesting an identity not traditionally associated with one's biological maleness or femaleness." - Jefferson County, KY, 1999

"Gender Identity" includes the status of being transsexual, transvestite, or transgender." - Olympia, WA, 1997

"Gender Identity" means an individual's various attributes as they are understood to be masculine and/or feminine and shall be broadly interpreted to include pre- and post-operative transsexuals, as well as other persons who are, or are perceived to be, transgendered." - Tucson, AZ, 1999

After its review, the Committee concluded that there is no standard definition of "gender identity", at least not one that encompasses all the meanings and connotations associated with that term. "Gender identity" has different meanings to different people and in different contexts. In many ways, it is an umbrella term that is used as a point of reference for a number of issues associated with how an individual's gender is perceived or manifested, by the individual himself/herself and by others. The terms "gender expression" and "gender characteristics" are used in the literature, at times interchangeably with "gender identity," but often with distinct differences in meaning. In most cases, "gender identity" is used to refer to an individual's own self-image regarding his/her gender status. This self-identity as male, female, or an intermediate state along a gender continuum may be strongly felt and relatively unchanging, or it may be more fluid or ambiguous. "Gender expression" and "gender characteristics" are terms used to refer to outward signs of appearance or behavior that are perceived by others and judged by cultural "norms". ("Gender characteristics" may also be used to refer to biological manifestations of gender, from chromosomes to reproductive organs and secondary sexual characteristics.) The perception that others have of a person's gender may or may not coincide with that person's self-identity, in part because an individual's gender identity may not be consistent with his/her outward appearance or behavior, in part because one individual's perception of another's gender may be a function of a set of expectations that causes this individual to misread the other's gender "signals" and, hence, his/her true gender identity. Perception of an individual's gender identity is often a greater factor in discrimination than his/her actual gender identity.

The Committee also concluded as a result of its review that "gender identity" is not a well-understood term in our University community, and that the general University community is not familiar with the range of complex gender issues encompassed by the set of terms briefly described in the last paragraph. The novelty and difficulty of these concepts for many here at MSU, the absence of a standard definition of "gender identity", the fact that even experts use the different terms noted above in varying ways to convey different ideas and nuances, and the continuing evolution of meaning which these terms are undergoing - these problems prompted the Committee to explore how "gender identity" relates conceptually to other protected categories currently included in the ADP. As a term, "gender identity" is used in connection with issues faced by individuals who identify as transsexual, transgender, transvestite, and intersex, among others. The two ADP categories most clearly related were "sexual orientation" and "gender".

There are similarities and practical connections between discrimination based on sexual orientation and discrimination against those who identify as desiring protection based on "gender identity". But, "gender identity" and "sexual orientation" are quite different conceptually.
Whereas "sexual orientation" is a term used to describe an individual's sexual partnering or affectional preferences, "gender identity" involves an individual's gender self-image. A correlation cannot reliably be made between sexual orientation and gender identity for any individual. Although sexual orientation has been defined or redefined in a state law and in some communities' ordinances to give protection against discrimination on gender identity grounds, it was clear to the Committee that "sexual orientation" is not conceptually inclusive of all gender identity issues.

The Committee also examined the issues of "gender identity" in relation to "gender". The prohibition against gender discrimination protects against discrimination based on an individual's sex (male or female). Increasingly, laws prohibiting sex discrimination are also being interpreted to ban discrimination or harassment based on rigid stereotypes of gender roles. The Committee discussed the issue of gender-based stereotyping and its relevance to gender identity issues at length. Social norms change dramatically over time. For example, not more than 50 years ago, business-appropriate slacks were not widely accepted as proper dress for women in the workplace. Today, this attire is common and accepted. On the other hand, an increasing number of men are opting to be the full-time childcare provider in the home. Gender appropriateness is a socially defined concept, and subject to evolution. Protection against this type of stereotyping is a recognition that gender expression is not categorical, but rather exists on a continuum or plane of characteristics. Such issues are similar to those often faced by individuals who identify as desiring protection based on gender identity. Transgender, transsexual, transvestite, and intersex individuals face discrimination based on their nonconformance to gender role stereotypes.

The Committee found through discussion that the most satisfactory method of understanding and approaching gender identity issues is to consider them as an extension of gender stereotyping issues.

4. The Committee's Review of Gender Identity Issues at MSU

During its meetings with a variety of individuals from the MSU community, the Committee sought to learn the scope and nature of problems suffered by members of the MSU community who would obtain protection under the ADP against discrimination and harassment if "gender identity" were to be added to its list of protected categories.

The Committee found that there is little hard data on such problems. Several years ago, a former student tried to bring an ADJB complaint which involved a gender transition, but the student had already left the University when the complaint was filed and it could not be processed. Also several years ago, an employee sought to learn if an ADJB complaint based on a gender transition or gender identity would be processed under the present ADP. But, the employee did not file an ADJB complaint alleging any past or continuing discrimination or harassment; the ADP and the Procedures for the Anti-Discrimination Judicial Board provide for adjudication of actual complaints, not for the issuance of advisory opinions on the scope or application of the ADP.
There have been occasional incidents of verbal harassment and derogatory graffiti at MSU which can be linked to gender identity issues, though some may also involve perceptions of or assumptions about an individual’s sexual orientation. There has been at least one physical assault, some years ago, which was based on the victim’s gender identity/perceived sexual orientation. Individuals have transitioned from one gender to another while employed at the University; it seems these situations have been handled successfully and with sensitivity on a case-by-case basis. Apart from derogatory graffiti, there is little or no track record involving student gender transitions or other gender identity issues in the residence hall system. Students seek and obtain counseling related to gender identity from various individuals at the University.

It is plain, however, that some individuals are reluctant to seek action on, or assistance with, gender identity problems in the University community because they are unsure of the reception they will receive from those they would have to approach about these issues. At least some individuals who have kept their real gender identities to themselves would be more inclined to disclose them, to seek transfers or promotions to other units, and to ask for accommodations involving, for example, restrooms, if the ADP provided specific protection against discrimination and harassment under the "gender identity" rubric. How many individuals would come forward in these and other ways the Committee cannot predict.

5. Providing Protection on Gender Identity Grounds in the ADP

The Committee evaluated the information it received from the individuals it interviewed and from the materials it reviewed to determine whether it is appropriate to provide protection against discrimination and harassment on gender identity grounds in the ADP. The Committee concluded that it is.

Normally, such a recommendation would rest on evidence of discrimination against a substantial number of individuals, or of discrimination or harassment of considerable severity. The Committee did not find such evidence. Instead, the Committee bases its recommendation on other grounds.

- Michigan State University has been a leader among major public universities in promoting an inclusive environment in which all members of the MSU family can achieve their full potential and in which acts of discrimination based on attributes other than individual merit are not tolerated. Extension of the MSU ADP to provide protection under the gender identity rubric is a natural extension of anti-discrimination attitudes at MSU, reasonable in light of the history and purposes of the ADP, and consistent with the commitment to diversity and inclusiveness that has characterized our campus for decades.

- Several communities in Michigan, and many others nation-wide, have adopted policies intended to provide protection against discrimination on gender identity grounds. So have a few institutions of higher education. The Committee believes this shows a shift in society’s general acceptance of people who are transgender or who do not fit a standard definition of masculinity or femininity. The Committee believes that, with increasing acceptance of gender variant individuals, there will be more such individuals joining the MSU community. With proactive problem solving like an ADP amendment, MSU can be prepared to welcome new students, faculty, and staff with tolerance.
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- The Committee feels that the low incidence of problems involving gender identity in the MSU community may be due in part to the hesitation of affected individuals to report their problems in the absence of protection under the ADP. Several of the experts whom the Committee interviewed characterized such individuals as extremely cautious, even secretive, about their status. When individuals acknowledge and act on their membership in an identified group, the visibility of that group increases, and their willingness to report and seek redress for discrimination or harassment may well grow, too. The Committee believes this will occur if gender variant individuals are protected against discrimination and harassment through the ADP.

- Although the Committee found little evidence of systematic harassment or discrimination at MSU against individuals whose gender identity, expression, or characteristics are atypical or nonconformist, the Committee believes that such individuals regularly suffer discrimination and harassment in society at large. The Committee believes this is wrong and that MSU should visibly join those who seek to end such discrimination and harassment.

- It is not right for individuals to deny or hide who they are based on their sense that, if they were open about their status, they would be the objects of discrimination or harassment. An appropriate change to the ADP (see Section 7 below) should provide reassurance to some members of our community and an opportunity to educate the community generally about gender identity issues with little cost or disruption to the University (see Sections 8 and 9(a) below).

6. Consideration of How to Amend the ADP to Provide Protection on Gender Identity Grounds

Having completed discussion and unanimously reached the conclusion that protection should be afforded to individuals facing discrimination or harassment based on gender identity, the Committee sought to develop a recommendation for how best to implement that decision.

While developing a working understanding of issues of gender identity (see Section 3 above), the Committee considered four possible options, of which explanations follow:

1. Accepting the ASMSU proposal to add "gender identity" to the ADP. The Committee rejected this option because "gender identity" does not have a simple, common meaning, and because the term "gender identity" and the issues associated with it are not well understood in the University community. (See Section 3 above.)

2. Accepting the ASMSU proposal to add "gender identity" to the ADP, but with a footnote defining "gender identity". The complications involved in concretely defining "gender identity", and in defining it in an accessible way, led the Committee to reject this option. (Again, see Section 3 above.)

3. Including gender identity protection in the current ADP category of "sexual orientation", by adding a footnote to extend the meaning of "sexual orientation" to cover gender identity issues. However, as discussed in Section 3 above, though discrimination and harassment on gender identity grounds often involve
assumptions about the victim's sexual orientation, sexual orientation and gender identity are conceptually different. The Committee, therefore, rejected this option.

4. Including gender identity protection in the current ADP category of "gender", by adding a footnote to extend the meaning of "gender" to cover gender identity issues. As discussed in Section 3, the Committee felt the best way to afford protection against discrimination and harassment on gender identity grounds was through and in connection with a general prohibition on gender stereotyping, as these sets of issues are closely and logically connected. (Again, see Section 3 above.)

Adding the following footnote after the reference to "gender" in the ADP is the way the Committee chose to implement the option it selected.

Gender includes sex as that term is used in Michigan and federal anti-discrimination laws, but shall also be broadly interpreted to provide protection against gender stereotyping and for persons who are, or are assumed to be, transgender. For these purposes, a transgender person includes (a) an individual whose gender self-image may be different from his/her biological sex or assigned sex at birth, whether or not that individual has taken any action to change his/her behavior and/or appearance (face, body, dress) to conform to the gender with which he/she identifies; and (b) an individual whose gender is, or is perceived to be, ambiguous or fluid.

The footnote embodies a broader, functional view of gender. It is intended to protect against gender stereotyping of any kind, for those who consider themselves transgender and those who do not, as well as to provide protection against discrimination and harassment based on transgender status, or the perception thereof.

7. Recommendations of the Committee

After due deliberation, the Committee unanimously makes the following recommendations.

**Recommendation 1.** The Committee recommends that the ADP provide protection against discrimination and harassment on gender identity grounds.

**Recommendation 2.** To do so, the Committee recommends that Article 2 of the ADP be amended as shown in (c) below. For clarity, three versions of Article II of the ADP follow: (a) the current version of the MSU ADP, (b) the version recommended by ASMSU, and (c) the amended version recommended by the Committee.

**a) Current Version of ADP Article II**

Unlawful acts of discrimination or harassment are prohibited.
In addition, the University community holds itself to certain standards of conduct more stringent than those mandated by law. Thus, even if not illegal, acts are prohibited under this policy if they:

1. Discriminate against any University community member(s) through inappropriate limitation\(^2\) of employment opportunity\(^4\), access to University residential facilities, or participation in educational, athletic, social, cultural, or other University activities on the basis of age, color, gender, disability status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, veteran status, or weight\(^6\); or

2. Harass any University community member(s) on the basis of age, color, gender, disability status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, veteran status, or weight.

These prohibitions are not intended to abridge University community members’ rights of free expression or other civil rights.

\(^2\)Limitations are inappropriate if they are not directly related to a legitimate University purpose.

\(^3\)For purposes of this policy, “employment opportunity” is defined as job access and placement, retention, promotion, professional development, and salary.

\(^4\)University ordinances, written regulations and policies, and published ADJB decisions approved by the President, provide guidance on the discriminatory acts prohibited by Section 1 and the harassing acts prohibited in Section 2.

b) ASMSU Proposed ADP Article II

[Proposed ASMSU changes are shown in boldface italics]

Unlawful acts of discrimination or harassment are prohibited.

In addition, the University community holds itself to certain standards of conduct more stringent than those mandated by law. Thus, even if not illegal, acts are prohibited under this policy if they:

1. Discriminate against any University community member(s) through inappropriate limitation\(^2\) of employment opportunity\(^4\), access to University residential facilities, or participation in educational, athletic, social, cultural, or other University activities on the basis of age, color, gender, disability status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, \textit{gender identity}, veteran status, or weight\(^6\); or
Ad Hoc Committee on Gender Identity, Report to ECAC

2. Harass any University community member(s) on the basis of age, color, gender, disability status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, gender identity, veteran status, or weight.

These prohibitions are not intended to abridge University community members’ rights of free expression or other civil rights.

\[^2\text{Limitations are inappropriate if they are not directly related to a legitimate University purpose.}\]

\[^3\text{For purposes of this policy, “employment opportunity” is defined as job access and placement, retention, promotion, professional development, and salary.}\]

\[^4\text{University ordinances, written regulations and policies, and published ADJB decisions approved by the President, provide guidance on the discriminatory acts prohibited by Section 1 and the harassing acts prohibited in Section 2.}\]

c) Committee’s Proposed ADP Article II

[Proposed Committee changes are shown in boldface italics]

Unlawful acts of discrimination or harassment are prohibited.

In addition, the University community holds itself to certain standards of conduct more stringent than those mandated by law. Thus, even if not illegal, acts are prohibited under this policy if they:

1. Discriminate against any University community member(s) through inappropriate limitation\(^2\) of employment opportunity\(^3\), access to University residential facilities, or participation in educational, athletic, social, cultural, or other University activities on the basis of age, color, gender\(^4\), disability status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, veteran status, or weight\(^5\); or

2. Harass any University community member(s) on the basis of age, color, gender, disability status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, veteran status, or weight.

These prohibitions are not intended to abridge University community members’ rights of free expression or other civil rights.

\[^2\text{Limitations are inappropriate if they are not directly related to a legitimate University purpose.}\]
3 For purposes of this policy, "employment opportunity" is defined as job access and placement, retention, promotion, professional development, and salary.

4 Gender includes "sex" as that term is used in Michigan and federal anti-discrimination laws, but shall also be broadly interpreted to provide protection against gender stereotyping and for persons who are, or are assumed to be, transgender. For these purposes, a transgender person includes (a) an individual whose gender self-image may be different from his/her biological sex or assigned sex at birth, whether or not that individual has taken any action to change his/her behavior and/or appearance (face, body, dress) to conform to the gender with which he/she identifies; and (b) an individual whose gender is, or is perceived to be, ambiguous or fluid.

5 University ordinances, written regulations and policies, and published ADJB decisions approved by the President, provide guidance on the discriminatory acts prohibited by Section 1 and the harassing acts prohibited in Section 2.

8. Practical Implications of the ADP Amendment Proposed by the Committee

The Committee devoted much of its attention to the practical implications for the University community of making a change to the ADP that would provide protection against discrimination and harassment to gender variant individuals. This was the focus of its conversations with the many administrators that it consulted; this wound up being the most time-consuming and difficult set of issues considered by the Committee.

Having carefully considered the practical implications of making the amendments to the ADP that it now recommends, the Committee has several observations. First, the administrators interviewed by the Committee uniformly assured the Committee that, if changes were made to the ADP to extend protection against discrimination and harassment to gender variant individuals, they would do what it takes in their units to respond to and implement the changes. But they also uniformly expressed the view that the University community will need education and training on gender identity issues in connection with the adoption of such changes to the ADP. For this reason, the Committee has suggested a set of educational and training efforts on these issues. See Section 9(a) below.

Second, the Committee has somewhat reluctantly concluded that it will often be necessary or appropriate for the University to have a measured approach to resolving (through mediation or adjudication) complaints alleging violations of the ADP on gender identity grounds. In this regard, the Committee notes that Article II of the ADP prohibits discrimination "through inappropriate limitation of employment opportunity, access to University residential facilities, or participation in educational, athletic, social, cultural, or other University activities" (emphasis added). The ADP defines "inappropriate limitation" as follows: "Limitations are inappropriate if they are not directly related to a legitimate University purpose.” The Committee believes the “inappropriate limitation” clause should be interpreted to provide administrators and, especially, the ADJB and the President with broad discretion to craft nuanced resolutions to complaints alleging violations of the ADP on gender identity grounds. In general, their goal should be to
respond to the needs of the complainant in ways that do not cause unnecessary disruption to other members of the University community or excessive expense to the University. In other words, the Committee believes that inverting the “inappropriate limitation” concept presently included in the ADP should yield a sense of what constitutes an “appropriate limitation” in resolving gender identity based complaints. Thus, those charged with interpreting the ADP in gender identity complaints should weigh carefully whether the particular remedy sought by the complainant would cause unnecessary disruption or excessive expense (avoiding such a disruption or expense is a “legitimate University purpose”); if it would, it may be possible for them to craft another remedy that would not.

Several examples may clarify the Committee’s intentions here.

- The literature provided by ASMSU focuses on discrimination against gender variant individuals in the workplace. But the living arrangements for students in residence halls and the locker/shower facilities in intramural and other athletic facilities often result in a lack of privacy that does not exist in the workplace. A male-to-female transgender student who seeks placement in a residence hall as a female student with other female students may reasonably be accommodated in a room with a roommate who accepts the placement, or through placement in a single room, in a residence hall with private bathroom facilities or common bathroom facilities where doors can be closed and curtains drawn. The Committee strongly encourages the University to develop bath/shower facilities which permit individual privacy when renovating or constructing residence hall facilities. It does not believe the University should have to create such facilities in a particular residence hall where they do not presently exist solely to accommodate a request by a transgender student to live in that residence hall.

- In some units of the University, the educational experience involves field training. Student teaching in the College of Education, field work in the School of Social Work, and the clinical programs of the various medical colleges are concrete examples. Many more colleges offer voluntary externship programs to supplement the on-campus academic experience. It is the practice in such units to work with individual students to help them understand how placements in those programs are made and what is expected of them there. While anticipating the norm here to be one of successful negotiation of difficulties relating to placement of a gender variant student in such programs, the Committee recognizes the possibility that a few gender variant individuals may be difficult to place in the specific field work situations that they seek. If, after honest and diligent negotiation between the unit of the University and the external entity involved in such a case, the external entity declines to accept the student (or to enter into a contract which incorporates protection against discrimination or harassment on gender identity grounds), the student should not be able to assert that the ADP was violated by that unit of the University. It is critical for the University to maintain relationships with external entities that provide field experiences for students, and since there is no legal protection for transgender individuals in Michigan outside a few communities that provide such protection by ordinance (e.g., Ann Arbor and Ypsilanti), the University may not be able to persuade all institutions that provide field experiences to accept transgender students into their programs. Nonetheless, the University should find a way to make sure that every gender variant student who needs off-campus experience to complete degree
requirements has the opportunity to have that experience. It may be that the experience is at a site or in a program selected by the relevant unit rather than one preferred by the student, but units presently exercise that authority in arranging off-campus clinical/work experiences.

- The bathroom at work is the most commonly cited example of a “problem” situation involving transgender individuals. Based on past experience at the University, the Committee is confident that these situations can be resolved on a case-by-case basis. In the rare situation where no mutually agreeable solution can be negotiated, the Committee believes that providing the transgender individual access to private, unisex restroom facilities would be a reasonable outcome. This does not mean the ADP should be construed to require the University to construct such facilities where they are not available. The Committee would hope that new construction and renovations will be designed to include such facilities in work spaces in the future. The Committee urges the University to plan to install such facilities in existing buildings over a reasonable time, insofar as that is possible given available resources.

That the Committee reluctantly accepts the need for a measured approach to resolving some complaints alleging ADP violations on gender identity grounds does not mean that such an approach would be appropriate or reasonable in responding to all such complaints. For example, the Committee cannot think of a reason that harassment based on transgender status should ever be tolerated or excused. Similarly, the Committee does not believe that a limitation on employment opportunity based on gender identity would be appropriate unless the limitation relates to a bona fide occupational qualification.

The Committee hopes that its expression of its views on these situations will provide help and guidance to those who construe the ADP and “inappropriate limitation” concept in the future, if the ADP is amended as the Committee has recommended.

9. Committee Suggestions

Through the course of the Committee’s deliberations and interactions between the Committee and the varied and diverse set of individuals whom it consulted, members of the Committee concentrated on the issues raised by the ASMSU proposal, per the charge to the Committee from ECAC. The Committee’s specific recommendations pursuant to that charge are set forth above in Section 7 above.

In addition, a number of other issues arose in the course of the Committee’s discussions and deliberations that, though outside the scope of the ECAC charge, merit separate comment and form the basis for suggestions to ECAC by the Committee.

a. Importance of Education on Gender Identity Issues

Gender identity issues are generally ill understood and ill appreciated in the MSU family. As a great university, the most appropriate, and indeed the best, remedy for this situation is education aimed at increasing knowledge about these issues and individual sensitivity to these issues.
Suggestion 1: The Committee suggests three specific educational efforts, as follows.

- First, for students, an educational program on gender identity issues that is developed and administered through the residence life offices.
- Second, for faculty and staff, educational programs and training on gender identity issues that would bring appropriate speakers to scheduled unit level events at which all those who work in the unit are present (e.g., regular department meeting, retreat).
- Third, for faculty, staff, and students, a series of dialogues on issues of gender identity.

b. COGS Concern: Unchecked Addition of Protected Groups

In response to Prof. Abeles’s inquiry regarding the possible addition of “gender identity” to the list of protected groups in the ADP, as proposed by ASMSU, Samuel Howerton, then-President of COGS, wrote on March 12, 2002:

*There were also concerns that the repeated addition of protected groups could grow unchecked. As a result, COGS seeks information regarding any current or proposed mechanisms that would insure that future additions are necessary and distinguishable from current language.*

Although not explicitly charged to address the issues thus raised by COGS, the Committee repeatedly discussed them and suggests that they receive further review.

In effect, COGS has two questions. The first is whether the number of protected groups the ADP may contain has some practical limit beyond which the effectiveness of the ADP may begin to decline. If more and more protected groups were to be added to the ADP, then the possibility would exist that—no matter how great the need of each individual group for protection against discrimination and harassment under the ADP—the impact of the ADP and the ADJB would be diminished.

Second, COGS asks whether there should be a screening process by which the addition of a new protected group would be evaluated to assure that it is “necessary and distinguishable from current language.” The Committee believes such a screening process is appropriate, as it would seem prudent to keep the number of protected groups as small as possible while including under the ADP those groups that need afforded protections. However, in practice, the “necessity” of adding a proposed protected group is not easily determined. The Committee understands the COGS phrase “distinguishable from current language” to mean that proposed additions to the list of protected groups under the ADP should not overlap or be subsumed by currently protected groups. Making such determinations would also, in practice, be difficult. The experience of the Committee in considering issues of gender identity underscores this point.

Suggestion 2: The Committee suggests that the COGS comments on the possible future addition of new protected groups to the ADP be referred to an appropriate group or body in (or convened by) the Academic Governance system which reflects the diversity of the community at large. This body should consider whether it would be possible to propose guidelines for the
inclusion of new protected groups in the ADP and, if so, should propose such guidelines.

10. Conclusion

The Committee expresses its thanks to the many members of the University community who were generous with their time and expertise in assisting the Committee to learn about the complex issues before it. The Committee also expresses its gratitude and appreciation for the many hours of assistance offered by its advisors, Dr. Banks and Mr. Noto. The Chairperson and members of the Committee will be available to respond to questions about this Report.
Appendix B: President McPherson’s Memo
MICHIGAN STATE
UNIVERSITY

April 8, 2003

MEMORANDUM

TO: Steven Spees, Chairperson, Executive Committee of Academic Council

FROM: President Peter McPherson

SUBJECT: Implementation Questions Related to the Proposed Change in the Anti-Discrimination Policy and Gender Identity

As you know, the ECAC Ad Hoc Committee on Gender Identity submitted its report to the Academic Council for review and action. The Academic Council approved the report and the changes proposed by the Ad Hoc Committee in the Anti-Discrimination Policy ("ADP") on February 25, 2003. After reviewing the report of the Committee and the action of the Academic Council, I requested a meeting with the Ad Hoc Committee. While it is clear that the Ad Hoc Committee was very thorough and thoughtful in its deliberations, I was concerned that a number of questions were left unresolved by the proposed ADP amendments. In my view, not only must the proposed change be clear in terms of its protections, we also have an obligation to assure that if a person is going to be charged with discrimination, the rule must have enough clarity for common understanding, or it is not fair to those being charged.

On March 14, most of the Ad Hoc Committee members met with me; Provost Lou Anna K. Simon; Paulette Granberry Russell, Senior Advisor to the President for Diversity and Director, Office for Affirmative Action; Angela Brown, Director, University Housing; and Denise Anderton, Acting Assistant Vice President, Office of Human Resources. General Counsel Noto and Assistant Provost Banks, who acted as advisors to the Ad Hoc Committee, were also in attendance. The Ad Hoc Committee members and others in attendance at the meeting provided commentary in response to various questions related to the implementation of the proposed changes.

While the meeting was very helpful, I continue to have concerns regarding the practicality of the proposed changes, particularly with respect to our ability to reasonably implement an enhanced definition of gender that is perceived by some as vague and ambiguous. After listening to the Committee members and considering their responses, I believe the answers still leave room for the exercise of judgment that may unreasonably expose members of the community to charges of violating the ADP. The proposed changes seem to lead us in the direction of an evolving "common law" of gender identity discrimination. Most regulatory schemes for discrimination are more prescriptive than what is envisioned here. It is hard to ask staff and administrators to make tough decisions on issues like access to facilities in the gender identity context when those making the decision have little ability to foresee whether
they can be charged with violating the ADP, and found to have violated the ADP, because of their decisions. This is equally true for faculty, staff, students, and others who are expected to abide by standards of behavior that are nondiscriminatory, and in order to do so need a clear and unambiguous Anti-Discrimination Policy.

However, my concerns regarding the practicality of the proposed changes do not affect my support for the need for further dialogue and educational programming on gender identity and gender stereotyping.

It should be noted that the ambiguities present fewer difficulties, in my judgment, in the harassment area than in deciding discrimination claims. For example, under the current ADP, prohibited racial, religious, or sexual orientation harassment, is handled similarly to sexual harassment and prohibiting harassment based on gender identity or gender stereotyping could therefore also be implemented and administered in a similar fashion.

As you will note, the Ad Hoc Committee members provided commentary to a representative sampling of the questions raised during our meeting. As I consider the Academic Council’s recommendations, more definitive responses to these questions would help guide me as I deliberate about my position regarding the proposed change to the ADP. I would expect that the Board of Trustees might also raise these questions as well. While the questions are posed to you (ECAC), the process you use for responding to these questions is a matter for your decision.

Questions for Consideration

1. In the definition, what is the meaning of “ambiguous or fluid” found in subsection (b)?

   Members of the Ad Hoc Committee indicated that “ambiguous and fluid” reflects that gender is on a continuum and that a person’s gender identity and expression may be fluid (i.e., variable and changeable). Further, the Committee also meant that it refers to “intersex” individuals, whose sex (male or female) cannot readily be determined medically or biologically.

   In reviewing the Ad Hoc Committee report, it is apparent that the members spent a significant amount of time considering the definitions for the class of people to be protected from discrimination and harassment. These are not concepts that are or will be easily understood within the community. In my view, however, without further clarification, the ambiguities and vagueness in the proposed ADP change will adversely impact our ability to protect the various interests that the Ad Hoc Committee sought to guard.

   One of the significant problems with subsection (b) is that it does not clearly inform people of what is protected or prohibited. (But, this is true for subsection (a) as well.) For example, if a supervisor reasonably perceives someone’s gender in one way and acts on that and denies the individual access to a facility or opportunity, could the supervisor be found in violation of the
ADP regardless of his or her intent not to discriminate and acting in good faith, if that reasonable perception is later determined to be wrong? The commentary during the meeting suggests that there is no need to provide additional guidance and that we deal with situations, like that described above, on a case-by-case basis. However, in my judgment, to do so presents greater opportunity for inconsistent treatment and error. The terms "ambiguous or fluid," for example, are subjective in nature and not susceptible of being understood, i.e., vague. The ADP must give notice to people of what is protected, as well as conduct that is prohibited and provide definite standards to guide discretionary actions of administrators and others.

2. Relative to the language "incremental approach to implementation," what facility modifications would be required by this amendment to the ADP?

The Ad Hoc Committee members indicated that they intended the same approach to facility modifications as that which occurs for persons with disabilities. In fact, it was suggested by the Ad Hoc Committee that many of the changes being made for disability accessibility would also address gender identity needs, e.g., a bathroom is renovated to accommodate disabilities, but it can also be designated unisex — hence their expectation that the proposed amendments would result in little additional cost on the facilities front. I interpreted this to mean that any requirement to make facility changes would be met if we comply with the ADA requirements, but others seemed less sure of this and your clarification on this interpretation is sought. In the disability area, case law, technical manuals, and other guidance give parameters for making decisions about reasonable accommodations. There are no such materials on gender identity.

3. How is the assignment of students in the residence halls to be handled and is there an expectation that accommodations would have to be made in every residence hall when requested?

While the Ad Hoc Committee report, page 11 provides some clarification of the Committee's intentions, the Ad Hoc Committee members also indicated that assignment questions should be handled on a case-by-case basis. However, as noted in the commentary under question (2) above, if such matters are to be treated like reasonable accommodations in the disability area, more detailed guidance (like that which exists for the ADA) would be useful in implementing such accommodations.

4. If a student's gender is in question for housing assignment, or after housing has been assigned, will University Housing have the ability to gain information from the student to make the best assignment or a change in assignment without being subject to a charge of discrimination?

The position taken by the Ad Hoc Committee members continued to be that we work these assignments out on a case-by-case basis. That has the same problems as (2) and (3) above. The absence of standards up front will expose
the individuals who handle these issues to second-guessing later.

5. What is the definition of gender stereotyping, and are there situations where there are "appropriate limitations" on employment opportunity, access to University residential facilities, or participation in other ADP enumerated University activities based on gender stereotyping?

Toward the end of the meeting with the Ad Hoc Committee members, I raised the question regarding the definition of gender stereotyping. While we did not have extensive discussions on the question, it was my impression that this is an area where we can reasonably expect implementation concerns. Based on a review of the Ad Hoc Committee report and action of the Academic Council it seems no attempt has been made to 1) ascertain the number and type of discrimination complaints that could be made as a result of adding gender stereotyping to the proposed ADP change; and 2) define the standards that would be applied to these complaints.

The Ad Hoc Committee is to be commended for its report. Yet, the remaining questions and their answers are essential to protecting the rights of the campus community. The administrators and other members of our community who make judgments here deserve more specific guidance from those who wish to change the ADP. I ask for assistance in clarifying these important matters.

Cc: Provost Lou Anna K. Simon
    Dr. Lee June
    Dr. Robert Banks
    Robert Noto
    Paulette Granberry Russell
    Denise Anderton
    Angela Brown
Appendix C: Smith v. Salem

United States Court of Appeals,
Sixth Circuit.
Jimmie L. SMITH, Plaintiff-Appellant,
v.
No. 03-3399.

Background: City fire department employee, who was born male and subsequently was diagnosed with gender identity disorder, brought Title VII action against city and various city officials alleging sex discrimination. The United States District Court for the Northern District of Ohio, Economus, J., granted employer's motion to dismiss, and employee appealed.

Holdings: The Court of Appeals, Cole, Circuit Judge, held that:
(1) employee offered direct evidence of causal connection between protected activity and adverse employment action;
(2) allegations that employee was discriminated against based upon employee's gender non-conforming behavior and appearance were actionable pursuant to Title VII;
(3) 24-hour suspension constituted an adverse employment action; and
(4) allegations sufficiently constituted claim of sex discrimination grounded in Equal Protection Clause pursuant to § 1983.
Reversed and remanded.

Opinion, 369 F.3d 912, superseded.

West Headnotes

170Bk794 Most Cited Cases

[2] Civil Rights 1118
78k1118 Most Cited Cases
To establish prima facie case of employment discrimination pursuant to Title VII, plaintiff must show that he: (1) is member of protected group; (2) suffered adverse employment action; (3) was qualified for position in question; and (4) was treated differently from similarly situated individuals outside of protected class. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[3] Civil Rights 1243
78k1243 Most Cited Cases
To establish prima facie case of retaliation pursuant to Title VII, plaintiff must show that: (1) he engaged in activity protected by Title VII; (2) defendant knew he engaged in this protected activity; (3) thereafter, defendant took employment action adverse to him; and (4) there was causal connection between protected activity and adverse employment action. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[4] Civil Rights 1553
78k1553 Most Cited Cases
268k218(3) Most Cited Cases
Evidence that city employee was suspended just four days after receiving right-to-sue letter from Equal Employment Opportunity Commission (EEOC) and six days after employee's attorney had contacted mayor constituted direct evidence of causal connection between protected activity and adverse employment action, for purposes of demonstrating prima facie case of retaliation under Title VII. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[5] Civil Rights 1193
78k1193 Most Cited Cases
Allegations by city fire department employee, who was born male and subsequently was diagnosed with gender identity disorder, that employee was discriminated against based upon employee's gender non-conforming behavior and appearance, which city felt were inappropriate for a male, were actionable under Title VII. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[6] Civil Rights 1193
78k1193 Most Cited Cases

[6] Civil Rights 1249(3)
78k1249(3) Most Cited Cases

268k198(2) Most Cited Cases
Twenty-four-hour suspension of city fire department employee, who was born male and subsequently was diagnosed with gender identity disorder, constituted adverse employment action, as required to support employee's discrimination and retaliation claims under Title VII. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[7] Constitutional Law 224(2)
92k224(2) Most Cited Cases

268k198(2) Most Cited Cases
Allegations by city fire department employee, who was born male and subsequently was diagnosed with gender identity disorder, that employee was discriminated against based upon employee's gender non-conforming behavior and appearance, sufficiently constituted claim of sex discrimination grounded in Equal Protection Clause pursuant to § 1983. U.S.C.A. Const.Amend. 14; 42 U.S.C.A. § 1983.

*567 Randi A. Barnabee (briefed), Deborah A. Smith & Company, Northfield, OH, for Plaintiff-Appellant.

Aretta K. Bernard (briefed), Roetzel & Andress, Akron, OH, for Defendant-Appellee.

Before COLE and GILMAN, Circuit Judges; SCHWARZER, Senior District Judge. [FN*]

FN* The Honorable William W Schwarzer, Senior United States District Judge for the Northern District of California, sitting by designation.

AMENDED OPINION

COLE, Circuit Judge.

Plaintiff-Appellant Jimmie L. Smith appeals from a judgment of the United States District Court for the Northern District of Ohio dismissing his claims against his employer, Defendant-Appellant City of Salem, Ohio, and various City officials, and granting judgment on the pleadings to Defendants, pursuant to Federal Rule of Civil Procedure 12(c). Smith, who considers himself a transsexual and has been diagnosed with Gender Identity Disorder, alleged that Defendants discriminated against him in his employment on *568 the basis of sex. He asserted claims pursuant
to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., and 42 U.S.C. § 1983. The district court dismissed those claims pursuant to Rule 12(c). Smith also asserted state law claims for invasion of privacy and civil conspiracy; the district court dismissed those claims as well, having declined to exercise pendent jurisdiction over them.

For the following reasons, we reverse the judgment of the district court and remand the case for further proceedings consistent with this opinion.

I. BACKGROUND

[1] In reviewing a motion for judgment on the pleadings pursuant to Rule 12(c), we construe the complaint in the light most favorable to the plaintiff and accept the complaint's factual inferences as true. Ziegler v. IBP Hog Market, Inc., 249 F.3d 509, 511-12 (6th Cir.2001). The following facts are drawn from Smith's complaint.

Smith is--and has been, at all times relevant to this action--employed by the city of Salem, Ohio, as a lieutenant in the Salem Fire Department (the "Fire Department"). Prior to the events surrounding this action, Smith worked for the Fire Department for seven years without any negative incidents. Smith--biologically and by birth a male--is a transsexual and has been diagnosed with Gender Identity Disorder ("GID"), which the American Psychiatric Association characterizes as a disjunction between an individual's sexual organs and sexual identity. American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders 576-582 (4th ed.2000). After being diagnosed with GID, Smith began "expressing a more feminine appearance on a full-time basis"--including at work--in accordance with international medical protocols for treating GID. Soon thereafter, Smith's co-workers began questioning him about his appearance and commenting that his appearance and mannerisms were not "masculine enough." As a result, Smith notified his immediate supervisor, Defendant Thomas Eastek, about his GID diagnosis and treatment. He also informed Eastek of the likelihood that his treatment would eventually include complete physical transformation from male to female. Smith had approached Eastek in order to answer any questions Eastek might have concerning his appearance and manner and so that Eastek could address Smith's co-workers' comments and inquiries. Smith specifically asked Eastek, and Eastek promised, not to divulge the substance of their conversation to any of his superiors, particularly to Defendant Walter Greenamyer, Chief of the Fire Department. In short order, however, Eastek told Greenamyer about Smith's behavior and his GID.

Greenamyer then met with Defendant C. Brooke Zellers, the Law Director for the City of Salem, with the intention of using Smith's transsexualism and its manifestations as a basis for terminating his employment. On April 18, 2001, Greenamyer and Zellers arranged a meeting of the City's executive body to discuss Smith and devise a plan for terminating his employment. The executive body included Defendants Larry D. DeJane, Salem's mayor; James A. Armeni, Salem's auditor; and Joseph S. Julian, Salem's service director. Also present was Salem Safety Director Henry L. Willard, now deceased, who was never a named defendant in this action.

Although Ohio Revised Code § 121.22(G)--which sets forth the state procedures pursuant to which Ohio municipal officials may meet to take employment action against a municipal employee--provides that officials "may hold an executive session to consider the appointment, employment,*569 dismissal, discipline, promotion, demotion, or compensation of a public employee only after a majority of a quorum of the public body determines, by a roll call vote, to hold an executive session and only at a regular or special meeting for the sole purpose of [considering such matters]," the City did not abide by these procedures at the April 18, 2001 meeting.

During the meeting, Greenamyer, DeJane, and Zellers agreed to arrange for the Salem Civil Service Commission to require Smith to undergo three separate psychological evaluations with physicians of the City's choosing. They hoped that Smith would either resign or refuse to comply. If he refused to comply, Defendants reasoned, they could terminate Smith's employment on the ground of insubordination. Willard, who remained silent during the meeting, telephoned Smith afterwards to inform him of the plan, calling Defendants' scheme a "witch hunt."

Two days after the meeting, on April 20, 2001, Smith's counsel telephoned DeJane to advise him of Smith's legal representation and the potential legal ramifications for the City if it followed through on the plan devised by Defendants during the April 18 meeting. On April 22, 2001, Smith received his "right to sue" letter from the U.S. Equal Employment Opportunity Commission ("EEOC"). Four days after that, on April 26, 2001, Greenamyer suspended Smith for one twenty-four hour shift, based on his alleged infraction of a City and/or Fire Department policy.
At a subsequent hearing before the Salem Civil Service Commission (the "Commission") regarding his suspension, Smith contended that the suspension was a result of selective enforcement in retaliation for his having obtained legal representation in response to Defendants’ plan to terminate his employment because of his transsexualism and its manifestations. At the hearing, Smith sought to elicit testimony from witnesses regarding the meeting of April 18, 2001, but the City objected and the Commission’s chairman, Defendant Harry Dugan, refused to allow any testimony regarding the meeting, despite the fact that Ohio Administrative Code § 124-9.11 permitted Smith to introduce evidence of disparate treatment and selective enforcement in his hearing before the Commission.

The Commission ultimately upheld Smith's suspension. Smith appealed to the Columbiana County Court of Common Pleas, which reversed the suspension, finding that "[b]ecause the regulation [that Smith was alleged to have violated] was not effective[,] [Smith] could not be charged with violation of it."

Smith then filed suit in the federal district court. In his complaint, he asserted Title VII claims of sex discrimination and retaliation, along with claims pursuant to 42 U.S.C. § 1983 and state law claims of invasion of privacy and civil conspiracy. In a Memorandum Opinion and Order dated February 26, 2003, the district court dismissed the federal claims and granted judgment on the pleadings to Defendants pursuant to Federal Rule of Civil Procedure 12(c). The district judge also dismissed the state law claims without prejudice, having declined to exercise supplemental jurisdiction over them pursuant to 28 U.S.C. § 1367(c)(3).

II. ANALYSIS
On appeal, Smith contends that the district court erred in holding that: (1) he failed to state a claim of sex stereotyping; (2) Title VII protection is unavailable to transsexuals; (3) even if he had stated a claim of sex stereotyping, he failed to demonstrate that he suffered an adverse employment action; and (4) he failed to state a claim based on the deprivation of a constitutional or federal statutory right, pursuant to 42 U.S.C. § 1983.

We review de novo the dismissal of a complaint pursuant to Rule 12(c). Grindstaff v. Green, 133 F.3d 416, 421 (6th Cir.1998). A motion for judgment on the pleadings shall be granted only where, construing the complaint in the light most favorable to the plaintiff, and accepting all of its factual allegations as true, the plaintiff can prove no set of facts in support of the claims that would entitle him to relief. Id. (citation omitted).

A. Title VII

The parties disagree over two issues pertaining to Smith's Title VII claims: (1) whether Smith properly alleged a claim of sex stereotyping, in violation of the Supreme Court's pronouncements in Price Waterhouse v. Hopkins, 490 U.S. 228, 109 S.Ct. 1775, 104 L.Ed.2d 268 (1989); and (2) whether Smith alleged that he suffered an adverse employment action.

[2] Defendants do not challenge Smith's complaint with respect to any of the other elements necessary to establish discrimination and retaliation claims pursuant to Title VII. In any event, we affirmatively find that Smith has made out a prima facie case for both claims. To establish a prima facie case of employment discrimination pursuant to Title VII, Smith must show that: (1) he is a member of a protected class; (2) he suffered an adverse employment action; (3) he was qualified for the position in question; and (4) he was treated differently from similarly situated individuals outside of his protected class. Perry v. McGinnis, 209 F.3d 597, 601 (6th Cir.2000). Smith is a member of a protected class. His complaint asserts that he is a male with Gender Identity Disorder, and Title VII's prohibition of discrimination "because of ... sex" protects men as well as women. Newport News Shipbuilding and Dry Dock Co. v. E.E.O.C., 462 U.S. 669, 682, 103 S.Ct. 2622, 77 L.Ed.2d 89 (1983). The complaint also alleges both that Smith was qualified for the position in question--he had been a lieutenant in the Fire Department for seven years without any negative incidents--and that he would not have been treated differently, on account of his non-masculine behavior and GID, had he been a woman instead of a man.

[3][4] To establish a prima facie case of retaliation pursuant to Title VII, a plaintiff must show that: (1) he engaged in an activity protected by Title VII; (2) the defendant knew he engaged in this protected activity; (3) thereafter, the defendant took an employment action adverse to him; and (4) there was a causal connection between the protected activity and the adverse employment action. DiCarlo v. Potter, 358 F.3d 408, 420 (6th Cir.2004) (citation omitted). Smith's complaint satisfies the first two requirements by explaining how he sought legal counsel after learning of the
Salem executive body's April 18, 2001 meeting concerning his employment; how his attorney contacted Defendant DeJane to advise Defendants of Smith's representation; and how Smith filed a complaint with the EEOC concerning Defendants' meeting and intended actions. With respect to the fourth requirement, a causal connection between the protected activity and the adverse employment action, "[a]lthough no one factor is dispositive in establishing a causal connection, evidence ... that the adverse action was taken shortly after the plaintiff's exercise of protected rights is relevant to causation." *Nguyen v. City of Cleveland*, 229 F.3d 559, 563 (6th Cir.2000); see also *Oliver v. Digital Equip. Corp.*, 846 F.2d 103, 110 (1st Cir.1988) (employee's discharge "soon after" engaging in protected activity *571 "is indirect proof of a causal connection between the firing and the activity because it is strongly suggestive of retaliation."); *Miller v. Fairchild Indus., Inc.*, 797 F.2d 727, 731 (9th Cir 1986) ("Causation sufficient to establish a prima facie case of unlawful retaliation may be inferred from the proximity in time between the protected action and the allegedly retaliatory discharge."). Here, Smith was suspended on April 26, 2001, just days after he engaged in protected activity by receiving his "right to sue" letter from the EEOC, which occurred four days before the suspension, and by his attorney contacting Mayor DeJane, which occurred six days before the suspension. The temporal proximity between the events is significant enough to constitute direct evidence of a causal connection for the purpose of satisfying Smith's burden of demonstrating a prima facie case.

We turn now to examining whether Smith properly alleged a claim of sex stereotyping, in violation of the Supreme Court's pronouncements in *Price Waterhouse v. Hopkins*, 490 U.S. 228, 109 S.Ct. 1775, 104 L.Ed.2d 268 (1989), and whether Smith alleged that he suffered an adverse employment action.

1. Sex Stereotyping

Title VII of the Civil Rights Act of 1964 provides, in relevant part, that "[i]t shall be an unlawful employment practice for an employer ... to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a).

In his complaint, Smith asserts Title VII claims of retaliation and employment discrimination "because of ... sex." The district court dismissed Smith's Title VII claims on the ground that he failed to state a claim for sex stereotyping pursuant to *Price Waterhouse v. Hopkins*, 490 U.S. 228, 109 S.Ct. 1775, 104 L.Ed.2d 268 (1989). The district court implied that Smith's claim was disingenuous, stating that he merely "invokes the term-of-art created by *Price Waterhouse*, that is, 'sex-stereotyping,' " as an end run around his "real" claim, which, the district court stated, was "based upon his transsexuality." The district court then held that "Title VII does not prohibit discrimination based on an individual's transsexualism."

Relying on *Price Waterhouse*--which held that Title VII's prohibition of discrimination "because of ... sex" bars gender discrimination, including discrimination based on sex stereotypes--Smith contends on appeal that he was a victim of discrimination "because of ... sex" both because of his gender non-conforming conduct and, more generally, because of his identification as a transsexual.

We first address whether Smith has stated a claim for relief, pursuant to *Price Waterhouse* s prohibition of sex stereotyping, based on his gender non-conforming behavior and appearance. In *Price Waterhouse*, the plaintiff, a female senior manager in an accounting firm, was denied partnership in the firm, in part, because she was considered "macho." 490 U.S. at 235, 109 S.Ct. 1775. She was advised that she could improve her chances for partnership if she were to take "a course at charm school," "walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry." Id. (internal quotation marks omitted). Six members of the Court agreed that such comments bespoke gender discrimination, holding that Title VII barred not just discrimination because Hopkins was a woman, but also sex stereotyping--that is, discrimination because she failed to act *572 like a woman. Id. at 250-51, 109 S.Ct. 1775 (plurality opinion of four Justices); id. at 258-61, 109 S.Ct. 1775 (White, J., concurring); id. at 272-73, 109 S.Ct. 1775 (O'Connor, J., concurring) (accepting plurality's sex stereotyping analysis and characterizing the "failure to conform to [gender] stereotypes" as a discriminatory criterion; concurring separately to clarify the separate issues of causation and allocation of the burden of proof). As Judge Posner has pointed out, the term "gender" is one "borrowed from grammar to designate the sexes as viewed as social rather than biological classes." Richard A. Posner, Sex and Reason, 24-25 (1992). The Supreme Court made clear that in the context of Title VII, discrimination because of "sex" includes gender discrimination: "In the context of sex stereotyping, an employer who acts on the basis of a belief that a woman
cannot be aggressive, or that she must not be, has acted on the basis of gender." Price Waterhouse, 490 U.S. at 250, 109 S.Ct. 1775. The Court emphasized that "we are beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotype associated with their group." Id. at 251, 109 S.Ct. 1775.

Smith contends that the same theory of sex stereotyping applies here. His complaint sets forth the conduct and mannerisms which, he alleges, did not conform with his employers' and co-workers' sex stereotypes of how a man should look and behave. Smith's complaint states that, after being diagnosed with GID, he began to express a more feminine appearance and manner on a regular basis, including at work. The complaint states that his co-workers began commenting on his appearance and mannerisms as not being masculine enough; and that his supervisors at the Fire Department and other municipal agents knew about this allegedly unmasculine conduct and appearance. The complaint then describes a high-level meeting among Smith's supervisors and other municipal officials regarding his employment. Defendants allegedly schemed to compel Smith's resignation by forcing him to undergo multiple psychological evaluations of his gender non-conforming behavior. The complaint makes clear that these meetings took place soon after Smith assumed a more feminine appearance and manner and after his conversation about this with Eastek. In addition, the complaint alleges that Smith was suspended for twenty-four hours for allegedly violating an unenacted municipal policy, and that the suspension was ordered in retaliation for his pursuing legal remedies after he had been informed about Defendants' plan to intimidate him into resigning. In short, Smith claims that the discrimination he experienced was based on his failure to conform to sex stereotypes by expressing less masculine, and more feminine mannerisms and appearance.

[5] Having alleged that his failure to conform to sex stereotypes concerning how a man should look and behave was the driving force behind Defendants' actions, Smith has sufficiently pleaded claims of sex stereotyping and gender discrimination.

In so holding, we find that the district court erred in relying on a series of pre-Price Waterhouse cases from other federal appellate courts holding that transsexuals, as a class, are not entitled to Title VII protection because "Congress had a narrow view of sex in mind" and "never considered nor intended that [Title VII] apply to anything other than the traditional concept of sex." Ulane v. Eastern Airlines, Inc., 742 F.2d 1081, 1085, 1086 (7th Cir.1984); see also Holloway v. Arthur Andersen & Co., 566 F.2d 659, 661-63 (9th Cir.1977) (refusing to extend protection of Title VII to transsexuals because discrimination against transsexuals is based on "gender" rather than "sex"). It is true that, in the past, federal appellate courts regarded Title VII as barring discrimination based only on "sex" (referring to an individual's anatomical and biological characteristics), but not on "gender" (referring to socially-constructed norms associated with a person's sex). See, e.g., Ulane, 742 F.2d at 1084 (construing "sex" in Title VII narrowly to mean only anatomical sex rather than gender); Sommers v. Budget Mkts., Inc., 667 F.2d 748, 750 (8th Cir.1982) (holding that transsexuals are not protected by Title VII because the "plain meaning" must be ascribed to the term "sex" in the absence of clear congressional intent to do otherwise); Holloway, 566 F.2d at 661-63 (refusing to extend protection of Title VII to transsexuals because discrimination against transsexualism is based on "gender" rather than "sex," and "sex" should be given its traditional definition based on the anatomical characteristics dividing "organisms" and "living beings" into male and female). In this earlier jurisprudence, male-to-female transsexuals (who were the plaintiffs in Ulane, Sommers, and Holloway) --as biological males whose outward behavior and emotional identity did not conform to socially-prescribed expectations of masculinity--were denied Title VII protection by courts because they were considered victims of "gender" rather than "sex" discrimination.

However, the approach in Holloway, Sommers, and Ulane--and by the district court in this case--has been eviscerated by Price Waterhouse. See Schwenk v. Hartford, 204 F.3d 1187, 1201 (9th Cir.2000) ("The initial judicial approach taken in cases such as Holloway [and Ulane ] has been overruled by the logic and language of Price Waterhouse."). By holding that Title VII protected a woman who failed to conform to social expectations concerning how a woman should look and behave, the Supreme Court established that Title VII's reference to "sex" encompasses both the biological differences between men and women, and gender discrimination, that is, discrimination based on a failure to conform to stereotypical gender norms. See Price Waterhouse, 490 U.S. at 251, 109 S.Ct. 1775; see also Schwenk, 204 F.3d at 1202 (stating that Title VII encompasses instances in which "the perpetrator's actions stem from the fact that he believed that the victim was a man who 'failed to act like' one" and that "sex" under Title VII encompasses both the anatomical differences between men and women and gender); Rene v. MGM Grand Hotel, Inc., 305 F.3d 1061, 1068 (9th Cir.2002) (en banc) (Pregerson, J., concurring) (noting that the Ninth Circuit had previously found that "same-sex gender stereotyping of the sort suffered by Rene--i.e. gender stereotyping of a male gay employee by his male co-workers" constituted actionable harassment under Title VII and
concluding that "[t]he repeated testimony that his co-workers treated Rene, in a variety of ways, 'like a woman' constitutes ample evidence of gender stereotyping"); Bibby v. Philadelphia Coca Cola Bottling Co., 260 F.3d 257, 262-63 (3d Cir.2001) (stating that a plaintiff may be able to prove a claim of sex discrimination by showing that the "harasser's conduct was motivated by a belief that the victim did not conform to the stereotypes of his or her gender"); Nichols v. Azteca Rest. Enters., Inc., 256 F.3d 864, 874-75 (9th Cir.2001) (holding that harassment "based upon the perception that [the plaintiff] is effeminate" is discrimination because of sex, in violation of Title VII), overruling DeSantis v. Pac. Tel. & Tel. Co., Inc., 608 F.2d 327 (9th Cir.1979); Doe v. Belleville, 119 F.3d 563, 580-81 (7th Cir.1997) (holding that "Title VII does not permit an employee to be *574 treated adversely because his or her appearance or conduct does not conform to stereotypical gender roles" and explaining that "a man who is harassed because his voice is soft, his physique is slight, his hair long, or because in some other respect he exhibits his masculinity in a way that does not meet his coworkers' idea of how men are to appear and behave, is harassed 'because of his sex' "); vacated and remanded on other grounds, 523 U.S. 1001, 118 S.Ct. 1183, 140 L.Ed.2d 313 (1998).

After Price Waterhouse, an employer who discriminates against women because, for instance, they do not wear dresses or makeup, is engaging in sex discrimination because the discrimination would not occur but for the victim's sex. It follows that employers who discriminate against men because they do wear dresses or makeup, or otherwise act femininely, are also engaging in sex discrimination, because the discrimination would not occur but for the victim's sex. See, e.g., Nichols, 256 F.3d 864 (Title VII sex discrimination and hostile work environment claim upheld where plaintiff's male co-workers and supervisors repeatedly referred to him as "she" and "her" and where co-workers mocked him for walking and carrying his serving tray "like a woman"); Higgins v. New Balance Athletic Shoe, Inc., 194 F.3d 252, 261 n.4 (1st Cir.1999) ("[I] just as a woman can ground an action on a claim that men discriminated against her because she did not meet stereotyped expectations of femininity, a man can ground a claim on evidence that other men discriminated against him because he did not meet stereotypical expectations of masculinity." (internal citation omitted)); see also Rosa v. Park West Bank & Trust Co., 214 F.3d 213 (1st Cir.2000) (applying Price Waterhouse and Title VII jurisprudence to an Equal Credit Opportunity Act claim and reinstating claim on behalf of biologically male plaintiff who alleged that he was denied an opportunity to apply for a loan because was dressed in "traditionally feminine attire").

Yet some courts have held that this latter form of discrimination is of a different and somehow more permissible kind. For instance, the man who acts in ways typically associated with women is not described as engaging in the same activity as a woman who acts in ways typically associated with women, but is instead described as engaging in the different activity of being a transsexual (or in some instances, a homosexual or transvestite). Discrimination against the transsexual is then found not to be discrimination "because of ... sex," but rather, discrimination against the plaintiff's unprotected status or mode of self-identification. In other words, these courts superimpose classifications such as "transsexual" on a plaintiff, and then legitimize discrimination based on the plaintiff's gender non-conformity by formalizing the non-conformity into an ostensibly unprotected classification. See, e.g., Dillon v. Frank, No. 90-2290, 1992 WL 5436 (6th Cir. Jan.15, 1992).

Such was the case here: despite the fact that Smith alleges that Defendants' discrimination was motivated by his appearance and mannerisms, which Defendants felt were inappropriate for his perceived sex, the district court expressly declined to discuss the applicability of Price Waterhouse. The district court therefore gave insufficient consideration to Smith's well-pleaded claims concerning his contra-gender behavior, but rather accounted for that behavior only insofar as it confirmed for the court Smith's status as a transsexual, which the district court held precluded Smith from Title VII protection.

Such analyses cannot be reconciled with Price Waterhouse, which does not make Title VII protection against sex stereotyping *575 conditional or provide any reason to exclude Title VII coverage for non sex-stereotypical behavior simply because the person is a transsexual. As such, discrimination against a plaintiff who is a transsexual-and therefore fails to act and/or identify with his or her gender--is no different from the discrimination directed against Ann Hopkins in Price Waterhouse, who, in sex-stereotypical terms, did not act like a woman. Sex stereotyping based on a person's gender non-conforming behavior is impermissible discrimination, irrespective of the cause of that behavior; a label, such as "transsexual," is not fatal to a sex discrimination claim where the victim has suffered discrimination because of his or her gender non-conformity. Accordingly, we hold that Smith has stated a claim for relief pursuant to Title VII's prohibition of sex discrimination.
Finally, we note that, in its opinion, the district court repeatedly places the term "sex stereotyping" in quotation marks and refers to it as a "term of art" used by Smith to disingenuously plead discrimination because of transsexualism. Similarly, Defendants refer to sex stereotyping as "the Price Waterhouse loophole." (Appellees' Brief at 6.) These characterizations are almost identical to the treatment that Price Waterhouse itself gave sex stereotyping in its briefs to the U.S. Supreme Court. As we do now, the Supreme Court noted the practice with disfavor, stating:

In the specific context of sex stereotyping, an employer who acts on the basis of a belief that a woman cannot be aggressive, or that she must not be, has acted on the basis of gender. Although the parties do not overtly dispute this last proposition, the placement by Price Waterhouse of "sex stereotyping" in quotation marks throughout its brief seems to us an insinuation either that such stereotyping was not present in this case or that it lacks legal relevance. We reject both possibilities.


2. Adverse Employment Action

Despite having dismissed Smith's Title VII claim for failure to state a claim of sex stereotyping--a finding we have just rejected--the district court nevertheless addressed the merits of Smith's Title VII claims arguendo. Relying on *White v. Burlington Northern & Sante Fe Ry. Co.*, 310 F.3d 443 (6th Cir.2002), the district court held that Smith's suspension was not an adverse employment action because the Court of Common Pleas, rendering the "ultimate employment decision," reversed the suspension, and that accordingly, Smith's Title VII claim could not lie. Because this Circuit has since vacated and overruled *White*, 364 F.3d 789 (6th Cir.2004) (en banc), and joined the majority of other circuits in rejecting the "ultimate employment decision" standard, we hold that the district court erred in its analysis and that Smith has successfully pleaded an adverse employment action in support of his employment discrimination and retaliation claims pursuant to Title VII.

[6] Common to both the employment discrimination and retaliation claims is a showing of an adverse employment action, which is defined as a "materi ally adverse change in the terms and conditions of [plaintiff's] employment." *Hollins v. Atlantic Co.*, 188 F.3d 652, 662 (6th Cir.1999). A "bruised ego," a "mere inconvenience or an alteration of job responsibilities" is not enough to constitute an adverse employment action. *White*, 364 F.3d at 797 (quoting *Kocsis v. Multi-Care Mgmt. Inc.*, 97 F.3d 876, 886 (6th Cir.1996)). Examples of adverse employment actions include firing, failing to promote, reassignment with significantly different responsibilities, a material loss of benefits, suspensions, and other indices unique to a particular situation. *Burlington Indus., Inc. v. Ellerth*, 524 U.S., 742, 761, 118 S.Ct. 2257, 141 L.Ed.2d 633 (1998); *White*, 364 F.3d at 798. Here, the Fire Department suspended Smith for twenty-four hours. Because Smith works in twenty-four hour shifts, that twenty-four hour suspension was the equivalent of three eight-hour days for the average worker, or, approximately 60% of a forty-hour work week. Pursuant to the liberal notice pleading requirements set forth in *Fed.R.Civ.P. 8*, this allegation, at this phase of the litigation, is sufficient to satisfy the adverse employment requirement of both an employment discrimination and retaliation claim pursuant to Title VII. [FN1]

*FN1.* Smith's complaint does not state whether he was suspended with or without pay. Because we must construe the complaint in the light most favorable to the plaintiff, *Ziegler*, 249 F.3d at 512, and given the liberal pleading standards of *Federal Rule of Civil Procedure 8*, we do not find this failure dispositive. A "materi ally adverse change" in employment conditions often involves a material loss of pay or benefits, but that is not always the case, and "other indices that might be unique to a particular situation" can constitute a "materi ally adverse change" as well. *Hollins*, 188 F.3d at 662. Because no discovery has been conducted yet, we do not know the full contours of the suspension. For now, however, for the reasons just stated, we find that Smith has sufficiently alleged an adverse employment action.

It is irrelevant that Smith's suspension was ultimately reversed by the Court of Common Pleas after he challenged the suspension's legality. In *White*, this Court recently joined the majority of other circuits in rejecting the "ultimate employment decision" standard whereby a negative employment action is not considered an "adverse employment action" for Title VII purposes when the decision is subsequently reversed by the employer, putting the plaintiff in the position he would have been in absent the negative action. *White*, 364 F.3d 789 (holding that the suspension of a railroad employee without pay, followed thirty-seven days later by reinstatement with back pay, was an "adverse employment action" for Title VII purposes). Even if the "ultimate employment decision" standard were still viable, the district court erred in concluding that, because the Court of Common Pleas overturned the suspension, it was not
an adverse employment action. There is no legal authority for the proposition that reversal by a judicial body—as opposed to the employer—declassifies a suspension as an adverse employment action.

Accordingly, Smith has stated an adverse employment action and, therefore, satisfied all of the elements necessary to allege a prima facie case of employment discrimination and retaliation pursuant to Title VII. We therefore reverse the district court’s grant of judgment on the pleadings to Defendants with respect to those claims.

B. 42 U.S.C. § 1983 Claims

The district court also dismissed Smith's claims pursuant to 42 U.S.C. § 1983 on the ground that he failed to state a claim based on the deprivation of a constitutional or federal statutory right.

42 U.S.C. § 1983 provides a civil cause of action for individuals who are deprived of any rights, privileges, or immunities secured by the Constitution or federal laws by those acting under color of state law. Smith has stated a claim for relief pursuant to § 1983 in connection with his sex-based claim of employment discrimination. Individuals have a right, protected by the Equal Protection clause of the Fourteenth Amendment, to be free from discrimination on the basis of sex in public employment. *577 Davis v. Passman, 442 U.S. 228, 234-35, 99 S.Ct. 2264, 60 L.Ed.2d 846 (1979). To make out such a claim, a plaintiff must prove that he suffered purposeful or intentional discrimination on the basis of gender. Vill. of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 264-65, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977). As this Court has noted several times, "the showing a plaintiff must make to recover on a disparate treatment claim under Title VII mirrors that which must be made to recover on an equal protection claim under section § 1983." Gutzwiller v. Fenik, 860 F.2d 1317, 1325 (6th Cir.1988) (citing Kitchen v. Chippewa Valley Schs., 825 F.2d 1004, 1011 (6th Cir.1987); Daniels v. Bd. of Educ., 805 F.2d 203, 207 (6th Cir.1986); Grano v. Dep't of Dev., 637 F.2d 1073, 1081-82 (6th Cir.1980); Lautermilch v. Findlay City Schs., 314 F.3d 271, 275 (6th Cir.2003)("To prove a violation of the equal protection clause under § 1983, [a plaintiff] must prove the same elements as are required to establish a disparate treatment claim under Title VII."). (quotation and citation omitted). The facts Smith has alleged to support his claims of gender discrimination pursuant to Title VII easily constitute a claim of sex discrimination grounded in the Equal Protection Clause of the Constitution, pursuant to § 1983. See Back v. Hastings on Hudson Union Free Sch. Dist., 365 F.3d 107, 117-21 (2d Cir. 2004) (holding that claims premised on Price Waterhouse sex stereotyping theory sufficiently constitute claim of sex discrimination pursuant to § 1983).

Defendants urge us to hold otherwise, on the ground that Smith’s complaint fails to refer specifically to the Equal Protection Clause of the U.S. Constitution. But the Federal Rules of Civil Procedure provide for a liberal system of notice pleading. Fed.R.Civ.P. 8(a). A plaintiff need only provide "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed.R.Civ.P. 8(a)(2). "Such a statement must simply ‘give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.’ " Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002) (quoting Conley v. Gibson, 355 U.S. 41, 47, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)). Claims made pursuant to 42 U.S.C. § 1983 are not subject to heightened pleading standards. Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 507 U.S. 163, 165-66, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993) (rejecting heightened pleading standard for § 1983 claims); Jones v. Duncan, 840 F.2d 359 (6th Cir.1988) (holding that § 1983 claims need not set forth in detail all the particularities of a plaintiff's claim against a defendant). Moreover, legal theories of recovery need not be spelled out as long as the relevant issues are sufficiently implicated in the pleadings; in considering motions pursuant to Fed.R.Civ.P. 12(c), we ask not whether a complaint points to a specific statute, but whether relief is possible under any set of facts that could be established consistent with the allegation. Because Smith's sex discrimination claim so thoroughly and obviously sounds in a constitutional claim of equal protection, Defendants had fair notice of his claim and the ground upon which it rests. As such, we hold that Smith has satisfied the liberal notice pleading requirements set forth in Fed.R.Civ.P. 8 with respect to his claim of sex discrimination, grounded in an alleged equal protection violation, and we therefore reverse the district court's grant of judgment on the pleadings dismissing Smith's § 1983 claim.

[7] In his appellate brief, Smith also contends that his complaint alleges a violation of his constitutional right to due process, based on the City's failure to comply with the state statutory and administrative procedures that an Ohio municipality must *578 follow when taking official employment action against a public employee. His complaint outlines the statutory procedures, governed by O.R.C. § 121.22(G), pursuant to which members of an Ohio municipality may meet for purposes of official employment action against a public employee, and it alleges
that those procedures were not followed. The complaint also discusses O.A.C. § 124-9-11, which would have permitted Smith to call witnesses at his post-suspension hearing in front of the Salem Civil Service Commission; and the complaint alleges that he was barred from calling witnesses. Smith contends that these allegations implicate his right to due process pursuant to the Fourteenth Amendment of the U.S. Constitution.

However, it is well-settled that state law does not ordinarily define the parameters of due process for Fourteenth Amendment purposes, and that state law, by itself, cannot be the basis for a federal constitutional violation. See Purisch v. Tennessee Technological Univ., 76 F.3d 1414, 1423 (6th Cir.1996) (“Violation of a state's formal [employment grievance] procedure ... does not in itself implicate constitutional due process concerns.”). Neither Smith's complaint nor his brief specifies what deprivation of property or liberty allegedly stemmed from the City's failure to comply with state procedural and administrative rules concerning his employment. Accordingly, he has failed to state a federal due process violation pursuant to § 1983.

In sum, we hold that Smith has failed to state a § 1983 claim based on violations of his right to due process. However, he has stated a § 1983 claim of sex discrimination, grounded in an alleged equal protection violation, and, for that reason, we reverse the district court's grant of judgment on the pleadings dismissing Smith's § 1983 claim.

III. CONCLUSION

Because Smith has successfully stated claims for relief pursuant to both Title VII and 42 U.S.C. § 1983, the judgment of the district court is REVERSED and this case is REMANDED to the district court for further proceedings consistent with this opinion.


Briefs and Other Related Documents (Back to top)

• 03-3399 (Docket) (Mar. 14, 2003)

END OF DOCUMENT
Appendix D: Members of the Second Ad Hoc Gender Identity Committee

Chair/ASMSU Representation: Lauren B. Beach, Undergraduate Student and Former Member of ASMSU’s Academic Assembly.

Member/ECAC Representation: George Allen, Ph.D., College of Nursing.

Member/ASMSU Representation: Steven Ambrose, Undergraduate Student and Former Member of ASMSU’s Academic Assembly.

Member/Faculty Representation: Michael Craw, Ph.D., James Madison College.

Member/COGS Representation: Rachel Olson, Graduate Student and member of COGS.

Member/Faculty Representation: Lynnette Overby, Ph.D., Department of Theater.

Advisor: Brent Bilodeau, Ph.D., Director of the Office of LBGT Concerns.

Advisor: Paulette Granberry Russell, J.D., Director of the Office for Inclusion and Intercultural Initiatives

Advisor: Kristine Zayko, J.D., Office of the General Counsel
Appendix E: Some current definitions of gender identity and gender expression

In examining various definitions of gender identity and expression, we sampled the following four sources, which we viewed as the most pertinent to our goals: (1) governmental units, such as cities and counties; (2) alliances of transgender individuals; (3) scholars in the area of gender studies; and (4) healthcare agencies. Although institutions of higher learning would have been a natural fifth group, they typically do not present definitions; rather, they simply state that gender identity and expression are protected under their ADP. We present below a small sample of representative definitions drawn from these sources. As may be seen, there is considerable overlap among these definitions.

1. Ann Arbor, Michigan.

   Gender Identity. A person’s actual or perceived gender, including a person’s gender identity, self-image, appearance, expression, or behavior, whether or not that gender identity, self-image, appearance, expression, or behavior is different from that traditionally associated with the person’s sex at birth as being either female or male.

   Source: City Ordinance No. 10-99, effective March 17, 1999.

2. Trans Alliance Society, British Columbia.

   Gender identity is an internally felt sense of gender. It refers to the self-image or belief that a person has about their gender as being female, male, both, or something altogether different...


   Gender identity refers to a person’s internal, deeply felt sense of being either male or female, or something other in between.... Gender expression refers to all of the external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, mannerisms, speech patterns and social interactions.


   Gender identity disorder describes a conflict between a person’s physical or apparent gender and that person’s self-identification. For instance, a person identified as a boy may actually feel and act like a girl. This is distinct from homosexuality in that homosexuals nearly always identify with their apparent sex or gender.
People with gender identity disorder may act and present themselves as members of the opposite sex. The disorder may affect self-concept, choice of sexual partners, and the display of femininity or masculinity through mannerisms, behavior, and dress.

Appendix F: University Apartments student/grad student application
APARTMENT INFORMATION

Apartments are available for students, their spouses and children. They are also available for students eligible to live in the residence halls who have earned at least 28 undergraduate credits. Each student must complete this application and pay the $25 application fee. Refer to the application letter for more information. Applications for current academic year not honored by the end of Spring Semester will be canceled. All assignments are made by date this office receives applications. No pets are permitted in University Apartments except for fish (excluding carnivorous or poisonous varieties).

Please enclose a $25 non-refundable application fee by check or money order, in U.S. FUNDS, payable to Michigan State University.

Return application and fee to: University Apartments
Michigan State University
100 University Housing Building
East Lansing, MI 48824-1231

Applicant Signature: ____________________________ Date: ___ / ___ / ___

PHONE | 800.678.4679 | 517.355.9550 • FAX | 517.432.2093 •
EMAIL | housing-info@uh.msu.edu • WEBSITE | www.uch.msu.edu/campus/apartments

OFFICE USE ONLY

Apartment Leasing Checklist

Initial and Date

- Check student account, enrollment and eligibility
- Application Approved
- Process $25 application fee in cash register, receipt # entered on application
- Process application in RMS, RMS ID entered on application
- File application
- Apartment Offer Sent
  Offer Sent Date: ___ / ___ / ___ Return By: ___ / ___ / ___ Move In Date: ___ / ___ / ___
- After Offer Returned and Processed
  Apartment Assigned: ___________________________ By: __________________ On: ___ / ___ / ___
- Lease typed and packet prepared
Appendix G: University Residence Halls application
I understand that the HOUSING CONTRACT is for the entire academic year, or from the time of entrance to the end of Spring Semester.

I will start Fall ☐ Spring ☐ Summer ☐ Summer continuing to Fall ☐ of 20____.

I agree to abide and be bound by the University Housing Terms and Conditions.

Signature ____________________________ Date ____________________

Return this application with the $25 housing application fee (not refundable).

DO NOT SEND CASH.

Make check or money order payable to MICHIGAN STATE UNIVERSITY.
Include your PID number on the check or money order.

Mail to: Hall Assignments Office
Michigan State University
100 University Housing Bldg
East Lansing, MI 48824-1231
### Appendix H: Unisex restrooms on campus

<table>
<thead>
<tr>
<th>Building</th>
<th>Unisex Restrooms</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agricultural Engineering</td>
<td>1</td>
</tr>
<tr>
<td>Anthony Hall</td>
<td>1</td>
</tr>
<tr>
<td>Auditorium</td>
<td>1</td>
</tr>
<tr>
<td>Central School</td>
<td>4</td>
</tr>
<tr>
<td>CIPS</td>
<td>1</td>
</tr>
<tr>
<td>Clinical Center - A Wing</td>
<td>2</td>
</tr>
<tr>
<td>Conrad Hall</td>
<td>1</td>
</tr>
<tr>
<td>Cyclotron</td>
<td>1</td>
</tr>
<tr>
<td>Demonstration Hall</td>
<td>1</td>
</tr>
<tr>
<td>Eppley</td>
<td>2</td>
</tr>
<tr>
<td>Fee Hall - East</td>
<td>7</td>
</tr>
<tr>
<td>Fee Hall - West</td>
<td>8</td>
</tr>
<tr>
<td>Football Building</td>
<td>1</td>
</tr>
<tr>
<td>Geography</td>
<td>1</td>
</tr>
<tr>
<td>Giltner Hall</td>
<td>2</td>
</tr>
<tr>
<td>IM Circle</td>
<td>2</td>
</tr>
<tr>
<td>IM West</td>
<td>1</td>
</tr>
<tr>
<td>Jenison Fieldhouse</td>
<td>6</td>
</tr>
<tr>
<td>Kedzie</td>
<td>2</td>
</tr>
<tr>
<td>Kresge</td>
<td>1</td>
</tr>
<tr>
<td>Life Sciences</td>
<td>1</td>
</tr>
<tr>
<td>MSU College of Law</td>
<td>3</td>
</tr>
<tr>
<td>Music Building</td>
<td>1</td>
</tr>
<tr>
<td>Nisbet</td>
<td>1</td>
</tr>
<tr>
<td>Olin Health Center</td>
<td>3</td>
</tr>
<tr>
<td>Power Plant</td>
<td>2</td>
</tr>
<tr>
<td>Stores (Food)</td>
<td>1</td>
</tr>
<tr>
<td>Student Services</td>
<td>1</td>
</tr>
<tr>
<td>Veterinary Medical Center</td>
<td>3</td>
</tr>
<tr>
<td>Wharton</td>
<td>18</td>
</tr>
<tr>
<td>Willis House</td>
<td>2</td>
</tr>
</tbody>
</table>

**Total:** 82

### Under Construction

- Snyder/Phillips Renovations & Addition: 21
- Chemistry Addition: 6
Appendix I: International Olympic Committee Press Release

IOC APPROVES CONSENSUS WITH REGARD TO ATHLETES WHO HAVE CHANGED SEX
18 May 2004

The Executive Board of the International Olympic Committee (IOC) today approved the consensus proposed by the IOC Medical Commission stating the conditions to be respected for a person who has changed sex to compete in sports competitions. These conditions will be applied as of the Games of the XXVIII Olympiad in 2004 in Athens.

The consensus reads as follows:

Statement of the Stockholm consensus on sex reassignment in sports

On 28 October 2003, an ad-hoc committee convened by the IOC Medical Commission met in Stockholm to discuss and issue recommendations on the participation of individuals who have undergone sex reassignment (male to female and vice versa) in sport.

The group was composed of:

- Prof. Arne Ljungqvist (SWE)
- Prof. Odile Cohen-Haguenauer (FRA)
- Prof. Myron Genel (USA)
- Prof. Joe Leigh Simpson (USA)
- Prof. Martin Ritzen (SWE)
- Prof. Marc Fellous (FRA)
- Dr Patrick Schamasch (FRA)

The group confirms the previous recommendation that any “individuals undergoing sex reassignment of male to female before puberty should be regarded as girls and women” (female). This also applies to individuals undergoing female to male reassignment, who should be regarded as boys and men (male).

The group recommends that individuals undergoing sex reassignment from male to female after puberty (and vice versa) be eligible for participation in female or male competitions, respectively, under the following conditions:

-Surgical anatomical changes have been completed, including external genitalia changes and gonadectomy

-Legal recognition of their assigned sex has been conferred by the appropriate official authorities

-Hormonal therapy appropriate for the assigned sex has been administered in a verifiable manner and for a sufficient length of time to minimise gender-related advantages in sport competitions.

In the opinion of the group, eligibility should begin no sooner than two years after gonadectomy.

It is understood that a confidential case-by-case evaluation will occur.
In the event that the gender of a competing athlete is questioned, the medical delegate (or equivalent) of the relevant sporting body shall have the authority to take all appropriate measures for the determination of the gender of a competitor.

Explanatory note to the recommendation on sex reassignment and sports

In the past there have been rare cases of athletes who have competed under one gender and later in life undergone sex reassignment. Occasionally, such an athlete has gone on competing under the new gender. Such cases seem to have been dealt with individually by the responsible sports federations without any clear rules. They have, however, been extremely rare and do not seem to have created a significant problem for sport in general.

With the arrival of improved methods for the identification of transsexual individuals, and improved possibilities to rectify any sexual ambiguity, the number of individuals undergoing sex reassignment has increased. The increase has become particularly significant after the introduction of legislation with respect to sex reassignment in many countries.

The increasing number of cases of sex reassignment has also come to affect sport. Although individuals who undergo sex reassignment usually have personal problems that make sports competition an unlikely activity for them, there are some for whom participation in sport is important. Thus, the question has been raised whether specific requirements for their participation in sport can be introduced, and what any such requirements should be.

The first international sports organisation to address the issue was the IAAF in 1990. An expert seminar unanimously recommended that any person who has undergone sex reassignment before puberty should be accepted in sport under the assigned gender. Individuals who have undergone sex reassignment after puberty were considered to represent a more complex problem, since they have been under the influence of hormones under their former gender during their puberty. In particular, a male puberty would mean an influence of testosterone, which could, in theory, be of importance even after a reassignment to female gender. It was, therefore, recommended that any such case be evaluated on an individual basis by competent experts before a decision be taken by the relevant sports authority. These recommendations have served as guiding principles also by the IOC when questions have been asked.

In recent years it has become apparent that the recommendation to make a case-by-case evaluation of athletes who have undergone sex reassignment after puberty is insufficient. The IOC has been asked to explain what such an evaluation should include. What requirements should be fulfilled before the athlete is allowed to compete under the new gender?

The present recommendation is the result of an updating of the IAAF guidelines by a panel of experts and to which clear requirements have been added with respect to eligibility for competition under the new gender following sex reassignment after puberty. The most debated aspects have been: (A) For how long will the hormonal influence of the earlier puberty be of importance? (B) Will the testosterone influence on the muscular strength during male puberty
ever disappear? (C) For how long should the treatment with female hormones last in order to be considered sufficient? (D) How can one make sure that the required treatment with female hormone does really take place? All those questions were addressed by the panel, which also sought advice from further outside experts, before the enclosed recommendations were agreed upon.

IOC Medical Commission Chairman Arne Ljungqvist
Appendix J: List of Meeting Dates

Note: All meetings lasted for 1.5 hours.

December 6, 2005 – Chair selected, met with GI I members
January 26, 2006 – Introductory meeting
February 23, 2006 – Met with transgender faculty, staff, and students
April 6, 2006 – Luncheon with transgender educator Samuel Lurie
April 20, 2006 – Met with Housing/Res Life staff
May 17, 2006
May 24, 2006
May 31, 2006
June 7, 2006
June 14, 2006
June 21, 2006
June 28, 2006
July 5, 2006
July 12, 2006
July 19, 2006
July 26, 2006
August 2, 2006
August 9, 2006
August 16, 2006
August 23, 2006
August 30, 2006
September 15, 2006
September 22, 2006
September 29, 2006
October 6, 2006
October 13, 2006
October 20, 2006
October 27, 2006
November 3, 2006
November 10, 2006
December 1, 2006
December 8, 2006
January 26, 2007 --- Meeting with President LouAnna Simon
February 9, 2007
February 16, 2007
Appendix K: List of Individuals the Committee Contacted for Consultation

MSU Faculty/Staff

*Brent Bilodeau, Office of LBGT Concerns, Advisor to the Committee
*Paulette Granberry Russell, Office of Inclusion and Intercultural Initiatives, Advisor to the Committee
*Kristine Zayko, Office of the General Counsel, Advisor to the Committee

Pam Beemer, Assistant Vice President for Human Resources
Sally Belloli, Assistant Director, IM Sports and Recreative Services
Dan Bollman, Physical Plant
Cassandra Book, Associate Dean, College of Education
Angela Brown, Director of Housing
Paul Goldblatt, Director of Residence Life
Julie Harrison, Academic Governance Secretary
Dugald McMillan, Senior Associate Registrar
Kristine Moore, Office for Inclusion and Intercultural Initiatives
Julie Navarre, internship coordinator, School of Social Work
Bob Nestle, Physical Plant
John Pedraza, Resource Center for Persons with Disabilities
Richard Shafer, Associate Director, Department of Student Life
Larry Sierra, Director, IM Sports and Recreative Services
Linda Stanford, Registrar
Jon Sticklin, GI-1 Committee
Paul Streng, School of Planning, Design and Construction

The GI-2 committee also expresses its gratitude for the personal stories and experiences that transgender students, staff and faculty at MSU shared with the committee. For privacy reasons we are unable to acknowledge them by name.

External Contacts

Doug Bauder, Coordinator of GLBT Student Support Services, Indiana University
Brett Genny Beemyn, Director of Stonewall Center, University of Massachusetts at Amherst
Jennifer Boleyn, Colby College
Olga Esquivel-Gonzalez, Human Resources, Ohio State University
Carol Fischer, Assistant coordinator of GLBT Student Support Services, Indiana University
Eunice Hornsby, Ohio State University
Carol Hustoles, Office of the General Counsel, Western Michigan University
Samuel Lurie, Transgender Educator
CJ Tune-Copeland, Transgender Michigan
Appendix L: List of Colleges and Universities by State that Have Added Gender Identity to Their Anti-Discrimination Policies, 1996-2006

Source 1:  http://www.transgenderlaw.org/college/index.htm#laws

70 Colleges and Universities and 2 Law Schools Have Non-Discrimination Policies that Include Gender Identity/Expression* (the year the policy change went into effect, if known, is in parentheses)

Arizona
Arizona State University (2004)
University of Arizona (2005)

California
California College of the Arts
California Institute of Technology (2004)
City College of San Francisco (2005)
Golden Gate University School of Law (2005)
Occidental College (2006)
University of California system (2004)
University of Southern California (2004)

Colorado
Colorado State University (2004)

Connecticut
Connecticut College (2005)
Wesleyan University (2002)

Florida
New College (2006)

Illinois
Knox College (2001)
Parkland College (2006)
University of Chicago (2004)
University of Illinois system (2005)

Indiana
DePauw University (1999)

Iowa
Central College (2005)
Drake University (2004)
Iowa State University (2005)
University of Iowa (1996)

Maine
Colby College (2005)
Rockport College (2000)
University of Maine system (2006)

Maryland
Goucher College (2006)
Johns Hopkins University (2005)
University of Baltimore (2006)

Massachusetts
Brandeis University (2006)
Harvard University (2006)
Massachusetts Institute of Technology (2003)
Tufts University (2005)
Western New England College School of Law (2005)
Williams College (2006)

Michigan
Kalamazoo College (2000)
Kalamazoo Valley Community College (2005)
Western Michigan University (2006)

New Hampshire
Dartmouth College (2006)
University of New Hampshire (2005)

New Jersey
Princeton University (2006)

New Mexico
College of Santa Fe (2005)

New York
City University of New York system (2002-03) [the policy of Brooklyn College, a CUNY school]
Columbia University (2006)
Cornell University (2005)
New York University (2005)
Rochester Institute of Technology (2005)
Sarah Lawrence College (2006)
Syracuse University (2005)
Vassar College (2006)

North Carolina
North Carolina State University (2005)

Ohio
Ohio State University (2004)

Oregon
Oregon State University (2005)
University of Oregon (2005)

Pennsylvania
Lehigh University (2003)
Muhlenberg College (2005)
Pennsylvania State University (2006)
University of Pennsylvania (2003)

Rhode Island
Brown University (2001-02)
Bryant University (2005)
Community College of Rhode Island
Rhode Island College  
University of Rhode Island (2003-04)

Vermont  
Middlebury College (2003)  
University of Vermont (2005)

Washington  
Central Washington University (2005)  
Evergreen State College (2006)  
University of Puget Sound (2002-03)  
University of Washington  
Whitman College (2001)

Washington, DC  
American University (2002)

Wisconsin  
University of Wisconsin system (2005)

*Rutgers University and the University of Michigan state in footnotes to their policies that discrimination based on “sex” includes transgender people or gender identity/expression.
Appendix M: Policy Changes to Include Transgender Students at Various American Colleges and Universities

Source 1: http://www.transgenderlaw.org/college/index.htm#laws

Ways that Colleges and Universities Meet the Needs of Transgender Students

Health Care

Most colleges and universities fail to meet the basic health-care needs of transgender students. Because campus health and counseling center staffs typically lack training on transgender issues, many practitioners are not sensitive to or knowledgeable about the medical needs of transgender students. Even transgender students who encounter respectful and informed health center staff often cannot receive proper medical treatment, as most college insurance plans specifically exclude coverage for gender reassignment surgeries and related conditions, including hormone replacement therapy.

- To begin to provide better services to transgender students, the health and counseling centers at Cornell University, New York University, the Ohio State University, Princeton University, the University of California-Riverside, and a number of other colleges and universities require or strongly encourage their staffs to attend a training on trans issues.

- Some campus health centers are also beginning to implement structural and procedural changes to create a more welcoming environment for transgender students. New York University, for example, has developed private changing rooms and gender-neutral restrooms for patient use, offers women's health exams outside of women's health services in cases where students are not comfortable in a women's space, and allows for students to have their preferred name used on medical records and announced when they are seen for an appointment. These trans-inclusive practices are outlined in a brochure created jointly by the university's Office of LGBT Student Services and the Office for Wellness Learning.

- Although more students are coming out as transsexual and seeking to transition during their college years, schools have been slow to address their health-care needs by including hormones and gender reassignment surgeries in prescription or health insurance plans. Only a few institutions, including Harvard University, the University of California-Santa Barbara, the Ohio State University, and Suffolk University, explicitly include hormone coverage for transitioning undergraduates. At some campuses, supportive physicians will provide transsexual students with a different diagnosis, such as an "endocrine deficiency," so that their insurance will pay most of the cost. But students should not have to depend on finding a sympathetic doctor or have to hide their gender identities to receive appropriate, affordable health care. In 2004, the University of California system established an important precedent by changing its insurance plans to cover hormones, psychotherapy, and gender reassignment surgeries for its transsexual staff members and their spouses/domestic partners and children.
Residence Halls

Most colleges and universities assign housing based strictly on the individual's birth gender and have residence halls designated as single-sex by building and/or room. As a result, transgender students often lack safe and comfortable on-campus housing options. Schools are addressing this issue in a number of ways.

- As a first step, some campuses are enacting a policy that supports transgender students in finding suitable, safe housing that is in keeping with their gender identity/expression. Ithaca College, the Ohio State University, the University of California-Riverside, the University of Minnesota, and the University of Wisconsin are among the institutions with model trans-related housing policies.

- Beyond implementing supportive policies, some schools are creating gender-neutral housing options, in which students are assigned a roommate regardless of gender.

- In 2003, Wesleyan University made national news by establishing a gender-neutral hallway in order to provide support to transgender students. But after a year, school administrators disbanded the hallway, reportedly because they were concerned about segregating the students and interest waning over time. Wesleyan now matches returning students who choose gender-neutral placements and houses them in various halls.

- In 2004, Sarah Lawrence College also began offering areas of "all gender" housing in campus residence halls.

- The University of Southern Maine has established a gender-neutral floor for returning students on both their Gorham and Portland campuses. More than 40 students are living on the floors this year.

- In 2005, the University of Pennsylvania began offering a gender-neutral housing option, in which returning students can complete an application to live with someone of a gender different than themselves. Some students, though, are protesting the separate process and how the policy was put in place. Editorial here.

- In fall 2005, the University of California-Riverside and Lewis and Clark College began to offer a gender-neutral housing option to all students.

- Swarthmore College offers gender-neutral housing in several residence halls and is considering expanding the option to a number of halls that are now entirely gender-specific for fall 2006. Story here.

- In Fall 2006, Oberlin College will expand its all-gender housing option to include all of its residence halls, except all-male and all-female halls. Currently, the option is available only to returning students. The proposal that was accepted by the administration is here. A story about the policy change from the student newspaper is here.

- Macalester College, Lawrence University, and New York University offer mixed-gender suites in some campus housing.
Alternatively, a number of colleges and universities are opting to create GLBTA living-learning programs or theme floors with gender-neutral bathroom facilities and sometimes mixed-gender rooms. These institutions include:

- Carleton College
- University of California-Berkeley
- University of California-Davis
- University of California-Irvine
- [University of California-Riverside](#) (to begin in 2005)
- University of California-Santa Barbara
- University of Colorado-Boulder
- University of Iowa (to begin in 2005)
- University of Massachusetts-Amherst
- University of Vermont

**Bathrooms**

Because gender-variant people are often subject to harassment and violence when using male- or female-specific campus restrooms, colleges are publicizing the locations of gender-neutral restrooms (typically single-stall, lockable restrooms available to people of all genders), changing male/female restrooms into unisex ones, and making sure that new buildings include gender-neutral restroom options.

- Some colleges and universities, including [New York University](#), the [Ohio State University](#), [Ohio University](#), [UCLA](#), the [University of California-San Diego](#), the [University of Southern Maine](#), and [the University of Vermont](#) list gender-neutral restrooms on their web sites.

- Colleges and universities that have changed male/female restrooms into gender-neutral ones include:

  **Oberlin College:** Transgender activists were able to establish two gender-neutral restrooms in the student union and were successful in having residence life agree to have at least one gender-neutral restroom in every residence hall.

  **San Diego State University:** The student association at SDSU at passed a resolution in 2003 calling for the implementation of safe restrooms across campus for transgender students. As a first step, the group approved funds to change door signs and install door locks to convert a set of male/female restrooms in the student union into unisex facilities. The location of all gender-neutral restrooms will also be listed in the university's general catalog.

  **Skidmore College:** In 2003, the Student Government Association passed a resolution drafted by the Skidmore Pride Alliance calling for the college to create at least one gender-neutral restroom in every academic building. Following the resolution's passage, the administration quickly created 12 gender-neutral restrooms on campus. The Skidmore Pride Alliance is planning to push for more facilities in 2005-06.
University of California-San Diego: The school converted 88 single-occupancy restrooms from gendered to gender-neutral.

University of California-Santa Barbara: They converted 17 single-occupancy restrooms from gendered to gender-neutral and are investigating the feasibility of converting an additional 17.

University of Chicago: A Queer Action Campaign led to the creation of gender-neutral restrooms in two major campus buildings in 2004. The school now has 15 restrooms around campus that are designated as gender-free.

University of New Hampshire: In 2004, the Student Senate and student organizations successfully lobbied for the creation of two gender-neutral restrooms in UNH's Student Union (the MUB).

University of Wisconsin-La Crosse: The Student Senate passed a resolution in 2002-2003 calling for each campus building to have at least one gender-neutral restroom. In 2004, two restrooms on the second floor of the student union were made gender neutral.

- **American University, New York University, the Ohio State University, the University of California-Santa Barbara, and Washington State University** have made a commitment to include gender-free, single-occupancy restrooms in new campus buildings.

- **The University of Arizona** has established a restroom policy that affirms that individuals have a right to use the restroom that corresponds with their gender identity. The statement is [here](#).

**Locker Rooms**

As with male and female restrooms, public locker and shower rooms can be uncomfortable, intimidating, and even dangerous for transgender students, who may be outed as transgender if they have to change in front of others. To address this issue, campuses can create private locker rooms and/or individual showers with curtains. A few campuses are now beginning to do so, recognizing that such facilities not only serve the needs of transgender students, but also adults with children and people with disabilities who require the assistance of an attendant of a different gender. For example, the **University of Maryland** has created a "family locker room" in its Campus Recreational Center. While the facility was not specifically established for transgender students, they are able to take advantage of the greater privacy it offers.

**Forms**

Having a "sex" category on forms that is limited to "Male" and "Female" makes transgender students feel disregarded, and with no means to identify themselves, they remain invisible to administrators and their needs continue to be overlooked. With these concerns in mind, some colleges and universities are changing forms in housing, admissions, health-care, and other areas
where gender needs to be asked to enable transgender students to self-identify. The most common solutions are using "Gender: M, F, self-identify: ______" or simply "Gender: _________."

- **the Ohio State University** is in the process of changing all of its written and web-based Student Affairs forms to be gender-inclusive by using "Gender: M, F, self-identify: ______" on written material and "male, female, transgender" on web documents that have a drop-down gender category.

- **Oberlin College** and the **University of Hawaii** use "Gender: Male, Female, Transgender" on their housing applications.

- **Tufts University** and the **University of Oregon** ask students to write in their gender on their housing applications.

- **Duke University** does likewise on its admissions application.

**Records and Documents**

Being able to alter their records and documents is personally and legally important for many trans students. Not only does having the appropriate name and gender listed reflect and validate their identity, but it can also protect trans students from constantly having to explain why they use a name different from their birth name and why their appearance does not match a photo or gender designation on an identification card. Moreover, updated records and documents can ensure that trans students will not be outed and will help protect them from discrimination when they apply for jobs, seek admission to graduate and professional schools, and at any other time that they must show a college document. Schools are addressing this issue by establishing a simple procedure for trans students to change the name and/or gender designation on all of their campus records, including identification cards, listings in electronic and print directories, and files in admissions, financial aid, the registrar's office, and the health center.

- At the **Ohio State University**, the **University of Utah**, and the **University of Oregon**, trans students can change the gender designation on their main college record without evidence that they have had gender reassignment surgeries (GRS). Not requiring medical intervention is important, as most transitioning students are not in a position to have GRS, even if they desire it.

- At the **University of Maryland**, trans students can change the gender listed on their records by obtaining a letter of support from a mental health professional.

- At the **University of Vermont**, trans students who are not yet able to change their names legally can still request an identification card with a name other than their birth name. Transgender students at **American University** and the **University of Illinois-Chicago** can request a new ID at no cost that has a gender-appropriate picture and only their last name and the initial of their first name.
At **Washington State University**, the director of the Gender Identity/Expression and Sexual Orientation Resource Center has permission from the Registrar's Office to change students' names on their university records. Students do not need to have their names legally changed first.
Appendix N: Inclusion of Gender Identity by Other Big-10 Universities

A. Universities in the Big-10 that include gender identity protection:

1. University of Illinois: “sexual orientation including gender identity”
2. University of Iowa: “gender identity”
4. University of Minnesota: State law prohibits discrimination based on “having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness.”
5. Ohio State University: “gender identity or expression”
6. Penn State University: “gender identity”
7. University of Wisconsin: The UW System prohibits discrimination based on “gender identity or expression” in employment; UW does not prohibit discrimination based on either with respect to students.

B. Big-10 universities that do not include gender identity protection:

1. Indiana
2. Northwestern
3. Purdue
X. Works cited


