



The State University
of New York

MEMORANDUM

To: Campus Presidents
Campus Chief Academic Officers
Campus Chief Diversity Officers
Campus Chief Student Affairs Officers

From: Teresa A. Miller, Sr. Vice Chancellor for Strategic Initiatives and Chief Diversity Officer

Date: August 7th, 2020

Subject: Guidance on Gender Markers and Chosen Name

Introduction

The purpose of this memorandum is to provide guidance to support SUNY campuses in implementing best practices regarding changes to gender markers and the use of preferred/chosen names in campus information systems. The goal of such practices is to create more inclusive campus communities, affording students and employees the freedom to express their gender identity and chosen name. Each campus is strongly encouraged to establish a working group to review these best practices and to set up processes which can be implemented across the various campus structures and systems.

Note that this memorandum pertains specifically to *currently* enrolled students and employees. Regarding prospective students, at this time, the SUNY Application follows the practices of the Common Application regarding gender identity questioning. Further guidance regarding application processes will be provided in the future.

Relevant Law & Best Practices

State laws, such as Gender Expression Non-Discrimination Act (“GENDA”), and federal privacy laws, including the Family Rights and Privacy Act (“FERPA”), allow individuals to use a chosen name or gender identification while participating as a member of a college or university community even when that person discloses a different legal name and/or gender status. GENDA also classifies gender identity and gender expression as a protected characteristic, thus prohibiting inferior treatment on the basis of gender identity or expression and extending anti-discrimination protections to individuals on those grounds. SUNY is generally not authorized to disclose such use outside of the institution or absent a legitimate educational need, subject to certain exemptions.

SUNY recognizes the importance that gender marker and name choices and changes have to students and employees. Therefore, SUNY aims to recognize campus community members consistent with their choice of gender identity/expression and name to the maximum extent possible, even if this differs from their existing records.

New York State law prohibits an educational institution from misgendering a person, or deliberately refusing to use an individual's requested name, pronoun or title, if the refusal is motivated by the individual's actual or perceived gender identity or expression. SUNY strongly advises that currently enrolled students and active employees be able to use a chosen/preferred name and gender on all records, regardless of the individual's legal name or sex assigned at birth, except in circumstances where legal name and/or sex is required on official records by law or operational necessity.

A chosen name is not a legal name, but rather a name which a person wishes to be known by that differs from their name given at birth. This may also include preferred names, such as a nickname or use of middle name.

Gender information should generally not be displayed unless it is necessary to do so. Gender marker options have historically been presented as either male (M) or female (F). While these markers are valid and required for a number of official reporting purposes, they do not fully reflect the demographics served by SUNY. Therefore, where practical, it is advised that a third gender marker option representing non-binary—X—be added to campus systems. Because state and federal mandates still currently require both students and employees to be reported as either M or F, SUNY will retain the historical data element of M/F in its data collections at this time and will add a new element to capture gender identity in both the SIRIS and HR Systems. Specific information about these new elements will be provided at a later date by the Offices of Institutional Research and Human Resources, respectively.

In most instances, SUNY strongly advises not asking students and employees to provide proof of legal name or gender changes in order to use a chosen name or gender identification. With that said, students and employees *seeking* legal name changes should be advised to contact relevant government agencies when making legal name changes, e.g., Social Security Administration, to prevent any problems with data mismatches between federal or state records and the information in SUNY files, as mismatches may cause problems with such things as benefits, taxes, and financial aid. Students should be advised to time such changes well in advance of applications for financial aid since receiving appropriate documentation can be a slow, potentially hindering financial aid processing.

SUNY business processes requiring use of legal name include but are not limited to:

- Official transcripts;
- Financial aid applications and records;
- Student Account records;
- Payroll;
- Reporting to state and federal agencies; and
- International student records.

SUNY strongly advises preferred/chosen name use be allowable under the following circumstances, unless there is a technical or administrative burden that would make it extremely challenging to support this change:

- Class rosters;
- Grade rosters;
- Campus directories;
- Time and attendance records;
- Learning Management System;
- Email display names;
- Sign-on display names; and
- Identification cards.

Under New York State law, an education institution is prohibited from deliberately disclosing a person's transgender, gender non-conforming or intersex status, or their gender dysphoria without their consent. For purposes of safety and confidentiality, SUNY strongly advises informing students and employees about where names and gender markers are publicized on the campus (e.g., directory information) and documenting which name or gender marker should be used by campus officials when speaking with support networks (e.g., family, guardians). Note that name discrepancies often occur across campus business functions such as mail services, pay stubs, financial aid documents, alumni networks, and foundations, and students and employees may need assistance in addressing these discrepancies (e.g. receiving pay stubs electronically rather than via inter-agency mail).

Campus Infrastructure

SUNY strongly advises campuses to establish a working group to discuss:

1. Developing a *policy* and a *process* through which students and employees can request changes to their name and gender markers.
2. Creating a webpage outlining relevant policies, procedures and points of contact for initiating these changes. Further explain where chosen versus legal name is permitted or required, and include statements about implications with other agencies and potential issues.

Contacts and Questions

Follow-up questions and requests for additional clarification or information may be directed as follows:

Legal related: contact the campus-specific assigned legal counsel

Student related, data reporting: IR@suny.edu

Student related, general: studentconcerns@suny.edu

Employee related: UwideHR@suny.edu

Cc Chief Human Resources Officers
 Chief Institutional Research Officers
 Office of General Counsel Attorneys
 Registrars
 Office of Diversity, Equity, and Inclusion

APPENDIX

Definitions

Note that definitions may evolve over time.

Legal Name: The name that identifies a person for legal and other purposes. One's legal name is generally the name given and registered at birth, and which appears on a birth certificate, but may subsequently change.

Chosen name: First, middle, and/or last name by which a person may wish to be known that differs from their legal name assigned at birth. This may also include "preferred name".

Gender Identity: A person's actual or perceived sense of their own gender, which can include female, male, another gender, transgender, or no gender. One's gender identity can be the same or different than the sex assigned at birth. Determining an individual's gender identity rests with each individual. The age at which individuals come to understand and express their gender identity may vary based on each person's social, cultural, and familial development.

Gender Expansive: An adjective used to describe people that identify or express themselves in ways that broaden the culturally defined behavior or expression associated with one gender.

Gender Expression: The manner in which a person represents or expresses gender, often through appearance, behavior, clothing, hairstyle, and so on.

Gender non-conforming: A term that describes people who have, or are perceived to have, gender characteristics and/or behaviors that do not conform to traditional or societal expectations. These expectations vary across cultures and have changed over time.

Non-binary: An individual who does not identify as male or female, but rather as neither, as a combination, and/or as something else.

Pronouns: Respecting someone's self-identification means using the pronouns with which they identify and the name they provide. It is good practice to ask which pronouns a person uses (e.g., he, she, and they).

Sex Assigned at Birth: The assignment and classification of people as male, female, intersex, or another sex assigned at birth often based on physical anatomy at birth and/or karyotyping. In most instances, this is currently either male or female.

Transgender: An umbrella term that can be used to describe people whose gender identify and/or expression is different from what is expected of them in their culture based on the sex assigned to them at birth.