Improving Law School for Trans* and Gender Nonconforming Students: Suggestions for Faculty

Gabriel Arkles
Northeastern University

Follow this and additional works at: https://academicworks.cuny.edu/clr

Part of the Legal Education Commons

Recommended Citation
Available at: https://academicworks.cuny.edu/clr/vol17/iss2/9

The CUNY Law Review is published by the Office of Library Services at the City University of New York. For more information please contact cunylr@law.cuny.edu.
CUNY Law Review Footnote Forum
July 12, 2014

Recommended citation:

IMPROVING LAW SCHOOL FOR TRANS* AND GENDER NONCONFORMING STUDENTS: SUGGESTIONS FOR FACULTY

Gabriel Arkles*

INTRODUCTION

In a way, creating accessible, nondiscriminatory, and effective law school experiences for trans* and gender nonconforming students is easy. All of our skills as educators apply; we can simply extend our existing strategies and best practices. Like all students, trans* and gender nonconforming students benefit from professors who care about their learning and expect the best from them, create respectful classroom dialogue on difficult issues, provide meaningful feedback, and so on.

In another way, creating accessible, nondiscriminatory, and effective law school experiences for trans* and gender nonconforming students is fantastically difficult. Simply acknowledging trans* existence and accepting gender nonconforming people on their own terms requires an overthrow of a deeply entrenched view of gender in our society: that gender is a binary, fixed, universal, apparent, and apolitical truth. Many everyday classroom practices and longstanding university policies created with the best of intentions can harm trans* and gender nonconforming students because they

* Professor of Legal Skills at Northeastern University School of Law. Many thanks to
1 Trans* includes diverse groups of people who have a gender identity that is not traditionally associated with the sex they were assigned at birth. The asterisk (silent when pronounced) acknowledges that people may identify in a number of different ways, such as trans, transgender, transsexual, trans feminine, trans masculine, genderqueer, Two Spirit, femme queen, or masculine of center. Gender nonconforming refers to people who identify or are perceived as not fitting gender norms.
are based on assumptions about gender that just don’t hold up. Partly because of these policies and practices, relatively few openly trans* and gender nonconforming people hold positions—especially the most powerful and prestigious positions—as faculty, staff, or students in law schools. Fortunately, more and more trans* and gender nonconforming people are entering law schools and many cisgender people want to learn how to work with them respectfully and effectively.

Like most worthy endeavors, transforming law schools to better support trans* and gender nonconforming students is not so much a matter of checking items off a list as engaging in an ongoing process. It requires participation of diverse stakeholders, attention to the particulars of unique institutions and situations, and respect for the perspectives of the people who are most directly impacted: trans* and gender nonconforming students themselves.

This document may help faculty take steps to improve some of their practices quickly and to start this larger process, but it is no substitute. In it, I address several major areas of concerns that can emerge by providing a general tip, examples of practices that need improvement, and examples of improved practices.

I. STUDENT NAMES AND PRONOUNS

Give all students a chance to share their preferred name and gender pronoun. Once you learn students’ correct names and gender pronouns, use them consistently. If you or someone else makes a mistake, correct it and move on.

➢ Practice in need of change: On the first day of class, the professor takes attendance or begins calling on people using the names on the

---

2 Cisgender refers to all people who are not trans*.

roster.

- **Comment:** Many students go by a name that is different from what is on the roster, for a variety of reasons. Unfortunately, many universities have policies and practices that prevent students from easily updating their name and gender in records. Even in those universities with excellent policies, some students may not have been able to take advantage of them. For trans* students, being identified by the wrong name can be humiliating, alienating, and even endangering.

> **Practice in need of change:** A professor refers to students with gendered language (such as he, she, Ms., Mr., the gentleman in front, the young lady in black) based on what gender the professor perceives the student to be. The professor forms this perception quickly and without conscious thought, based on cues such as the student’s first name, hair length, clothing, height, voice pitch, and other characteristics like breasts and facial hair.

- **Comment:** This even more common practice is also very harmful to trans* and gender nonconforming students whose gender may commonly be misperceived. Guessing wrong about the gendered language someone prefers creates a difficult situation for them, and can also impact on other people’s perceptions of that person’s gender. These mistakes can discourage students from coming to class.

> **Practice in need of change:** A professor talking informally with a group of students at an event notices that one of the students has a presentation that doesn’t match gender norms and suspects the student might be trans*. Not wanting to make a mistake, the professor asks the student, “Excuse me, but are you a woman or a man?” The student says, “Um, I’m a guy.” In conversation, the professor then sometimes calls the person “she” and sometimes “he.”

- **Comment:** It’s a good instinct to ask people how they identify in terms of gender; that’s the only way we can actually know someone’s gender identity for sure. However, it can be stigmatizing to single out just one person who “looks trans*” for the question. Also, some trans* people do not identify as either men or women, so a question framed in this way may not be a great set up. Finally, it’s a mistake to refer to someone who identifies as a “guy” as “she” unless he
specifically asks you to do so; it’s an even bigger mistake to just move on without quickly correcting oneself after making that mistake.

**Better practice:** On the first day of a seminar class, a professor asks students to introduce themselves, including the name and the gender pronoun that they prefer to have used for them. The professor explains, “I realize some of you probably prefer to go by a name that is different from what is on the roster. Just share whatever name you want us to use for you in this class. If that name is very different from what’s on the roster, you might want to let me know after class or by e-mail to make sure I don’t mistakenly mark you absent. Also, I realize that some of you may not have been asked for your preferred gender pronoun before. By gender pronoun, I mean words like ‘she’ or ‘he’ that we use to refer to one another. I’m asking you to share this information because I’m aware that we all make assumptions about one another, and that sometimes those assumptions are wrong. Part of treating one another with respect means referring to one another in the ways that we want, including pronouns. If you would rather not share this information about yourself, you may pass, but please take the exercise seriously. Listen to others when they introduce themselves and pay attention to how to pronounce their names correctly and what pronouns they want to have used for them. I’ll start. My name is Ericka Roe and I prefer the pronouns she and her.” The professor also passes around a blank sign-in sheet that allows students to write their names and pronouns, which she then uses to update her records.

- **Comment:** This approach gives everyone in the class a chance to learn the right way to refer to one another, while also providing the professor with a written record to refresh her memory and learn preferred spellings. The introduction creates a learning moment about the importance of checking assumptions and respectful behavior in class. It also avoids singling out people who “look trans*” or placing the burden on trans* students to approach the professor before the first class. If verbal introductions with the whole group take too much time in a large lecture class, having students sign a seating chart with their preferred name and pronoun may also work.

**Better practice:** A student comes to a professor’s office hours. The student, who has gone by the pronoun “he” so far during the year,
tells the professor that ze is trans* and has decided that ze would prefer to be referred to with the gender neutral pronouns “ze” and “hir.” However, ze says that ze has not decided how ze wants to handle job applications, and asks the professor to avoid pronouns in recommendation letters for hir. The professor asks the student if ze would like the professor to share the information about the new pronoun with teaching assistants and other students in the class. The student says that ze will handle telling other students, but ze would appreciate it if the professor told the TAs. After the meeting, the professor follows through on avoiding pronouns in recommendation letters, using “ze” and “hir” for the student everywhere else, letting the TAs know that they should start referring to the student as “ze” and “hir,” without commenting on the pronoun change in class.

- **Comment:** Students’ names and pronoun preferences may change. This professor responded to such a change appropriately, taking it in stride and adapting. Notably, the professor did not demand explanations, try to excuse possible mistakes, or ask the student personal questions. The professor also responded appropriately to the request about recommendation letters: trans* and gender nonconforming students can be particularly vulnerable with recommendation letters, where professors may inadvertently “out” students exposing them to potential employment discrimination. The professor was willing to take on some of the work of educating others, but checked with the student first.

- **Better practice:** A professor is guest lecturing in a large class and does not know most of the students. When calling on students, the professor carefully avoids using gendered language for any of the students, inviting questions from “the person in the yellow shirt in the back” rather than guessing what that person’s gender may be. The professor does, however, pay attention to whether she is mostly calling on students she reads as male. If she is, she interrupts that pattern.

- **Comment:** If one does not ask students to self-identify their gender, it is generally best to do like this professor did and avoid referring to students as a particular gender at all. This practice takes vigilance, since we are used to referring to one another with gendered words without even thinking about it. While this professor does not verbalize guesses about students’ gender, she does not try to take a “gender-blind” approach. She is aware of her own assumptions about gender
and considers how gender dynamics may be playing out in the class.

* Better practice: In class discussion, a student uses the wrong pronoun when referring to another student. The professor responds by saying, “As a reminder, Jess goes by they pronouns. Your response to their point echoes Justice Breyer’s dissent. Let’s unpack that reasoning a little more . . . .”
  
  o Comment: This practice recognizes and corrects the mistake, models using the correct pronoun and acting as an ally, but does not dwell on the mistake, shame the student who made it, or draw additional uncomfortable attention to the person who was just misidentified by a classmate.

**Grammar interlude**

Some trans* people prefer to have pronouns used for them that may be unfamiliar to some professors. Some of the most common singular third person pronouns that people prefer to have used for them are as follows:

<table>
<thead>
<tr>
<th>Nominative</th>
<th>Objective</th>
<th>Possessive</th>
<th>Reflexive</th>
</tr>
</thead>
<tbody>
<tr>
<td>She</td>
<td>Her</td>
<td>Her, hers</td>
<td>Herself</td>
</tr>
<tr>
<td>He</td>
<td>Him</td>
<td>His, his</td>
<td>Himself</td>
</tr>
<tr>
<td>They</td>
<td>Them</td>
<td>Their, theirs</td>
<td>Themselves or themselves</td>
</tr>
<tr>
<td>Ze (pronounced “zee”)</td>
<td>Hir (pronounced “hear”)</td>
<td>Hir, hirs</td>
<td>Hirself</td>
</tr>
</tbody>
</table>

This list is by no means exhaustive. When we encounter new pronouns, we may need to take extra care to use them correctly until we get used to them. Asking colleagues or friends to correct us whenever we make a mistake, as well as practicing using them alone until they roll more easily off the tongue, can help. A pronoun that is new to us is no less important to use consistently than a pronoun that is more familiar. To help readers get acquainted with some of these pronouns, I vary the pronouns I use when referring to professors and students in this piece.

* For additional examples, see Gender Neutral Pronoun Blog, http://genderneutralpronoun.wordpress.com/ (last visited July 12, 2014).
In addition to using “they” as a third person singular pronoun to refer to someone who prefers to have that pronoun used for them, some people use “they” as a third person singular pronoun to refer to a person whose gender is not known or to a generic figure. While this usage remains controversial among grammarians, it has a long and distinguished pedigree, enjoys frequent colloquial use, and avoids some of the sexism, enforcement of a gender binary, and awkwardness of alternatives. In any event, whatever pronoun an individual prefers to have used for them is always grammatically correct when used for that person.

One final note on pronouns: sometimes we just need to repeat the person’s name more often than usual or structure sentences in a way that does not call for use of pronouns.

II. CLASS DISCUSSION

Be thoughtful about gendered language you use more generally. Avoid broad generalizations or stereotypes about gender, including language that implicitly excludes trans* people from categories of men or women or that assumes there are only two genders. However, do not avoid discussion of gender.

➢ Practice in need of change: A professor conducts a discussion of restrictions on abortion, referring to it as an issue that most directly affects women because women are the ones who get pregnant. The professor raises questions about the role of sexism in debates over reproductive healthcare.

   o Comment: This professor brings up an important issue and highlights its gendered impact for discussion. However, the

---

5 Mignon Fogarty, Generic Singular Pronouns, QUICKANDDIRTYTIPS.COM, http://www.quickanddirtytips.com/education/grammar/generic-singular-pronouns?page=2 (Oct. 20, 2011) (noting that while prominent authors have used “they” in this context and while it is likely the direction in which the language is moving, many people consider this use of “they” incorrect); Guide to Grammar and Writing, Pronouns and Pronoun Antecedent Agreement, Capital Community College, http://grammar.ccc.commnet.edu/grammar/pronouns.htm (last visited July 12, 2014) (“It is widely regarded as being correct (or correct enough), at the beginning of the twenty-first century, to say ‘Somebody has left their bag on the floor.’”) (emphasis in original); Henry Churyard, Jane Austen and other famous authors violate what everyone learned in their English class, Henry Churchyard’s Linguistics Page, http://www.crossmyt.com/hc/linghebr/austheir.html (last visited July 12, 2014) (noting this use of “they” by prominent authors such as Jane Austen, Geoffrey Chaucer, Edmund Spenser, William Shakespeare, George Eliot, Charles Dickens, Walt Whitman, Oscar Wilde, H. G. Wells, F. Scott Fitzgerald, Edith Wharton, W. H. Auden, George Orwell, and C. S. Lewis).
language the professor uses implies that trans men and other trans* people who can become pregnant do not exist or that their gender identities are not valid. This language may also imply that those women who cannot become pregnant are not “real” women (such as trans women; women who have gone through menopause; women with infertility; and women who have had surgical sterilization through choice, coercion, or treatment for disease).

➢ **Practice in need of change:** A professor conducts a discussion of restrictions on abortion without referring to gender at all. Instead, ze uses neutral language like “pregnant people” and excludes any questions about sexism.
  
  o **Comment:** This professor refers specifically to pregnancy and abortion, rather than overgeneralizing about gender in potentially harmful ways. However, the professor’s language choice erases the very real gendered impact of abortion restrictions and the role of gender and sexism in reproductive health debates.

➢ **Better practice:** A professor conducts a discussion of restrictions on abortion, acknowledging the particular impact of these policies on those cisgender women and trans* people who can become pregnant, as well as their broader social impact. The professor also addresses eugenics, discussing the law of forced sterilization. The professor raises questions about the roles of sexism, racism, classism, ableism, transphobia, homophobia, and nativism in debates over reproductive healthcare.
  
  o **Comment:** This professor does not shy away from talking about gender, but does so in a more inclusive and accurate way. The discussion ze creates opens up possibilities for examining intersectional experiences.

### III. Curricular Integration

Trans* issues are relevant to every area of law, and it is important to include trans* issues in curricula. Superficial, joking, or disparaging inclusion of trans* issues, however, can be worse than no inclusion at all. Raise trans* issues with seriousness and sensitivity after fully educating yourself on the issues within your subject matter.

➢ **Practice in need of change:** In discussing Equal Protection
doctrine, a constitutional law professor says, “But is sex really an immutable characteristic? Don’t some people get ‘sex changes’?” The class laughs, and the professor moves on.

- This comment makes trans* people into the butt of a joke, assumes that no trans* people are in the room, gives no substantive attention to trans* issues in constitutional law, and plays into myths about trans* healthcare.

Practice in need of change: A professor designates one day in a Sexuality and the Law class to address trans* issues, after a semester of discussing legal issues affecting cisgender gay and lesbian people. He assigns a collection of cases brought by trans* plaintiffs in several different areas of law without any particular overarching themes. In discussing the cases, he refers to the plaintiffs by pronouns inconsistent with their gender identity and characterizes their claims as “bizarre” and “going too far.”

- This class gives students a chance to learn some about trans* legal issues, but it also trains students to disrespect the gender identity of trans* people and to treat their claims especially skeptically. Having a “trans* day” rather than incorporating trans* issues throughout the semester may imply that trans* people are an exception or tack-on. The lack of focus may make it harder for students to learn doctrine and analysis.

Better practice: In discussing Terry stops, a criminal procedure professor assigns students cases where a stop was based on behavior that didn’t match gender stereotypes. He also assigns an article about how stops impact women of color, trans* people of color, and queer people of color differently than white people and cisgender straight men of color. In class, he asks students about the assumptions the courts made in their rationales and invites dialogue about related policy issues.

- Here the professor incorporates trans* issues in a way that is closely connected to the substantive doctrine he is teaching. He gives the issues the serious attention they merit and gives students support for thinking them through.

Better practice: An immigration law professor invites a practitioner with expertise in trans* immigration issues to guest teach a class on

---

gender-identity based asylum claims.  
  o It can be helpful and appropriate to bring more voices into the classroom, especially on subjects that may be somewhat outside of our own area of expertise.

Better practice: A professor includes cases where trans* people challenge regulations about gender on identification documents in his administrative law class, as well as cases about gender identity in custody and visitation cases in his family law class. During the discussion, he does not ask trans* students to speak for trans* communities or call on trans* students more or less often than cisgender students.
  o Again, this professor makes sure that trans* people and issues aren’t excluded from his course materials by incorporating them where relevant. He also tried to neither exclude nor inappropriately single out trans* students in class.

IV. EMPLOYMENT PRACTICES

Affirmatively work to uproot transphobia and gender bias in employment practices.

Practice in need of change: A professor considers a trans applicant for a TA position. While the student is highly qualified, the professor worries that 1Ls might be put off by the student’s gender identity and so gives greater consideration to cisgender applicants.
  o Comment: This practice wrongly denies a trans student an employment opportunity and deprives 1Ls of access to that student’s skills.

Practice in need of change: In office hours, a student with a male gender identity and a feminine gender presentation tells a criminal law professor that he wants to become a public defender and asks for advice. The professor usually responds to requests like these with a recommendation to take certain classes; an offer to introduce the student to people in the field; a suggestion of books to read; and general encouragement. In this case, though, the professor suggests

---

the student change his hairstyle and take off his earrings and nail polish before going to any interviews. When the student says that he would rather not do those things, the professor says he should consider a type of practice where he would not appear in court.

- **Comment:** While the professor may be rightly concerned about discrimination the student could face in his chosen career path, the professor is actually acting out that discrimination through pressuring him to conform to gender stereotypes, rather than offering resources or brainstorming to address it. The networking, advice, and encouragement the professor would ordinarily have offered might be even more important to a student who could be vulnerable to discrimination based on his gender expression.

➤ **Better practice:** A professor on a hiring committee solicits applications from trans* and gender nonconforming people, including those with nontraditional backgrounds for academic positions.

- **Comment:** Given the reality and expectation that trans* and gender nonconforming people will face discrimination in legal academic hiring processes, extra outreach is one necessary step to improve opportunities. Having more trans* and gender nonconforming faculty may help improve the environment for trans* and gender nonconforming students.

➤ **Better practice:** A professor supports a student-led, university-wide coalition seeking to add coverage for gender-affirming healthcare for trans* people to the university’s insurance coverage for students, faculty, and staff.

- **Comment:** Many insurance policies refuse coverage for gender-affirming healthcare, such as hormones and surgeries, that some trans* people need. Changing these policies can help trans* students, faculty, and staff to get access to necessary healthcare, remove a financial burden on those who would otherwise pay out of pocket, alleviate strain that may detract from their work, and attract more trans* candidates.

---

VI. CONFIDENTIALITY AND SUPPORT

Respect students’ privacy, autonomy, and dignity. Avoid invasive questions and don’t share information about someone being trans* without their permission. Advocate for trans* and gender nonconforming students and connect them with appropriate resources.

➢ Practice in need of change: On the first day of class, a legal writing professor calls out the name of students from the roster when taking attendance. After calling out the name “Robert Blank,” a student the professor perceives as a woman says, “I’d rather you called me Bianca.” Confused, the professor says, “Bianca? But who’s Robert?” The student grimaces and says, “That’s me, but please, it’s Bianca.” The professor realizes they might have a trans* student in class. After class is over, the professor calls the Vice Dean of Student Affairs and shares their conclusion. The vice dean then calls Bianca into the office and asks if Bianca has had a “sex change operation.”
  o Comment: This professor made a number of mistakes, starting with relying on the roster rather than giving students a chance to self-identify and questioning the student rather than just accepting the information. The professor then shared their guess that the student was trans* without permission or a valid reason. The administrator compounded these mistakes with inappropriately personal questioning. It is not appropriate to ask a student to describe her genitals or medical history.

➢ Better practice: After class, a student approaches a torts professor and says that he will be getting surgery over spring break and is afraid he might miss the first couple of days of class after the break. He asks to have the class recorded. The professor agrees and says they hope the student will be okay. The student reassures the professor, saying he is getting a form of gender affirming surgery and his doctor expects he will recover fully from the procedure in one to two weeks. The professor suggests that the student may want to call the Office of Student Support if it turns out he needs more time for recovery and is falling behind in his classes; the professor also offers to make the call if the student wishes. The student thanks the professor and says he doesn’t think that will be necessary, but he will keep the offer in mind. The professor gets the classes recorded and asks the student how he is feeling when they next see each
Comment: Here the professor makes appropriate accommodations for a student’s medical needs and politely expresses concern, without prying or sharing the student’s personal information with others without permission.

Better practice: A trans student confides to their clinical professor that they are struggling with depression. The professor acknowledges how hard it can be to deal with depression and how common a problem it is, especially among law students. The professor asks what sort of help the student wants. The student says that they may want counseling, but they are worried about finding resources that are trans-friendly. After talking more, the professor and student agree on a plan. While the student is in the professor’s office, the professor calls the university counseling center and asks a couple of questions about how many trans* counselors work there, how much experience the center has working with trans* students, whether the center has gender neutral restrooms, and whether the staff at the center have ever received cultural competency training for working with trans* patients. The professor also calls the local LGBT Center and asks for referrals for trans-friendly peer support groups and sliding-scale private therapists. The professor then gives that information to the student, who decides to start with one of the peer support groups and think more about whether or not to try the counseling center.

Comment: Many issues, like depression, can affect any student, but resources and referrals that work for cisgender students may not be fully accessible to trans* and gender nonconforming students. A professor’s research and advocacy can make a big difference to students in these situations. Note that the professor and the student came up with the plan together; the professor didn’t assume they knew what was best for the student.

VII. Criticism and Institutional Change

Stay open to criticism. Advocate for change to policy and infrastructure to increase safety and accessibility for trans* and gender nonconforming students, faculty, and staff.

Practice in need of change: A group of gender nonconforming students and allies approach the dean with concerns about a law
school policy: during proctored exams, only one woman and one man at a time may leave the testing room to go to the bathroom. The students say that this policy is unfair, because gender nonconforming students have to worry about how the proctors will perceive their gender and sometimes are not allowed to go to the bathroom. The dean explains that the policy is neutral, does not discriminate, and prevents cheating.

- **Comment:** Here, the dean reacts defensively rather than taking the critique seriously, reflecting on it, and working with students to try to identify a policy that could prevent cheating while avoiding harm to gender nonconforming students.

**Practice in need of change:** A group of students approaches a professor on a committee that brings speakers to the law school. The students complain that all of the speakers have been cisgender and none of them have worked on trans* issues, even in the panel on developments in LGBT law. The students offer a list of potential speakers. The professor says she’ll look into it, but thinks no more of it after the meeting.

- **Comment:** While the professor did not verbally dismiss the students’ concern, she failed to follow through with action.

**Better practice:** Students start advocating for gender neutral restrooms. A professor meets with the students and learns more about why gender neutral bathrooms improve safety of trans* and gender nonconforming people. The professor shares information with the students about the administrative channels they will need to go through to get change made and publicly supports their campaign. She also suggests that they might want to get in touch with other student groups already pressuring the administration to build more wheelchair accessible restrooms and to add changing tables to restrooms.

- **Comment:** The professor provides information and action to help make the needed change, while also inviting students to consider connections with other communities.

**Better practice:** A trans student approaches a professor for help with changing her gender in law school records. The professor makes a call to find out what the policy is for gender changes and learns that there is no policy. The professor raises the issue in a faculty meeting and ends up forming a task force to recommend a
policy. The task force develops a recommendation based on student input and research into best practices. The professor also advocates with the administration for the student who originally approached her to have her needs addressed while the school is still deciding on a policy.

- **Comment:** The professor could easily have said that the student’s problem was not her responsibility, but instead she performed a service that may benefit not only that student but also future students.

VIII. **A Final Note: Increasing Law School Accessibility to Trans* People is Everyone’s Job**

Whether no, few, or many openly trans* people have positions as students, faculty, or staff in your institution, trans* issues matter and need your support. If no trans* people are out at your institution, that can be a sign that the institution urgently needs to change policies and practices that exclude or silence trans* people. If openly trans* people are a part of your institution, they should not have to do all of the work to make it an accessible and nondiscriminatory environment. While it is very appropriate to follow the leadership of trans* and gender nonconforming students, cisgender professors have important roles to play in making change.

***