

Best Practices for Trans Inclusion in the Law School Classroom

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Introduction

Goals: The purpose of this guide is to explain best practices for being inclusive of trans, nonbinary and gender nonconforming students in the classroom. We explain best practices for pronoun usage, gender neutral language, honorifics, and general advice for inclusion.

Summary of Main Points

1. Classrooms should be safe and welcoming places for trans, nonbinary and gender nonconforming students.
2. Many trans students, at Berkeley and elsewhere, report experiences of misgendering, transphobia, and trans exclusion. This guide sets forward some best practices for mitigating those effects inside the classroom.
3. Using people's correct pronouns, honorifics, and names is an important way to make them feel included, welcomed, and happier.
4. The best practice is to ask students their pronouns at the beginning of the semester via a survey. Provide a space for entering students' pronouns, but leave it optional. It is also a good idea to share your pronouns with the class.
5. Where possible, use first or last names rather than honorifics. If you want to use honorifics, ask for them in your pronouns in the survey.

6. Use they/them rather than “he or she” or “he and she” as gender neutral pronouns. They/them is both grammatically correct and has a long history of use as a gender neutral pronoun.
7. Where possible, use gender neutral language around reproduction, bodies, pregnancy, and similar topics.
8. It is important to remember students’ pronouns. If you make mistakes, apologize, move on, and try to remember for the future.

Trans Identity

Transgender (or trans) is a wide umbrella term that refers to a variety of experiences with gender and identity. We use it in this document to refer to anyone who does not identify with their gender assigned at birth or has an expansive or non-binary relationship to gender.¹ We also want this guide to be beneficial to individuals who are cisgender, but have a gender expression that may lead others to misgender them. While we acknowledge not all of these individuals might identify as trans, for the sake of simplicity we are using trans as an umbrella term. Trans people have always existed and will always exist.

Gender and sex are far more complicated than simple biology. This is part of why it is important to not equate genitals and gender; for example, not all men have penises, not all women can give birth, and not all people have the biology that is assumed to correlate with just one gender. This is also why it is better to use terms like “gender assigned at birth” rather than “biological sex” or “male-bodied/female-bodied.”

Definitions

Cisgender (or cis): A person who identifies with their gender assigned at birth.

Trans men are assigned female at birth (often abbreviated AFAB) and identify as men.

Trans women are assigned male at birth (AMAB) and identify as women.

Nonbinary: People who identify as neither male nor female, or both, or as a third gender, or something otherwise outside the gender binary.

Gender identity: A person’s self-identification as male, female, nonbinary, a third gender, multiple genders, no gender, etc.

Sexual orientation: A person’s sexual and romantic attraction. A trans person can be gay, asexual, lesbian, straight, etc.²

¹ This includes people who identify as genderfluid, genderqueer, nonbinary, demigender, two-spirit, or other terms.

² For more information, see the Trans Students Educational Resources (TSER) guide to the “gender unicorn.” *Gender Unicorn*, TRANS STUDENT EDUCATIONAL RESOURCES, <https://transstudent.org/gender/> (last visited Apr. 22, 2021).

They/Them and Other Pronouns

Some people use they/them pronouns. These are conjugated like you would normally use a they/them pronoun, except “themselves” becomes “themselves.” For example:

Sam is a student at Cal. They like studying trans history and spending time with their friends. They are nineteen years old. Sam lives by themselves.

While it may feel odd at first, the more you practice they/them pronouns, the easier it becomes.

A note on the singular *they/them*: *They* has been used as a singular pronoun since the late 1300s.³ Nearly everyone uses *they* in casual conversation to refer to a person with an unspecified gender. Many also use it in formal writing. Using the singular *they* is not only a more concise way to phrase a sentence, but it is also more inclusive and precise. Just as legal writing has evolved beyond “he” as the default pronoun, it is now evolving to include identities beyond “he” and “she.”⁴ For example, Supreme Court Justice Sotomayor used the singular *they* in a 2016 majority opinion.⁵ Furthermore, in 2018, the California legislature adopted the singular *they* and now requires that all legislation be drafted with gender-neutral language.⁶

Additionally, some people use pronouns outside of he/she/they, such as “ze.”⁷ These are often referred to as neopronouns.⁸ If someone’s pronouns are unfamiliar to you and you are in doubt about how to use them, ask the person.

Some people may use two or more pronouns such as “she/they” or “he/she” (this is simply a shorter way of writing out, e.g., she/her/hers and they/them/theirs). Unless otherwise specified, you may use either pronoun when referring to that person—and some people like both. Some people may use a different pronoun depending on the day or change their pronouns, in which case defer to the most recent pronoun the person told you.

What is Misgendering?

Misgendering occurs when a person is addressed or described using language (name, pronouns, or title) that does not match their gender identity. This can be intentional or unintentional.

³ Singular ‘They’, Merriam-Webster.com, <https://www.merriam-webster.com/words-at-play/singular-nonbinary-they> (last visited April 22, 2021).

⁴ For a look at the singular *they* in legal writing and for tips to avoid ambiguity in your own writing, see Brad Charles & Thomas Myers, *Evolving They*, 98 MICH. B.J. 38 (2019).

⁵ *Lockhart v. United States*, 136 S. Ct. 958, 966 (2016) (“Section 2252(b)(2)’s list is hardly the way an average person, or even an average lawyer, would set about to describe the relevant conduct if they had started from scratch.”).

⁶ Chris Micheli, *What Is Gender-Neutral Legislative Drafting?*, California Globe (Nov. 3, 2020, 6:19 AM), <https://californiaglobe.com/section-2/what-is-gender-neutral-legislative-drafting/>.

⁷ Shige Sakurai, “Ze” Pronouns, MYPRONOUNS.ORG, <https://www.mypronouns.org/ze-hir> (last visited May 10, 2021).

⁸ For further explanation of neopronouns and helpful links, see Shige Sajurai, *Neopronouns*, MYPRONOUNS.ORG, <https://www.mypronouns.org/neopronouns> (last visited May 8, 2021).

Often, misgendering happens because people make assumptions about the pronouns or gender of another person based on that person's appearance or name.

Why it Matters

It is harmful to refer to people with pronouns or other gendered language that does not align with their identity. Even when it is unintentional, being misgendered can make a trans person feel unseen, disregarded, and disrespected. When a trans person's identity is not respected, it can have negative impacts on their well-being, sense of self, and learning. Misgendering can be an especially negative experience in a classroom setting.⁹

On the other hand, being referred to with the correct pronouns makes a trans person feel respected, seen, and included. It communicates, "Yes, this is your identity and I respect you." Being gendered correctly can make a world of difference in a trans student's comfort participating in class discussions, coming to office hours, and generally engaging with a subject as deeply as possible. For example, one study has shown that for each additional context (i.e. home, school, work, or with friends) where a trans youth's gender identity was respected, their rate of suicidality was reduced by 50%.¹⁰ Using someone's correct pronouns is the smallest and easiest way to affirm a trans person's identity, and it can go a long way.

It is important to challenge the idea that someone's gender can always be determined by outward appearances. In reality, you cannot know someone's gender from what you see on the outside. As classroom leaders, professors have tremendous power in and responsibility for creating welcoming and inclusive learning environments for students. When a professor shares their pronouns and is intentional about correctly gendering their students, it signals that the professor cares about the well-being of all of their pupils.

Pronoun Sharing

Pronoun sharing should be optional—not everyone is comfortable sharing their pronouns. Remember that pronoun sharing can be a stressful experience for trans individuals. It is helpful to think about learning pronouns like learning someone's name or title: when you learn their name, note their pronoun. Here are some suggestions for learning and remembering pronouns.

- **For the person running the meeting:** Share your pronouns both out aloud and in your Zoom name. This creates a standard that facilitates pronoun sharing if desired.
- Examples of ways to share your pronouns: "My pronouns are he/his," "I use the he series," "My pronouns are he/him/his," "My pronouns are he and she," or "My pronouns are they/them or she/her, but I prefer they/them."

⁹ Many studies have shown the negative impacts of misgendering. *See, e.g.,* GENNY BEEMYN, TRANS PEOPLE IN HIGHER EDUCATION (2019); Kevin McLemore, *Experiences with Misgendering: Identity Misclassification of Transgender Spectrum Individuals*, 14 SELF & IDENTITY 51 (2015); Stephen T. Russell, Amanda M. Pollitt, Gu Li & Arnold H. Grossman, *Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior Among Transgender Youth*, 63 J. OF ADOLESCENT HEALTH 503 (2018).

¹⁰ Russell et al., *supra* note 9.

- When sharing pronouns, it is best to use language like: “What are your pronouns?” It is better to say “pronouns” rather than “preferred pronouns,” because “preferred” implies that using correct pronouns or a person’s identity is merely a preference.
- **If you are running a recurring meeting or class:** Consider including a question about pronouns in a pre-semester survey. Our survey of Berkeley Law students found widespread support for a pre-semester survey as the most effective way to share pronouns.
- The best practice for a pre-semester survey that invites pronoun-sharing is a question that asks “What are your pronouns?” with a box for free responses. You can then note students’ pronouns in your class roster, gradebook, or some other place to help you remember.
- Alternatively, in a small seminar, the professor can invite pronoun sharing when people go around to share their name/year/etc. Pronoun sharing could be worded like “Please feel free to share your pronouns if you’d like.”

A Note on Zoom Pronouns: The most common comment we received in response to misgendering is: “put pronouns in your zoom name!” However, our survey results demonstrate that trans students do not want mandatory Zoom name pronouns. While having the option to do so can be helpful, requiring it may force some trans students to out themselves, and can be stressful and ineffective.

Put simply: Create the space for people to share their pronouns, then learn those pronouns and use them.

Keep in mind that when you learn people’s pronouns, you only have learned their pronouns, not their entire relationship to gender. Some nonbinary individuals use he or she, some people use different pronouns depending on the day, and some people’s pronouns may not match your perceptions of their gender expression. Try not to make too many assumptions based on people’s pronouns.

Additional Ways to Foster Inclusivity

The best practice is to avoid gendered language in general. For example, instead of saying “ladies and gentlemen,” use “students,” “guests,” or “everyone.” Instead of saying “he or she,” use “they.” This makes nonbinary and trans students feel more welcome and included, and is both less awkward and more grammatically correct.

In addition, try to refrain from using gendered language when discussing reproduction, bodies, pregnancy, or similar topics. For example, use “pregnant person” rather than “pregnant woman” and “reproductive rights” or “abortion rights” rather than “woman’s right to an abortion.” This

acknowledges that not all people who can get pregnant are women¹¹ and not all women can get pregnant.

Honorifics

Honorifics include titles like “Dr.,” “Ms.,” “Mr.,” “Mx.,” “M.,” and others.

Some honorifics are “gendered,” meaning that people frequently associate them with particular gender identities (e.g. “Ms.” or “Mr.”). Other honorifics don’t communicate anything about gender, such as “Dr.” or “Professor.”

Examples:

- Many people associate “Ms.” and “Mr.” with the gender identities woman and man, but some people who use these honorifics may identify beyond or outside of the gender binary. Importantly, some people do not use *either* of these honorifics, including many trans, non-binary, and gender-nonconforming people.
- Some people use “Mx.” (pronounced like “mix”) instead of, or in addition to, other gender-associated honorifics. Many people with non-binary identities use “Mx.,” but keep in mind that some do not, and some people with binary identities may also use it.
- “M.” (pronounced like the letter, “em”) is another honorific many people use instead of, or in addition to, other gender-associated honorifics. People with both non-binary and binary gender identities use “M.” In addition, “M.” is sometimes understood as an abbreviation for “Ms.,” “Mr.,” and “Mx.” that also includes people who use none of those honorifics.

The absolute best practice for avoiding misgendering when using honorifics is to *avoid using gender-associated honorifics altogether*. Instead, consider referring to people by their first names/given names, full names, or their family names/last names not prefaced by an honorific.

If you do use honorifics for your students, you should first ask everyone what honorifics they use, ideally in a way that respects people’s privacy (e.g., a Google Forms survey, email, etc.) rather than asking in front of a large group. Once people have shared their honorifics with you, you should use only those honorifics to refer to that person.

When corresponding with strangers whose honorifics you do not yet know, the best practice is to avoid using gender-associated honorifics. For example, address your letter to “Dear GivenName FamilyName,” instead of “Dear Mr. FamilyName.” Not only will you be less likely to misgender people, but you will also save yourself the agony of trying to guess which honorific to use based on someone’s given name, which is particularly challenging when the name is gender-neutral or from a language with which you are unfamiliar.

¹¹ For further reading on this topic, see Paisley Currah, *Expecting Bodies: The Pregnant Man and Transgender Exclusion from the Employment Non-Discrimination Act*, 36 WOMEN’S STUDIES Q. 330 (2008). See also Alexis Hoffkling, Juno Obedin-Maliver & Jae Sevelius, *From Erasure to Opportunity: A Qualitative Study of the Experiences of Transgender Men around Pregnancy and Recommendations for Providers*, 17 BMC PREGNANCY CHILDBIRTH 332 (2017).

If you must use an honorific for someone whose honorifics you do not yet know, “M.” may be the best choice, particularly if you are unsure of the person’s gender identity or pronouns.

Put simply: If possible, avoid using honorifics. If you do use honorifics, ask students which honorifics they prefer via your classroom survey. M. can be a good honorific for students whose honorifics you do not know.

Recovering from Mistakes

Understandably, people make mistakes as they shift from appearance to stated pronouns when determining how to refer to someone. It is no easy task to deconstruct a lifetime of habit.

The most important thing to remember after making a mistake is to not make it worse for the person you misgendered. It is normal to feel guilty or embarrassed when referring to someone incorrectly, and you may feel inclined to apologize profusely to show that you care. However, it is more important not to shift that discomfort and guilt onto the person you misgendered or draw unneeded attention to the situation. It is also important not to blame the trans student for the misgendering, for example by saying something like “I misgendered you because your pronouns weren’t in your Zoom name” or “It is so hard to remember pronouns.”

The best course of action is to simply acknowledge your mistake and move on. If you have the opportunity in the moment, go on to use the person’s correct pronouns. Here is how this could look:

(“Professor,” a law professor. “A,” a law student who uses they/them pronouns but presents in a way that many people associate with she/her pronouns)

Professor: A, how would a court come out on this set of facts?

A: I think that a court would find the statutory test weighs in favor of the plaintiff.

Professor: Does anyone think that she’s wrong here? Sorry, I meant does anyone think they’re wrong? They told us that the test would weigh in favor of the plaintiff, but what arguments could the defendant make?

It is also possible that you will not notice your mistake in the moment and will only realize later in class, when another student notifies you, or after class. In that case, it may be beneficial to reach out to the student with a short message recognizing your error. Below is an example email, but the message you decide to send should be authentic to you.

Hi A,

I am sorry for my slip in class relative to your pronouns. Please accept my sincere apology.

Regards,
Professor

It is also important to use people's correct pronouns when they are not present. If you misgender someone when speaking to others, the same rules as above apply. You can simply correct your mistake and go on to gender the person correctly. If someone corrects your use of a pronoun, you can say, "Thank you," and restate your phrase with the correct pronoun. It is also important to correct others when they misgender someone who is not present; this can be as simple as saying, "Actually, so and so's pronouns are ____."

At the end of the day, know that it is normal to make a mistake here and there as you develop a new habit of relying on stated pronouns. What is most important is that you are making an effort and keeping the well-being of your students in mind.

Put simply: If you make a mistake, apologize, move on, and do your best to use the person's correct pronouns in the future.

Conclusion

Pronoun-sharing is an effective way to make your classroom a more inclusive space for students and guests. Many of the recommendations seem small, but whether or not you take them can make a world of difference to your students. Even though these changes seem simple, they can be hard to internalize. No one expects perfection on the first attempt, and the purpose of this guide is to encourage ongoing progress towards equality. Your efforts, when made with consistency and intentionality, will support all students, deepen classroom conversations, and improve student outcomes.

In this document, we have shared current models for trans inclusivity, but our understandings of gender and inclusivity are constantly evolving. For this reason, we have included additional dynamic resources for continued learning.

Further Resources

Berkeley Centers for Educational Justice & Community Engagement, Resources for Classrooms and Groups, <https://cejce.berkeley.edu/geneq/resources/publications-media-faqs/resources-classrooms-and-groups>.

Shige Sakurai, <https://www.mypronouns.org/>.

Trans Student Educational Resources, <https://transstudent.org/>

For a more in-depth guide to neopronouns, see <https://neopronounss.carrd.co/#>