

TRANSGENDER STUDENTS

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(Background information for Policy Sub-Committee)

During the past decade, controversies surrounding students' sexual orientation and gender identity have become increasingly common in schools. School administrators and boards of education need to manage the conflicts that arise in areas of curriculum, student clubs, dress codes, sports and harassment.

Because of a more tolerant school/society community, growing numbers of transgender and gender non-conforming students are coming forth in schools. Transgender students are children whose assigned birth sex does not match their internalized sense of who they are as either a boy or a girl, that is, their gender identity. For most of these children, having a persistent cross-gender identification can be interruptive of their daily emotional and psychosocial development unless and until they receive support for expressing their gender identity and receive recognition for that gender identity. Gender non-conforming students are those whose gender-related identity, appearance, or behavior do not in some way meet the stereotypically expected norms for a student of that assigned sex at birth. It includes transgender students who live their lives consistent with their gender identity rather than their assigned birth sex. The law requires that all of these students be guaranteed an equal educational opportunity.

Transgender is a broad term for individuals who do not fit within strict gender categories. This category includes individuals whose gender identity differs from the social expectations for their physical gender. Gender identification is not the same as sexual orientation. Sexual orientation concerns whom an individual loves or desires. In contrast, gender identity concerns which gender an individual feels he or she is.

There is evidence that a school's failure to recognize and support a child's gender identity or expression can result in significant harm to the child. Schools need to provide a safe, supportive and non-discriminatory environment for transgender and gender non-conforming students.

These youth, because of widespread misunderstanding and lack of knowledge about their lives, are at a higher risk for peer ostracism, victimization and bullying in the school environment, in addition to the psychological harm they may suffer in an environment that rejects them for their gender identity.

Ensuring a safe, nurturing and equal educational environment for these students requires a system-based approach. The school system, in concert with family and educational professionals, must be supportive role models and strong advocates for the safety and well-being of such students including ensuring full respect for the expression of the student's gender identity.

Sixteen states, including Connecticut, have laws which prohibit discrimination against transgender individuals. However, there is an absence of any federal statute. It is estimated that two to five percent of the country's population is transgender.

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Connecticut law, Public Act 11-55, which became effective on October 1, 2011, prohibits discrimination on the basis of gender identity or expression in all areas and contexts in which the laws already prohibit discrimination on the basis of sex. This includes the areas of employment, public accommodations, the sale or rental and use of housing, the granting of credit, and education. The Connecticut Commission on Human Rights and Opportunities (CHRO) has jurisdiction over these laws, enforcing antidiscrimination laws in these areas. CHRO issued a declaratory ruling in 2000 holding that the prohibition against sex discrimination in the laws over which CHRO has jurisdiction, covers discrimination on the basis of gender identity or expression making P.A. 11-55 a clarification of existing obligations.

P.A. 11-55 codifies this protection against discrimination on the basis of gender identity or expression in the statutes and explicitly authorizes the CHRO to investigate and process complaints in this area.

Further, like all other individuals, lesbian, gay, bisexual, and transgender (LGBT) students are guaranteed equal protection under the Fourteenth Amendment of the Constitution and free speech under the First Amendment. Court cases addressing legal issues regarding LGBT students and related issues have resolved many questions and provide some guidance to schools if and when conflicts arise. However, not all issues have been resolved. It is always good practice to seek legal advice either from district legal counsel, the state department of education, and CAGE to determine appropriate actions.

P.A. 11-55 defines “gender identity or expression” as a person’s gender-related identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the person’s physiology or assigned sex at birth. The definition specifies that gender-related identity can be shown by providing evidence in various ways that include (1) medical history, (2) care or treatment of the gender-related identity, (3) consistent and uniform assertion of such an identity, or (4) any other evidence that the identity is sincerely held part of a person’s core identity, or that the person is not asserting such an identity for an improper purpose. The act gives CHRO jurisdiction to investigate complaints of discrimination on the basis of gender identity or expression against students by public schools.

This act also prohibits boards of education from discriminating on the basis of gender identity or expression in employing or paying teachers. The district is prohibited, except in the case of a bona fide occupational qualification or need, from refusing to hire or employ someone; barring or discharging someone from employment; or discriminating against someone in pay or in employment terms, conditions, or privileges based upon the individual’s gender identity or expression. This prohibition applies to any employer, public or private, that employs three or more people.

Public schools, as places of public accommodations, cannot limit any student’s parent/guardian access to the school facilities, staff, or educational or other activities or access to student related information to one mother or father in a family with same-sex parents or on the basis of a parent’s sexual orientation or on the basis of the student’s sexual orientation.

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Further, a school cannot limit any student's parent/guardian access to school facilities, staff or educational or other activities or access to student-related information to any parent/guardian because of his or her gender identity or expression or because of the student's gender or expression.

Policy Implications

Policy is a proactive way of addressing concerns before they arise. Many specific issues arise regarding transgender students in the school setting. These issues include, but are not limited to, such areas as privacy, official records, names/pronouns, gender-segregated activities, student information systems, restroom and locker accessibility, physical education classes, intramural and interscholastic sports, and dress codes.

A new policy, #5145.53, "Transgender and Gender Non-Conforming Youth" has been developed and follows for your consideration. This is considered a recommended "good practice" policy for inclusion in a district's policy manual.

In addition, many resources are available on this topic. Such resources will prove helpful in the recommendation to train all teachers, administrators, counselors and students in transgender sensitivity, in what it means to treat all people respectfully and equally. The goal must be for a positive, harassment-free atmosphere for all students.

A new recommended policy to consider.

Students

Transgender and Gender Non-Conforming Youth

Purpose

Federal and state law and District policy require that all programs, activities, and employment practices be free from discrimination based on sex, sexual orientation, or gender identity or expression. This policy is designed in keeping with these mandates to create a safe learning environment for all students and to ensure that every student has equal access to all school programs and activities.

This policy sets out guidelines for schools and District staff to address the needs of transgender and gender non-conforming students and clarifies how state law should be implemented in situations where questions may arise about how to protect the legal rights or safety of such students. This policy does not anticipate every situation that might occur with respect to transgender or gender non-conforming students and the needs of each transgender or gender non-conforming student must be assessed on a case-by-case basis. In all cases, the goal is to ensure the safety, comfort, and healthy development of the transgender or gender non-conforming student while maximizing the student's social integration and minimizing stigmatization of the student.

Definitions

The definitions provided here are not intended to label students but rather to assist in understanding this policy and the legal obligations of District staff. It is recognized that students might or might not use these terms to describe themselves.

“Gender identity” is a person's deeply held sense or psychological knowledge of their own gender, regardless of the gender they were assigned at birth. One's gender identity can be the same or different than the gender assigned at birth. Everyone has a gender identity.

“Transgender” describes people whose gender identity or expression is different from that traditionally associated with an assigned sex at birth.

“Gender expression” refers to the manner a person represents or expresses gender to others, often through behavior, clothing, hairstyles, activities, or mannerisms.

“Gender non-conforming” describes people whose gender expression differs from stereotypical expectations, such as “feminine” boys, “masculine” girls, and those who are perceived as androgynous. This includes people who identify outside traditional gender categories or identify both genders.

Students

Transgender and Gender Non-Conforming Youth

Definitions (continued)

“Transition” is the process in which a person changes their gender expression to better reflect their gender identity. In order to feel comfortable and to express their gender identity to other people, transgender people may take a variety of steps such as using a nickname or legally changing their name; choosing clothes and hairstyles to reflect their gender identity; and generally living and presenting themselves to others, consistently with their gender identity. Some, but not all, transgender people take hormones or undergo surgical procedures to change their bodies to better reflect their gender identity.

“Bullying” means the repeated use by one or more students of a written, oral or electronic communication, such as cyberbullying, directed at or referring to another student attending school in the same school district or a physical act or gesture by one or more students repeatedly directed at another student attending school in the same school district that (1) causes physical or emotional harm to such student or damage to such student’s property, (2) places such student in reasonable fear of harm to himself or herself, or of damage to his or her property, (3) creates a hostile environment at school for such student, (4) infringes on the rights of such student at school, or (5) substantially disrupts the education process or the orderly operation of a school.

Bullying shall include, but not be limited to, a written, oral, or electronic communication or physical act or gesture based on any actual or perceived differentiating characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity or expression, socioeconomic status, academic status, physical appearance, or mental, physical, developmental or sensory disability, or by association with an individual or group who has or is perceived to have one or more of such characteristics.

“Harassment” means written, verbal or physical conduct that adversely affects the ability of one or more students to participate in or benefit from the school’s educational programs or activities because the conduct is so severe, persistent or pervasive. This includes conduct that is based on a student’s actual or perceived race, color, national origin, sex, disability, sexual orientation, sexual identity or expression, or religion. This also includes conduct that targets a student because of a characteristic of a friend, family member or other person or group with whom a student associates.

Privacy

All persons, including students, have a right to privacy. This includes the right to keep private one’s transgender status or gender non-conforming presentation at school. Information about a student’s transgender status, legal name, or gender assigned at birth also may constitute confidential medical information. School personnel should not disclose information that may reveal a student’s transgender status or gender non-conforming presentation to others, including parents and other school personnel, unless legally required to do so or unless the student has authorized such disclosure. Transgender and gender non-conforming students have the right to discuss and express their gender identity and expression openly and to decide when, with whom, and how much to share private information.

Students

Transgender and Gender Non-Conforming Youth (continued)

Guidance

Privacy (continued)

When contacting the parent or guardian of a transgender or gender non-conforming student, school personnel should use the student's legal name and the pronoun corresponding to the student's gender assigned at birth unless the student, parent, or guardian has specified otherwise.

Official Records

The District is required to maintain a mandatory permanent student record ("official record") that includes a student's legal name and legal gender. However, the District is not required to use a student's legal name and gender on other school records or documents. The District will change a student's official record to reflect a change in legal name or legal gender upon receipt of documentation that such change has been made pursuant to a court order. In situations where school staff or administrators are required by law to use or to report a transgender student's legal name or gender, such as for purposes of standardized testing, school staff and administrators shall adopt practices to avoid the inadvertent disclosure of such confidential information.

Names/Pronouns

A student has the right to be addressed by a name and pronoun that corresponds to the student's gender identity. A court-ordered name or gender change is not required, and the student need not change his or her official records.

The intentional or persistent refusal to respect a student's gender identity (for example, intentionally referring to the student by a name or pronoun that does not correspond to the student's gender identity) is a violation of this policy.

Gender-Segregated Activities

To the extent possible, schools should reduce or eliminate the practice of segregating students by gender. In situations where students are segregated by gender, such as for selected health education classes, students should be included in the group that corresponds to their gender identity.

Student Information Systems

The District shall modify its student information system, as necessary, to prevent disclosure of confidential information and ensure that school personnel use a student's preferred name and pronouns consistent with the student's gender identity.

Students

Transgender and Gender Non-Conforming Youth

Guidance (continued)

Restroom Accessibility

Students shall have access to the restroom that corresponds to their gender identity consistently asserted at school. Any student who has a need or desire for increased privacy, regardless of the underlying reason, should be provided access to a single user restroom. However, no student shall be required to use such a restroom because they are transgender or gender non-conforming.

Locker Room Accessibility

The use of locker rooms by transgender students shall be assessed on a case-by-case basis with the goals of maximizing the student's social integration and equal opportunity to participate in physical education classes and sports, ensuring the student's safety and comfort, and minimizing stigmatization of the student. In most cases, transgender students should have access to the locker room that corresponds to their gender identity consistently asserted at school, like all other students. Any student, transgender or not, who has a need or desire for increased privacy, regardless of the underlying reason, should be provided with a reasonable alternative changing area such as the use of a private area (e.g., a nearby restroom stall with a door, an area separated by a curtain, a P.E. instructor's office in the locker room, or a nearby health office restroom), or with a separate changing schedule (e.g., using the locker room that corresponds to their gender identity before or after other students). Any alternative arrangement should be provided in a way that protects the student's ability to keep his or her transgender status confidential. In no case shall a transgender student be required to use a locker room that conflicts with the student's gender identity.

Physical Education Classes & Intramural Sports

Transgender and gender non-conforming students shall be permitted to participate in physical education classes and intramural sports in a manner consistent with their gender identity.

Interscholastic Competitive Sports Teams

Transgender and gender non-conforming students shall be permitted to participate in interscholastic athletics in a manner consistent with their gender identity and in compliance with the applicable regulations of the Connecticut Interscholastic Athletic Association (CIAC).

Dress Codes

Transgender and gender non-conforming students have the right to dress in a manner consistent with their gender identity or gender expression. In general, District schools may not adopt dress codes that restrict students' clothing or appearance on the basis of gender.

Students

Transgender and Gender Non-Conforming Youth

Guidance (continued)

Discrimination/Harassment

It is the responsibility of each school and the District to ensure that transgender and gender non-conforming students have a safe school environment. This includes ensuring that any incident of discrimination, harassment, or violence is given immediate attention, including investigating the incident, taking appropriate corrective action, and providing students and staff with appropriate resources.

Complaints alleging discrimination or harassment based on a person's actual or perceived transgender status or gender nonconformity are to be handled in the same manner as other discrimination or harassment complaints.

Transferring a Student to Another School (Opportunity Transfers)

In general, schools should aim to keep transgender and gender non-conforming students at the original school site. Opportunity transfers should not be a school's first response to harassment and should be considered only when necessary for the protection or personal welfare of the transferred student, or when requested by the student or the student's parent/guardian. The student or the student's parent or guardian must consent to any such transfer.

Professional Development

The Board of Education directs the Superintendent to provide for the training of District staff in transgender sensitivity, in what it means to treat all people respectfully and equally. Developmentally age-appropriate training shall also be provided for students.

- (cf. 0521 – Nondiscrimination)
- (cf. 4131 – Staff Development)
- (cf. 5114 – Suspension and Expulsion/Due Process)
- (cf. 5131 – Conduct)
- (cf. 5131.21 – Violent and Aggressive Behavior)
- (cf. 5131.8 – Out-of-School Misconduct)
- (cf. 5131.912 – Aggressive Behavior)
- (cf. 5131.913 – Cyberbullying)
- (cf. 5131.91 – Hazing)
- (cf. 5144 – Discipline/Punishment)
- (cf. 5145.4 – Nondiscrimination)
- (cf. 5145.5 – Sexual Harassment)
- (cf. 5145.51 – Peer Sexual Harassment)
- (cf. 5145.52 – Harassment)
- (cf. 5145.6 – Student Grievance Procedure)
- (cf. 6121 – Nondiscrimination)
- (cf. 6121.1 – Equal Educational Opportunity)

Students

Transgender and Gender Non-Conforming Youth

Legal Reference: Connecticut General Statutes

10-15c Discrimination in public school prohibited. (Amended by P.A. 97-247 to include “sexual orientation” and PA 11-55 to include “gender identity or expression”)

46a-60 Discriminatory employment practices prohibited Federal Law.

10-209 Records not to be public.

46a-60 Discriminatory employment practices prohibited.

Section 504 and the Federal Vocational Rehabilitation Act of 1973, 20 U.S.C. 706(7)(b).

Public Act 07-62 An Act Concerning the Deprivation of Rights on Account of Sexual Orientation.

Public Act 11-55 An Act Concerning Discrimination.

Title IX of the Education Amendments of 1972, 34 CFR Section 106.

Meritor Savings Bank. FSB v. Vinson, 477 U.S. 57 (1986).

Faragher v. City of Boca Raton, No. 97-282 (U.S. Supreme Court, June 26, 1998).

Burlington Industries, Inc. v. Ellerth, No. 97-569, (U.S. Supreme Court, June 26, 1998).

Gebbs v. Lago Vista Indiana School District, No. 99-1866, (U.S. Supreme Court, June 26, 1998).

Davis v. Monroe County Board of Education, No. 97-843 (U.S. Supreme Court, May 24, 1999).

Policy adopted:
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