

Students

Administrative Procedure – Accommodating Transgender Students or Gender Non-Conforming Students

This procedure's accommodation and support guidelines advance the District's goals of (1) providing all students equal access to a safe, non-hostile learning environment, and (2) implementing risk management controls in a developing and unsettled area of the law in which the federal Office of Civil Rights and Department of Justice have issued guidance.

While there is no mandate requiring procedures for accommodating transgender students or gender non-conforming students, this procedure guides school officials through the: (1) application of State and federal anti-discrimination laws to this student population, and (2) common needs in which transgender or gender non-conforming students may request accommodations and support at school. This procedure applies to all school activities, school-provided transportation, and school-sponsored events regardless of where they occur.

The Building Principal, Nondiscrimination Coordinator, and/or Complaint Manager, with input from others as appropriate, will implement this procedure. They will work with each transgender or gender non-conforming student, and as appropriate with the student's parent(s)/guardian(s), to manage a student's accommodations and supports on a case-by-case basis. The Board Attorney may be consulted concerning legal compliance.

Gender-Based Discrimination Is Prohibited

School districts must provide equal educational opportunities to transgender students and gender non-conforming students. Under State law, *sex discrimination* extends to claims of discrimination based on *sexual orientation* and *gender identity*. 775 ILCS 5/5-101(11); 23 Ill.Admin.Code §1.240. The Ill. Human Rights Act defines *sexual orientation* as the "actual or perceived heterosexuality, homosexuality, bisexuality, or gender related identity, whether or not traditionally associated with the person's designated sex at birth." 775 ILCS 5/1-103(O-1). The Act permits schools to maintain single-sex facilities that are distinctly private in nature, e.g., restrooms and locker rooms. 775 ILCS 5/5-103.

Federal law prohibits exclusion and discrimination on the basis of *sex*. 20 U.S.C. §1681(a), Title IX of the Education Amendments of 1972. According to the U.S. Department of Education's Office for Civil Rights (OCR) and the U.S. Department of Justice, Title IX protects lesbian, gay, bisexual, and transgender students, from gender discrimination.

School Board policy 7:10, *Equal Educational Opportunities*, recognizes the legal requirements described above. This procedure's guidance on accommodating transgender students or gender non-conforming students is based on OCR pronouncements. See the last section, **Resources**.

Gender-Based Bullying and/or Harassment Is Prohibited

The Office for Civil Rights' guidance provides that laws prohibiting gender discrimination include protecting transgender students and gender non-conforming students from bullying and harassment by other students. According to the federal Office for Civil Rights, a school district is responsible for damages suffered by a student who was the victim of protected-class harassment:

(1) that is severe, pervasive, or persistent; (2) about which school officials knew or should have known; and (3) that interferes with or limits a student's participation in or benefit from services, activities, or opportunities offered by the school.

The School Code prohibits bullying on the basis of actual or perceived sexual orientation, gender-related identity or expression, and/or association with a person or group with one of the aforementioned actual or perceived characteristics. 105 ILCS 5/27-23.7(a). The Board policy on bullying and the District's suite of bullying materials must be used to prevent, address and resolve peer bullying and harassment of transgender or gender non-conforming students. See 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*.

Terminology and Definitions

The District uses the following terms and definitions when discussing accommodations for a transgender student or gender non-conforming student (from the *Arcadia Resolution Agreement*, 7-24-2013, www.justice.gov/crt/about/edu/documents/arcadiaagree.pdf). NOTE: Definitions are not intended to label students, but rather to assist with understanding.

Gender-based discrimination is a form of sex discrimination, and refers to differential treatment or harassment of a student based on the student's sex, including gender identity, gender expression, and non-conformity with gender stereotypes, that results in the denial or limitation of education services, benefits, or opportunities. Conduct may constitute gender-based discrimination regardless of the actual or perceived sex, gender identity, or sexual orientation of the persons experiencing or engaging in the conduct.

Sex assigned at birth and assigned sex refers to the gender designation listed on one's original birth certificate.

Gender expression refers to external cues that one uses to represent or communicate one's gender to others, such as behavior, clothing, hairstyles, activities, voice, mannerisms, or body characteristics.

Gender identity refers to one's internal sense of gender, which may be different from one's assigned sex, and which is consistently and uniformly asserted, or for which there is other evidence that the gender identity is sincerely held as part of the student's core identity.

Transgender describes an individual whose gender identity is different from the individual's assigned sex. *Transgender boy* and *transgender male* refer to an individual assigned the female sex at birth who has a male gender identity. An individual can express or assert a transgender gender identity in a variety of ways, which may but do not always include specific medical treatments or procedures. Medical treatments or procedures are not considered a prerequisite for one's recognition as transgender. For purposes of this procedure, a *transgender student* is a student who consistently and uniformly asserts a gender identity different from the student's assigned sex, or for whom there is documented legal or medical evidence that the gender identity is sincerely held as part of the student's core identity.

Gender transition refers to the experience by which a transgender person goes from living and identifying as one's assigned sex to living and identifying as the sex consistent with one's gender identity. A gender transition often includes a *social transition*, during which an individual begins to live and identify as the sex consistent with the individual's gender identity, with or without certain medical treatments or procedures.

Gender stereotypes refers to stereotypical notions of masculinity and femininity, including expectations of how boys or girls represent or communicate one's gender to others, such as behavior, clothing, hairstyles, activities, voice, mannerisms, or body characteristics.

Gender non-conformity refers to one's gender expression, gender characteristics, or gender identity that does not conform to gender stereotypes.

Facilities refers to facilities and accommodations used by students at school or during school-sponsored activities and trips, and include, but are not limited to, restrooms, locker rooms, and overnight facilities.

Relevant Board Policies for Accommodations, Supports, and Inclusion of Transgender or Gender Non-Conforming Students

- 2:260, *Uniform Grievance Procedure*, contains the process for an individual to seek resolution of a complaint. A student may use this policy to complain about discrimination, bullying, and/or harassment. The District Complaint Manager shall address the complaint promptly and equitably per the Policy.
- 6:65, *Student Social and Emotional Development*, requires that social and emotional learning be incorporated into the District's curriculum and other educational programs.
- 7:10, *Equal Educational Opportunities*, requires that equal educational and extracurricular opportunities be available to all students without regard to, among other protected statuses, sex, sexual orientation, and gender identity.
- 7:20, *Harassment of Students Prohibited*, prohibits any person from harassing, intimidating, or bullying a student based on an actual or perceived characteristic that is identified in the policy including, among other protected statuses, sex, sexual orientation, and gender identity.
- 7:130, *Student Rights and Responsibilities*, recognizes that all students are entitled to rights protected by the U.S. and Illinois Constitutions and laws for persons of their age and maturity in a school setting.
- 7:160, *Student Appearance*, prohibits students from dressing or grooming in such a way as to disrupt the educational process, interfere with a positive teaching/learning climate, or compromise reasonable standards of health, safety, and decency.
- 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*, contains the comprehensive structure for the District's bullying prevention program.
- 7:250, *Student Support Services*, directs the Superintendent to develop protocols for responding to students' social, emotional, or mental health problems that impact learning.
- 7:300, *Extracurricular Athletics*, contains the requirements for students to participate in school-sponsored extracurricular athletic activities.
- 7:330, *Student Use of Buildings - Equal Access*, grants student-initiated groups or clubs the free use of school premises for their meetings, under specified conditions.
- 7:340, *Student Records*, contains the comprehensive structure for managing school student records, keeping them confidential, and providing access as allowed or required.

Common Needs for Transgender or Gender Non-Conforming Students; Accommodations and Supports

The goal of an accommodation is to allow a transgender or gender non-conforming student to equally participate in educational and extracurricular opportunities. While the right of transgender students to accommodations is generally found in State legislation (Illinois Human Rights Act), there is no explicit right set forth in federal law (Equal Protection Clause and Title IX) and the issue has not been fully interpreted by the courts. Determining appropriate accommodations is difficult because school officials must balance the rights of transgender or gender non-

conforming students to freedom from discrimination and freedom of expression with the rights of other students to freedoms of religion and expression and privacy.

The Board Attorney may be a member of the team that will identify accommodations for a specific student.

The determination of whether a transgender student needs accommodations will be determined by school officials on a case-by-case basis. This list of common areas of need is not exhaustive. School officials will request input from the student and/or parents, and a particular student may not be interested in receiving an accommodation for each item listed. Seek the Board Attorney's advice concerning the scope and extent of accommodations.

1. Gender transition
2. Names and pronouns
3. School student records
4. Student privacy and confidentiality
5. Access to gender-segregated areas (e.g. locker rooms and restrooms)
6. Sports and physical education classes - participation in competitive athletic activities is resolved pursuant to IESA *Policy and School Recommendations for Transgender Participation*, <https://www.iesa.org/documents/handbook/IESA-Handbook.pdf>
7. Dress codes
8. Gender segregation in other areas (e.g., class discussions and field trips)

Training for School Staff Members

When and where appropriate, as determined by the Superintendent or his/her designee, professional development for staff members will include opportunities to gain a better understanding of equal educational opportunity laws, gender identity, gender expression, and gender diversity; the development of gender identity in children and adolescents; developmentally appropriate strategies for communicating with students and parents/guardians about issues related to gender identity; gender-affirming approaches to ensuring the safety and support of transgender students and gender non-conforming students; developmentally appropriate strategies for preventing and intervening in bullying incidents; and Board policies regarding bullying, discrimination, and student privacy.

Resources

Dealing with Legal Matters Surrounding Students' Sexual Orientation and Gender Identity, published by the National School Board Association and other participating organizations, April 2013, at www.nsba.org/sites/default/files/reports/DealingwithLegalMattersSurroundingStudentsSexualOrientationandGenderIdentity.pdf.

Massachusetts Department of Elementary and Secondary Education, *Guidance for Massachusetts Public Schools Creating a Safe and Supportive School Environment Nondiscrimination on the Basis of Gender Identity* (undated), at www.doe.mass.edu/ssce/GenderIdentity.pdf.

OCR Dear Colleague Letter, harassment and bullying (2010), at www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html.

OCR Guidance on Responsibilities of Schools to Address Sexual Violence, Other Forms of Sex Discrimination (2014) at www.ed.gov/news/press-releases/guidance-issued-responsibilities-schools-address-sexual-violence-other-forms-sex.

OCR and DOJ Consent Decrees and Resolution Agreements:

www2.ed.gov/about/offices/list/ocr/docs/investigations/05115901.html (Anoka-Hennepin School District, MN, 3-5-2012).

www2.ed.gov/about/offices/list/ocr/docs/investigations/09111031.html (Tehachapi Unified School District, CA, 7-7-2011).

www.justice.gov/crt/about/edu/documents/arcadiaagree.pdf (Arcadia Unified School District, CA, 7-24-2013).

Executive Order No. 11,246, 30 FR 12319, 12935, 3 CFR, 1964-1965 Comp., p. 339, (1965), as amended on July 21, 2014, prohibits discrimination by the federal government or federal contractors on the basis of sexual orientation or gender identity. The Secretary of Labor was directed to prepare implementing regulations within 90 days (or by 10-19-2014).

The School Leaders Risk Management Association. *District Transgender and Gender Non-conforming Student Practice and Policy*, May 2014 (Copyright - Chicago: Brokers Risk Placement Service, Inc., 2014).

Which Way to the Restroom? Respecting the Rights of Transgender Youth in the School System. April 2012 (Copyright - National School Boards Association), Grant Bowers and Wendy Lopez, at

www.nsba.org/sites/default/files/reports/Respecting%20the%20Rights%20of%20Transgender%20Youth%20and%20appendices.pdf.

Doe v. Regional School District, Unit 26, 2014 ME 11 (1/30/14): School district discriminated against a transgender student in violation of state law by not allowing the student to access to the bathroom of her gender identity.

Johnston v. University of Pittsburgh, 97 F.Supp.3d 657 (W.D. PA 2015): No violation of the Equal Protection Clause or Title IX by prohibiting a transgender student from using the sex-segregated locker rooms and restrooms associated with his gender identity.

Grimm v. Gloucester County School Board, Civil No. 4:15cv54, 2015 WL 5560190 (E.D. VA 2015): Transgender student was not entitled to injunction requiring school district to allow student to use the bathroom of his gender identity under Title IX.

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