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District Policy

5756 - TRANSGENDER AND NONBINARY STUDENTS (M)

Section: Students
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M

A. Purpose

The Board of Education is committed to fostering an educational environment that is safe, welcoming, supportive and free from stigma and discrimination for all students, regardless of sexual orientation, gender identity or gender expression and to ensuring that all students have the opportunity to express themselves and live authentically.

The New Jersey Law Against Discrimination (NJLAD), N.J.S.A. 10:5-12(11)(f), generally makes it unlawful for schools to subject individuals to differential treatment based on gender identity or expression. Title IX of the Education Amendments of 1972 ("Title IX") specifically prohibits discrimination on the basis of sex in Federally-funded, and inclusive learning environment for all students, including, transgender, gender nonconforming, and to ensure that every student has equal educational opportunities and equal access to the District's educational programs and activities [20 U.S.C. § 1681(a).

N.J.S.A. 18A:36-41 directs the Commissioner of Education to establish guidelines outlined in this Policy to provide direction for schools in addressing common issues concerning the needs of transgender students, and to assist schools in establishing policies and procedures that ensure a supportive and nondiscriminatory environment for transgender students.

This Policy establishes the Board's expectations for addressing the needs of transgender and nonbinary students in compliance with applicable anti-discrimination laws. The goal of all South Orange and Maplewood School District ("SOMSD") staff shall be to ensure the safety, comfort, privacy, and healthy development of all students, including transgender, gender nonconforming, and/or gender expansive students.

B. Definitions/Terms

A safe and supportive environment within a school begins with understanding and respect. The Board believes students, teachers, and administrators should be provided with common terminology associated with gender identity. The terms listed below are provided not for the purpose of labeling students but rather to assist in understanding the application of this policy and the legal obligations of District staff. These terms are commonly used by advocacy and human rights groups; however students may prefer other terms to describe their gender identity, appearance, or behavior. Staff also should keep in mind that students may use different words to describe their lives and experiences of gender identity or expression. District staff should use the terms that students use to describe themselves and avoid terms that make students uncomfortable.

GENDER EXPRESSION: The manner in which a person represents or expresses gender to others, often through behavior, clothing, hairstyles, activities, voice, or mannerisms.

GENDER IDENTITY: A person's deeply held knowledge of their own gender, which can include being female, male, another gender, or no gender. identity is an innate and largely inflexible part of a person's identity. One's gender identity can be the same or different than the gender assigned at birth. The responsibility for determining an individual's gender identity rests with the individual. Children typically begin to understand their own gender identity by age four, although the age at which individuals come to understand and express their gender identity may vary based on each person's social and familial development.

GENDER NONCONFORMING: A term sometimes used to describe people whose gender expression differs from stereotypical expectations, such as "feminine" boys, "masculine" girls, and people who are perceived as androgynous in some way. Most gender nonconforming people are not transgender. For example, a non-transgender girl who has short hair and likes sports might be considered gender nonconforming. The term "gender nonconforming" is also sometimes used to refer to people whose gender identity is not male or female.

CISGENDER: A person whose gender identity and expression are aligned with the gender they were assigned at birth.

NONBINARY/GENDERQUEER: These are terms often used to describe people whose gender is not exclusively male or female, including those who identify with a gender other than male or female, as more than one gender, or as no gender.

TRANSGENDER: A person whose gender identity and/or expression are not aligned with the gender they were assigned at birth. "Transgender" is often used as an umbrella term encompassing a large number of gender identities and can include other terms related to gender nonconformity.

Gender Expansive, Gender diverse, Gender fluid, Gender non-binary, Agender, Gender queer: Are terms that conveys a wider, more flexible range of gender identity and/or expression than typically associated with the binary gender system. For example, students who identify as gender queer or gender fluid might not identify as boys or girls; for these students, the non-binary gender identity functions as the student's gender identity.

TRANSITION: The process in which a person begins to live according to their gender identity, rather than the gender they were thought to be at birth. Transition is a process that is different for everyone, and it may or may not involve social, legal, or physical changes. There is no one step or set of steps that an individual or student must undergo in order to have their gender identity affirmed and respected.

SEXUAL ORIENTATION: A person's romantic and/or physical attraction to people of the same and/or another gender, such as being straight, gay, bisexual, or asexual. Transgender and gender nonconforming people may have any sexual orientation.

LGBT or LGBTQ+: An umbrella term referring to people who identify as lesbian, gay, bisexual and/or transgender. Sometimes the acronym is written as LGBTQ, with the "Q" referring to those who identify as queer and/or questioning. The acronym can also include additional letters, in reference to other identities that do not conform to dominant societal norms around sexual orientation and gender identity and expression.

C. Student-Centered Approach

Every student has the right to be addressed by a name and pronouns that correspond to the student's gender identity. The school district shall accept a student's asserted gender identity and/or chosen name; parental consent is not required. A student is not required to meet any threshold or legal requirements to have their gender identity and/or chosen name recognized on school records, student forms or documents or student Identification be respected by the school district, school, or by school staff members. In addition, a legal or court-ordered name change is **not** required for a student to request a change of name in student records.

If the student has previously been known at school by a different name, the school administration will direct school personnel to use the student's chosen name and appropriate pronouns. To ensure consistency among administrators and staff, every effort will be made to immediately update student education records (such as attendance reports, class rosters for substitutes, school IDs, transcripts, electronic records, etc.) with the student's chosen name and appropriate gender markers. There is no affirmative duty for any school district staff member to notify a student's parent of a change to the student's gender identity or expression.

All persons, including students, have a right to privacy, and this includes the right to keep one's transgender status private at school. Information about a student's transgender status, legal name, or gender assigned at birth constitutes confidential personally identifiable and medical information. Disclosing this information to other students or parents, district staff or other third parties may violate privacy laws, such as the federal Family Educational Rights and Privacy Act (FERPA), as well as constitutional privacy protections. Additionally, disclosure or misuse of this information may establish a hostile environment for a transgender or gender nonconforming student, potentially subjecting them to emotional, verbal or physical harm, or bullying and harassment by peers, discrimination by school staff, or family rejection.

D. Safe and Supportive Environment

The Board developed and adopted this Policy to ensure that its schools provide a safe and supportive learning environment that is free from discrimination and harassment for transgender and nonbinary students. Gender-based policies, rules, and practices can have the effect of marginalizing, stigmatizing, and excluding students, whether they are gender nonconforming or not. The Superintendent or designee shall review and update existing policies and procedures, including those regarding classroom activities, school ceremonies, school photographs, and dress codes, to verify transgender and nonbinary students are not excluded.

In addition, the school district shall take the following steps to establish and maintain a nondiscriminatory environment for all students, including LGBTQ+, transgender and nonbinary and transitioning students:

- The school district must comply with N.J.S.A. 18A:37-15 and N.J.A.C. 6A:16-7.7, which prohibit harassment, intimidation, and bullying. The Board is required to develop, adopt, and implement a Policy in accordance with N.J.S.A. 18A:37-15 and N.J.A.C. 6A:16-7.7 that prohibits harassment, intimidation, or bullying on school property, at a school-sponsored function, or on a school bus. If harassment, intimidation, or bullying based on gender identity creates a hostile environment, the school must take prompt and effective steps to end the harassment, intimidation, or bullying, prevent its recurrence, and, as appropriate, remedy its effects.
- The Superintendent or designee should ensure regular training is provided to school staff members on sensitivity and respect towards LGBTQ+ and transgender students.
- Social and Emotional Learning (SEL) concepts should be incorporated into school culture and curricula. And as outlined in curricula by N.J.A.C. 18A:35-4.35 and N.J.A.C. 18A:35-4.36.
- The school district may seek a variety of professionals, including counselors and school psychologists, to provide emotional supports for all students who demonstrate a need. The Superintendent or designee shall ensure school counselors are knowledgeable regarding issues and concerns relevant to LGBTQ+ transgender and students facing other gender identity issues, or students who may be transitioning.
- Student dress codes should not be enforced more strictly for transgender and gender nonconforming students than for other students.
- The school district shall honor and recognize a student's asserted chosen name and gender identity, and shall not require any documentation or evidence in any form, including diagnosis, treatment, or legal name change.
- A school's obligation to ensure nondiscrimination on the basis of gender identity or gender expression requires schools to provide transgender students equal access to educational programs and activities, even in circumstances in which other students, parents, or community members raise objections or concerns.

The responsibility for determining a student's gender identity rests with the student. SOMSD staff shall accept a student's asserted gender identity when it is a sincerely held part of the student's core identity. Staff and schools shall not question or disregard the students' assertion of their gender.

No person shall be subjected to discrimination on the basis of actual or perceived gender identity, gender expression, gender, or sexual orientation. (N.J.S.A. 10:1 et seq, 20 U.S.C. § 1681 (TitleIX)).

E. Confidentiality and Privacy

School staff and members volunteers may not disclose information that may reveal a student's transgender status except as required by law or the student has authorized such disclosure. The Principal or designee is advised to work with the student to create an appropriate confidentiality plan regarding the student's transgender or transitioning status. The school district shall keep confidential a current, new, or prospective student's transgender status. Schools should address the student using a chosen name and the student's birth name should be kept confidential by school and school staff members. LGBTQ+ students and transgender and nonbinary students have the right to openly discuss and express their sexual orientation, gender identity or transgender status and to decide when, with whom, and how much to share. In sharing this information, district employees should not use a student's self-disclosure as grounds for sharing information about the student's sexual orientation, gender identity or transgender status without the student's express permission.

During a harassment, intimidation, or bullying investigation the school district is obligated to develop a procedure to report, verbally and in writing, an act of harassment, intimidation, and bullying committed by an adult or youth against a student, pursuant to N.J.A.C. 6A:16-7.7(a)2viii. In this instance, the Principal or

designee should inform the student of the school's obligation to report the findings of the harassment, intimidation, and bullying investigation pursuant to N.J.S.A. 18A:37-15(d), which permits the parents of the students who are parties to the investigation to receive information about the investigation in accordance with Federal and State law and regulation. Under harassment, intimidation, and bullying legal requirements, parents are entitled to know the nature of the investigation; whether the district found evidence of harassment, intimidation, or bullying; or whether disciplinary action was imposed or services provided to address the incident of harassment, intimidation, or bullying. The Principal or designee shall take into account the circumstances of the incident when providing notification to parents of all students involved in the reported harassment, intimidation, or bullying incident and when conveying the nature of the incident, including the actual or perceived protected category motivating the alleged offense, pursuant to N.J.A.C. 6A:16-7.7(a)2viii(2).

Disclosure of personally identifiable information from a student's education record to other school officials within the school district, whom the school district has determined have a legitimate educational interest in the information, may be permissible under Family Educational Rights and Privacy Act (FERPA) (34 C.F.R. § 99.31(a)(1)). The school district shall make a concerted effort to ensure school officials obtain access to only those education records in which they have legitimate educational interests. The school district shall comply with all laws and regulations regarding the confidentiality of student records and student privacy, including the requirements set forth at 20 U.S.C. § 1232g, Family Educational Rights and Privacy Act; 34 CFR Part 99, Family Educational Rights and Privacy; 20 U.S.C. § 1232h, Protection of Pupil Rights; 34 CFR Part 98, Student Rights in Research, Experimental Programs, and Testing; P.L. 104-191, Health Insurance Portability and Accountability Act; 45 CFR Part 160, General Administrative Requirements; 20 U.S.C. § 7917, Transfer of school disciplinary records; 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records; N.J.S.A. 18A:40A-7.1, Confidentiality of certain information provided by pupils, exceptions; N.J.A.C. 6A:16-3.2, Confidentiality of student alcohol and other drug information; N.J.S.A. 18A:36-19, Pupil Records, creation, maintenance and retention, security and access, regulations, non-liability; N.J.S.A. 2A:4A-60, Disclosure of juvenile information, penalties for disclosure; N.J.A.C. 6A:32-7, Student Records; N.J.A.C. 6A:14-2.9, Student records; as well as all other existing Federal and State laws and rules pertaining to student records and confidentiality.

F. School Records

If a student has expressed a preference to be called by a name other than their birth name, permanent student records containing the student's birth name should be kept in a separate, confidential file.

This file should only be shared with appropriate school staff members after consultation with a student. A separate file containing records bearing the student's chosen name may also be kept. If the student has previously been known at school or in school records by a birth name, the Principal or designee should direct school staff members to use the student's chosen name and not the student's birth name. To ensure consistency among teachers, school administrators, substitute teachers, and other school staff members, every effort should be made to immediately update student education records (for example: attendance records, transcripts, Individualized Education Programs (IEP), etc.) with the student's chosen name and gender pronouns, consistent with the student's gender identity and expression, and not circulate records with the student's birth name, unless directed by the student.

- The school district shall report to the New Jersey Department of Education (NJDOE) through NJ SMART a student's name or gender based upon that student's chosen name and corresponding gender identity. Changing the name or gender identity from what was reported in previous years will not affect the reliability of the data reported.
- If the school district changes a student's name or gender identity, it must also maintain locally a separate record reflecting the student's legal name and sex assigned at birth until receipt of documentation of a legal change of name or gender. In order to protect the student's privacy, the school should maintain the official, permanent student record in a secure location, separate from the student's other records. If the official record is maintained electronically, similar security measures should be implemented to protect student privacy.
- Maintaining student's privacy with regard to gender identity, name, and pronouns is a matter of physical and emotional safety. Whether or not a student has a court-ordered or other type of official name or gender marker change, student privacy will be maintained and the student shall be treated in accordance with the expressed gender identity.

G. Activities

With respect to gender-segregated classes or athletic activities, including intramural and interscholastic athletics, all students must be allowed to participate in a manner consistent with their gender identity.

The school district shall:

- Provide transgender and nonbinary students with the same opportunities to participate in physical education, intramural and extracurricular activities as other students in accordance with their gender identity;
- Permit a transgender student to participate in gender-segregated school activities in accordance with the student's gender identity;
- Permit and support the formation of student clubs or programs regarding issues related to lesbian, gay, bisexual, transgender, and queer/questioning (LGBTQ+) youth; and
- Offer support in the creation of peer led educational groups.

H. Use of Facilities

All students are entitled to have access to restrooms, locker rooms, and changing facilities in accordance with their gender identity to allow for involvement in various school programs and activities. In all cases, the Principal or designee must work with the student and school staff members so all parties are aware of facility policies and understand the student may access the restroom, locker room, and changing facility that corresponds to the student's gender identity. Transgender students who are uncomfortable using a sex-segregated restroom should be provided with a safe and adequate alternative, such as a single "unisex" restroom or the nurse's restroom. Similarly, some transgender students may be uncomfortable using the changing facilities that correspond to the student's gender identity. Non-transgender students should also be afforded the option to use a private facility, such as a unisex facility or the nurse's restroom, should they feel uncomfortable. Schools and district facilities shall designate any existing facilities that are designed to be used by only one person at a time as accessible to all students regardless of gender. However, under no circumstances shall a student be required to use a single-user facility because they are transgender or gender nonconforming.

- The school district shall allow a transgender or nonbinary student to use a restroom or locker room based on the student's gender identity.

- Every effort shall be made if needed to ensure a transgender student’s safety and comfort. This direction for accommodations should come from the student. The Superintendent or designee will make available to school staff members a variety of resources regarding professional development opportunities as sourced by the NJDOE as well as developmentally appropriate information for students regarding LGBTQ+ issues.

The Board adopts this Policy to help school and district administrators take steps to create an welcoming, inclusive environment in which transgender and nonbinary students feel safe and supported, and to ensure each school provides equal educational opportunities for all students, in compliance with N.J.A.C. 6A:7-1.1 et seq.

N.J.S.A. 18A:36-41; 18A:37-15
N.J.A.C. 6A:7-1.1 et seq.; N.J.A.C. 6A:16-7.7
New Jersey Department of Education – October 2018
Transgender Student Guidance for School Districts
N.J.S.A. 10:5-1 et seq. Title IX, 20 U.S.C. Section 1681

Cross References: 5512, 5519, 5751

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