

**SOUTH BURLINGTON SCHOOL DISTRICT
POLICY F16**

**Transgender and Nonbinary Student Policy
First Reading on November 15, 2023**

It is the policy of the South Burlington School District to provide a safe, inclusive, equitable, civil, and positive learning environment¹ for all students regardless of perceived or actual sex, gender identity, sexual orientation, or gender expression.

Title IX of the Education Amendments of 1972 and 9 V.S.A. 4502² protects all students from sex discrimination, including transgender students and students who do not conform to traditional gender stereotypes.

Definitions³

- **Cisgender:** A person whose gender identity corresponds to their assigned sex at birth.
- **Gender attributions:** How a person’s gender is perceived by others.
- **Gender binary:** A socially constructed system of viewing gender as consisting solely of two categories, “male” and “female” in which no other possibilities for gender are believed to exist.
- **Gender expression:** The way a person externally communicates gender to other people such as through behaviors, clothing, hairstyles, voice, mannerisms, activities, or body characteristics.
- **Gender identity:** An individual’s actual or perceived concept and expression of self as male, female, both, or neither regardless of the individual’s assigned sex at birth.
- **Nonbinary:** An identity embraced by those who do not identify exclusively as a man or a woman; other terms that have the same or similar meaning include gender creative, gender variant, gender expansive, gender non-conforming, gender fluid, or gender atypical.
- **Sexual orientation or sexuality:** A person’s identity in relation to the gender or genders to which they are romantically and/or sexually attracted. Sexual orientation is not the same as gender identity.

¹ The recommendation for districts to adopt a Transgender and Gender Nonconforming Students policy was made in response to federal guidance issued May 2016 (US Department of Education Office of Civil Rights and US Department of Justice Office of Department of Justice Civil Rights Division Dear Colleague Letter on Transgender Students, May 13, 2016.)

² Vermont’s Public Accommodations Act prohibits the discrimination on the basis of “race, creed, color, national origin, marital status, sex, sexual orientation, or gender identity of any person.” V.S.A. § 4502.

³ Definitions are consistent with SBSD Policy F15 - Prevention of Sexual Harassment as Prohibited by Title IX /and are adapted from the Vermont Agency of Education guidance document, “Best Practices for Schools Regarding Transgender and Gender Nonconforming Students,” and the Human Rights Campaign and GLSEN.

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- **Sex assigned at birth:** The sex designation assigned to a person when they are born.
- **Transgender:** A person whose gender identity or gender expression is different from the person's assigned sex at birth. This is an umbrella term that is used in this policy to capture multiple gender identities such as nonbinary or intersex identities.

Privacy

All students have the right to privacy. Consistent with those rights provided under the Family Educational Rights and Privacy Act (FERPA) of 1974, any student will be able to discuss and express their gender diversity openly and the student will decide when, with whom, and how much of their private information to share with others.

In addition, school staff will respect any requests to use a name and pronoun that corresponds to the student's gender identity, or that the student asserts or wishes to assert at school irrespective of the gender listed on the student's records. Students will not be required to obtain a court-ordered name and/or gender change or to change their student records as a prerequisite to being addressed by the name and pronoun that corresponds to their gender identity.⁴ The school district will make reasonable efforts to provide School Information System records options for students to indicate their name and gender change. Students engaging in this process should be notified that this information is accessible to families in certain circumstances.

There may be times when disclosure to school staff or employees of a student's gender identity is necessary in order to fulfill a school's obligations to the transgender or nonbinary student with respect to safety, health, education, and anti-discrimination efforts.

A school can best support a transgender or nonbinary student by involving the student regarding how and what information about the student is shared within the school, and between the school and the student's home. The school will work closely with the student, and their parents or legal caregivers when appropriate, in devising a plan regarding the confidentiality of a student's transgender status that is safe and affirming while meeting competing legal requirements. To the extent possible and consistent with all competing legal requirements, school personnel will endeavor throughout to maintain the confidentiality of the student's transgender status.

Student Records

⁴ Under Title IX, a school must treat students consistent with their gender identity even if their education records or identification documents indicate a different sex. The Departments of Education and Justice have resolved Title IX investigations with agreements committing that school staff and contractors will use pronouns and names consistent with a transgender student's gender identity.

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The superintendent will adopt procedures that ensure that all students' personally identifiable information is maintained in compliance with FERPA and state and federally mandated reporting requirements.

To the extent that the school is not legally required to use a student's legal name or gender on school records and other documents, the school will use the name and gender consistent with the student's gender identity.⁵

Where a student's record(s) may not be changed absent court order due to state and/or federal law, efforts will be taken to maintain those records in strictest confidentiality in order to preserve the student's transgender status. Where appropriate, an amended version will be maintained that preserves the confidentiality of that transgender status where a review of the record is required for educational purposes by either school personnel educating the student or personnel who will be evaluating the student (for eligibility purposes for example).

Student Gender, Pronoun, and/or Name Change

The District shall institute protocols for gender transitions that clearly delineate responsibilities and expectations of staff in the case that a student changes their gender, pronoun, and/or name. In a case where a student is not yet able to self-advocate, the request to respect and affirm a student's identity will likely come from the student's parent or legal caregiver. However, in other cases, transgender students may not want their parents or legal caregivers to know about their transgender identity. These situations should be addressed on a case-by-case basis and school districts should balance the goal of supporting the student with the requirement that parents or legal caregivers be kept informed about their children. The paramount consideration in such situations should be the health and safety of the student, while also making sure that the student's gender identity is affirmed in a manner that maintains privacy and confidentiality.⁶

Family and Educational Rights and Privacy Act, 34 CFR Part 99.

⁵ There is no medical diagnosis or treatment requirement that students must meet as a prerequisite to being treated consistent with their gender identity. Because transgender students often are unable to obtain identification documents that reflect their gender identity (e.g., due to restrictions imposed by state or local law in their place of birth or residence) requiring students to produce such identification documents in order to treat them consistent with their gender identity may violate Title IX when doing so has the practical effect of limiting or denying students equal access to an educational program or activity. (From Dear Colleague letter of May 13, 2016).

⁶ Even when a student has disclosed the student's transgender status to some members of the school community, schools may not rely on this Family and Educational Rights and Privacy Act (FERPA) exception to disclose PII from education records to other school personnel who do not have a legitimate educational interest in the information. Inappropriately disclosing (or requiring students or their parents to disclose) personally identifiable information from education records to the school community may violate FERPA and interfere with transgender students' right under Title IX to be treated consistent with their gender identity.

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A student (or parent or legal caregiver in the case of a minor student) who is currently enrolled may request retroactive changes to that student's record including name and gender. Such requests will be handled on a case-by-case basis with consideration of the need to maintain legally accurate records consistent with state and/or federal-mandated reporting requirements with the school's ongoing efforts to maintain internal student confidentiality regarding a student's transgender status.

To the extent possible, former student permanent pupil records will be changed by request of a parent/legal caregiver of a minor student, or former students who have reached the age of majority, upon receipt of documentation that such legal name and/or gender have been changed pursuant to applicable state law.

Use of Gender Segregated Facilities

A student must be permitted to use a locker room or restroom that aligns with the student's gender identity. Any student who expresses a need or desire for increased privacy will be provided with alternative arrangements. Reasonable alternative arrangements may include the use of a private area, or a separate changing schedule, or the use of a single stall restroom. Any alternative arrangement will be provided in a way that protects a student's ability to keep their transgender status confidential.

In all cases the use of restrooms and locker rooms by transgender students requires schools to consider numerous factors, including, but not limited to: the transgender student's stated gender identity; protecting student privacy; maximizing social integration of the transgender student; minimizing stigmatization of the transgender student; ensuring equal opportunity to participate; and the student's age.

School Sports and Activities

As a general rule, in any other circumstances where students are separated by gender in school sports and activities, students will be permitted to participate in accordance with their gender identity that is asserted at school. Activities that may involve the need for accommodations to address student privacy concerns will be addressed on a case-by-case basis considering the factors listed above.

Annual Monitoring

The superintendent shall not fail to address disparities in group outcomes as measured by regularly administered standardized test results, absenteeism, and incidents in which student

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behavior results in intervention by a School Resource Officer or administrator; nor shall the superintendent fail to quantify, report on, and address individual instances of discrimination.

At least annually and to the extent possible, the District shall report to the Board student academic achievement, student engagement, incidents of harassment and bullying as measured by standardized testing and any other district wide assessment tools disaggregated by LGBTQIA+ status and their non-LGBTQIA+ peers.⁷

Curriculum and Instruction

The district shall support inclusion of LGBTQIA+ inclusive content and curriculum throughout our PreK-12 curriculum and instruction. The district prohibits instruction that explicitly or implicitly teaches content or curriculum that excludes the experiences of LGBTQIA+ individuals. The District shall implement anti-bias curricula and education, which could involve teaching, not endorsing or using methods of teaching/instruction that harm, the history of stigmatizing language, the harm in such ideology, and the societal implications it has on those in our communities. The district prohibits instruction from teaching or endorsing religious ideology or sectarian tenets or doctrines, using shame-based or stigmatizing language or instructional tools, employing gender norms or gender stereotypes, or excluding the relational or sexual experiences of LGBTQIA+ individuals.⁷

Professional Development

The District shall conduct training for all staff members on their responsibilities under applicable laws and this policy, including but not limited to, teachers, administrators, counselors, social workers, health staff, and support staff. Information regarding this policy shall be incorporated into training for new school employees.

The District shall make every effort to implement ongoing professional development to build the skills of all staff members to prevent, identify and respond to bullying, harassment, and discrimination. The content of such professional development shall include, but not be limited to:

- (i) terms, concepts, and current developmental understandings of gender identity, gender expression, and gender diversity in children and adolescents;
- (ii) developmentally appropriate strategies for communication with students and parents about issues related to gender identity and gender expression that

⁷ Oregon Department of Education: *Guidance to School Districts: Creating a Safe and Supportive School Environment for Transgender Students*. Issued May 5, 2016 and See, 18 V.S.A. 5112 for Vermont law governing the process for obtaining a new birth certificate following a sexual reassignment and See, LGBTQ-Inclusive Curriculum as a Path to Better Health from the American Bar Association and See, ACLU-Colorado HB19-1032: Comprehensive Human Sexuality Education.

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protect student privacy;

(iii) developmentally appropriate strategies for preventing and intervening in bullying incidents, including cyberbullying;

(iv) classroom-management practices, curriculum, and resources that educators can integrate into their classrooms to help foster a more gender-inclusive environment for all students;

(v) school and District policies regarding bullying, harassment, discrimination, and suicide prevention and responsibilities of staff.

Date Policy Warned: November 15, 2023

Date Policy Considered:

Date Policy Adopted:

Signed:

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