

Concord School District Policy #162

Transgender and Gender Non-conforming Students

I. Purpose

Concord School District policy requires that all programs, activities, and employment practices be free from discrimination based on sex, sexual orientation, or gender identity. 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 is intended to be interpreted in light of applicable federal and state laws and regulations, as well as Board policies, procedures and school rules.

This policy sets out guidelines for schools and District staff to address the needs of transgender and gender nonconforming students and clarifies how state and federal 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 nonconforming students, and the needs of each transgender or gender nonconforming student must be assessed on a case-by-case basis. In all cases, the goal is to facilitate the safety, privacy, and healthy development of the transgender or gender nonconforming student while maximizing the student's access to education and social integration and minimizing the stigmatization of the student.

II. Definitions

The definitions provided here are not intended to label students but rather are intended to assist in understanding this policy and the legal obligations of District staff. 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. Everyone has a gender identity.

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

“Gender expression” refers to multiple ways in which a person represents or expresses their gender to others, often through behavior, clothing, hairstyles, activities, voice, or mannerisms. Gender expression could be referred to as masculine, feminine, gender nonconforming, etc.

“Gender nonconforming” describes an individual whose gender identity and/or expression are different from societal and stereotypical gender expectations traditionally associated with their assigned sex at birth.

“Gender non-binary” describes an individual whose gender identity and/or expression does not align with the gender binary of male or female. A gender non-binary person

may describe their gender identity and/or expression as androgynous, genderfluid, genderqueer, agender, or non-labeling, etc.

“Genderfluid” describes an individual whose gender identity and/or expression may be gender nonconforming or non-binary, who has a wider and more flexible range of gender expression that may even change from day to day. While the gender expression of a student who is genderfluid is flexible or may appear to change with some frequency, their genderfluid identity can be recognized as the “gender which the student consistently asserts at school” regarding this policy.

“Gender transition” describes the process by which a person goes from living and identifying as one gender to living and identifying as another gender. Gender transition is typically prompted by the feeling that an individual’s gender identity does not match the one typically associated with their assigned sex at birth. Examples include binary transitions: transitioning from a boy to a girl, a girl to a boy, a girl to gender non-binary, or a boy to gender non-binary. For most elementary and secondary students, this involves no or minimal medical interventions. In most cases, transgender students under the age of 18 are in a process of “social transition” from one gender to another.

“Sexual orientation” describes a person’s romantic and/or sexual attraction. Sexual orientation is not the same as gender identity or gender expression. In this policy, sexual orientation refers to an individual’s “actual or perceived” sexual orientation.

III. Guidance

A. Privacy

The Board recognizes that information related to a student’s transgender status, legal name, assigned birth sex, name change for gender identity purposes, gender transition, medical or mental health treatment related to gender identity, or other information of a similar nature, regardless of its form, constitute confidential student record information under state and federal privacy laws, and therefore must be kept private and secure. Any disclosure of such information shall be governed by state and federal privacy laws.

Transgender and gender nonconforming 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. To the extent a student has a Gender Support and Transition Plan (see Section J), the student’s wishes related to any disclosure should be included within that plan.

If a student new to a school is using a preferred name, the birth name is considered private information. If the student has previously been known at school or in school records by his or her birth name, the Principal should direct school personnel to use the student’s preferred name. Every effort should be made to update student records (e.g., Individualized Education Plans) with the student’s preferred name and not circulate records with the student’s assigned birth name. Records with the student’s assigned birth name should be kept in a separate, confidential file.

School staff should keep in mind that under FERPA, student records may only be accessed and disclosed to staff with a legitimate educational interest in the information. Disclosures to others shall only be made with appropriate authorization from the administration and/or parents/guardians.

B. 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 and, in that case, the District should designate a student’s preferred name and gender. 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 in accordance with any applicable laws. 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.

C. Names/Pronouns

All students should be addressed by the name and pronoun that corresponds to their gender identity, i.e., their preferred name. A court-ordered name or gender change is not required. 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.

D. Gender-Segregated Activities

In situations where students are segregated by gender, a student should be included in the group that corresponds to their gender identity or according to their Gender Support and Transition Plan.

E. 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-stall restroom, but no student shall be required to use such a restroom.

F. Locker Room Accessibility

The use of locker rooms by transgender and gender nonconforming 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 privacy, and minimizing stigmatization of the student. As a general rule, all students, including transgender and gender nonconforming students, should be permitted to use the locker room assigned to the gender consistent with 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 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 physical education 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). In no case shall any student be required to use a locker room that conflicts with the student's gender identity consistently asserted at school.

If there are no facilities (restrooms, locker rooms, or other gender-segregated facilities) that align with the gender which the student consistently asserts at school (e.g., in the case of a student who is gender non-binary), recommendations of the student's parent/guardian, and/or medical or mental health professionals may be obtained by the school in a manner consistent with FERPA and considered in developing the plan developed for the student (Section J).

G. Physical Education Classes and Intramural Sports

All students, including transgender and gender nonconforming students, shall be permitted to participate in physical education classes and intramural sports in a manner consistent with their gender identity.

H. Interscholastic Competitive Sports Teams

The New Hampshire Interscholastic Athletic Association (NHIAA) and the District are committed to providing transgender and gender nonconforming student-athletes with equal opportunities to participate in NHIAA athletic programs consistent with their gender identity.

All students, including transgender and gender nonconforming students, shall be permitted to participate in interscholastic athletics in a manner consistent with their gender identity consistently asserted at school. The District shall determine a student's eligibility to participate in a NHIAA gender-specific sports team based on the gender identification of that student in current school records (not necessarily the official record) and daily life activities in the school and community at the time that sports eligibility is determined for a particular season.

Students who wish to participate on a NHIAA gender-specific sports team that is different from the gender identity listed on the student's current school records (not necessarily the official record) should address the gender identification issue with the school well in advance of the deadline for athletic eligibility determinations for a current sports season.

Students will not be permitted to participate in practices or to try out for gender-specific sports teams that are different from their publicly identified gender identity at the time or to try out simultaneously for NHIAA sports teams of both genders. As a general rule, after the issue of gender identity has been explicitly addressed by the student and the District, the determination shall remain consistent for the remainder of the student's high school sports eligibility.

If issues arise regarding participation in Interscholastic Athletics, the District will follow the guidance set forth by the NHIAA.

I. Dress Codes

All students, including transgender and gender nonconforming students, may dress in a manner consistent with their gender identity or gender expression, and consistent with the school dress code applicable to all students.

J. Gender Support and Transition Plan

Efforts will be made, and action taken, to create a supportive school environment and a shared understanding regarding the ways in which a student's gender identity will be addressed at school. If a Gender Support and Transition Plan is desired by the student and/or their parent or guardian, they should contact the student's counselor or the school psychologist to schedule a meeting to discuss a student's particular circumstances through creation of a Gender Support and Transition Plan. In the case of a student who has not yet enrolled in school, the Principal should be contacted to schedule a meeting.

In addition to the student and/or their parent/guardian and the assigned counselor, the student and their parent/guardian may consent to attendance by other relevant school staff and outside providers, who can assist in developing a plan for the student. If the student has an IEP or a 504 plan, supports, services, and accommodations will be considered in order to respect and affirm the student's gender identity. If the parties cannot reach an agreement about the elements to be included in a Gender Support and Transition Plan, the building Principal and/or the Superintendent shall be consulted as appropriate.

Once a request has been made by a student or their parent/guardian to create a Gender Support and Transition Plan, a meeting should be scheduled within (30) calendar days.

K. Discrimination/Harassment

It is the responsibility of each school and the District to ensure that all students, including transgender and gender nonconforming students, enjoy a safe school environment and have equal access to educational benefits, school programs or activities. This includes ensuring that any incident of discrimination, harassment, bullying, or violence is given immediate attention, including investigating the incident, taking appropriate corrective action, and providing students with supportive measures, regardless of whether a formal complaint is filed. Guidance on reporting discrimination or sexual harassment related to a student's actual or perceived transgender and gender nonconforming status, and the grievance process, can be found in Policy #415 Title IX Sexual Harassment Reporting and Grievance Process, section II (J), and section III. Guidance on student safety, violence prevention, and bullying is found in Policy #539 Student Safety and Violence Prevention – Bullying.

This policy shall be considered one of the policies that guides the development and implementation of the District's coordinated plan to prevent, assess the presence of, intervene in, and respond to incidents of discrimination in accord with NH RSA 193:39.

L. Distribution and Notice of Policy

The Superintendent or their designee shall provide notice to students, parents, staff, and designated volunteers of this policy through appropriate references in the parent/student handbook or through other reasonable means. This policy shall be reviewed no less than biannually to determine its efficacy.

M. Training

The Superintendent shall ensure that staff, designated volunteers, and students are provided with informational materials, training, or other education, either online or in person, regarding transgender and gender nonconforming student matters, including training on how best to support students through Gender Support and Transition Plans. Such information or training will be completed within 30 days of employment and renewed annually for staff, designated volunteers, and students.

Legal Reference:

NH RSA 193:39

Adopted April 5, 2021

Corresponds to NHSBA policy JBAB