

## **POLICY RELATED TO PUPIL SERVICES**

### **TRANSGENDER AND GENDER NONCONFORMING STUDENTS**

The Burrillville School Department is committed to ensuring safe and supportive learning environments for all students. Educators, parents, and other stakeholders in public education all have the obligation and duty to ensure that school is a safe and supportive learning environment for all students in order that they may progress academically and developmentally. In order to achieve this end, the Burrillville School Department shall foster an educational environment that is safe and free from discrimination for all students, regardless of sex, sexual orientation, gender identity or gender expression.

#### **Legal Authority**

Title IX of the Education Amendments of 1972, 20 USC §1681 *et. seq.* is a federal civil rights law that prohibits discrimination on the basis of sex in federally funded education programs and activities. Specifically, Title IX's sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity of femininity and the Office of Civil Rights accepts such complaints for investigation.<sup>1</sup>

The Family Educational Rights and Privacy Act of 1974, 20 USC §1232g (1974), (FERPA), is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the US Department of Education. Pursuant to FERPA, schools have a legal obligation to protect the privacy of transgender, gender nonconforming and transitioning students when maintaining education records.<sup>2</sup>

The United States Department of Education and the Rhode Island Department of Education have issued guidance stating that School Districts shall adhere to both Title IX and FERPA in order to protect transgender, gender nonconforming and transitioning students from discrimination and to protect their privacy.

Rhode Island General Laws § 11-24-1 *et. seq.*, entitles all persons within the jurisdiction of the state to the full and equal accommodations, advantages, facilities, and privileges of any place of public accommodation, resort or amusement, and prohibits discrimination based on gender identity or expression.

The Rhode Island General Assembly mandates that school committees, including the Burrillville School Committee, assure the implementation of federal and state laws, local school policies, programs and directives. It also mandates that school committees address the health and wellness of students.<sup>3</sup>

The Rhode Island General Assembly requires superintendents of schools to implement policies established by school committees and to comply with provisions of federal and state law.

### **District's Adoption of State and Federal Guidance**

The Burrillville School Committee hereby adopts the US Department of Education's Guidance on Transgender Students and the Rhode Island Department of Education's Guidance on Transgender and Gender Nonconforming Students.

### **District Protocol**

The Superintendent of Schools shall forthwith establish a districtwide protocol facilitating the terms of this policy that is consistent with applicable federal and state law, rule, and guidance from the US Department of Education and Rhode Island Department of Education.

### **Evaluation and Review**

This policy shall be reviewed and updated on a regular basis, and shall be automatically amended to conform to amendments and changes in applicable state and federal laws, rule and regulations.

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<sup>1</sup> Dear Colleague Letter: Transgender Students (May 13, 2016) *available at* <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-transgender.pdf>

<sup>2</sup> Id.

<sup>3</sup> See RI General Laws `16-2-9 §§ (a) (3) & (24).

First Reading: July 12, 2016

Second Reading: August 9, 2016

## TRANSGENDER, GENDER NONCONFORMING AND TRANSITIONING STUDENTS POLICY PROTOCOL

### PURPOSE

The purpose of this protocol is to ensure that the Burrillville School Department is in full compliance with the following:

- The Rhode Island Department of Education’s Guidance for Rhode Island Schools on Transgender and Gender Nonconforming students, as set forth in its May 2016 Guidance;
- The United States’ Department of Education Guidance on Transgender Students, as set forth in its May 13, 2016 Dear Colleague Letter pertaining to transgender students;
- The Family Educational Rights and Privacy Act of 1974, 20 USC §1232g (1974), as it pertains to transgender, gender nonconforming and transition students; and
- Title IX of the Education Amendments of 1972, 20 USC §1681 *et. seq.*, as each pertains to transgender, gender nonconforming and transitioning students.
- Rhode Island General Laws §11-24-1 *et. seq.*

The Burrillville School Department is committed to ensuring a safe and supportive learning environment for all students. It is committed to ensuring that all educational professionals and other school staff be supportive role models and strong advocates for the safety and well-being of students. All students need a safe and supportive school environment to progress academically and developmentally. There, this protocol shall:

- Foster an educational environment that is safe and free from discrimination for all students, regardless of sex, sexual orientation, gender identity or gender expression;
- Ensure compliance with state and federal law concerning bullying, harassment, and discrimination;
- Reduce the stigmatization of and improve education integration of transgender and gender nonconforming students, maintain the privacy of all students, and foster cultural competence and professional development for school staff; and
- Support healthy communication between educator and parents(s)/guardian(s) to further the successful educational development and well-being of every student.

### DEFINITIONS

1. **“Bullying”** means the use by one or more students of a written, verbal or electronic expression or a physical act or gesture or any combination thereof directed at a student that causes physical or emotional harm to the student or damage to the student’s property; places the student in reasonable fear of harm to himself/herself or of damage to his/her property; creates an intimidating, threatening, hostile or abuse educational environment for the student; infringes

on the right of the student to participate in school activities; or materially and substantially disrupts the education processor the orderly operation of the school. The expression, physical act or gesture may include, but is not limited to, an incident or incidents that may be reasonably perceived as being motivated by characteristics such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression of mental, physical or sensory disability, intellectual ability or by any other distinguishing characteristic.

2. **“Gender Expression”** is the manner in which a person represents or expresses their gender to others, often through behavior, clothing, hairstyles, activities, voice and mannerism.
3. **“Gender Identity”** is a person’s deeply held sense or psychological knowledge of their own gender. One’s gender identity can be the same or different that the gender assigned at birth. Most people have a gender identity that matches their assigned gender at birth. For some, however, their gender identity is different from their assigned gender. All people have gender identity, not just transgender people. Gender identity is an innate, largely inflexible characteristic of each individual’s personality that is generally established at a very early age, although the age at which individuals come to understand and express their gender identity may vary.
4. **“Gender nonconforming”** is a term used to describe people whose gender expression differs from stereotypical expectations. This includes people who identify outside traditional gender categories or identify as both genders. Other terms that can have similar meaning include gender variant, gender expansive or gender atypical.
5. **“Sexual orientation”** is a person’s romantic or sexual attraction to people of the same or opposite gender or multiple genders. Some common sexual orientations are straight, gay, lesbian, bisexual, pansexual, queer, etc. A transgender or gender nonconforming person can have a sexual orientation.
6. **“Transgender”** is an umbrella term used to describe a person whose gender identity or gender expression is different from that traditionally associated with their assigned sex at birth. A *transgender male* is someone who identifies as male but was assigned the sex of female at birth. A *transgender female* is someone who identifies as female, but was assigned the sex of male at birth.
7. **“Transition”** is the process in which a person goes from living and identifying as one gender to living and identifying as another. Transition is a process that is different for everyone, and it may or may not involve social, legal or physical changes. There is not one step or set of steps that an individual must undergo in order to have their gender identity affirmed and respected. Transgender individuals may undergo transition at any stage of their lives, and gender transition can happen swiftly or over a long duration of time.

## PROTOCOLS FOR STUDENTS WHO IDENTIFY AS TRANSITIONING, TRANSGENDER AND GENDER NONCONFORMING

1. The school and staff shall accept a student's assertion of his or her gender identity when there is:
  - (1) a consistent and uniform assertion of the student's gender identity; **OR**
  - (2) any other evidence that the student's gender identity is sincerely held.

***Note: There are times when a student may not consistently and uniformly assert their gender identity because of the threat of discrimination or violence.***

- A. **Elementary School Students:** If school staff believes that a gender identity issue is presenting itself and is creating challenges for a student at school or if a student or parents(s)/guardian(s) of a student indicate an intention on behalf of the student to transition, the school should make every effort to work with the student and the child's parents. Where the student has expressed an intention to transition, the school should meet with the family to prepare for a formal gender transition at school and put in place measure for supporting the child and creating a sensitive, supportive environment at school.
  - B. **Secondary School Students:** If school staff believes that a gender identity issue is presenting itself and creating challenges for a student at school, or if the student or parent(s)/guardian(s) of a student indicate intention to transition, the school should make every effort to work with the student. Generally, notification to a student's parent(s)/guardian(s) about their gender identity, expression, or transition is unnecessary, as they are already aware and supportive. However, some transgender students do not want their parents to know about their transgender status. These situations must be addressed on a case-by-case basis and require schools to balance the goal of supporting the student with the desire that parents be kept informed about their children. In these circumstances, school administration should ask the superintendent for direction on how to proceed. If the administration determines that notifying the family carries risks for the student, it should work closely with the student to assess the degree to which if any, the family will be involved in the process and must consider the age, health, well-being and safety of the student.
2. When a student has expressed intent to transition, in order to ensure that the school is a supportive and safe environment, the School Department shall develop a ***"Gender Transition Plan"*** for the student, which adheres to the following protocol:
    - A. **Resources:** Make resources available to parents and students who have additional questions or concerns.

B. **Privacy:** Ensure the privacy of students who are transitioning to the extent that the student desires. Transgender and gender nonconforming students have the ability, as so all students, to discuss and express their gender identity and expression openly and decide when, with whom and how much of their private information to share with others.

- a. The School Department shall work closely with the student and family in devising an appropriate plan regarding confidentiality of the student's transgender or gender nonconforming status that works for both the student and the school.
- b. School personnel shall not disclose information that may reveal a student's transgender status, unless legally required to do so or unless the student has authorized such disclosure.<sup>1</sup>
- c. A student's transgender or gender nonconforming status may constitute confidential medical information. Therefore, only certified school nurse teachers and other licensed professionals shall be given access to accurate and reliable information to confirm a student's identity in order to ensure that the student receives appropriate care and to enable them to coordinate care with other health care providers or licensed professionals, as well as to file health insurance claims. Nurses are legally required, per RI Rules and Regulations for School Health Programs, to maintain an individual school health record for every student that accurately documents clinical information relating to their patients and must keep their patients' health records confidential.

C. **Names/Pronouns:** Address the issue of names/pronouns with respect to the student as follows:

- a. If a student has changed their name through legal means, then official school records shall reflect the change and students should be addressed accordingly.
- b. Students who have not legally changed their name shall be privately asked how they would like to be addressed. This name should be referred to as their "Preferred name."
  - The school, student and family (if they are involved) should be engaged and develop a plan for using the preferred name and pronoun within the school.
  - The plan should include when and how this is communicated to staff, to students and to parents of other students, if desired.

- The goal of this plan shall be on how the sharing of information will benefit the student.
- Students shall then be addressed by school staff by the name and pronoun corresponding with the student's gender identity according to their wishes.
- Students are not required to obtain a court ordered name and/or gender change to change their pupil personnel records as a prerequisite to being addressed by the name and pronoun that corresponds with their gender identity.<sup>2</sup>

**D. Official School Records:** Address the issue of official records with the student and parents as follows:

- a. 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 shall use the name and gender preferred by the student.
- b. Records that legally require the use of a student's legal name and gender shall be changed to reflect a change in legal name or gender only upon receipt of documentation that such legal name and/or gender have been changed pursuant to applicable law.
  - The documentation required for a legal change of name and/or gender is a court order or federally issued document, such as a birth certificate or passport, demonstrating the student's new name.
- c. In situations where school staff or administrators are required by law to use or report a transgender student's legal name or gender, school staff and administrators shall adopt practices to avoid the inadvertent disclosure of such confidential information. These practices shall be share with students and their Parent(s) and/or guardian(s).
- d. With respect to directory information, students shall be assured that the School Department shall not designate a student's sex, including transgender information under FERPA, because doing so could be a harmful invasion of privacy.

**E. Dress codes:** Address the issue of dress codes as follows:

Schools may enforce dress code pursuant to School Department policy.

- a. Students shall have the right to dress in accordance with their gender identity, within the parameters of the dress code adopted by the District.
- b. School Staff shall not enforce a dress code more strictly against transgender or gender nonconforming students than other students.
- c. Dress codes shall be general statements that ensure the proper dress for all students.

**F. Restroom, Locker Room and Changing Facilities:** Address the issue of restroom and locker room accessibility as follows:

All students are entitled to have access to restrooms, locker rooms and changing facilities that are sanitary, safe, and adequate, so that they can comfortably and fully engage in their school program and activities.

- a. Transgender or gender nonconforming students shall be assured of their right to use any locker room or restroom that aligns with their gender identity.
- b. A transgender student shall not be required to use a locker room or restroom that conflicts with the student's gender identity, nor shall a transgender student be mandated to use a particular restroom or locker room.
- c. Any student who expresses a need or desire for increased privacy should be provided with reasonable alternative arrangements.
  - Reasonable alternative arrangements may include the use of a private area, or a separate changing schedule, or use of a single stall restroom.
  - Any alternative arrangement for a transgender, gender nonconforming or transitioning student should be provided in a way that protects the student's ability to keep his or her transgender status confidential if he or she so chooses.

**G. Physical Education Classes and Intramural and Interscholastic Athletic Activities:**

Students shall be allowed to participate in sex-segregated physical education classes or athletic activities, concluding intramural and interscholastic athletics, in a manner consistent with their gender identity.



- a. If the student desires to participate in an interscholastic sport, provide the student with a copy of the Rhode Island Interscholastic League's policy on "Gender Identity Participation."
- b. If the student desires, develop a plan for a school administrator or athletic director to contact the Rhode Island Interscholastic League (RIIL) to start the gender identity eligibility appeal process pursuant to RILL Policy.

#### H. **Other Gender Based Activities, Rules, Policies and Practices**

The School Department shall evaluate all gender based policies, rules and practices and maintain only those that have a clear and sound pedagogical purpose. The School Department shall consider alternatives to said policies, rules and practices.

- a. As a general rule, in any other circumstances where students are separated by gender in school activities (i.e. overnight field trips), students should be permitted to participate in accordance with their gender identity consistently asserted at school.
- b. However, a student's voluntary request for a single-occupancy accommodation shall be honored by the school in order to honor a student's privacy, if requested by the student.

I. **Discipline:** Students and their parent(s)/guardian(s) shall be reassured that students will not be disciplined or excluded from participating in activities for appearing or behaving in a manner that is consistent with their gender identity or that does not conform to stereotypical notions of masculinity and femininity. This shall be applicable to yearbook photographs, school dances, graduation ceremonies, and other school sponsored events or activities.

J. **Safety Plan:** Address the issue of bullying and harassment and develop a safety plan in the event that a student and/or parents feel one is necessary as follows:

- a. In the event that a transgender or gender nonconforming student alleges that he or she has been the victim of bullying/harassment, the bullying/harassment shall be documented and formally addressed by investigation in accordance with the District's Harassment Policy.
- b. In addition, if sex based harassment is based on gender identity, transgender status, gender nonconforming status or gender transition and creates a hostile environment, the school shall put a plan in place

to take prompt and effective steps to end harassment, prevent its recurrence, and, as appropriate, remedy its effects.<sup>3</sup>

## Other Issues

### A. School Records of Former Students

- a. Requests from former students to change their name and gender on school records shall be handled in the same manner as current students. To the extent that the School Department is not legally required to use a former student's legal name or gender on school records and other documents, the School Department shall use the name and gender preferred by the former student.
- b. Records that legally require the use of a former student's legal name and gender shall be changed to reflect a change in legal name or gender only upon receipt of documentation that such legal name and/or gender have been changed pursuant to applicable law.
- c. The documentation required for a legal change of name and/or gender is a court order or federally issued document demonstrating the student's new name.

### B. Education and Training

In order to further a safe and supportive school environment for all students, the School Department shall incorporate education and training about transgender and gender nonconforming students into its anti-bullying curriculum, health curriculum, student leadership trainings and staff professional development.

*Staff professional development shall include but not be limited to:*

- Terms, concepts and current developmental understandings of gender identity, gender expression, and gender diversity in children and adolescents;
- Developmentally appropriate strategies for communication with students and parents about issues related to gender identity and gender expression that protect student privacy;
- Reinforcements of developmentally appropriate strategies for preventing and intervening in bullying incidents, including cyber bullying;
- Access to resources on working with transgender and gender nonconforming students.

### C. Communication with School Community

Superintendents and principals shall review existing policies, handbooks and other written materials to ensure that they reflect the inclusion of gender identity/expression in the anti-discrimination policy statements as appropriate prior to the start of the school year. Schools shall inform all members of the school community, including school personnel, students, and families, about the federal and state law concerning transgender and gender nonconforming youth along with implications for school policy and practice.

#### REFERENCES:

1. Family Educational Rights and Privacy Act of 1974, 20 USC §1232g (1974)
2. Title IX of the Educational Amendments of 1972, 20 USC §1681 et seq.
3. Dear Colleague Letter: Transgender Students (May 13, 2016), *available at* <http://www2.ed.gov/about/offices/list/oer/letters/colleague-201605-title-ix-transgender.pdf>
4. Guidance for Rhode Island Schools on Transgender and Gender Nonconforming Students, *Rhode Island Department of Education* (March 2016)<sup>4</sup>
5. 2016 Transgender Students in Schools, National School Boards Association

<sup>1</sup> Under FERPA, only those school employees with a legitimate educational need should have access to a student's records or other information contained in those records. Disclosing confidential student information to other employees, students, parents, or other third parties may violate privacy laws, including but not limited to FERPA.

<sup>2</sup> Requiring students to take these steps may be a violation of Title IX of the Education Amendments of 1972.

<sup>3</sup> A school's failure to treat students consistent with their gender identity may create or contribute to a hostile environment on violation of Title IX.

<sup>4</sup> Both the Federal and State Departments of Education reference the Gay, Lesbian & Straight Education Network (<http://glsen.org>) as an additional source of information.

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