Students

Administrative Procedure - Accommodating Transgender, Nonbinary, or Gender Nonconforming 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 Dept. of Education's Office for Civil Rights (OCR) and Dept. of Justice (DOJ) have issued guidance.

While there is no mandate requiring procedures for accommodating transgender, nonbinary, and gender nonconforming 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 for which transgender, nonbinary, or gender nonconforming 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, Title IX Coordinator, and/or Complaint Manager, with input from others as appropriate, will implement this procedure. They will work with each transgender, nonbinary, or gender nonconforming 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 will be consulted concerning legal compliance.

Gender-Based Discrimination Is Prohibited

School districts must provide equal educational opportunities to transgender, nonbinary, and gender nonconforming students. Under State law, *sex discrimination* extends to claims of discrimination based on *sexual orientation* and *gender identity*. 775 ILCS 5/1-103(O-1); 775 ILCS 5/5-101(11); 23 Ill.Admin.Code §1.240. The Ill. Human Rights Act (IHRA) 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). IHRA 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 (Title IX). The U.S. Dept. of Education has taken varying positions on the application of Title IX to transgender or gender nonconforming students depending upon the administration in power. However, the Seventh Circuit U.S. Court of Appeals (which has jurisdiction over the State of Illinois) has ruled that a school's practice of denying a transgender student access to the bathroom that aligned with his gender identity violated Title IX because it was a sex-based classification. See Whitaker by Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ., 858 F.3d 1034 (7th Cir. 2017); A.C. v. Metropolitan Sch. Dist. of Martinsville, 45 F.4th 760 (7th Cir. 2023), *cert. denied*, 2024 WL 156480 (2024).

Board policy 7:10, *Equal Educational Opportunities*, recognizes the legal requirements described above. This procedure's guidance on accommodating transgender, nonbinary, or gender nonconforming students is based on non-regulatory guidance from the Ill. State Board of Education (ISBE) and the Ill. Dept. of Human Rights (IDHR), as well as OCR pronouncements. See the last section, **Resources**.

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Gender-Based Discrimination, Harassment, and/or Bullying Prohibited

The laws prohibiting gender discrimination require the District to protect transgender, nonbinary, and gender nonconforming students from sex discrimination, sex-based harassment, and bullying by other students. Under Title IX, a school district is responsible for damages suffered by a student who was the victim of prohibited sexual harassment: unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's educational program or activity. 34 C.F.R. §106.30(a). Board policy 2:265, *Title IX Grievance Procedure*, and its accompanying procedures are used to address sexual harassment as defined in Title IX.

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 prevention materials are used to address and resolve peer bullying and harassment of transgender or gender nonconforming students. See Board policy 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, nonbinary, or gender nonconforming student (from the *Arcadia Resolution Agreement*, 7-24-13, at: www.justice.gov/crt/about/edu/documents/arcadiaagree.pdf and ISBE Non-Regulatory Guidance, *Supporting Transgender, Nonbinary and Gender Nonconforming Students*, at: www.isbe.net/supportallstudents). **Note:** Definitions are not intended to label students, but rather to assist with understanding.

Gender-based discrimination – a form of sex discrimination, refers to differential treatment or harassment of a student based on the student's sex, including gender identity, gender expression, and nonconformity 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 or *assigned sex* – a label a person is given at birth, often based on a medical professional's interpretation of the newborn's physical characteristics. Common examples may be *male* or *female*. This is typically the sex reflected on one's original birth certificate.

Gender expression – an individual's characteristics and behaviors such as appearance, dress, grooming, mannerisms, voice or speech patterns, activities, and social interactions that are perceived as masculine, feminine, both, or neither.

Gender identity – a person's internal, deeply held sense or psychological knowledge of their own gender that can include being female, male, another gender, nonbinary, gender nonconforming, or no gender, and is unrelated to the person's sex assigned at birth. Gender identity is an innate part of a person's identity, and the responsibility for determining an individual's gender identity rests with the individual. Unlike gender expression, gender identity is not visible to others.

Nonbinary – a term used to describe people whose gender identity is not exclusively male or female, including those who identify as a gender other than male or female, as more than one gender, or as no gender.

Transgender – an individual whose gender identity is different from the individual's assigned sex at birth. Being transgender is not dependent on appearance, body parts, or medical procedures.

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Transgender can also be used as an umbrella term that encompasses diversity of gender identities and expressions. 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.

Intersex – a term used for a variety of conditions in which a person is born with a reproductive and/or sexual anatomy that does not seem to fit the typical, binary definitions of female or male. Intersex conditions are not always discernable at birth or the awareness of internal anatomy present at birth may not be known to the person until puberty, if it is known at all. A derogatory term previously used for intersex individuals is *hermaphrodite*.

Gender transition – the process whereby people may change their gender expression, bodies, and/or identity documents to match their gender identity. Transition can be social (changing gender expression, using facilities, using a different name/pronouns), medical (hormones and/or surgeries), and/or legal (changing name/gender marker on identity documents), and is different for every individual. It is common for gender transition to be an ongoing process and is unique to each person.

Gender stereotypes – 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 nonconforming or gender expansive – one's gender expression or gender identity that does not conform to traditional, societal, or stereotyped expectations based on the sex assigned at birth. Gender expansive individuals may identify as male, female, some combination of both, or neither.

Gender pronouns – the set of words used to refer to someone without using their name. Common examples include, but are not limited to, "she/her/hers," "he/him/his," "they/them/theirs," and "ze/zir/zirs."

Gender support plan – a document that may be used to create a shared understanding about the way in which a student's gender identity will be accounted for and supported at school.

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.

<u>Relevant Board Policies for Accommodations, Supports, and Inclusion of Transgender, Nonbinary, or Gender Nonconforming Students</u>

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 bullying. The District Complaint Manager shall address the complaint promptly and equitably.

2:265, *Title IX Grievance Procedure*, contains the process for an individual to report or complain of sexual harassment in violation of Title IX. The District Title IX Coordinator shall address the report or complaint promptly and equitably.

6:60, *Curriculum Content*, requires the history curriculum to include a study of the roles and contributions of lesbian, gay, bisexual, and transgender (LGBT) people in the history of the U.S. and Illinois and, if offered by the District, requires the implementation of a comprehensive health education program in accordance with State law, which may include the National Sex Education Standards (NSES) sex education curriculum. If NSES is offered, it must be inclusive and sensitive to students' needs on many bases, including based on their status as intersex and based

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on their gender, gender identity, and gender expression. See 6:60-AP2, *Comprehensive Personal Health and Safety and Sexual Health Education Program (National Sex Education Standards (NSES))*.

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.

7:165, *Student Uniforms*, encourages students to wear school uniforms in order to maintain and promote orderly school functions, school safety, and a positive learning environment, if adopted.

7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*, contains the comprehensive structure for the District's bullying prevention program.

7:185, *Teen Dating Violence Prohibited*, prohibits students from using or threatening to use physical, mental, or emotional abuse to control an individual in the dating relationship, and from using or threatening to use sexual violence in the dating relationship.

7:250, *Student Support Services*, directs the Superintendent to develop protocols for responding to students' social, emotional, or mental health needs that impact learning.

7:290, *Suicide and Depression Awareness and Prevention*, directs the Superintendent to develop, implement, and maintain a suicide and depression awareness and prevention program.

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.

<u>Common Needs for Transgender, Nonbinary, or Gender Nonconforming Students; Accommodations and Supports</u>

The goal of an accommodation is to allow a transgender, nonbinary, or gender nonconforming student to equally participate in educational and extracurricular opportunities. The right of transgender students to accommodations is generally found in legislation (IHRA and Title IX) but has not been fully interpreted by the courts. Determining appropriate accommodations must be made on a case-by-case basis depending upon the needs expressed by the student.

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The Superintendent may establish a gender support team that will identify accommodations for a specific student. Those accommodations may be documented in a gender support plan or other written document. The Board Attorney should be consulted and may be invited to be a member of the team.

This following list of possible accommodation considerations is not exhaustive, and each student's request must be managed on a case-by-case basis. A particular student may not be interested in an accommodation for each item listed. This area of law is rapidly evolving. **Seek the Board Attorney's advice concerning the scope and extent of accommodations**.

1. Gender transition
2. Names and gender pronouns
3. School student records
   For managing demographic information in the ISBE Student Information System, see www.isbe.net/Documents/student_demographics.pdf. ISBE is not required to collect student sex, sexual orientation, or gender identity data for its major programs, unless required for federal reporting. 20 ILCS 65/20-15(a-5), amended by P.A. 103-175
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 and contact sports is resolved pursuant to IHSA policy #34, *Policy and School Recommendations for Transgender Participation* at: www.ihsa.org/About-the-IHSA/Constitution-By-laws-Policies.
7. Dress codes
8. Gender segregation in other activities, e.g., class discussions and field trips (including any overnight school trips)
9. Communication with a new school about gender-specific accommodations upon transfer or graduation

Training for School Staff Members

Professional development for staff members should include regular 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, nonbinary, and gender nonconforming students; developmentally appropriate strategies for preventing and intervening in bullying incidents; and Board policies regarding equal educational opportunities, bullying, discrimination, and student privacy.

Resources

IDHR, *Non-Regulatory Guidance Relating to Protection of Transgender, Nonbinary, and Gender Nonconforming Students Under the Ill. Human Rights Act* (Dec. 2021), at: https://dhr.illinois.gov/publications/guidance-re-illinois-students-1221.html.

ISBE, *Supporting Transgender, Nonbinary and Gender Nonconforming Students* (Mar. 2020), at: www.isbe.net/supportallstudents.

Gender Spectrum, an organization whose mission is to create a gender-inclusive world for all children and youth, at: www.genderspectrum.org.

Mass. Dept. of Elementary and Secondary Education, *Guidance for Massachusetts Public Schools Creating a Safe and Supportive School Environment Nondiscrimination on the Basis of Gender Identity* (Oct. 2021), at: www.doe.mass.edu/sfs/lgbtq/GenderIdentity.html.

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Ill. Association of School Boards, *Transgender, Nonbinary, and Gender Nonconforming Students: Legal Issues*, at: www.iasb.com/policy-services-and-school-law/guidance-and-resources/transgender,-nonbinary,-and-gender-nonconforming-s/.

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