

REFERENCE COPY (Version 2)

FILE: ACAE
Critical

EXPLANATION: TRANSGENDER STUDENTS

Version 2: MSBA has written this policy to provide for accommodations for transgender students, but this policy does not go so far as to permit a transgender student to use restrooms and locker rooms associated with the student's gender identity. A district that adopts this policy should be aware that the Office for Civil Rights and the Department of Justice have advocated for allowing restroom access based on gender identity and should be prepared to defend the district's position to those agencies on behalf of a transgender student.

This is a SUPPLEMENTAL policy. Districts are not required to adopt this policy. Because the law is still developing in this area, MSBA encourages districts to discuss this policy with the district's private attorney prior to adoption.

While there are a number of legal issues involving transgender students, the law in this area is far from settled. The primary questions are whether school districts are required to provide accommodation to transgender students under Title IX and, if so, what accommodations the district must make. As explained below, the answer is not clear; however, many attorneys are advising districts to provide accommodation.

The U.S. Department of Justice (DOJ) and the Office for Civil Rights (OCR) of the U.S. Department of Education have stated that accommodation of transgender students is a requirement under Title IX, including allowing transgender students to use restrooms and locker rooms associated with the student's gender identity. See:

“Questions and Answers on Title IX and Sexual Violence” (April 2014), available at:

<http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>;

Student v. Downey Unified School District, Resolution Agreement, OCR Case Number 09-12-1095 (Oct. 8, 2014), available at:

<http://www2.ed.gov/documents/press-releases/downey-school-district-agreement.pdf>;

Student v. Arcadia Unified School District, Resolution Agreement, OCR Case Number 09-12-1020 and DOJ Case Number 169-12C-70 (July 24, 2013), available at:

<http://www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf>;

DOJ Statement of Interest of the United States, *G.G. v. Gloucester County School Board*, U.S. District Court, Eastern District of Va., Civil Case No. 4:15cv54.

However, a recent court case from Pennsylvania determined that Title IX does not prohibit discrimination on the basis of transgender status and did not require a university to accommodate a transgender student by allowing the student to use the bathroom associated with the student's gender identity. *Johnston v. University of Pittsburgh*, 2015 WL 1497753 (W.D. Penn 2015). A court in Virginia has dismissed a student's Title IX claims and refused to issue a preliminary injunction against a district that refused to allow the student to use restroom facilities associated with the student's gender identity. The court found that Title IX was not violated. The court has not yet ruled on whether the school district has violated the student's constitutional rights under the Equal Protection Clause. See *G.G. ex rel. Grimm v. Gloucester County School Board*, 2015 WL 5560190 (E.D. Virginia 2015).

There has been no litigation in Missouri or in the Eighth Circuit (the federal court governing Missouri) on whether Title IX or the Equal Protection Clause protects transgender students from discrimination or whether restroom accommodations are necessary. While it is unclear whether the district is legally required to provide any accommodations to transgender students, there is evidence to show these types of accommodations are important for students struggling with their gender identities. Research shows that transgender students are in particular need of support since they are less likely to graduate, more likely to be bullied, and have high rates of depression and suicide.

MSBA is glad to assist districts in revising this sample policy to conform with the district's decisions on these difficult issues.

Disability

Many districts might be tempted to view transgender students as having a disability. However, both Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act exclude from the definition of a "disability" "gender identity disorders not resulting from physical impairments." 20 U.S.C. 705(20); 42 U.S.C. 12211(b)(1). This means that creating a Section 504 plan for a transgender student is not appropriate unless the student has some other medical condition that may qualify as a disability that requires accommodation. Remember that the accommodation provided in this policy is under Title IX, which prohibits discrimination on the basis of sex, not disability.

Records

This policy requires the district to use the student's legal name on all official records, such as the student's transcript. It is necessary for practical and historical purposes to clearly link these records to a specific person. However, when the parent/guardian and the student so request, the district will use a name that corresponds with the student's gender identity on other documents. Many districts already make this accommodation for students for a variety

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of reasons, and most student enrollment software includes a line for a nickname or preferred name that ultimately links to the legal name of the student.

A more difficult issue involves records regarding gender. Missouri law does not require presentation of a birth certificate upon enrollment. While many parents/guardians do provide this documentation, a birth certificate is not required and, for students born in other countries, is frequently not available. That means that at least for some students, districts simply take the word of the parents/guardians or use some other documentation to determine gender. Given this fact, MSBA could find no practical or legal reason not to allow parents/guardians and students to request a change of gender in the district's official records.

MSBA has consulted the Department of Elementary and Secondary Education (DESE) because a number of federal laws administered by the U.S. Department of Education require the district to submit reports to DESE that include identification by gender. DESE does not audit district records for gender, and the U.S. Department of Education's Office for Civil Rights has made it clear that districts should accommodate transgender students, so it is unlikely the federal government will have a problem with the district changing the district's records regarding gender as an accommodation for these students. DESE has informed MSBA that a change of gender in the middle of a student's schooling will not impact the state-issued MOSIS numbers.

For these reasons, MSBA has allowed a change of gender in official records upon request. However, the district may want to examine how it uses its gender records internally and discuss this issue with the district's private attorney.

More Information

American Psychological Association, "Answers to Your Questions about Transgender People, Gender Identity and Gender Expression," available at:

<http://www.apa.org/topics/lgbt/transgender.aspx>

"Which Way to the Restroom? Respecting the Rights of Transgender Youth in the School System," Grant Bowers and Wendy Lopez, National School Boards Association, available at:

<http://www.nsba.org/sites/default/files/reports/Respecting%20the%20Rights%20of%20Transgender%20Youth%20and%20appendices.pdf>

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MSBA recommends that copies of this document be routed to the following areas because the content is of particular importance to them. The titles on this list may not match those used by the district. Please forward copies to the district equivalent of the title indicated.

	Board Secretary		Business Office	X	Coaches/Sponsors
X	Facility Maintenance		Food Service		Gifted
	Human Resources	X	Principals		Library/Media Center
X	Health Services	X	Counselor	X	Special Education
	Transportation		Public Info/Communications		Technology

TRANSGENDER STUDENTS

The district seeks to provide all students a safe and tolerant learning environment that is free from illegal discrimination and harassment. This policy addresses the measures the district will take to meet the needs of transgender students. Additional measures may be taken at the discretion of the superintendent or designee depending on the needs of the individual student, the needs of the school community and the district's legal obligations.

Definitions

Accommodations – Measures the district will take to meet a transgender student's needs for the purposes of complying with Title IX of the Education Amendments of 1972, a federal law that prohibits discrimination on the basis of sex. A student's transgender status alone is not a medical condition that qualifies as a legal disability that requires accommodation under Section 504 of the Rehabilitation Act of 1973 (Section 504) or the Americans with Disabilities Act (ADA).

Gender Assigned at Birth – The gender designation listed on the student's original birth certificate or other documentation of birth.

Gender Identity – A student's inner sense of being male or female, regardless of the student's gender assigned at birth. A student's gender identity must be consistently and uniformly asserted by the student, or there must be other evidence that the student's gender identity is sincerely held as part of the student's core identity, such as medical documentation or documentation that legal action has been taken to legally change the student's name or birth certificate.

Transgender Student – A student whose gender identity does not correspond with the gender the student was assigned at birth. Medical treatments or procedures or legal actions are not required for recognition as a transgender student.

Consultation with Parents/Guardians and Students

Parents/Guardians and students are encouraged to notify a district administrator or counselor of a student's transgender status. The principal, counselor or other relevant staff members will meet with the student's parents/guardians and, when appropriate, the student to discuss the student's needs and district accommodations.

In general, the district will only consider accommodations requested or discussed with the student's parents/guardians. However, the district may provide accommodations to a student without the consent of the parents/guardians if the student is 18 or older, is not dependent upon his or her parents/guardians or is determined by the district, after consulting the district's attorney, to have a legal entitlement to accommodations.

Privacy

A student's transgender status will be shared only with staff members and district officials who need to know, as determined by the district. The information will not be shared with students or other individuals without written permission of the parents/guardians unless disclosure is required or allowed by law. These privacy rules apply regardless of whether the parent/guardian or student decides to keep the student's transgender status private or openly discuss the student's status.

The district may provide students, staff and the public educational information regarding the needs of transgender students in general and the district's legal obligations without identifying a particular student.

Records

The student's legal name will be used in the district's official records including, but not limited to, the student's official transcript. If the parent/guardian or student legally changes the student's name or birth certificate and provides proof of the change, the district will change the official record.

Upon request, the district will use a name chosen by the parents/guardians and student that corresponds with the student's gender identity when the district is not required to use the student's legal name on a document or when a document is created for internal or ceremonial purposes only. Therefore, grade cards, diplomas and certificates will use the student's chosen name.

District records regarding gender will reflect the gender provided by the parents/guardians and student and may be changed upon request.

Names and Pronouns

Upon request, district staff will address a transgender student using the student's preferred name, if different than the legal name, and will refer to the student using the pronouns the student prefers.

Bathroom and Locker Room Access

Transgender students may use the restroom or locker room that conforms with the student's gender assigned at birth, or they may use any unisex facilities available to students. The district will also, upon request, designate separate facilities for transgender students to use if unisex facilities are not available to students.

Classes and Academic Activities

The district does not typically segregate courses by gender, but there are some classes and activities, such as physical education and health, where students are sometimes divided by gender. In those situations, transgender students will be allowed to participate in the class or activity that conforms with the student's gender identity as long as they are otherwise qualified.

Extracurricular Activities and Athletics

The district will abide by Missouri State High School Activities Association (MSHSAA) rules regarding transgender student participation for any activity governed by MSHSAA. For all other district activities in which gender is a participation factor, transgender students will be allowed to participate based on the gender with which they identify.

Dress

A transgender student will be allowed to dress in a manner that conforms with the student's gender identity and will be subject to the rules applicable to dress associated with that gender.

Disruption, Illegal Discrimination and Illegal Harassment

The district does not tolerate bullying or misbehavior directed at an individual student, disruption to the district's education environment or illegal discrimination or harassment. If the behavior could constitute illegal discrimination or harassment of a transgender student, the behavior must be reported to the district's compliance officer in accordance with policy AC. All other incidents must be reported to the principal.

Students who violate this or other district policies may be disciplined. Employees may be disciplined or terminated.

Training and Education

Employees

Regular training on the prevention of illegal discrimination and harassment will include information on the district's obligations to accommodate transgender students. Staff members who are informed of the identity of a specific transgender student will receive additional training and direction as necessary.

Students

Students who are taught about illegal discrimination and harassment as part of an approved course curriculum may also be provided information about legal obligations to accommodate transgender persons. In addition, the district may provide age-appropriate information to students regarding transgender persons when considered necessary or appropriate, particularly when a transgender student is enrolled in the class or grade level.

Parents/Guardians and Community

While the district will respect the privacy of individual transgender students, if a parent/guardian or community member requests information on the district's accommodation of transgender students, the district will provide a copy of this policy as well as additional information regarding the needs of transgender students and the district's legal obligations.

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Note: The reader is encouraged to check the index located at the beginning of this section for other pertinent policies and to review administrative procedures and/or forms for related information.

Adopted: **FIELD**(AdoptDate)

Revised:

Cross Refs: IGD, District-Sponsored Extracurricular Activities and Groups
JFCA, Student Dress Code
JFCF, Hazing and Bullying
JHD, Student Guidance and Counseling
JG, Student Discipline
JO, Student Records

Legal Refs: Missouri Human Rights Act, § 213.065, RSMo.
Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 - 1417
Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681
The Rehabilitation Act of 1973, Section 504, 29 U.S.C. § 794
Americans with Disabilities Act, 42 U.S.C. §§ 12101 - 12213
Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g

FIELD(DistrictLocationLine)