

TRANSGENDER AND GENDER EXPANSIVE STUDENTS

[NOTE: Local school units can consider different options for addressing the needs of transgender/gender expansive students. There is no legal requirement for a Board-level policy on this topic, so local school units could opt for adopting this sample as guidelines or as an administrative procedure if they prefer. The approach chosen can be made based on local school unit needs. This topic is complex, and involves legal and other issues. MSMA strongly recommends discussion of any proposed changes to this sample with legal counsel before they are finalized.]

As administrators and policy makers review this sample, they should keep in mind that the needs of students and families vary depending on a number of factors including, but not limited to, a student's individual circumstances, age and grade level, and level of family support. In addition, the needs of particular schools may also vary depending upon programs, facilities and resources available in each school unit. This sample is intended as a starting point for discussion about how best to respond to the needs of transgender/gender expansive students in local school units.

All notes to the Board should be removed before adoption].

A. PURPOSE

The purposes of this policy are to: (1) foster a learning environment that is safe and free from discrimination, harassment and bullying; and (2) assist in the educational and social integration of transgender and gender expansive students in our schools. This policy is intended to be interpreted in light of applicable federal and state laws/regulations, as well as other applicable Board policies, procedures and school rules.

This policy is not intended to anticipate every possible situation that may occur, since the needs of particular students and families differ depending on the student's age and other factors. In addition, the programs, facilities and resources of each school differ. Administrators and school staff are expected to consider the needs of students on a case-by-case basis, and to utilize this policy and other available resources as appropriate.

B. DEFINITIONS

The following definitions are not intended to provide rigid labels for students, but to assist in discussing and addressing the needs of students. Except as specifically defined in Maine law, the terminology in this area is constantly

evolving, and preferences for particular terminology vary widely. Administrators, school staff, volunteers, students and others who interact with students are expected to be sensitive to the ways in which individual transgender and gender expansive students may wish to be identified. However, for the sake of brevity, this policy refers to “transgender students” and “gender expansive students.”

1. *Sexual orientation* – Sexual orientation is defined in the Maine Human Rights Act as an individual’s “actual or perceived heterosexuality, bisexuality, homosexuality or gender identity or expression.”
2. *Gender identity* – Gender identity is defined in the Maine Human Rights Act as “gender-related identity, appearance, mannerisms or other gender-related characteristics of an individual, regardless of the individual’s assigned sex at birth.”

[NOTE: Different organizations have different definitions for the terms below which, unlike “sexual orientation” and “gender identity” are not defined in Maine law. The following definitions are provided as a starting point for discussion, but local school units may choose to use other definitions].

3. *Gender expression* – The manner in which a person represents or expresses gender to others, often through behavior, clothing, hairstyles, activities, voice or mannerisms.
4. *Gender expansive* – An umbrella term used to describe a person who expands notions of gender expression and identity beyond perceived or expected societal gender norms.
5. *Transgender* – An adjective describing a person whose gender identity or expression is different from that traditionally associated with an assigned sex at birth.
6. *Transition* – The process by which a person goes from living and identifying as one gender to living and identifying as another gender. For most elementary and secondary students, this involves no or minimal medical interventions. Transgender students under the age of 18 are often in a process of social transition from one gender to another.

C. ADDRESSING THE NEEDS OF TRANSGENDER AND GENDER EXPANSIVE STUDENTS

For the purposes of this policy, a student will be considered transgender or gender expansive if, at school, they assert a gender identity or expression different from the gender assigned at birth. This involves more than a casual declaration of gender identity or expression, but it does not require a medical diagnosis.

If a student and/or their parent(s)/guardian(s) want the school to recognize the student's identity as transgender or gender expansive, the following procedure will be used.

1. A transgender or gender expansive student and/or their parent(s)/guardian(s) should contact the building administrator or the student's guidance counselor. In the case of a student who has not yet enrolled in school, the appropriate building administrator should be contacted.
2. If requested by the student, or if deemed necessary by the administration to address school-related issues, a meeting will be scheduled to discuss the student's particular circumstances and needs. In addition to the student, and depending on the particular needs of the student, other participants in the meeting may include the parent(s)/guardian(s), a building administrator, a guidance counselor or social worker, the school nurse, and/or other school staff. Outside providers and/or a support person for the student may also be included if appropriate.
3. In the case of a student who has not yet informed their parent(s)/guardian(s), the administrator should first discuss parent/guardian involvement with the student to avoid inadvertently putting the student at risk by contacting their parent(s)/guardian(s). The student will be notified by the administrator prior to contacting their parent(s)/guardian(s).
4. If requested by the student, or deemed necessary by the administration to address school-related issues, a plan will be developed by the school in consultation with the student and other meeting participants. If the student has an IEP and/or a 504 Plan, the provisions of these plans should be taken into consideration in developing a plan for addressing transgender and gender expansive issues within the school program.
5. The school administration may request documentation from outside providers if deemed necessary to assist in developing a plan appropriate for the student.
6. Any plan developed must be reviewed and approved by the building administrator. If the parties involved in developing the plan cannot reach an

agreement about the elements of the student's plan, the Superintendent shall be consulted as appropriate.

D. GUIDANCE ON SPECIFIC ISSUES

1. **Privacy:** All students have a right to privacy. This includes the right to keep private one's transgender status or gender non-conforming presentation at school. In some cases, a student may want school staff and students to know that they are transgender or gender expansive, and in other cases the student may not want this information to be widely known. Accordingly:
 - a. The student's plan shall be kept confidential and shared only with individuals attending the plan development meeting, the Superintendent, others with a bona fide need to know, and, if necessary, the district's legal counsel.
 - b. As part of the development of the student's plan, the discussion should include what information may be shared, to whom the information may be shared, and how the information should be shared.
 - c. School staff should take care to follow the student's plan and not to inadvertently disclose information that is intended to be kept private or that is protected from disclosure (such as confidential medical information, the student's transgender status, their legal name, or sex assigned at birth).
 - d. School staff should keep in mind that under FERPA, student records may only be accessed and disclosed to parents/guardians and to staff with a legitimate *educational* interest in the information. Disclosures to others should only be made with appropriate authorization from the administration and/or parents/guardians.

[NOTE: Drummond Woodsum has extensively searched for explicit, written state or federal mandates to use a child's legal name in the child's education records, and at the time of the publication of this sample policy, we have not identified any such written mandates for any category of student record. Drummond Woodsum notes that officials at the Maine Department of Education have occasionally expressed that student transcripts should use the child's legal name, but at this time that Department has not identified or

issued any written mandate regarding the use of legal names on student transcripts or on other student records].

2. **School Records:** Schools are required to maintain a large number of records for students. If a student makes a legal change in their name and/or gender, appropriate documentation should be provided to the building administrator and records will be changed.

A student who has not legally changed their name and/or gender may still request that the school unit utilize their preferred name and/or gender on school records, and this request will be honored to the extent that the school unit is not legally required to use a student's legal name or gender on particular records. This information should be included in any plan developed for the student.

If a student requests a change to their name and/or gender in school records without parental approval, the Superintendent should be consulted, and the matter resolved on a case-by-case basis. Students should be informed that parents/guardians have a right to access all education records of their child and therefore the school cannot keep the change in name and/or gender a secret. This information should be discussed in the development of the student's plan.

In the event of a student transfer to a new school unit, the building administrator will identify a person who will inform the new school unit or out-of-district school program that the student's records indicate a change in name preference, and what the student's prior and current name preferences are.

3. **Names/Pronouns:** The student should be addressed by school staff, substitutes, volunteers and other students by the name and pronoun corresponding to their gender identity that is asserted at school.
4. **Restrooms:** The student is permitted to use the restrooms that most closely match their gender identity. If the student expresses a need for privacy, they will be provided with access to reasonable alternative facilities or accommodations such as a single-occupancy toilet facility or a staff facility. However, the student shall not be required to use a separate non-communal facility over their objection.

5. **Locker Rooms:** The student is permitted to use the locker room that most closely matches their gender identity. If the student expresses a need for privacy, they will be provided with access to reasonable alternative facilities or accommodations, such as using a separate stall, a staff facility, or an alternative schedule.
6. **Other Gender-Segregated Facilities or Activities:** As a general rule, in any other facilities or activities when students may be separated by gender, the student may participate in accordance with their gender identity. Participation in interscholastic athletic activities will be addressed in accordance with current Maine Principals Association guidelines and procedures.
7. **Dress Code:** The student is expected to comply with Board policies and school rules regardless of gender identity.

E. SAFETY AND SUPPORT FOR TRANSGENDER AND GENDER EXPANSIVE STUDENTS

1. As part of the support plan development, the concerned parties should discuss safe zones (ex. main office, counselor's office) the student may access at any time the student feels unsafe or uncomfortable. A support person (and possibly a back-up person) should also be identified for each student.
2. School staff are expected to comply with any plan developed for a transgender or gender expansive student.
3. School staff are expected to promptly notify the building administrator or other designated support person for the student if there are concerns about the plan, or about the student's safety or welfare.
4. School staff should be sensitive to the fact that transgender and gender expansive students can be at higher risk for being bullied or harassed, and should immediately notify the appropriate administrator if they become aware of a problem.

F. STAFF TRAINING AND INFORMATIONAL MATERIALS

1. The Superintendent and/or building administrators may institute in-service training and/or distribute educational materials about transgender and gender expansive issues to school staff as they deem appropriate.

[NOTE: Any related policies/procedures/forms should be reviewed to ensure that they are consistent with this procedure and to address any gaps. Consider: student emergency cards, first aid/emergency response procedures, medications policy/procedures, field trip procedures, bus procedures, athletic procedures, recordkeeping and confidentiality

Legal Reference: 5 MRSA §§ 4553(5-C), (9-C); 4592(9)

Cross Reference: AC–Non Discrimination/Equal Opportunity and Affirmative Action

Adopted: _____

