

PROCEDURE 413A

SUPPORTING TRANSGENDER AND/OR GENDER-EXPANSIVE STUDENTS

(KEY - Black text is language from the original Administrative Guidance, Red text is new language)

I. PURPOSE

- A. These ~~Administrative Guidelines (“Guidelines”)~~ **procedures** set forth **the School District’s Rochester Public Schools’ (“District”)** procedures for schools to address the needs and concerns of transgender and/or gender-expansive students to ensure safe, supportive, and healthy school environments where every child can learn. These **procedures** ~~Guidelines~~ are intended to: 1) ensure that all students are welcomed, valued, included, and respected; 2) to help schools ensure safe learning environments free of discrimination, harassment, and bullying; and 3) to promote the educational and social integration of transgender and/or gender-expansive students. These **procedures** ~~Guidelines~~ do not and cannot anticipate every situation that may occur, as every student is unique. The support for each student must be assessed and addressed individually based upon the student’s specific requests and needs.

II. DEFINITIONS

- A. The definitions ~~contained in the policy~~ are not intended to label students, but rather to assist in understanding this **procedure** ~~policy~~ and the legal obligations of District staff. It is recognized that students might or might not use these terms to describe themselves.
1. “*Gender Identity*” is a person’s deeply held sense or psychological knowledge of their own gender, regardless of the sex or gender they were assigned at birth. A person’s gender identity can be the same or different than the sex or gender assigned at birth.
 2. “*Gender Expression*” refers to the manner in which a person represents or expresses that person’s gender identity to others, often through behavior, clothing, hairstyles, activities, or mannerisms.
 3. “*Transgender/Trans*” ~~describes people whose gender identity or expression is different from that traditionally associated with an assigned sex at birth.~~ **is an umbrella term for people whose gender identity and/or expression is different from the sex they were assigned at birth.**
 4. “*Gender Non-Conforming*” describes ~~people~~ **those** whose gender expression differs from social **and cultural** expectations, **as well as those who identify outside the gender binary.** ~~such as “feminine” boys, “masculine” girls, and those who are perceived as androgynous. This phrase also includes people who identify outside traditional gender categories.~~
 5. “*Gender-expansive*” describes someone with a more flexible gender identity than is associated with the gender binary.

III. PRIVACY

- A. All students have a right to privacy, including the right to keep private one's transgender or gender expansive status at school. Transgender and gender-expansive students have the right to discuss and express their gender identity and expression openly and to decide when, how, and with whom to share private information, well as to determine what information will be shared.
- B. The privacy of student data is governed by the Minnesota Government Data Practices Act (MDGPA) and the Family Educational Rights and Privacy Act (FERPA). Virtually all student data are private, including a student's gender identity, sex assigned at birth, transgender identity, or information that may reveal a student's gender identity (e.g., birth name).
- C. Private student data are accessible only to:
 - 1. the student who is the subject of the data,
 - 2. their parent/guardian,
 - 3. District employees, contractors, and volunteers whose work assignment reasonably requires access and who have a legitimate educational interest
- D. To ensure the safety and well-being of the student, District employees shall not disclose information that reveals a student's gender identity, sex assigned at birth, transgender identity, or information that may reveal a student's gender identity (e.g., birth name) to staff members, students, or parents/guardians of other students unless:
 - 1. The student or student's parent/guardian has given written consent
 - 2. The information is needed by other school personnel within the District who have a legitimate educational interest in the information in order to perform their duties or provide services to the student
 - 3. A federal or state law compels disclosure (i.e. health emergency, court order or subpoena)
 - 4. The person is a parent or legal guardian of the student (see Parent Access to Information)

~~such disclosure has been authorized by the student and/or their parent(s)/guardian(s). If such a disclosure is necessary, it will be documented in writing and should be discussed with the student and/or parent/guardian in advance.~~
- E. In some cases, transgender or gender-expansive students may feel more supported and safer if other students are aware that they are transgender or gender-expansive. In such cases, District staff should work closely with the student, parent/guardian, and other staff members on a plan to inform and educate the student's peers and shall document the plan. In some circumstances, it may also be appropriate to engage external resources to assist with educational efforts. The District must have written consent from the parent/guardian before disclosing a student's transgender or gender-expansive status to other students.

IV. PARENT ACCESS TO INFORMATION

- A. If a child is under the age of 18, the law generally gives parents/guardians the right to access all educational data on their child, unless there exists a court order which

specifically denies access to the data.

- B. If a parent or guardian requests information about their child who is under the age of 18, including information about whether their child identifies as transgender or whether their child has asked to use a name, pronouns, restrooms, or locker rooms based on the child's gender identity rather than their legal name or sex assigned at birth, a staff member must provide that information to the parent/guardian if the staff member is in possession of that information at the time the request is made.
- C. Staff members may refuse to provide such information if the student is 18 years of age or older, unless the parent has been designated as the child's legal guardian or conservator.
- D. Any staff member who provides such information to a parent/guardian should promptly inform the lead principal of the school or lead administrator of the program.

V. NAMES, PRONOUNS, GENDER MARKERS AND DISTRICT RECORDS

- A. A student and/or a parent/guardian has the right to request that the student be referred to by a name and pronouns that correspond to the student's gender identity by all school staff and fellow students, unless the student's principal determines that the use of a particular name or pronoun would be patently offensive.
- B. In order for a student to be addressed by the name and pronouns that correspond to the student's gender identity by members of the school community, parent/guardian consent is not required, a court-ordered name change or official gender change is not required, and the student is likewise not required to change the school's "official records" or the school's student information system (SIS).
- C. The District is required to maintain a mandatory and permanent student record ("official record") that includes a student's legal name and legal gender. The District will change a student's "official record" to reflect a change in legal name or gender upon receipt of documentation that such change has been made pursuant to a court order or other official government action.
- D. The District is not required to use a student's legal name and gender on other school records or documents that do not constitute "official records", and should use a name, gender and/or pronouns that correspond to the student's gender identity.
- E. Parent(s)/Guardian(s) have a right to request that the District change the student's first and middle name, and/or gender marker identity, and/or preferred pronouns that correspond to the student's gender identity in the school's student information system SIS. Documenting the name and pronouns that correspond to the student's gender identity in the school's SIS will help ensure that a student's preferred name, gender identity and/or preferred pronouns are used correctly in the school setting.
- F. In situations where the student's name has not been changed in the "official records", and District staff or administrators are required by law to use or report a transgender or gender-expansive 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 confidential or private information relating to a student's gender identity or gender expression to parties lacking a legitimate educational interest in that information. When administering standardized tests or conducting surveys, the building administrator or designee should ensure that a student's preferred name is used.

- G. If a student and/or a parent/guardian requests that the student be referred to by a name and pronouns that correspond to the student's gender identity, but has not made a request to change the school's "official records" or the student's information in the school's SIS, the building administrator and staff should work to accommodate the preferred change to the greatest extent possible.

VI. GENDER-SEGREGATED FACILITIES

- A. Transgender and gender-expansive students shall have access to gendered facilities that are consistent with the student's gender identity. This includes, but is not limited to, multi-stalled gendered restrooms and locker rooms.
- B. Restroom Accessibility - Pursuant to ~~state law~~ Minn. Stat. 363A.13, subd. 1 (N.H. v. Anoka-Hennepin Sch. Dist. No. 11, 950 N.W.2d 553 (Minn. Ct. App. 2020)), students shall have access to the restroom that corresponds to their gender identity asserted at school.
1. Any student who has a need or desire for increased privacy, regardless of the student's gender identity or expression, and regardless of the underlying reason for the student's need or desire for increased privacy, should be provided access to a single user restroom.
 2. No student shall be required to use a single user restroom because they are transgender or gender-expansive.
 3. The District shall work with each gender-expansive student to determine which restrooms are most comfortable for the student.
 4. In no case shall a transgender or gender-expansive student be required to use a restroom that conflicts with the student's gender identity.
 5. Students seeking to use facilities that do not correspond to their sex assigned at birth must first notify their principal or designee of their intent to do so.
- C. Locker Room Accessibility - Pursuant to Minn. Stat. 363A.13, subd. 1 (N.H. v. Anoka-Hennepin Sch. Dist. No. 11, 950 N.W.2d 553 (Minn. Ct. App. 2020)), the use of locker rooms by transgender and gender-expansive students shall be assessed on an individual basis with the goals of maximizing the student's social integration and equal opportunity to participate in physical education classes and sports and other school activities, ensuring the student's safety and comfort, and minimizing stigmatization of the student.

1. Unless the student requests otherwise, transgender and gender-expansive students should have access to the locker room that corresponds to the student's gender identity asserted at school, like all other students.
 2. Any student who has the need or desire for increased privacy, regardless of the student's gender identity or expression, and regardless of the underlying reason for the student's need or desire for increased privacy, 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 or near the locker room, or a nearby health office restroom), or with a separate changing schedule (e.g., using the locker room that corresponds to gender identity before or after other students).
 3. Any alternative arrangement should be provided in a manner that protects the student's ability to keep the student's transgender or gender-expansive status confidential.
 4. The District shall work with each gender-expansive student to determine which restrooms and locker room facilities are most comfortable for the student.
 5. In no case shall a transgender or gender-expansive student be required to use a locker room that conflicts with the student's gender identity.
 6. Students seeking to use facilities that do not correspond to their sex assigned at birth must first notify the school of their intent to do so.
- D. Response to Requests, Concerns or Complaints - Student and/or parent/guardian requests, concerns or complaints regarding gender-segregated facilities should be forwarded to the building principal. These may include:
1. Requests from students and/or parents/guardians for increased privacy and a reasonable restroom or locker room alternative;
 2. Concerns or complaints from students and/or parents/guardians that the District is violating a student's privacy rights by allowing transgender students to use restroom and locker room facilities consistent with their gender identity. Responses to concerns or complaints may include a reminder that school officials may not share private information about other students, the District follows the laws governing the rights of transgender and gender-expansive students, and that alternative arrangements are available for any student who has an increased desire for restroom or locker room privacy.

VII. GENDER-SEGREGATED ACTIVITIES, CLASSES, RULES, POLICIES AND PRACTICES

- A. To the extent possible, schools should reduce or eliminate the practice of segregating students by gender.

- B. In situations where students are segregated by gender, students have the right to participate in any such activities or conform to any such rule, policy, or practice in a manner that aligns with their gender identity consistently asserted at school.
- C. The District will make reasonable accommodations to the curriculum and provide staff training to accommodate students whose gender identity aligns outside the binary male and female constraints.
- D. Transgender and gender-expansive students shall be permitted to participate in physical education classes **and** health education classes, ~~and intramural sports and activities~~ in a manner consistent with their gender identity or in a manner that allows the student to feel the safest, included, and most comfortable.
- E. Students in physical education classes may be grouped by ability, as long as a student's ability is based on objective standards of individual performance. A student's gender identity shall not be considered when assessing ability.
- F. ~~Physical education and health education teachers and staff will make their best efforts not to divide students based on sex assigned at birth or gender identity during any activities or classes.~~

VIII. DRESS CODES

- A. Transgender and gender-expansive students have the right to dress in a manner consistent with their gender identity or gender expression, including at school-sponsored functions such as dances, after school activities, and graduation. ~~The District's rules~~ **Policy 504 and Procedure 504A Student Dress** ~~regarding clothing~~ will be enforced consistently, regardless of a student's gender identity or expression.
- B. A student whose gender expression is different from expectations based on the student's sex assigned at birth will not be considered disruptive of the educational process or as an interference with the maintenance of a positive teaching/learning climate.

IX. SCHOOL TRIPS

- A. All students shall be permitted to participate in all school trips, **including overnight trips**, in a manner that corresponds with their gender identity or in a manner that allows the student to feel the safest, included, and most comfortable. In planning school trips, staff is expected to assess the student's need in collaboration with the student and/or the student's parent(s)/guardian(s) and make reasonable efforts to provide an accommodation that is acceptable to the student. Accommodations will be discussed in advance of the trip on a case-by-case basis and will be documented in writing. **In all cases, the school has an obligation to maintain the privacy of all students and cannot disclose or require the disclosure of the student's gender identity to the other students or the parent(s)/guardian(s) of other students.**

X. **INTRAMURAL SPORTS, EXTRA-CURRICULAR ACTIVITIES AND INTERSCHOLASTIC** ~~COMPETITIVE SPORTS TEAMS/ACTIVITIES~~

- A. Transgender and gender-expansive students shall be permitted to participate in **school-sponsored** sports and activities in a manner consistent with their gender identity or in a manner that allows the student to feel the safest, included, and most comfortable. Transgender students must have an equal opportunity to participate and are subject to the same performance criteria that apply to all other students.
- B. Transgender and gender-expansive students shall be permitted to participate in interscholastic athletics in a manner consistent with their gender identity and in compliance with the applicable regulations of the Minnesota State High School League (MSHSL). ~~Transgender students must also have an equal opportunity to participate in other school sponsored activities consistent with their gender identity.~~

XI. COMPLIANCE

- A. District employees who refuse to abide by these Guidelines may be subject to disciplinary actions, up to and including termination, as set forth in the relevant employee discipline policy. This includes a staff member's persistent refusal to respect a student's gender identity, for example by consistently referring to the student by a name or pronoun that does not correspond with the student's gender identity.

XII. DISCRIMINATION/HARASSMENT/BULLYING

- A. It is the policy of the District to maintain a safe and supporting learning and educational environment that is free from harassment, intimidation, violence, and/or bullying and free from discrimination on account of gender, gender identity, and gender expression.
- B. Complaints alleging discrimination or harassment based on a student's actual or perceived transgender status or gender non-conformity generally are to be handled in the same manner as sex discrimination, harassment or bullying complaints. For information about the types of conduct that constitute violation of the District's policy on harassment and violence and the District's procedures for addressing such complaints, refer to the District's policy on harassment and violence (Policy 413). For information about the types of conduct that constitute violation of the District's policy on bullying and the District's procedures for addressing such complaints, refer to the District's policy on bullying (Policy 514).

CROSS REFERENCES

Policy 102 (Equal Education Opportunity)

Policy 105 (Equity Policy)

Policy 413 (Harassment and Violence)

Policy 514 (Bullying Prohibition Policy)

Policy 515 (Protection and Privacy of Pupil Records)

Policy 522 (Title IX Sex Nondiscrimination Policy, and Grievance Procedure and Process)

LEGAL REFERENCES:

Minn. Stat Ch. 363A (Minnesota Human Rights Act)

Minn. Stat. § 13.32 (Educational Data)
Minn. Stat. § 121A.031 (Safe and Supportive Minnesota Schools Act)
Minn. Stat. § 121A.03, subd. 2 (Sexual, Religious and Racial Harassment and Violence Policy)
Minn. Stat. § 121A.04 (Athletic Programs; Sex Discrimination)
20 U.S.C. § 1232g (Family Educational and Privacy Rights)
20 U.S.C. § 1681 et seq. (Title IX)
20 U.S.C. § 1701 et seq. (Equal Educational Opportunities)
34 C.F.R. Part 106 (Implementing Regulations of Title IX)

CASE LAW

N.H. v. Anoka-Hennepin Sch. Dist. No. 11, 950 N.W.2d 553 (Minn. Ct. App. 2020)
Montgomery v. ISD No. 709, 109 F.Supp. 2d 1081, 1093 (D. Minn. 2000)
Bostock v. Clayton County, 140 S. Ct. 1731 U.S. 2020