
From: Greene, Diana L. <GreeneD@duvalschools.org>
Sent: Friday, December 2, 2022 4:40 PM
To: Chancellor of Public Schools
Cc: Poole, Ray
Subject: Letter Regarding School District Policies
Attachments: DRAFT Language DCPS.docx; Legal Memo Bathrooms and Locker Rooms.docx

Chancellor Oliva,

In my November 22, 2022, correspondence to you, I indicated that I would be sending you a draft of our revised draft procedures on bathrooms and locker rooms. Duval County Public Schools provides the attached draft procedure for the Department of Education's review. The draft procedure has been developed after significant research, legal advice, and internal discussion. Based on the legal advice we received from the Consolidated City of Jacksonville's Office of General Counsel, the District believes this draft complies with both existing federal law and precedent, as well as Rule 6A-10.086. Attached please find an outline of our legal reasoning for developing the draft procedure and the draft procedure itself. We respectfully request that the Department provide feedback to our District by COB Tuesday, December 6, 2022, regarding any potential edits or changes it finds necessary, in order to allow the district to submit a final version by December 9, 2022.

Kind regards,

Dr. Diana Greene
Superintendent
Duval County Public Schools
1701 Prudential Drive
Jacksonville, FL 32207
Tel: (904)390-2115
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From: Greene, Diana L.
Sent: Tuesday, November 22, 2022 2:15 PM
To: Chancellor.Oliva@fldoe.org
Cc: Poole, Ray <PooleJ2@duvalschools.org>
Subject: Letter Regarding School District Policies

Chancellor Oliva,

My office is in receipt of your November 18, 2022 letter regarding district procedures related to the Parents' Bill of Rights. Your memo references certain draft procedures provided by DCPS in response to the State Board of Education Survey dated August 26, 2022. The district procedures referenced in your memo are included in the LGBTQ + Section of the Comprehensive Student Support Guide. Please be reminded that those

materials were clearly marked DRAFT, as they were under review by district staff and legal counsel for the district at the time of submission. Additionally, at the time the survey materials were provided, Rule 6A-10.086, Florida Administrative Code (FAC), regarding bathrooms, locker rooms, and dressing rooms had not been approved by the State Board. Rather, Rule 6A-10.086, FAC was adopted by the State Board on November 11, 2022, approximately two months after the survey documents were submitted.

While not specifically cited in your memo, the State Board approved Rule 6A-10.085 regarding Field Trips and Extracurricular Activities effective September 20, 2022. In response to the new rule, the district immediately updated its Field Trip consent form (see attached) to meet the parental notification requirements in the rule.

The district works closely with its legal counsel to ensure that it complies with federal and state laws, as well as administrative rules and other governing authority. We are currently working with counsel to further update the Comprehensive Student Support Guide and look forward to submitting the revised document to the Duval County School Board. A copy of the draft language will be provided to your office by December 9, 2022 for your review and information.

Kind regards,

Dr. Diana Greene
Superintendent
Duval County Public Schools
1701 Prudential Drive
Jacksonville, FL 32207
Tel: (904)390-2115
Fax: (904)390-2586



From: Chancellor of Public Schools <Chancellor.Oliva@fldoe.org>
Sent: Friday, November 18, 2022 3:27:33 PM
To: Greene, Diana L. <GreeneD@duvalschools.org>
Subject: Letter Regarding School District Policies

This message was sent from outside the district. Please do not click links or open attachments unless you recognize the source of this email and know the content is safe.

Superintendent Greene,

Please see the attached letter and let me know if you have any questions.

Sincerely,
Jacob Oliva
Senior Chancellor

LEGAL ANALYSIS REGARDING BATHROOM USE BY TRANSGENDER STUDENTS

The Florida Department of Education has issued Rule 6A-10.086, which requires that districts “ensure that all students have an opportunity to use a bathroom or locker room separated by biological sex at birth.” Rule 6A-10.086(2)(b). DCPS recognizes that federal law, federal case law, and federal administrative guidance prohibit it from discriminating against students on the basis of gender identity, and specifically prohibit the District from barring transgender students from using bathrooms which align with the students’ gender identity. In order to comply with the Department’s Rule and the existing federal authority, the District has created the attached draft procedure, which allows all students to use multi-stall bathrooms and ensures students the ability to use a bathroom separated by biological sex at birth by making single-stall/single-occupant bathrooms available to all students.

DCPS is conscious of its obligation to comply with federal law since it receives funding from the federal government. The Florida Department of Education 2021-2022 report on Fundings for Florida School Districts found that federal funding helps support key initiatives and services to students across Florida. This includes the Every Student Succeeds Act program, which establishes accountability measures for public schools to ensure that students in all schools reach proficiency in reading and mathematics; Individuals with Disabilities Education Act programs, which support education services for students with physical and mental challenges; Workforce Investment Act entitlement programs and Carl D. Perkins Career and Technical Education Act programs, which improve the quality of career and technical education. (see report at <https://www.fldoe.org/core/fileparse.php/7507/urlt/fefpdist.pdf>). Because DCPS receives federal funding, it is required to comply with Title IX of the Education Amendments of 1972 (“Title IX”). Title IX prohibits any recipient of federal funding from discriminating against students on the basis

of “sex.” The term “sex” as used in Title IX has repeatedly been interpreted to include sexual orientation and gender identity.

In 2020, the Supreme Court of the United States issued its opinion in the matter of Bostock v. Clayton County, 140 S. Ct. 1731 (2020) which prohibited discrimination on the basis of sex, including gender identity. In that case, the Court interpreted the definition of the word “sex” under Title VII of the Civil Rights Act (“Title VII”), a federal law which, like Title IX, prohibits discrimination on the basis of sex to include gender identity. Title VII applies in the employment context, while Title IX applies to educational institutions. Although Bostock was decided under Title VII, long-standing precedent holds that decisions issued under Title VII are to be used to interpret and implement Title IX. Therefore, the holding in Bostock applies to educational institutions and prevents them from discriminating against students on the basis of gender identity.

Following the Bostock decision, President of the United States issued an Executive Order making it clear that schools cannot discriminate on the basis of gender identity. Executive Order No. 14021, issued on March 8, 2021, and titled “Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity” provides:

Section 1. Policy. It is the policy of my Administration that all students should be guaranteed an educational environment free from discrimination on the basis of sex, including discrimination in the form of sexual harassment, which encompasses sexual violence, and including discrimination on the basis of sexual orientation or **gender identity**. For students attending schools and other educational institutions that receive Federal financial assistance, this guarantee is codified, in part, in Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq., which prohibits discrimination on the basis of sex in education programs or activities receiving Federal financial assistance.

20 U.S.C.A. § 1681 (emphasis added).

Then, on June 22, 2021, the Department of Education, Office of Civil Rights issued a Notice of Interpretation regarding the Bostock decision. The Notice stated in relevant part: “The Department issues this Interpretation to make clear that the Department interprets Title IX’s prohibition on sex discrimination to encompass discrimination based on sexual orientation and gender identity and to provide the reasons for this interpretation, as set out below.” (<https://www2.ed.gov/about/offices/list/ocr/docs/202106-titleix-noi.pdf>)

Similarly, on June 23, 2022, the United States Department of Education (US DOE) released its proposed amendments to the regulations implementing Title IX. These proposed amendments also stated that Title IX’s prohibition of discrimination on the basis of sex includes discrimination on the basis of gender identity. In its breakdown of the proposed regulations the US DOE stated that, based in part on the Bostock decision, “sex” under Title IX includes gender identity, and that any interpretation to the contrary is “at odds with Title IX’s text and purpose and the reasoning of the Bostock Court and other courts to have considered the issue in recent years—both before and after Bostock.” (<https://www2.ed.gov/about/offices/list/ocr/docs/t9nprm.pdf>)

Even before the Bostock ruling and the administrative guidance cited above, DCPS was aware of a significant decision from the United States District Court for the Middle District of Florida - Adams by & through Kasper v. Sch. Bd. of St. Johns Cnty., Fla., 318 F. Supp. 3d 1293 (M.D. Fla. 2018).¹ In that case, Judge Corrigan, the Chief Judge for the Middle District of Florida, found that Title IX discrimination on the basis of sex included discrimination based on gender identity. The decision discussed and analyzed several other cases where the meaning of “sex” had

¹ The District notes that this case is currently being reviewed *en banc* by the Eleventh Circuit Court of Appeals, but no decision has been issued at this time.

been found to include gender identity, including cases before Bostock, and stated: “This Court likewise follows the guidance of Glenn² and other authorities cited above to conclude that the meaning of ‘sex’ in Title IX includes “gender identity” for purposes of its application to transgender students.” Adams, at 1325.

The Adams decision is particularly informative when considering the Department’s Rule 6A-10.086, in that it found that while “gender-neutral bathrooms are not an adequate remedy for the breach of Adams' rights, they remain an alternative for any cisgender student who is uncomfortable sharing a restroom with Adams.” Adams, at 1319-1320. This is exactly what DCPS proposed in its draft rule, attached for your review and comment – that multi-stall bathrooms be accessible to all students for use that is consistent with the student’s gender identify, and that single-stall/single-occupant bathrooms be available to all students who require additional privacy or who wish to be in a bathroom where only one biological gender is present.

DCPS and the DOE have a shared mission of ensuring a safe environment for all of our students while providing them a quality education. The District takes this responsibility seriously, and values its partnership with the DOE in undertaking such a critical mission. The attached policy has been developed in good faith to comply with the Department’s Rule 6A-10.086 and to ensure that the funding and student services provided by the federal government remain available to all students in Duval County.

² In Glenn v. Brumby, 663 F. 3d 1312, 1317 (11th Circ. 2011), the Eleventh Circuit Court of Appeals said, “accordingly, discrimination against a transgender individual because of her gender-nonconformity is sex discrimination, whether it is described as being on the basis of sex or gender.” This is binding law throughout Florida unless and until it is overruled by the Eleventh Circuit *en banc* or the Supreme Court of the United States.

Excerpts from The Duval County Public Schools Comprehensive Student Support Guide

Restrooms/Locker Rooms

Original Draft Language

School administrators will develop a plan on a case-by-case basis that meets privacy concerns. (p. 3/17).

Proposed Draft Language

Restrooms

Consistent with prevailing federal requirements, students should be allowed to use any school restroom in accordance with their gender identity. Any student who has a need or desire for increased privacy, regardless of underlying reasons, has the right to access a single-user restroom, which will only be accessible by one gender type at a time.

Locker Rooms

Locker rooms are separated by biological sex at birth. For students needing locker room accommodations, school administrators will develop a plan to ensure that students have access to safe facilities on the school campus. This plan will be developed on a case-by-case basis, with the support of district staff and follow the procedures outlined in the Parental Notification of Change in Support Services Procedures. Some options include, without limitation: 1) a change in schedule; 2) use of a private area in the facility (e.g., nearby restroom stall with a door, or an area separated by a curtain, a physical education instructor's office in the locker room); or 3) use of a nearby private area (e.g., restroom, nurse's office).

Overnight Field Trips

Original Draft Language

School administrators will develop a plan on a case-by-case basis that meets privacy concerns." (p. 4/18).

Proposed Draft Language

School administrators will develop a plan on a case-by-case basis that meets privacy concerns of students participating in the field trip. Pursuant to the *Parental/Guardian Consent Form and Indemnity Agreement – Out of County Field Trip* (Consent Form), parents will be notified if student lodging for overnight field trips will be assigned based on biological sex at birth or if room assignments for one or more students are not separated by biological sex at birth. Each student impacted by this exception must have an individual written parental consent form on file for that student's lodging. A copy of the Consent Form is attached as Exhibit ____.

Guidelines For Transgender Students

Original Draft Language

Disclosure by a student of their sexual orientation and/or gender identity, absent other factors does not mandate reporting the disclosure to a parent." {p. 5/19).

Proposed Draft Language

LGBTQ+ Student Support Action Steps - Disclosure by a student of their sexual orientation and/or gender identity, absent other factors does not automatically mandate reporting the disclosure to a parent. Rather, disclosure by a student of their sexual orientation and/or gender identity, as with any other type of information disclosed by a student, should be evaluated to determine whether such disclosure may result in a change in the student's services or monitoring related to the student's mental, emotional, or physical health or well-being and the school's ability to provide a safe and supportive learning environment for the student. The District's *Parental Notification of Change in Support Services Procedures* sets forth the process.