

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
SOUTHERN DISTRICT

SUPERIOR COURT

JANE DOE

on behalf of herself
and as next friend to a minor child
referred to herein as M.C.

v.

MANCHESTER SCHOOL DISTRICT

and

SCHOOL ADMINISTRATIVE UNIT #37

Case No. _____

**COMPLAINT FOR DECLARATORY JUDGMENT, TEMPORARY AND PERMANENT
INJUNCTION, NOMINAL DAMAGES AND ATTORNEY'S FEES**

I. NATURE OF THE CASE

1. This is an action for declaratory judgment, temporary injunction, permanent injunction, nominal damages, and attorney's fees.

2. Plaintiff brings this action to obtain a judgment declaring that the Defendants adopted an unconstitutional and illegal policy, to enforce her rights to access and receive certain information generated and retained about her Minor Child (hereinafter "M.C.") by the defendants and their agents, to whom the Plaintiff has entrusted her child for the child's education, and to enjoin the defendant and its agents from withholding information about M.C. from the Plaintiff. Plaintiff further seeks to enforce her right to provide consent on behalf of her minor child. These rights are founded on the Constitutions of the United States of America and the State of New Hampshire, and on state and federal statutory and regulatory provisions, which recognize the

fundamental right of parents to direct the upbringing of their children, to be primarily responsible for their children's health, safety, emotional and spiritual development, and to decide what is in their+ minor child's best interests.

3. The Defendants have violated these rights by adopting and enforcing a Policy (see Exhibit #1, hereinafter "the Policy") expressly designed to circumvent parental involvement in a pivotal decision affecting a minor child's care, health, education, well-being, and future.

4. The Policy authorizes Manchester School District (hereinafter variously "MSD" or the "District") personnel to counsel minor children concerning matters related to gender identity and expression and allows minor children, of any age, to transition socially to a different gender identity at school, with support and encouragement of MSD personnel, but without parental consent, notice, or knowledge.

5. The Policy further requires school personnel to enable students to transition by using pronouns other than those consistent with the child's birth gender and by using a name of the student's choosing that may be different that the name given by the child's parents.

6. The Policy prohibits and/or discourages school personnel from communicating with parents about a minor child's potentially life-altering choices, unless the minor child "consents" to such parental disclosure.

7. Further, the policy directs teachers and staff to affirmatively deceive parents concerning their child's in-school behavior by reverting to the child's given name and corresponding pronoun(s) when communicating with the parents, by using the child's given name and pronoun(s) when the child's parents are present, and by keeping information about the child's in-school gender expression and transformation out of school files which the parents have access to under state and federal law.

8. Nothing in this case is intended to suggest that the Plaintiff: (1) believes that transgender persons of any age should be discriminated against based upon their transgender status; (2) that transgender persons in the Manchester School District, almost all of whom are children, should be subjected to harassment and/or bullying in school; (3) that transgender adults should not be able to live their lives as they desire; or (4) that school advisors, counselors, or others have an affirmative duty to report to parents any time a student confides in them that the student is experiencing confusion or is having questions relating to sexuality, gender identity, or other difficult or sensitive issues.

9. To the contrary, it is the Plaintiff's view that the District has an affirmative obligation to protect transgender students against discrimination, harassment, and bullying pursuant to Title IX of the Civil Rights Act of 1964 (see *Bostock v. Clayton County, Georgia*, 140 S.Ct. 1731 (2020)(holding Title VII protects transgender employees from employment discrimination)), as well as RSA 193:38, and RSA 354-A:27.

10. However, the District, like every other government entity, must perform its functions and meet its obligations without violating constitutionally protected individual rights. This includes the constitutional rights of the parents of minor students. The policy adopted by the District, and its implementation, ignores these constitutional restraints on the performance of its duties.

11. The Policy adopted by the District, and its enforcement as set forth below, violate the rights of Jane Doe and other parents similarly situated.

II. PARTIES

12. Plaintiff Jane Doe is a resident of Manchester, New Hampshire. She is the legal and custodial parent of a minor child who is enrolled in a school in the Manchester School

District. Plaintiff Doe is a fit parent pursuant to New Hampshire law. Plaintiff Doe is also an individual taxpayer eligible to vote in the City of Manchester and the Manchester School District.

13. Defendant Manchester School District is a corporation and body politic with the power to sue and be sued, created pursuant to RSA 194:2. The Manchester School District has a business address of 20 Hecker Street, Manchester, N.H. 03102.

14. Defendant School Administrative Unit #37 is a corporation and body politic with the power to sue and be sued pursuant to RSA 194-C:1, and has a business address of 20 Hecker Street, Manchester, N.H. 03102.

III. JURISDICTION AND VENUE

15. This Court has jurisdiction to hear this matter pursuant to Part I, Article 8 of the New Hampshire Constitution, RSA 491:7, RSA 491:22, and RSA 498:1.

16. Venue is proper in Hillsborough County, Northern District, as it is the Plaintiff's county and judicial district of residence and the county in which the defendants are located.

IV. STANDING

17. The plaintiff has standing to challenge the Policy both as an individual who has been harmed due to the defendants' enforcement of the Policy, and who therefore has a case or controversy and as a taxpayer in the taxing district Pursuant to Part I, Article 8 of the New Hampshire Constitution, who has standing to seek a judicial declaration of illegality in order to secure her right to "an orderly, lawful, and accountable government."

V. STATEMENT OF FACTS

Background on Gender Dysphoria in Minor Children

18. The American Psychological Association ("APA") defines "transgender" as:

an umbrella term for persons whose gender identity, gender expression or behavior does not conform to that typically associated with the sex to which they were assigned at birth. Gender identity refers to a person's internal sense of being male, female or something else; gender expression refers to the way a person communicates gender identity to others through behavior, clothing, hairstyles, voice or body characteristics.

See, Answers to Your Questions About Transgender People, Gender Identity and Gender Expression. (Last accessed March 2, 2022, at <https://www.apa.org/topics/lgbtq/transgender.pdf>).

19. The World Professional Association for Transgender Health ("WPATH"), a transgender advocacy organization that has produced a set of guidelines for the care of transgender persons, has defined "gender dysphoria" as "Distress that is caused by a discrepancy between a person's gender identity and that person's sex assigned at birth (and the associated gender role and/or primary and secondary sex characteristics). See WPATH, Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People at 96 (Version 7, 2012), available at https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English2012.pdf?t=1613669341 ("WPATH Guidelines")(Last accessed March 2, 2022).

20. Those "transitioning" to a gender other than their birth sex have demonstrated significantly higher rates of suicide ideation, suicide attempts, and suicide, both with respect to the average population and to those of a homosexual sexual orientation. A study published in the September 2018 issue of *Pediatrics*, a publication of the American Association of Pediatrics, presented the following findings: Nearly 14% of all adolescents reported a previous suicide attempt, 50.8% of female to male transgender adolescents did so, 41.8% of adolescents who identified as not exclusively male or female did so, and 29.9% of male to female transgender adolescents did so. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6317573/pdf/PEDS_20174218.pdf (Last accessed March 2, 2022).

21. There is significant consensus that children with gender dysphoria and their parents can substantially benefit from professional assistance and counseling “as they work through the options and implications.” See WPATH Guidelines at 13-17.

The Defendant’s Transgender And Gender Non-Conforming Students Policy

22. On February 8, 2021, the defendant adopted Policy 100.1. (Exhibit #1). The Policy is included herein by reference as if fully restated herein.

23. Policy 100.1 was derived from a model policy known as “JBAB” that was drafted, circulated, and recommended by the New Hampshire School Boards Association, an organization to which one or both defendants pay dues.

24. The Policy includes the following definitions:

“Gender identity” is a person's deeply held sense or psychological knowledge of their own gender, regardless of the gender they were assigned at birth. Everyone has a gender identity.

“Transgender” describes people whose gender identity is different from their gender assigned at birth.

“Gender nonconforming” describes people whose gender expression differs from stereotypical expectations, such as “feminine” boys, “masculine” girls, and those who are perceived as androgynous.

Exhibit #1.

25. The Policy purports to grant a privacy interest to students while at school that transcends, and is superior to, the parent-child relationship. The relevant provision of the Policy reads as follows:

A. Privacy

The Board recognizes a student's right to keep private one's transgender status or gender non-conforming presentation at school. Information about a student's transgender status, legal name, or gender assigned at birth also may constitute confidential information. ***School personnel should not disclose information that may reveal a student's transgender status or***

gender non-conforming presentation to others, including parents and other school personnel, unless legally required to do so or unless the student or parent has authorized such disclosure. Transgender and gender non-conforming students have the right to discuss and express their gender identity and expression openly and to decide when, with whom, and how much to share private information.

When contacting the parent or guardian of a transgender or gender non-conforming student, school personnel should use the student's legal name and the pronoun corresponding to the student's gender assigned at birth unless the student, parent, or guardian has specified otherwise. Any student who has a need or desire for increased privacy, regardless of the underlying reason, should be provided with a reasonable alternative to meet the need for that individual's privacy, regardless of gender identity.

Exhibit #1 (Emphasis added).

27. By its express terms, the Policy creates a right for students to control what information a school provides to the student's parents. This includes a right for students to compel teachers to lie to parents, either directly or through omission, and to require school personnel to otherwise mislead parents about a child's in-school gender expression.

26. This process inherently requires District personnel to inquire into the student's specific perceived needs, including the student's sexual behaviors and attitudes, and the student's perception of the student's parents' perceived social attitudes.

27. This policy applies to all students attending one of the Defendants' schools, regardless of age.

28. Notably, as set forth above, the Plaintiff does not here claim that school personnel are required to report to parents any time that a student has a conversation with school personnel in which the student questions his or her sexual orientation or gender identity. Rather, the policy requires school personnel to mislead, lie, or omit relevant information about a child to a parent when the minor child has announced to the school community a desire to be publicly treated as a transgender person, to be addressed by pronouns that do not correspond to the child student's sex

at birth, to be addressed by a name other than the student's given name (or commonly used nickname associated with such a given name), or to be permitted to use school facilities that do not correspond to the child student's birth sex.

29. Pursuant to the Policy, the District and its agents are authorized and/or required to withhold information from parents about a child's gender expression at school, even if the parent specifically requests such information.

30. As quoted above, the Policy contains specific provisions that interfere with the rights of parents to be fully informed and involved in addressing issues relating to gender identity, expression, and potentially even to gender transition involving medical intervention.

31. Upon information and belief, District personnel have been trained to enforce the Policy and have conformed their behavior and practices to the terms of the Policy, including withholding information from parents about their child's transgender identity, expression, or gender non-conforming presentation at school.

32. Upon information and belief, without the relief requested from this Court, District personnel will continue to conform to the behavior and practices set forth in the Policy, including by withholding information from parents about their child's transgender identity, expression, or gender non-conforming presentation at school if the child has not desired that information to be transmitted to the parents and by keeping such information out of the school records which parents are legally entitled to access.

33. Upon information and belief, District personnel who interacted with the Plaintiff and her minor child pursuant to the Policy, and those who interact with other students who experience gender dysphoria, are not professionally trained, certified, or licensed in the diagnosis or treatment of gender dysphoria.

Jane Doe's Minor Child/Student

34. As set forth above, Jane Doe has a minor child, M.C., attending school in the Manchester School District.

35. During the fall of 2021, Jane Doe became aware that M.C. had asked teachers and students to address M.C. by a name typically associated with a gender that is different from M.C.'s sex at birth. Jane Doe became aware of this fact through an inadvertent disclosure by one of M.C.'s teachers.

36. Jane Doe then engaged in several email exchanges with M.C.'s guidance counselors and others at the school in which she explained that while she has always been open in matters of sexuality and sexual attraction between people of all kinds, she had recently become aware that M.C. was engaging in social transitioning at school and that she would like the school to continue to treat M.C. according to M.C.'s birth gender, to address M.C. by the name on the district's mandatory permanent pupil record (M.C.'s given name), and to address M.C. using the pronouns that correspond to M.C.'s biological sex.

37. Two of M.C.'s teachers emailed Jane Doe to state that, "I do think that a parent should be giving permission for their child to be called by any other name." The teacher wrote that the teacher, "had a discussion with [M.C.] about [M.C.'s] name. [M.C.] writing [M.C.'s] given name on [M.C.'s] [school] work will help all of us."

38. Another teacher wrote, "[w]e will absolutely respect your wishes and continue to call [M.C. by M.C.'s birth name] on team!"

39. Minutes later, Jane Doe received an email from the building principal, which read as follows:

Good Morning [Jane Doe]. While I respect and understand your concern, we are held by the District policy as a staff. I have quoted our district policy below,

which outlines the fact that we cannot disclose a student's choice to parents if asked not to. If [M.C.] insists on being called [M.C.'s desired name] as a staff we have to respect that according to the policy or unfortunately we can be held accountable despite parents' wishes.

40. In the time since she received the above email, Jane Doe has discussed issues related to gender expression, birth-name usage, and pronouns with M.C. M.C. has advised Jane Doe that M.C. requested school personnel to use M.C.'s birth name and pronouns.

41. School personnel likewise have represented to Jane Doe that they are addressing M.C. by M.C.'s birth name and pronouns.

42. However, the continued existence of the Policy means that Jane Doe cannot know whether representations by District personnel are factually true, or whether the District personnel are simply following the Policy by misleading and/or lying to Jane Doe about M.C.'s in-school gender expression and the District's response thereto.

VI. CLAIMS

43. Plaintiff brings this challenge to the Policy as violative of the New Hampshire Constitution, both on its face and as applied to her.

44. The Policies are not, "necessary to achieve a compelling governmental interest [nor] narrowly tailored to meet that end." *State v. Mack*, 173 N.H. 793, 815 (2020).

45. The Policies are *ultra vires* in that they exceed the legislative grant of authority under RSA 193:27, 193:28, or any other legislative delegation of authority to the District and/or SAU. No delegation of legislative authority authorizes the Defendants to interfere with Jane Doe's constitutional right to exercise her natural, essential, and inherent constitutional right to raise and direct the educational, social, and spiritual development of her child, and no delegation

of legislative authority authorizes school personnel to lie (whether by omission or commission) or mislead, or willfully withhold information from parents of minor children.

46. Further, as a taxpayer in the taxing district, Jane Doe has a right pursuant to Part I, Article 8 of the New Hampshire Constitution to seek a declaratory judgment from this Court holding that the provisions of Policy 100.1 are unlawful and violate the New Hampshire Constitution.

COUNT I
Violation of Part I, Art. 2 of the New Hampshire Constitution

47. Plaintiff incorporates by reference all other allegations in this Complaint.

48. Parental rights are “natural, essential, and inherent” under Part I, Article 2 of the New Hampshire Constitution. Parents have a fundamental liberty interest in raising and caring for their children.

49. These fundamental rights include, but are not limited to, the rights of parents to counsel their children on important decisions regarding their health and safety and to decide what is in the best interests of their minor children.

50. “Fit parents are presumed to act in the best interest of their children.” *In re Guardianship of Reena D.*, 163 N.H. 107, 111 (2011)(citing *Troxel v. Granville*, 530 U.S. 57 (2000)). “When a parent is fit, there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent’s children.” *Id.* (citing *In the Matter of Nelson & Horsley*, 149 N.H. 545, 547 (2003)). “Fit parents are those who have not been adjudicated unfit.” *Id.* at 112.

51. Jane Doe is a fit parent under New Hampshire law.

52. Defendants, by promulgating and enforcing the Policy and purposefully withholding information from Jane Doe, and other parents similarly situated, directly related to M.C.'s support, care, nurture, welfare, safety, and education, and have announced their intention to violate, and have directly hindered Plaintiff, and others similarly situated, from carrying out, a parent's fundamental rights protected under the New Hampshire Constitution.

53. The State may not abridge or hinder parents in the exercise of their fundamental rights with respect to their minor children unless doing so is "necessary to achieve a compelling governmental interest [and the state action is] narrowly tailored to meet that end." *State v. Mack*, 173 N.H. 793, 815 (2020).

54. The Policies are neither necessary to achieve a compelling governmental interest nor are they narrowly tailored to advance or accomplish any such interest.

55. Defendants have no compelling interest in withholding information from Plaintiff, or other parents similarly situated, regarding a minor child's desire to express gender differently than the minor child's parents understand to be the case.

56. The District policy of withholding information from, or of affirmatively lying to, the Plaintiff and other parents similarly situated, concerning a child's request to be treated as having a gender other than his or her sex at birth, are not narrowly tailored to achieve a lawful governmental purpose.

Count II

The Policies Are *Ultra Vires*

57. Plaintiff incorporates by reference all other allegations in this Complaint.

58. "There has been a consistent and unvarying support of the principle of complete legislative control of local government." *Opinion of the Justices*, 99 N.H. 540, 541 (1955).

59. If a political subdivision enacts an ordinance or policy pursuant to a grant of authority by the legislature, the political subdivision, “must exercise [its] power in conformance with the enabling legislation.” *K.L.N. Construction v. City of Pelham*, 167 N.H. 180, 184 (2014)(quotations omitted).

60. By the specific terms of the Policy, it was adopted pursuant to the legislative delegation of authority contained in RSA 193:38.

61. That statute reads as follows:

193:38 Discrimination in Public Schools. – No person shall be excluded from participation in, denied the benefits of, or be subjected to discrimination in public schools because of their age, sex, gender identity, sexual orientation, race, color, marital status, familial status, disability, religion, or national origin, all as defined in RSA 354-A. Any person claiming to be aggrieved by a discriminatory practice prohibited under this section, including the attorney general, may initiate a civil action against a school or school district in superior court for legal or equitable relief, or with the New Hampshire commission for human rights, as provided in RSA 354-A:27-28.

62. Further, RSA 193:39 requires the Defendants to adopt a policy that, “guides the development and implementation of a coordinated plan, to prevent, assess the presence of, intervene in, and respond to incidents of discrimination on the basis of ... sex [and/or] gender identity....”

63. Nothing in either RSA 193:38 or RSA 193:39 requires or authorizes a school district to adopt policies requiring or encouraging school district personnel to hide information about minor students from a student’s parents.

64. Nothing in either RSA 193:38 or RSA 193:39 authorizes a school district to adopt policies that violate the New Hampshire Constitution or state or federal statutory law concerning

the rights of parents to raise their children, the rights of free speech, or the right of parents to access information about their minor child, or to violate religious freedoms.

Count III
Violation of the Family Educational Rights and Privacy Act.

65. Plaintiff incorporates by reference all other allegations in the Complaint.

66. The Family Educational Rights and Privacy Act, (“FERPA”), 20 U.S.C. § 1232g, is a law made under the authority of the United States of America.

67. Plaintiff has standing “to petition the Superior Court to declare whether the State or political subdivision in which [he] resides has spent, or approved spending, public funds in violation of a law, ordinance, or constitutional provision.” N.H. Const. Part I, Art. 8. Thus, while federal courts have ruled that FERPA does not create a private cause of action in federal court, Part I, Article 8 creates an independent cause of action to seek a declaration that a political subdivision has spent, or approved spending, in violation of the law in the Superior Court.

68. Upon information and belief, the District has spent public funds as a dues paying member of the New Hampshire School Boards Association, which provided guidance to its members concerning the Policy. Further, upon information and belief, the District expended funds considering, adopting, and publishing the Policy, as well as training on the enforcement of the Policy.

69. FERPA provides, in relevant part, as follows:

(a)(1)(A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children....

No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided

an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's education records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.(A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which— contain information directly related to a student; and are maintained by an educational agency or institution or by a person acting for such agency or institution.

70. SAU #37 and the District are each an "educational agency or institution" as that term is defined in FERPA.

71. Records referring to a change or proposed change in gender identity by minor children attending MSD schools are "education records" as that term is defined in FERPA.

72. The Policy of withholding records from Plaintiff with respect to their children's gender expression in school is a violation of FERPA.

Count IV **Violation of the Protection of Pupil Rights Act**

73. Plaintiff incorporates by reference all other allegations in this Complaint.

74. The Protection of Pupil Rights Act, 20 U.S.C. § 1232h, is a law made under the authority of the United States. The federal regulations implementing PPRA, found in 34 C.F.R. §98.4, are also law made under the authority of the United States.

75. Plaintiff has “standing to petition the Superior Court to declare whether the State or political subdivision in which [he] resides has spent, or approved spending, public funds in violation of a law, ordinance, or constitutional provision.” N.H. Const. Part I, Art. 8.

76. Defendants have spent public funds considering, adopting, and publishing the Policy. Defendants have further spent public funds training personnel on the enforcement of the Policy.

75. PPRA provides in relevant part as follows:

(b) Limits on survey, analysis, or evaluations. No student shall be required, as part of any applicable program, to submit to a survey, analysis, or evaluation that reveals information concerning—

...

(3) sex behavior or attitudes;

...

without the prior consent of the student (if the student is an adult or emancipated minor), or in the case of an unemancipated minor, without the prior written consent of the parent.

76. PPRA is implemented by regulations of the United States Department of Education, which, as provided in 34 CFR §98.4, in relevant part provides as follows:

(a) No student shall be required . . . to submit without prior consent to psychiatric examination, testing, or treatment, or psychological examination, testing, or treatment, in which the primary purpose is to reveal information concerning one or more of the following:

Sex behavior and attitudes;

(b) As used in paragraph (a) of this section, prior consent means: Prior consent of the student, if the student is an adult or emancipated minor; or

Prior written consent of the parent or guardian, if the student is an unemancipated minor.

(Emphasis added).

77. Under the express terms of the Policy, a student, including a minor student, has a right to consult with school personnel about being permitted to choose a gender expression, and to be addressed by school personnel and other students through the use of pronouns that are not consistent with the minor student's birth sex.

78. The Policy states that school personnel “should” address a minor student’s wishes in this regard.

79. The Policy thus begs the question: How are school personnel to decide whether they “should” comply with a student’s stated wishes? By requiring the questioning of a student about gender identity, and other actions required to be taken with a student in order to comply with the Policy without consent as provided for by PPRA and its implementing regulations, the Policy is in contravention of the PPRA and its implementing regulations.

WHEREFORE, Plaintiff requests the following relief:

- A. A judicial declaration that the Policy violates Part I, Article 2 of the New Hampshire Constitution, is *ultra vires*, violates FERPA, and violates the PPRA;
- B. A temporary and permanent injunction prohibiting the Defendants from enforcing or training staff to enforce the Policy;
- C. An award of nominal damages;
- D. An award of Attorney’s Fees; and
- E. Grant such other relief as may be just and proper

Respectfully Submitted,
Jane Doe
By her attorneys,
Lehmann Major List, PLLC

/s/Richard J. Lehmann

March 3, 2022

Richard J. Lehmann (Bar No. 9339)
6 Garvins Falls Road
Concord, N.H. 03301
(603) 731-5435
rick@nhlawyer.com

Students 100.1: Transgender and Gender Non-Conforming Students

[JBAB: Transgender and Gender Non-Conforming Students]

I. PURPOSE

District policy requires that all programs, activities, and employment practices be free from discrimination based on sex, sexual orientation, or gender identity. This policy is designed in keeping with these mandates to create a safe learning environment for all students and to ensure that every student has equal access to all school programs and activities.

This policy sets out guidelines for schools and district staff to address the needs of transgender and gender nonconforming students and clarifies how state law should be implemented in situations where questions may arise about how to protect the legal rights or safety of such students in accordance with RSA 193:38, which protects students from discrimination on the basis of Sex, Gender Identity, and Sexual Orientation. This policy does not anticipate every situation that might occur with respect to transgender or gender nonconforming students, and the needs of each transgender or gender nonconforming student must be assessed on a case-by-case basis. In all cases, the goal is to ensure the safety, comfort, and healthy development of the transgender or gender nonconforming student while maximizing the student's social integration and minimizing stigmatization of the student.

II. DEFINITIONS

The definitions provided here are not intended to label students but rather are intended to assist in understanding this policy and the legal obligations of District staff. Students might or might not use these terms to describe themselves.

"Gender identity" is a person's deeply held sense or psychological knowledge of their own gender, regardless of the gender they were assigned at birth. Everyone has a gender identity.

"Transgender" describes people whose gender identity is different from their gender assigned at birth.

"Gender expression" refers to the way a person expresses gender, such as clothing, hairstyles, activities, or mannerisms.

"Gender nonconforming" describes people whose gender expression differs from stereotypical expectations, such as "feminine" boys, "masculine" girls, and those who are perceived as androgynous.

III. GUIDANCE

A. Privacy

The Board recognizes a student's right to keep private one's transgender status or gender nonconforming presentation at school. Information about a student's transgender status, legal name, or gender assigned at birth also may constitute confidential information. School personnel should not disclose information that may reveal a student's transgender status or gender nonconforming presentation to others, including parents and other school personnel, unless legally required to do so or unless the student has authorized such disclosure. Transgender and gender nonconforming students have the right to discuss and express their gender identity and expression openly and to decide when, with whom, and how much to share private information.

When contacting the parent or guardian of a transgender or gender nonconforming student, school personnel should use the student's legal name and the pronoun corresponding to the student's gender assigned at birth unless the student, parent, or guardian has specified otherwise. Any student who has a need or desire for increased privacy, regardless of the underlying reason, should be provided with a reasonable alternative to meet the need for that individual's privacy, regardless of gender identity.

B. Official Record

The District is required to maintain a mandatory permanent pupil record ("official record") that includes a student's legal name and legal gender. However, the District is not required to use a student's legal name and gender on other school records or documents. The District will change a student's official record to reflect a change in legal name or legal gender upon receipt of documentation that such change has been made pursuant to a court order. In situations where school staff or administrators are required by law to use or to report a transgender 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 such confidential information.

C. Names/Pronouns

A student has the right to be addressed by a name and pronoun that corresponds to the student's gender identity. A court-ordered name or gender change is not required, and the student need not change his or her official records. The intentional or persistent refusal to respect a student's gender identity (for example, intentionally referring to the student by a name or pronoun that does not correspond to the student's gender identity) is a violation of this policy.

D. Gender-Segregated Activities

To the extent possible, schools should reduce or eliminate the practice of segregating students by gender. In situations where students are segregated by gender, such as for health education classes, students should be included in the group that corresponds to their gender identity. Any student who has a need or desire for increased privacy, regardless of the underlying reason, should be provided with a reasonable alternative to maintain that individual's right to privacy during student activities that are segregated by gender.

E. Restroom Accessibility

Students shall have access to the restroom that corresponds to their gender identity consistently asserted at school. Any student who has a need or desire for increased privacy, regardless of the underlying reason, should be provided access to a single stall restroom, but no student shall be required to use such a restroom.

F. Locker Room Accessibility

The use of locker rooms by transgender students shall be assessed on a case-by-case basis with the goals of maximizing the student's social integration and equal opportunity to participate in physical education classes and sports, ensuring the student's safety and comfort, and minimizing stigmatization of the student. In most cases, transgender students should have access to the locker room that corresponds to their gender identity consistently asserted at school. Any student who has a need or desire for increased privacy, regardless of the underlying reason, 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 P.E. instructor's office in the locker room, or a nearby health office restroom), or with a separate changing schedule (e.g., using the locker room that corresponds to their gender identity before or after other students). Any alternative arrangement should be provided in a way that protects the student's ability to keep his or her transgender status confidential. In no case shall a transgender student be required to use a locker room that conflicts with the student's gender identity.

G. Physical Education Classes & Intramural Sports

Transgender and gender nonconforming students shall be permitted to participate in physical education classes and intramural sports in a manner consistent with their gender identity.

H. Interscholastic Competitive Sports Teams

Transgender and gender nonconforming students shall be permitted to participate in interscholastic athletics in a manner consistent with their gender identity. This policy is in line with current (2021) New Hampshire Interscholastic Athletic Association (NHIAA) guidance regarding participation of transgender and gender nonconforming students in athletics.

I. Dress Codes

Transgender and gender nonconforming students have the right to dress in a manner consistent with their gender identity or gender expression. In general, schools may not adopt dress codes that restrict students' clothing or appearance on the basis of gender.

J. Discrimination/Harassment

It is the responsibility of each school and the District to ensure that transgender and gender nonconforming students have a safe school environment. This includes ensuring that any incident of discrimination, harassment, or violence is given immediate attention, including investigating the incident, taking appropriate corrective action, and providing students and staff with appropriate resources. Complaints alleging discrimination or harassment based on a person's actual or perceived transgender status or gender nonconformity are to be handled in the same manner as other discrimination or harassment complaints.

Legal References:

NH RSA 193:38: Discrimination in Public Schools

NHIAA By-Laws, Article 2, Section 21 (2020-2021 school year)

2021 Adoption

First Reading (Policy Committee): 1/12/21

Second Reading and BOSC Approval: 2/8/21