



School District Governance Association of New Hampshire

Model Policy approved Apr. 2, 2022

Transgender Students

Policy Code(s): JBAB

Policy Text	Annotations
I. Purpose	
<p>It is the policy of this school district to provide a safe learning environment for all students and to ensure that every student has equal access to all school programs and activities, in compliance with State and Federal law. This policy sets out guidelines for schools and district staff to address the needs of transgender students and clarifies how state law should be implemented to protect the legal rights and safety of these students as well as the general school community.</p>	<p>This introductory paragraph is adapted and abbreviated from the sample policy adopted by Gilford in 2020. These annotations will reference the Gilford policy.</p> <p>The Gilford policy incorrectly references SB263 rather than RSA 193 which is quoted in the legal references at the end of this document.</p>
II. Definitions	
<p>"Biological Sex" is the DNA encoding which permanently determines, at time of conception, whether an individual is male or female.</p>	<p>This term is not defined in the Gilford policy, which gives preference to the phrase "gender assigned at birth".</p>
<p>"Gender identity" is a person's deeply held sense of their own gender, which may differ from their biological sex.</p>	<p>This definition of gender identity corresponds closely to the Gilford policy.</p>
<p>"Transgender" describes people whose gender identity is different from their biological sex.</p>	<p>Within this policy, the term "transgender" is used as a general term for a range of possible differences between an individual's biological sex and their gender identity, impacting that individual's presentation of self through naming, dress, associations, and other behavior.</p> <p>The Gilford policy defines additional categories such as bisexual, gender fluid, non-binary, and non-conforming which are not material to the school district actions required by the policy.</p>
<p>"Parents" is the term used in this policy to refer to the responsible adults as determined in policy KBBA Custodial and Non-Custodial parents. Depending on the circumstances, it could encompass natural parents, a custodial parent, adopted parent or legal guardian.</p>	<p>The reference to policy KBBA Custodial and Non-Custodial parents would need to be adjusted to the specific policy manual of the school district.</p>
<p>"Shared Personal Spaces" are restrooms, locker rooms, shower rooms, hotel rooms, camping tents and bunkhouses, in which communal dressing, bathing and sleeping occur.</p>	<p>This definition of shared personal spaces does not exist in the Gilford policy.</p> <p>The Gilford policy addresses transgender access to restrooms and locker rooms, but does not consider other situations in which shared personal spaces apply.</p>
III. General Policy Objectives	

<p>It is the policy of this school district to support families of each student, and not to intrude between the parents and their children in working out how to deal with the needs of a transgender student.</p>	<p>The reinforcement of the primary parental role in their child's nurture is not part of the Gilford policy.</p>
<p>Assertion of a gender identity differing from one's biological sex elicits acts of public affirmation from the students, staff and institution including official record keeping. For this reason, the school district requires that the institutional affirmation of a student's assertion of transgender identity be undertaken with deliberation and with the participation of the student's family (if the student is a minor).</p>	<p>This provision directly contradicts the Gilford policy section on Privacy which provides that the school district can withhold the student's transgender status from the parents of minor students.</p>
<p>The needs of each transgender 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 student while maximizing the student's social integration and minimizing stigmatization of the student.</p>	<p>This statement of case-by-case assessment of needs corresponds closely to the Gilford policy.</p>
<p>IV. Assertion of Transgender Identity</p>	
<p>The assertion of a gender identity which differs from the student's biological sex shall be initiated by the student's parents (or by the student, if adult), and shall require a written recommendation from a physician, psychiatrist, psychologist, or other qualified therapist chosen by the parents, stating that the affirmation of such gender identity is in the student's best interest.</p>	<p>The purpose of this provision is to ensure that the request for the school district to take actions (under the terms of an individual accommodation plan) has some due diligence and support from a qualified professional. This can also help the school district understand the scope of accommodation required. This also protects the school district from liability for delivering services which are subsequently subject to legal action for being inappropriate. This is not intended to imply that the school district would resist or obstruct the assertion of gender identity, it simply qualifies how that assertion is to be formally produced. Under the Gilford policy, transgender status may be asserted by a minor student alone, without the knowledge of their parents.</p>
<p>If a minor student approaches a school district staff member to assert a gender identity which differs from that student's biological sex, the staff member shall direct the student to raise the matter with the student's parents. No member of the school district staff shall form a relationship with a minor student to provide counseling or therapeutic services without the prior consent of the student's parents. Any such relationship formed with parental consent shall include a waiver of patient privileged confidentiality with respect to the student's parents. No member of the district staff shall promise confidentiality to the student with respect to either the student's parents or with respect to other senior staff such as the Principal and the Superintendent, nor shall officials of the school district honor such a promise if made.</p>	<p>This provision ensures that the school district and its staff never intrude between a minor student and that student's parents. School district professional resources may be offered to parents if appropriate and supported by the relevant skill sets and funding sources, such as Medicaid. However, it is always the parent's decision to take advantage of those services or not. School district professional staff need to understand that they must not offer a veil of professional confidentiality to minor students, and that their duty under the policy of the school district is to involve the parents. Nothing in this policy relieves school staff of their obligations as mandatory reporters if evidence of child abuse or neglect comes to their attention. This is addressed by Policy JHF in the standard policy rubric.</p>

<p>The Superintendent shall establish a process for the parents (or adult student) to initiate a meeting with school district professional staff to assess the individual student's needs in accordance with the professionally-recommended assertion of gender identity.</p>	
<p>Participants in the assessment meeting may include the school counselor, school nurse, teachers and/or other school staff and outside providers who can assist in developing a plan for that student. A written accommodation plan will be developed by the school, in consultation with the student, parents and others as appropriate, to address the student's particular needs. If the student has an IEP or a 504 Plan, the provisions of these plans should be taken into consideration in developing the plan for addressing transgender issues. If the parties cannot reach an agreement about the elements to be included in the plan, the Superintendent and the family's professional therapist if desired by the parents shall be consulted as appropriate.</p>	<p>The statement on formation of an individual accommodation plan corresponds closely to the Gilford policy.</p>
<p>The accommodation plan shall document that the student's primary public Gender Identity is either Male or Female for purposes of naming, student records, pronouns (he/she), and dress code.</p>	<p>Staff and other students are entitled to the stability and predictability of how to address the transgender student. Exotic, arbitrary and changing pronouns cannot be accommodated in official school communications, and would be unfair to enforce upon staff or other students.</p>
<p>V. Implementation Requirements</p>	
<p>Official Records The permanent pupil record ("official record") must include the student's legal name and biological sex. The District will change a student's official record to reflect a change in legal name upon receipt of documentation that such change has been made pursuant to a court order.</p> <p>Where allowed by law, the district shall make best efforts to record the student's preferred name and gender identity as documented on the accommodation plan, and to use these identifiers in written communication.</p> <p>The confidentiality and disclosure status of the student's legal identity on his or her permanent record will correspond to any other student.</p>	<p>The statement on Official Records differs materially from the Gilford model, in that the legal identity of the student does not gain a privileged confidential status for a transgender student different from any other student, and no extra duties of confidentiality are applied to school district staff.</p>
<p>Names/Pronouns A student under this policy should be addressed by a name or pronouns that correspond to the student's gender identity according to the accommodation plan agreed with the student and parents. School district staff are directed to do so, and to remind students to do likewise.</p>	<p>This clause does not mandate the use of pronouns beyond the scope of the accommodation plan (above).</p>

<p>School district staff shall not use formal disciplinary process against staff or students for the sole reason of incidental non-malicious failure to use the agreed name or pronouns in addressing a transgender student.</p>	<p>School district policies prohibiting discrimination, harassment, and bullying fully apply to protect transgender students.</p> <p>The purpose of this paragraph is to protect students who may incidentally address a transgender student incorrectly, without malicious intent. It is also intended to protect staff who may witness such an incident and consider themselves obliged to deal with it formally, at the risk of perhaps being accused later of failure to enforce policy. Harassment and bullying may take many forms, including the taunting, sarcastic use of the transgender student's <i>correct</i> name or pronouns.</p>
<p>Sex-Segregated Activities To the extent possible, schools should reduce or eliminate the practice of segregating students by sex. In situations where students are segregated by sex, such as for health education classes, students should be included in the group that corresponds to the accommodation plan worked out with the student and parents.</p>	<p>This section covers matters other than athletics.</p> <p>This section corresponds closely to the wording of the Gilford policy.</p>
<p>Shared Personal Spaces It is the policy of this school district to protect the privacy and safety of students in shared personal spaces by respecting separate facilities for biological males and females, supervised exclusively by staff of the same biological sex who also present as that sex. The accommodation plan for a transgender student may offer the options of using the space corresponding to that student's biological sex, or arranging for a reasonable alternative non-shared space such as a single-occupant bathroom.</p>	<p>This section directly contradicts the Gilford policy.</p> <p>After stating that transgender students will normally be permitted to use the facilities corresponding to their asserted gender identity, the Gilford policy states that <i>Any student who has a need or desire for increased privacy, regardless of the underlying reason will be provided with a reasonable alternative changing area or single occupant bathroom.</i> This effectively places the onus upon the other students to claim a need for increased privacy and separate accommodation. The Gilford policy does not deal with the question of staff supervision of these spaces.</p>
<p>Physical Education Classes & Intramural Sports It is the policy of this school district that students who wish to participate in sports shall compete according to their biological sex. Notwithstanding the policies of the NHIAA, this school district shall not enter events in which biological females compete against biological males.</p>	<p>This section directly contradicts the Gilford policy. Title IX of the Education Act Amendments of 1972 was designed to provide biological girls with comparable athletic opportunities to those previously available predominantly to boys. The manifest physical advantages of biological males in size, strength and muscle mass would erase the opportunities for girls in physical competition if allowed. Protection of equal rights on the basis of sex demands that school athletic competition continue to be segregated on the basis of biological sex rather than gender identity.</p>

<p>Dress Codes All students are required to meet the requirements in the dress code or school rules. Transgender students may dress in accordance with the accommodation plan agreed with the student and parents.</p>	<p>This section on dress codes corresponds closely to the wording of the Gilford policy.</p>
<p>Discrimination/Harassment Complaints alleging discrimination, harassment or bullying based on a person's actual or perceived transgender status are to be handled in the same manner as other discrimination, harassment or bullying complaints. Refer to policy AC, JBAA, and/or JICK.</p>	<p>Discrimination and harassment are prohibited for all reasons, as covered by other school district policies.</p> <p>Note that enforcement of policy against discrimination and harassment of all kinds is a duty of the school district under NH law and administrative procedures. Enforcement as pertains to protected classes under Title IX is additionally required by Federal law, and lapses by the school district can have Federal civil rights repercussions</p> <p>This section needs to be adjusted by reference to the specific district policy book.</p> <p>This section corresponds to the wording of the Gilford policy.</p>
<p>STAFF TRAINING 1. The Superintendent and/or building principal may institute in-service training and/or distribute educational materials about transgender issues to school staff as deemed appropriate. 2. Teachers and other staff who have responsibilities for a transgender student with a plan, as outlined in this policy, will receive support in implementing the plan.</p>	<p>This section corresponds to the wording of the Gilford policy.</p>
<p>References</p>	
<p>NH RSA 193-F:8-a</p>	<p>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, physical or mental disability, religion or national origin, all as defined in RSA 354-A</p>
<p>Title IX of the Education Amendments of 1972</p>	<p>Title IX provides that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681(a). The Department of Justice has determined that the best reading of Title IX’s prohibition on discrimination “on the basis of sex” is that it includes discrimination on the basis of gender identity and sexual orientation</p>
<p>Policy KBBA Custodial and Non-Custodial Parents</p>	<p>Reference to the appropriate policy in the district policy book defining how parental rights are applied in varying family situations.</p>

NH RSA 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.
NH 193:39 Discrimination Prevention Policy Required	Each school district and chartered public school shall develop 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 age, sex, gender identity, sexual orientation, race, color, marital status, familial status, disability, religion, national origin, or any other classes protected under RSA 354-A.
NH RSA 169-C Child Protection Act	Requirements for mandatory reporting of abuse or neglect
NH RSA 354-A:29 Opportunity for Public Education Without Discrimination a Civil Right 354-A:31 Prohibition on Public Employers 354-A:32 Prohibition on the Content of Government Programs and Speech 354-A:33 Protection for Public Employees	The general court hereby finds and declares that practices of discrimination against any New Hampshire inhabitants because of age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin are a matter of state concern, that discrimination based on these characteristics not only threatens the rights and proper privileges of New Hampshire inhabitants but menaces the institutions and foundation of a free democratic state and threatens the peace, order, health, safety and general welfare of the state and its inhabitants.
NH RSA 186:11 XXXIII Discrimination	The state board of education shall ... Ensure that there shall be no unlawful discrimination in any public school against any person on the basis of sex, race, creed, color, marital status, or national origin in educational programs, and that there shall be no denial to any person on the basis of sex, race, creed, color, marital status, national origin, or economic status of the benefits of educational programs or activities.
NH Code Admin. R. Ed. 303.01(i)	Each school board shall: ... (i) Adopt a rule to ensure that there shall be no unlawful discrimination on the basis of sex, race, age, creed, color, marital status, national origin, or disability in educational programs or activities consistent with local standards which may be stricter in specific areas than the broader statewide standards