



STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING


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STATE SUPERINTENDENT

MEMORANDUM

DATE: February 23, 2016

TO: State Board of Education

FROM: Brian J. Whiston, Chairman 

SUBJECT: Presentation on State Board of Education Statement and Guidance on Safe and Supportive Learning Environments for Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) Students

As articulated in the "Top 10 in 10 Years" strategic goals, the State Board of Education (SBE) and the Michigan Department of Education (MDE) are committed to reducing the impact of high-risk factors and providing equitable resources and access to quality educational opportunities to meet the needs of all students. The SBE recognizes the need for all students to have a safe and supportive school environment to progress academically and developmentally, and believes school administrators, teachers, staff, families, and students all play an important role in creating and sustaining that environment. To that end, students should be treated equally, fairly, and be protected from discrimination based on their real or perceived sexual orientation, gender identity, and gender expression. Due to a variety of factors, the school experience can be significantly more difficult for students with marginalized identities. Despite widespread efforts, lesbian, gay, bisexual, transgender, and questioning (LGBTQ) students continue to face challenges that threaten their health, safety, and learning opportunities in schools.

The State Board of Education Statement and Guidance on Safe and Supportive Learning Environments for Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) Students is attached. Following a period of public comment, the Board will be asked to approve the Statement and Guidance at its May 10, 2016, meeting.

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State Board of Education Statement and Guidance on Safe and Supportive Learning Environments for Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) Students

The State Board of Education (SBE) is committed to promoting a safe, supportive, and inclusive learning environment for all students and ensuring that every student has equal access to educational programs and activities. Due to a variety of factors, the school experience can be significantly more difficult for students with marginalized identities. Despite widespread efforts, lesbian, gay, bisexual, transgender, and questioning (LGBTQ) students continue to face challenges that threaten their health, safety, and learning opportunities in schools.

A number of terms are used in this document that may not be commonly known. A short list of definitions is included below to facilitate a shared understanding. It is not an all-inclusive list.

- Biological sex assigned at birth—a person’s biological sex is a combination of bodily characteristics, including chromosomes, hormones, internal and external genitalia, and secondary sex characteristics. At birth, infants are assigned a sex, usually male or female, based solely on the appearance of their external anatomy.
- Gender identity—a person’s deeply held internal sense or psychological knowledge of their own gender, regardless of the biological sex they were assigned at birth.
- Gender expression—the manner in which a person represents or expresses gender to others, often through one’s name, pronouns, behavior, clothing, haircut, activities, voice, mannerisms, and other distinctive cultural markers of gender.
- Transgender—an adjective describing a person whose gender identity or expression is different from their biological sex assigned at birth.
- Gender nonconforming (GNC)—an umbrella term for people whose gender expression differs from stereotypical expectations of the biological sex they were assigned at birth. GNC people may identify as girls, boys, neither girls nor boys, or some other gender.
- Sexual orientation—a person’s emotional, romantic, and/or sexual attraction to other people. Sexual orientation is not the same as gender identity.
- Questioning—a person’s process of exploring and discovering their own sexual orientation and/or gender identity.

Research indicates that LGBTQ students, nationally and in Michigan, are targeted with physical violence and experience a hostile school environment more frequently than their non-LGBTQ peers.

- Data from the 2015 Michigan Youth Risk Behavior Surveyⁱ (YRBS) show that students who identify as lesbian, gay, or bisexual (LGB), 8.4 percent of all high school students, are 2.3 times more likely to be threatened or injured with a weapon on school property than their non-LGB peers, and they are 2.3 times more likely to skip school because they feel unsafe. Forty-one percent of LGB students report being bullied on school property, and they are 4.5 times more likely to attempt suicide.
- According to a national report, 26 percent of transgender students were physically assaulted, (e.g., punched, kicked, or injured with a weapon) in school in the past year because of their gender expression.ⁱⁱ
- Overall, LGBTQ students who are bullied and harassed are more likely to experience depression and anxiety, feel excluded from the school community, and experience lower academic achievement and stunted educational aspirations.
- Lesbian, gay, bisexual, and transgender (LGBT) students are over-represented in the unaccompanied homeless youth population, creating significant barriers to health, safety, and school success.
- The adverse health and educational consequences for transgender students are even greater than those for LGB students.

Not all LGBTQ students are equally affected by these risk factors. LGBTQ students with intersecting, marginalized identities (e.g., black gay males, LGBTQ students with disabilities) are at greater risk of negative outcomes. The SBE recognizes the role that power, privilege, discrimination, and oppression play in creating disparities that exist between LGBTQ students and their peers, and that only by addressing the underlying structural inequities will the existing disparities in academic achievement and health outcomes be eliminated.

As articulated in the “Top 10 in 10 Years” strategic goals, the SBE and the Michigan Department of Education (MDE) are committed to reducing the impact of high-risk factors and providing equitable resources and access to quality educational opportunities to meet the needs of all students. The SBE recognizes the need for all students to have a safe and supportive school environment to progress academically and developmentally, and believes school administrators, teachers, staff, families, and students all play an important role in creating and sustaining that environment. To that end, students should be treated equally, fairly, and be protected from discrimination based on their real or perceived sexual orientation, gender identity, and gender expression. As such, the SBE encourages districts to:

- 1) **Adopt, implement, and enforce policies protecting students from harassment, violence, and discrimination based on their real or perceived sexual orientation, gender identity, and/or gender expression (e.g., enumerated nondiscrimination, anti-bullying, and anti-harassment policies).**ⁱⁱⁱ Inclusive school policies and administrative guidelines regarding implementation provide clear guidance for school administrators, teachers, support staff, families, and students to ensure all members of the school community have similar, consistent expectations for what is considered appropriate conduct in school and at school-related activities. Those same protections should also be afforded to LGBT staff to provide a diverse workforce and role models who are supported.
- 2) **Provide professional development opportunities on issues affecting LGBTQ students to all district staff and board members.** These opportunities should extend beyond teachers, administrators, and school mental health staff, to include anyone who interacts with students (e.g., coaches, bus drivers, cafeteria workers, custodians, and administrative support staff). MDE conducts introductory and advanced workshops to help educators and other school personnel understand, assess, and improve school safety and climate for all students, including those who are LGBTQ.^{iv} Districts should encourage and support staff attendance at these and other role-appropriate professional development opportunities.
- 3) **Support the formation of extracurricular student-led clubs, such as Gay-Straight Alliances or Gender and Sexuality Alliances (GSAs) in middle and high schools, in accordance with local policies.** In accordance with the Equal Access Act, the GSA should be afforded the same rights and privileges as other student-led extracurricular clubs in all areas, such as appointment and compensation of advisors, publicity for events, and inclusion on school websites. These groups have been shown to improve school climate for all students, regardless of sexual orientation, gender identity, or gender expression, and are protective for all students, both members and non-members. They can serve different functions, including supporting potentially isolated and at-risk LGBTQ students and their allies, educating the larger school community, and advocating for a more inclusive school climate.
- 4) **Provide appropriate and meaningful family engagement and support.** Since parental acceptance and family support are key determinants of LGBTQ student health, student support teams, staff, and community partners should provide resources to help families and students locate information, affirming counseling, and support services. School mental health professionals (school counselors, school social workers, and school psychologists) play an important role in helping students evaluate their academic and family situations, support systems, and resources, and have the necessary training to

conduct mental health and substance use assessments, as needed. Schools should provide a welcoming environment for diverse families, including those that are headed by LGBTQ parents/guardians, and are encouraged to educate all families in their community about this SBE statement and guidance.

- 5) **Encourage respect for the human and civil rights of all people, including those who are LGBTQ, across the curriculum.**^v Research shows that inclusion of LGBTQ topics in curricula is correlated with students feeling safer in school, regardless of sexual orientation or gender identity. Schools are encouraged to have relevant and age-appropriate content throughout the curriculum, in areas such as social studies, English language arts, creative arts, and health education, including sex education.^{vi}
- 6) **Provide developmentally-appropriate information about LGBTQ issues in school libraries and in student and faculty resource centers.** School libraries should include a selection of high-interest LGBTQ books and media. Computer-filtering software should not inhibit age-appropriate access to medical and social information. Schools are encouraged to review the computer-filtering protocol to ensure that students and other school community members can access information related to LGBTQ youth, local and national resources, and LGBTQ health information.
- 7) **Collect and review data to identify disparities that create barriers to a safe and successful learning experience for LGBTQ students.** LGBTQ students are disproportionately at risk for experiencing bullying, truancy, violence, substance use, unaccompanied homelessness, discipline treatment, and involvement with the juvenile justice system. Districts are encouraged to analyze available attendance, suspension, expulsion, bullying, student risk behavior, and school climate data to promote practices that improve LGBTQ students' attendance and participation in school.^{vii} The United States Office for Civil Rights (OCR) requires every public school in the nation to report data on key education and civil rights issues, including incidents of bullying based on sexual orientation and sex (which can include gender- or gender identity-based bullying).
- 8) **Designate a building-level staff member who is conversant in issues related to sexual orientation, gender identity, and gender expression.** Students report feeling safer at school when they know where to go for information or support regarding LGBTQ issues, or when they have a trusted teacher or school staff person available. This person may assume a leadership role in working with LGBTQ students and their families, educate the school community regarding these topics, serve as the point person for the building, work closely with the district Title IX Coordinator, and be a liaison to MDE.

Guidance to Support Transgender and Gender Nonconforming (GNC) Students

Due to the increased risks facing transgender and GNC students, as well as the unique circumstances that may arise when working with these students and their families, the SBE is providing additional guidance and recommendations to help ensure these students receive the same educational opportunities as their peers.

Districts make important decisions regarding policies and practices to promote student safety and support, with equal access to all programs, services, and facilities provided by school districts. It is the position of the SBE that students should be treated equally and fairly, free from discrimination, harassment, and bullying based on their real or perceived sexual orientation, gender identity, and gender expression. This commitment to equal and fair treatment includes transgender and GNC students, and applies to all district operations, programs, and activities. Title IX guidance and legal briefs issued by the OCR have defined fair and equal treatment for transgender and GNC students in relation to rights in areas such as student names and pronouns, restrooms, privacy, school records, student safety, and dress codes.^{viii}

The responsibility for determining a student's gender identity rests with the student. Outside confirmation from medical or mental health professionals, or documentation of legal changes, is not needed. These recommendations facilitate district compliance with local, state, and federal laws, while furthering the goals of cultivating and sustaining caring, supportive, respectful, and affirming learning environments that provide for the education, safety, and welfare of all students. While this guidance provides important suggestions for school staff, it does not anticipate every situation that might occur. The unique needs and concerns of each student should be addressed on a case-by-case basis, with a student-centered approach that includes the ongoing engagement of the student, the parent/guardian, as appropriate, and school personnel with a legitimate educational interest per the Family Education Rights and Privacy Act (FERPA). The overall goal is to ensure the safety, comfort, and healthy development of all students, including transgender and GNC students, maximizing inclusion and social integration while minimizing exclusion and stigmatization.

- 1) **Names and Pronouns.** School staff should address students by their chosen name and pronouns that correspond to their gender identity, regardless of whether there has been a legal name change. Upon request, the chosen name and gender should be included in the district's information management systems, in addition to the student's legal name. District-generated student email addresses should also reflect the student's chosen name, if first names are identifiable in such addresses. These changes inform all staff, including substitute teachers, of the name and pronoun to use when addressing the student, and help avoid inadvertent disclosures.
- 2) **Student Records.** When requested, schools should engage in reasonable and good faith efforts to change current unofficial student records (e.g., class and team rosters, yearbooks, school newspapers, and newsletters) with the chosen name and appropriate gender markers to promote consistency among teachers, substitute teachers, school administrators, and other staff.^{ix} The Michigan School Code requires proof of identity and age for school entry (e.g., birth certificate, passport) but does not address changing names and gender markers in student records. Per communications with the U.S. Department of Education, the gender marker in the pupil's official record should reflect the gender identity of the student regardless of what appears on the birth certificate.^x While Michigan law provides a process for people to seek a legal name change, there may be extenuating circumstances that make a legal name change desired but unattainable. Parents/guardians, or students who are age 18 or older, have the right to seek amendment to the school records (per FERPA) if their records are deemed "inaccurate, misleading, or in violation of the student's privacy." School districts should comply if transgender students ask the district to amend their secondary educational records, including diplomas and transcripts after graduation, to ensure that those requesting records (e.g., college admissions offices or potential employers) will only see the name and gender marker corresponding to the student's gender identity.^{xi}
- 3) **Privacy and Confidentiality Regarding Disclosures.** Transgender and GNC students have the right to decide when, with whom, and to what extent to share private information. When contacting the parent/guardian of a transgender or GNC student, school staff should use the student's legal name and the pronoun corresponding to the student's assigned sex at birth, unless the student or parent/guardian has specified otherwise.
- 4) **Restrooms.** Students should be allowed to use the restroom in accordance with their gender identity. Alternative and non-stigmatizing options, such as an all-gender or single-user restroom (e.g., staff bathroom or nurse's office), should be made available to students who request them, but not presented as the only option. Any student who has a need or desire for increased privacy, regardless of underlying reasons, has the right to access a single-user restroom.^{xii}

- 5) **Locker Rooms or Changing Facilities.** A student should not be required to use a locker room that is incongruent with their gender identity. Locker room usage should be determined on a case-by-case basis, using the guiding principles of safety and honoring the student's gender identity and expression. Some options include: 1) an adjusted changing schedule; 2) use of a private area in the facility (e.g., nearby restroom stall with a door, an area separated by a curtain, a physical education instructor's office in the locker room); and 3) use of a nearby private area (e.g., restroom, nurse's office). Any student who has a need or desire for increased privacy, regardless of the underlying reasons, may request the options listed above.
- 6) **Physical Education Classes and Intramural Sports.** Students should be allowed to participate in physical education classes and intramural sports in accordance with their gender identity.
- 7) **Interscholastic Sports.** Students should be allowed to participate in interscholastic sports in accordance with their gender identity. Eligibility of transgender students in Michigan High School Athletic Association (MHSAA)-sponsored post-season tournaments is governed by the MHSAA, subject to state and federal civil rights laws.
- 8) **Dress Code.** Students should have the right to express their gender at school, within the parameters of the school's dress code, without discrimination or harassment. The school's dress code should be gender-neutral and not restrict a student's clothing choices on the basis of gender. In the event that the dress code has differing expectations or practices based on gender, students should be permitted to dress in accordance with their gender identity.
- 9) **Gender-Based Activities or Practices.** Districts should evaluate all gender-based programs and practices and maintain only those that have a clear and sound educational purpose. Gender-based programs and practices can have the unintentional consequence of marginalizing, stigmatizing, and excluding transgender and GNC students. Moreover, in some circumstances, they may violate state and federal laws. When students are separated by gender in school activities, students should be allowed to participate in accordance with their gender identity. When considering overnight accommodations, situations should be assessed on a case-by-case basis, seeking solutions that are inclusive, respectful, and acceptable to the student and do not impose an additional expense or burden on the student.

Endnotes

- ⁱ Michigan Department of Education (2016). Risk behaviors and sexual identity report. 2015 Youth Risk Behavior Survey. Unpublished data.
- ⁱⁱ Greytak, E., A., Ksciw, J. G., & Diaz, E. M. (2009). Harsh realities: The experiences of transgender youth in our nation's schools. New York: GLSEN.
- ⁱⁱⁱ See State Board of Education Model Anti-Bullying Policy as an example of an enumerated policy that includes sexual orientation, gender identity and gender expression. Retrieved from http://www.michigan.gov/documents/mde/SBE_Model_AntiBullying_Policy_Revised_9.8_172355_7.pdf. The State Board of Education Model Code of Student Conduct, Sample Notice of Discrimination, is another example of enumeration. Retrieved from https://www.michigan.gov/documents/mde/Revised_Code_of_Student_Conduct_SBE_Approved_465406_7.pdf.
- ^{iv} The introductory workshop (*A Silent Crisis: Creating Safe Schools for Sexual Minority Youth*) and advanced workshop (*Planning for Action: Next Steps in Creating Safe Schools for Sexual Minority Youth*) are available at regional sites throughout the states. For more information, go to www.michigan.gov/mde-smy.
- ^v In a recent national study, Michigan was one of 20 states that scored an "F" in teaching about civil rights. Retrieved from <http://www.scribd.com/doc/266143260/Teaching-the-Movement-2014>.
- ^{vi} Note that changes in materials and methods that fall under the umbrella of sex education must go through approval process specified in MCL 380.1507.
- ^{vii} The Michigan Profiles for Healthy Youth (MiPHY) collects risk data on students in Grades 7, 9, and 11, with questions regarding students who identify as lesbian, gay, or bisexual or engage in same sex sexual behavior. Standard reports include cross tabulations that compare these students with all others on academic achievement. For more information, see www.michigan.gov/miphy.
- ^{viii} OCR enforces Title IX of the Education Amendments of 1972, which prohibits sex discrimination in educational programs and activities operated by recipients of Federal financial assistance. OCR has interpreted this prohibition to encompass discrimination based on gender identity, including discrimination based on a student's transgender status. See OCR's Questions and Answers on Title IX and Sexual Violence (2014) at B-2. Retrieved from <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.
- ^{ix} Note that schools should not be expected to make changes to unofficial student records that existed prior to the request for a name and gender change.
- ^x C. Foley, US Department of Education, ED*Facts* Partner Support Center, personal communication with C. Jones in CEPI, July 10, 2015.
- ^{xi} For more information, see Lambda Legal (2014). A transgender advocates guide to updating and amending school records: Frequently asked questions on FERPA. Retrieved from http://www.lambdalegal.org/sites/default/files/publications/downloads/factsheet_ferpa.pdf.
- ^{xii} In the event that the school does not have such a facility, every effort must be made to accommodate the student's needs.