

THIS POLICY WAS CREATED BY JCPS STAFF

POWERS AND DUTIES OF THE BOARD OF EDUCATION

E01.52

**Preemptive Effect of U.S. Constitution and Federal Law and
Protecting Transgender Children from Discrimination**

CONSTITUTIONAL BASIS

Article VI of the U.S. Constitution states in part, “This Constitution, and the Laws of the United States ... shall be the supreme Law of the Land... any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

When confronted with a circumstance when Kentucky law is in clear and explicit conflict with the U.S. Constitution or federal law, the federal provisions prevail and preempt state law, and the District is obligated to comply with the U.S. Constitution and federal law.

FINDING OF THE BOARD

The Board believes that certain provisions of KRS 158.159, KRS 158.191, and KRS 158.1415 as created or amended by of Senate Bill 150 (2023 RS) clearly and explicitly violate Title IX of the Education Amendments Act of 1972 or the Equal Protection Clause of 14th Amendment to the U.S. Constitution, or both. Two Board policies and administrative procedures created or amended to implement Senate Bill 150 reflect 150 and reflect this finding, and are:

- a) 09.141 Student Right to Privacy and Safety; and
- b) 09.13 Equal Educational Opportunities.

ACCESS TO FACILITIES AND THE EQUAL PROTECTION CLAUSE OF THE U.S. CONSTITUTION

Section 1 of the 14th Amendment of the U.S. Constitution states in part, that “No State shall make or enforce any law which shall...deny to any person within its jurisdiction the equal protection of the laws.”

KRS 158.189 requires the Board to adopt policies, that, “at a minimum, not allow students to use restrooms, locker rooms, or shower rooms that are reserved for students of a different biological sex” and is a clear and unambiguous violation of the Equal Protection Clause of the U.S. Constitution. The persuasive authority of the vast majority of opinions of Federal District Courts and Courts of Appeals concur.

In Grimm v. Gloucester County School Board, 972 F.3d 586 (4th Cir. June 26, 2020), a ruling which the U.S. Supreme Court chose to allow to remain in place, the 4th Circuit U.S. Court of Appeals upheld the District Court ruling that a similar bathroom policy violated the Equal Protection Clause. The court granted summary judgement on the plaintiff’s equal protection claim and held that the policy was “not substantially related to the important objective of protecting student privacy.” It also ruled that transgender individuals are subject to sex discrimination based on their non cisgender-conforming gender identity, and thus represent “at least a quasi-protected class” deserving of the application of heightened scrutiny.

Opinions of a large number of federal US Court of Appeals and U.S. District Courts concur that discrimination against transgender students, including through bathroom policies violate the Equal Protection Clause.⁷ Federal courts have “consistently rejected claims that transgender-inclusive polices violate the rights of others.⁸

**Preemptive Effect of U.S. Constitution and Federal Law and
Protecting Transgender Children from Discrimination**

(CONTINUED)

SEXUAL HARASSMENT UNDER TITLE IX OF THE EDUCATION AMENDMENTS ACT OF 1972

As a local educational agency that is a recipient of federal funding, the District is obligated to comply with Title IX regulations prohibiting sex discrimination in all operations of the District. Those regulations make clear that Title IX regulations preempt any state or local law in conflict with Title IX. Proposed Rule 34 C.F.R. 106.6(b), clarifying current interpretation of 34 C.F.R. 106.6(h) and 34 C.F.R. Section 106(b), states in part, “the obligation to comply with this part is not obviated or alleviated by any state or local law...”¹

The Office of Civil Rights first recognized that Title IX prohibits discrimination and harassment based on gender identity in 2014. While that and similar guidance was rescinded in 2017, it was reinstated in 2020 and remains in effect. The proposed revisions to the Title IX regulation, expected to be promulgated in 2023 will codify this guidance. The proposed definition of sex-based harassment includes “bases that were not expressly covered including harassment based on sex stereotypes, sex characteristics..., and gender identity.”²

As set forth in Board Policy 09.428111 and under the federal regulations implementing Title IX law, sexual harassment in educational programs or activities of the District is prohibited.^{3, 4} The Title IX definition of sexual harassment includes “unwelcome sexual conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District’s education program or activity.”³

The intentional, repeated, and ongoing misgendering or harassment of a student based on gender identity, including, but not limited to, the use of non-preferred pronouns of the student, constitutes sexual harassment as defined by Title IX. It is unwelcome and subjects a transgender student to embarrassment and humiliation; it can cause severe anxiety and depression affecting a student’s ability to learn and can affect attendance, denying the student equal access to instruction; it can lead to increased likelihood of self-harm and suicide. The depth of its cruelty and the impact on transgender students is objectively offensive.

KRS 158.191 states, “a local school district shall not require school personnel or students to use pronouns for students that do not conform to that particular student’s biological sex.” In so doing, the statute mandates the District to permit the sexual harassment of a student by an employee based on gender identity, essentially requiring the District to violate Title IX. As discussed above, the Supremacy Clause of the U.S. Constitution and Title IX itself require the District to comply with federal law when state law is in conflict.

A large number of opinions of the U.S. Court of Appeals concur that discrimination of against transgender students including through bathroom policies violate the Equal Protection Clause.⁵ Additionally, rulings from federal courts have consistently rejected claims that transgender-inclusive policies violate the rights of others.”⁶ Only a few courts have held that title IX does not discrimination based on gender identity.⁷

**Preemptive Effect of U.S. Constitution and Federal Law and
Protecting Transgender Children from Discrimination**

(CONTINUED)

REFERENCES:

¹ Proposed Rule 34 C.F.R. 106.6(b), clarifying current interpretation of 34 C.F.R. 106.6(h) and 34 C.F.R. Section 106(b).

² Proposed Rule 34 C.F.R. 106.2.

³ Title IX of the Education Amendments of 1972 (20 USC § 1681, et seq.); § 34 C.F.R. 106.30

⁴ Board Policy 09.428111

COURTS OF APPEALS

- a) Whitaker v. Kenosha Unified School District, 858 F.3d 1034 (7th Cir. May 30, 2017) (holding that discrimination against transgender students constitutes sex discrimination under Title IX and the Equal Protection Clause).
- b) Dodds v. U.S. Dept. of Education, 845 F.3d 217 (6th Cir. Dec.16, 2016) (holding that discrimination against transgender students likely constitutes sex discrimination under Title IX and the Equal Protection Clause).

District Courts

- a) Grimm v. Gloucester County School Board, 400 F.Supp.3d 444 (E.D. Va. Aug. 9, 2019) (holding that denying a transgender boy access to school restrooms matching his gender violated Title IX and the Equal Protection Clause).
- b) A.H. ex rel. Handling v. Minersville Area School District, 408 F.Supp.3d 536 (M.D. Pa. 2019) (holding that excluding a transgender girl from girls' school restrooms states a sex discrimination claim under Title IX and the Equal Protection Clause).
- c) Adams v. School Board of St. Johns County, 318 F.Supp.3d 1293 (M.D. Fla. Jul. 26, 2018) (holding that excluding transgender student from school restrooms consistent with his gender identity constituted sex discrimination under Title IX and the Equal Protection Clause).
- d) M.A.B. v. Board of Education of Talbot County, 286 F. Supp. 3d 704 (D. Md. March 12, 2018) (holding that prohibiting a transgender boy from boys' locker room based on transgender status is a Title IX sex-discrimination claim as well as a gender-stereotyping claim).
- e) Stone v. Trump, 280 F. Supp. 3d 747 (D. Md. Nov. 21, 2017) (discrimination against transgender people is gender-based discrimination under the Equal Protection Clause).
- a)f) Brown v. Dept. of Health and Hum. Servs., No. 8:16DCV569, 2017 WL 2414567 (D. Neb. June 2, 2017) (holding that discrimination against transgender people constitutes sex discrimination that is subject to heightened scrutiny under the Equal Protection Clause).

**Preemptive Effect of U.S. Constitution and Federal Law and
Protecting Transgender Children from Discrimination**

(CONTINUED)

REFERENCES (CONTINUED):

- g) Evancho v. Pine-Richland Sch. Dist., 237 F. Supp. 3d 267 (W.D. Pa. Feb. 27, 2017) (holding that excluding transgender students from restrooms consistent with their gender identity likely constitutes sex-based discrimination in violation of the Equal
- h) Bd. of Ed. of Highland Local Sch. Dist. v. U.S. Dep't of Educ., 208 F. Supp. 3d 850 (S.D. Ohio Sept. 26, 2016) (holding that excluding transgender student from restrooms consistent with her gender identity likely constituted sex-based discrimination under Title IX and the Equal Protection Clause).
- i) Whitaker v. Kenosha Unified School District, No. 16-CV-943-PP, 2016 WL 5239829 (E.D. Wis. Sept. 22, 2016) (holding that excluding transgender student from restrooms consistent with his gender identity likely constitutes sex-based discrimination under Title IX).

⁶ Cases rejecting claims that transgender-inclusive policies violate the rights of others

- a) Doe v. Boyertown Area School District, 897 F.3d 518 (3rd Cir. 2018), cert. denied, 139 S. Ct. 2636 (2019).
- b) Parents for Privacy v. Barr, No.18-35708 (9th Cir. Feb. 12, 2020).
- c) Students & Parents for Privacy v. U.S. Dep't of Educ., No. 16-cv-4945, 2016 WL 6134121 (N.D. Ill. Oct. 18, 2016) report and recommendation adopted, 2017 WL 6629520 (N.D. Ill. Dec. 29, 2017).
- d) Cruzan v. Special Sch. Dist. No. 1., 294 F.3d 981, 983 (8th Cir. 2002).

⁷Texas v. United States, 201 F. Supp. 3d 810 (N.D. Tex. Aug. 21, 2016) (holding that Title IX does not prohibit discrimination based on gender identity or transgender status).

CHANGES FROM PREVIOUSLY REVIEWED VERSION HIGHLIGHTED.

LEGAL: SB 150 (EFFECTIVE NOW) AMENDS KRS 158.1415 TO REQUIRE A POLICY TO RESPECT PARENTAL RIGHTS REGARDING HUMAN SEXUALITY. IT ALSO REQUIRES PARENTAL NOTIFICATION OF THE STUDENT'S PLANNED PARTICIPATION IN THE COURSE AND A PROCESS FOR WRITTEN CONSENT FROM THE PARENT OR GUARDIAN.

FINANCIAL IMPLICATIONS: NONE ANTICIPATED

TEXT IN BLUE IS KSBA RECOMMENDED LANGUAGE

TEXT IN RED REFLECT JCPS RECOMMENDED LANGUAGE CHANGES

CURRICULUM AND INSTRUCTION

08.13531

Human Sexuality

INSTRUCTION ON HUMAN SEXUALITY OR SEXUALLY TRANSMITTED DISEASES

Per KRS 158.1415, if a school council or, if none exists, the Principal adopts a curriculum for human sexuality or sexually transmitted diseases, instruction shall include but not be limited to the following content:

- ~~— Abstinence from sexual activity is the desirable goal for all school-age children;~~
- ~~— Abstinence from sexual activity is the only certain way to avoid unintended pregnancy, sexually transmitted diseases, and other associated health problems;~~
- ~~— The best way to avoid sexually transmitted diseases and other associated health problems is to establish a permanent mutually faithful monogamous relationship;~~
- ~~— A school policy to respect parental rights by ensuring that:
 - ~~— Children in grade five (5) and below do not receive any instruction through curriculum or programs on human sexuality or sexually transmitted diseases; or~~
 - ~~— Any child, regardless of grade level, enrolled in the district does not receive any instruction or presentation that has a goal or purpose of students studying or exploring gender identity, gender expression, or sexual orientation; and~~~~

Per KRS 1415(1)(d) and (e):

- a) A student in grade five (5) or below shall not receive any instruction through curriculum or programs on human sexuality or sexually transmitted diseases.
- b) A school shall adopt and implement a policy to notify a parent/guardian in advance and obtain a parent's/guardian's ~~the parent's~~ written consent before the parent's/guardian's child in grade six (6) or above receives any instruction through curriculum or programs on human sexuality or sexually transmitted diseases authorized under KRS 158.1415.

CURRICULUM REQUIREMENTS

Any course, curriculum, or program offered by a public school on the subject of human sexuality provided by school personnel or by a third party ~~third parties~~ authorized by the school shall:

- a) Provide an alternative course, curriculum, or program without any penalty to the student's grade or standing for students whose parents have not provided written consent as required by law;
- b) Be subject to an inspection by parents of participating students that allows parents to review the following materials:
 - 1) Curriculum;

Human Sexuality

CURRICULUM REQUIREMENTS (CONTINUED)

- 2) Instructional materials;
- 3) Lesson plans;
- 4) Assessments or tests;
- 5) Surveys or questionnaires;
- 6) Assignments; and
- 7) Instructional activities;
- c) Be developmentally appropriate; and
- d) Be limited to a curriculum that has been subject to the reasonable review and response by stakeholders in conformity with KRS 160.345.

NOTIFICATION OF A COURSE, CURRICULUM OR PROGRAM REGARDING HUMAN SEXUALITY

A public school offering any course, curriculum, or program on the subject of human sexuality shall provide written notification to the parents of a student at least two (2) weeks prior to the student's planned participation in the course, curriculum, or program. The written notification shall:

- a) Inform the parents of the provisions of the course or curriculum;
- b) Provide the date the course, curriculum, or program is scheduled to begin;
- c) Detail the process for a parent to review the materials;
- d) Explain the process for a parent to provide written consent for the student's participation in the course, curriculum, or program; and
- e) Provide the contact information for the teacher or instructor of the course, curriculum, or program and a school administrator designated with oversight.

PERMISSIBLE DISCUSSION AND RESPONSE TO QUESTIONS REGARDING HUMAN SEXUALITY

Nothing in this policy or KRS 158.1415 shall ~~This shall not~~ prohibit school personnel from:

- a) Discussing human sexuality, including the sexuality of any historic person, group, or public figure, where the discussion provides necessary context in relation to a topic of instruction from a curriculum approved pursuant to KRS 160.345; or
- b) Responding to a question from a student during class regarding human sexuality as it relates to a topic of instruction from a curriculum approved pursuant to KRS 160.345.

REFERENCES:

KRS 158.1415; KRS 160.345

RELATED POLICIES:

08.1; 08.23; 08.2322

LEGAL: SB 150 (EFFECTIVE NOW) CREATES A NEW SECTION OF KRS 158 TO REQUIRE THE BOARD TO ADOPT POLICIES NECESSARY TO PROTECT THE PRIVACY RIGHTS OF STUDENTS.

FINANCIAL IMPLICATIONS: COST OF LITIGATION DEFENDING THIS LEGISLATION

TEXT IN BLUE IS KSBA RECOMMENDED LANGUAGE

TEXT IN RED REFLECT JCPS RECOMMENDED LANGUAGE CHANGES

HIGHLIGHTED TEXT DIFFERENT THAN VERSION 1

STUDENTS

09.141

Student Right to Physical Privacy and Safety Privacy Rights

EVERY STUDENT HAS A RIGHT TO PHYSICAL PRIVACY AND SAFETY

Every student, regardless of sexual orientation, gender identity, or gender expression, has the right to physical privacy and safety when using a school restroom, locker room, or shower room. The district shall work to ensure that right to physical privacy is afforded to all students through actions including, but not limited to, Board and school policies, current and alternative uses of existing facilities, the alteration and renovation of existing facilities, and the design and construction of new facilities.

PUBLIC COMMENT REQUIRED

KRS 158.189 requires the Board, after allowing public comment at an open meeting, to adopt this Policy (09.141), necessary to protect the privacy rights for students.

FEDERAL LAW AND THE U.S. CONSTITUTION PREEMPT STATE LAW

As discussed in depth in Board Policy 01.52, when a state law is in clear and explicit conflict with the U.S. Constitution or federal law, the federal provisions prevail and preempt state law, and district is obligated to comply with the U.S. Constitution and federal law. The Board believes that KRS 158.159, created by Section 3 of Senate Bill 150 (2023 RS) constitutes sex discrimination under Title IX of the Education Amendments Act of 1972 and violates the Equal Protection Clause of the U.S. Constitution. This policy is reflective of that finding.

SCHOOL POLICY ON PHYSICAL PRIVACY AND SAFETY OF STUDENTS

In order to comply with District KRS 160.345 grants a school-based decision making council determination of use of school space during the school day related to improving classroom teaching and learning, including restrooms, locker rooms, and shower rooms. A school-based decision making council or Advisory Leadership Team shall adopt a policy that protects the privacy and safety of all students regardless of gender identity ~~that:~~

- ~~a) At at a minimum, does not allow students to use restrooms, locker rooms, or shower rooms that are reserved for students of a different biological sex; A student's biological sex shall be recorded in the District student data system as reported by the student's parent/guardian; and.~~
- ~~b) Provides a A student who asserts to school officials that his/her/their or her gender is different from his/her/their or her biological sex and whose parent/guardian or legal guardian provides written consent to school officials shall be provided with the best available accommodation, but that accommodation shall not include the use of school restrooms, locker rooms, or shower rooms designated for use by students of another the opposite biological sex while students of another the opposite biological sex are present or could be present.~~

STUDENTS

09.141

Student Right to Physical Privacy and Safety ~~Privacy Rights~~

SCHOOL POLICY ON PHYSICAL PRIVACY AND SAFETY OF STUDENTS (CONTINUED)

Acceptable accommodations for a student may include but are not limited to access to restrooms to students of all genders, restrooms reserved for people who share the gender identity of the student, single-stall restrooms or controlled use of faculty bathrooms, locker rooms, or shower rooms.

REFERENCES:

¹34 CFR Subtitle A PART 99—FAMILY EDUCATIONAL RIGHTS AND PRIVACY

KRS 158.189

Title IX of the Education Amendments Act of 1972

U.S. Constitution, Amendment XIV

RELATED POLICIES ~~RELATED POLICY:~~

E01.52

09.14

VERSION 2 – SAME AS VERSION 1

LEGAL: SB 150 (EFFECTIVE NOW) CREATES A NEW SECTION OF KRS 158 TO REQUIRE PARENTAL CONSENT FOR HEALTH OR MENTAL HEALTH SERVICES RELATING TO HUMAN SEXUALITY.

BECAUSE THE LEGISLATION DOES NOT EXPLICITLY REQUIRE THE ADOPTION OF A POLICY FOR IMPLEMENTATION, KSBA DID NOT PROVIDE RECOMMENDED LANGUAGE. JCPS STAFF HAS DETERMINED THAT A BOARD POLICY SETTING FORTH THE REQUIREMENTS OF THE LEGISLATION WOULD ASSIST SCHOOLS IN ENSURING COMPLIANCE BY SCHOOLS.

NEW TEXT IN BLUE REFLECTS JCPS RECOMMENDED LANGUAGE CHANGES

STUDENTS

09.22

Student Health and Safety

PRIORITY

Student health, welfare and safety shall receive priority consideration by the Board.

Rules and regulations on health and safety promulgated by the Kentucky Board of Education under Kentucky statute and by local and state regulatory agencies relating to student safety and sanitary conditions shall be implemented in each school.

HEALTH SERVICES TO BE PROVIDED

In keeping with applicable legal requirements, only licensed medical professionals or school employees who have been appropriately trained and authorized to do so shall provide health services to students.

Employees to whom health service responsibilities have been delegated must be approved in writing by the delegating physician, nurse practitioner or registered nurse. The approval form shall state the employee consents to perform the health service when the employee does not have the administration of health services in his/her contract or job description as a job responsibility, possesses sufficient training and skills, and has demonstrated competency to safely and effectively perform the health service. The approval form shall be maintained as required by law. Delegation of health service responsibilities shall be valid only for the current school year.¹

If the delegation involves administration of medication, the District will maintain proof that the employee has completed the required training provided by Health Services in accordance with the Kentucky Department of Education (KDE) requirements or as allowed under [KRS 158.838](#).

PARENT/GUARDIAN NOTIFICATION OF HEALTH AND MENTAL HEALTH SERVICES

At the beginning of each school year, or upon a student's enrollment in a District school, the District shall provide notification to a student's parent/guardian listing each of the health services as defined in KRS 156.502 and mental health services as defined in KRS 158.4416 available at the student's school related to human sexuality, contraception, or family planning, and of the parent/guardian's right to withhold consent or decline any of those specific services.

A school shall notify a student's parent/guardian if:

1. The school changes the health services or mental health services related to human sexuality, contraception, or family planning that it provides, or
2. A school employee intends to make a referral for a student to receive health services or mental health services:
 - a. Provided by the District; or
 - b. Provided by an external health care provider or mental health care provider as defined in KRS 158.191.

Student Health and Safety

PARENT/GUARDIAN NOTIFICATION OF HEALTH AND MENTAL HEALTH SERVICES (CONTINUED)

A school shall obtain parent/guardian consent prior to making a referral for health services or mental health services for a student. Consent of a parent/guardian for a student to receive a health service or mental health service shall not waive the parent/guardian's right to access the student's educational or health records held by the District. ⁵

PARENT/GUARDIAN RIGHT TO MAKE DECISIONS

The Superintendent/designee shall establish procedures for appropriately trained and certified District employees to encourage students to discuss mental or physical health or life issues with their parent/guardian or through facilitating the discussion with their parents. ⁵

INFORMATION TO BE PROVIDED TO A PARENT/GUARDIAN

A District employee shall comply with the provisions of the federal Family Educational Rights and Privacy Act, related federal regulations, Board Policy 09.14, and Administrative Procedure 09.14 AP.1 which afford a parent/guardian or student who has reached age 18 the right to have access to the student's education record for inspection and review. ⁶

KRS 158.191(5)(a) states in part that, "a district or school shall not adopt policies or procedures with the intent of keeping any student information confidential from parents." A District or school employee is not required under those provisions to provide confidential information about a student to a parent/or guardian. ⁵

Nothing in this policy or KRS 158.191(5) shall prohibit the District or district personnel from withholding information from a parent if a reasonably prudent person would believe, based on previous conduct and history, that the disclosure would result in the child becoming a dependent child or an abused or neglected child as defined in KRS 600.020.

An employee who knows or has reasonable cause to believe that a child is dependent, abused, or neglected shall immediately make a report to a local law enforcement agency, the Cabinet for Health and Family Services or its designated representative, the Commonwealth's Attorney, or the County Attorney, in accordance with Board Policy 09.227 and KRS 620.030.

The fact that district personnel withhold information from a parent under this policy shall not in itself constitute evidence of failure to report dependency, neglect, or abuse to the Cabinet for Health and Family Services under KRS 620.030. ⁵

DISTRICT RESPONSIBILITY FOR THE HEALTH AND SAFETY OF STUDENTS

Nothing in this policy shall:

1. Prohibit the District or the District's personnel from seeking or providing emergency medical or mental health services for a student as outlined in the District's policies; or
2. Remove the duty to report pursuant to KRS 620.030 if a District employee has reasonable cause to believe the child is a dependent child or an abused or neglected child due to the risk of physical or emotional injury identified in KRS 600.020(1)(a)2. or as otherwise provided in that statute. ⁵

STUDENTS

09.22
(CONTINUED)

Student Health and Safety

SAFETY PROCEDURES

All students shall receive annual instruction in school bus safety.

The Superintendent shall develop procedures designed to promote the safety of all students. Said procedures shall specify specific responsibilities for line positions having responsibility for student supervision.

STUDENT IDENTIFICATION BADGES

Any student identification badge issued to a student in grades six (6) through twelve (12) by a school in the District shall contain the contact information for:

- a) A national domestic violence hotline;
- b) A national sexual assault hotline; and
- c) A national suicide prevention hotline.⁴

SUICIDE PREVENTION

All employees with job duties requiring direct contact with students in grades four (4) through twelve (12) shall annually complete a minimum one (1) hour of high-quality suicide prevention training, including the recognition of signs and symptoms of possible mental illness. Such training shall be in-person, by live streaming, or via video recording and may be included in the four (4) days of professional development required by statute. The District shall provide suicide prevention materials for review by any employee subject to training hired during a year in which the in-person, live streaming, or video recording training is not required.³

By September 15 of each year, each public school shall provide suicide prevention awareness information to students in grades four (4) through twelve (12), as provided by the Cabinet for Health and Family Services or a commercially developed suicide prevention training program.²

SEIZURE DISORDER MATERIALS

All principals, guidance counselors, and teachers shall complete at least one (1) hour of self-study review of seizure disorder materials no later than July 1, 2019. At least one (1) hour of self-study review of seizure disorder materials shall also be required for all principals, guidance counselors, and teachers hired after July 1, 2019.³

REFERENCES:

¹[KRS 156.501](#); [KRS 156.502](#); [702 KAR 001:160](#)

²[KRS 156.095](#)

³[KRS 158.070](#)

⁴[KRS 158.038](#)

⁵[KRS 158.191\(5\)\(a\)](#)

⁶20 U.S.C. § 1232g; 34 CFR Part 99; Board Policy 09.14

[KRS 156.160](#); [KRS 158.838](#), [KRS 156.502](#), [KRS 158.4416](#)
[702 KAR 005:030](#)

STUDENTS

09.22
(CONTINUED)

Student Health and Safety

RELATED POLICY:

09.2241

09.14

Adopted/Amended: 7/21/2020

Order #: 2020-101

VERSION 2 – SAME AS VERSION 1

LEGAL: SB 150 (EFFECTIVE NOW) CREATES A NEW SECTION OF KRS 158 TO REQUIRE PARENTAL CONSENT FOR HEALTH OR MENTAL HEALTH SERVICES RELATING TIO HUMAN SEXUALITY.

BECAUSE THE LEGISLATION DOES NOT EXPLICITLY REQUIRE THE ADOPTION OF A POLICY FOR IMPLEMENTATION, KSBA DID NOT PROVIDE RECOMMENDED LANGUAGE. JCPS STAFF HAS DETERMINED THAT A BOARD POLICY SETTING FORTH THE REQUIREMENTS OF THE LEGISLATION WOULD ASSIST SCHOOLS IN ENSURING COMPLIANCE BY SCHOOLS.

TEXT IN BLUE REFLECT JCPS RECOMMENDED LANGUAGE CHANGES

STUDENTS

09.22 AP.2

Parent-Student Discussion of Health and Mental Health Issues

District personnel shall respect the rights of a parent/guardian to make decisions regarding the upbringing and control of his/her/their child. An appropriately trained and certified school employee, including, but not limited to, a principal, assistant principal, counselor, mental health practitioner, school psychologist, or school social worker, who engages with a student regarding a mental health, physical health, or life issue is authorized to encourage a student to discuss the issue with his/her/their parent/guardian and may facilitate such a discussion.

Nothing in this procedure shall prohibit a District employee from refraining from encouraging or facilitating a discussion between a student and a parent/guardian if a reasonably prudent person would believe, based on previous conduct and history, that the discussion would result in the child becoming a dependent child or an abused or neglected child as defined in KRS 600.020. The fact that a District employee does not encourage or facilitate from a parent under this subsection shall not in itself constitute evidence of failure to report dependency, neglect, or abuse to the Cabinet for Health and Family Services under KRS 620.030.

REFERENCES:

SB 150/EN (2023 RS), Section 1

KRS 600.020

KRS 620.030

RELATED POLICY:

09.22

CHANGES FROM PREVIOUSLY REVIEWED VERSION HIGHLIGHTED

HIGHLIGHTED TEXT DIFFERENT THAN VERSION 1

ALL CHANGES ARE PROVIDED BY JCPS STAFF.

STUDENTS

09.13

Equal Educational Opportunities

DISCRIMINATION PROHIBITED

As required by Title IX, the District does not discriminate on the basis of sex regarding admission to the District or in the educational programs or activities operated by the District. Inquiries regarding Title IX Sexual Harassment may be referred to the District Title IX Coordinator (TIXC), the Assistant Secretary for the Office of Civil Rights, or both.¹

No student shall be subject to unlawful discrimination because of race, color, national origin, age, religion, marital or parental status, political affiliations or beliefs, sex (including sexual orientation or gender identity), gender expression, veteran status, or disability.²

STUDENTS WITH DISABILITIES

The District shall provide a free, appropriate public education to each qualified student with a disability, as defined by law, within its jurisdiction.

The District shall operate its programs in accordance with the procedures addressing requirements of the Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2009, and Section 504 of the Rehabilitation Act of 1973.

Parents of students who have a temporary or permanent disability may request the District supervisor to provide appropriate accommodations necessary for them to participate in instructional and extracurricular activities, as required by law. Students who are at least eighteen (18) years of age may submit their own requests.

STUDENT RELIGIOUS ACTIVITIES OR POLITICAL EXPRESSION

The District shall observe the rights of students to voluntarily engage in religious activities. Students may express religious or political viewpoints while at school to the same extent and under the same circumstances as other permitted activities or expression consistent with the Constitutions of the United States and the Commonwealth of Kentucky and law, students shall be permitted to engage in these activities and express these viewpoints, provided they do not:

1. Infringe on the rights of the school to:
 - a. Maintain order and discipline;
 - b. Prevent disruption of the educational process; and
 - c. Determine education curriculum;
2. Harass other persons or coerce other persons to participate in the activity; or
3. Otherwise infringe on the rights of other persons.

Student complaints concerning possible violations of their rights of religious or political expression shall be addressed in keeping with legal requirements. Their complaints shall be directed to the Principal, who shall investigate and take appropriate action within thirty (30) days of receipt of the written notification.

Equal Educational Opportunities

CERTIFIED EMPLOYEE ETHICAL OBLIGATIONS TO STUDENTS

As set forth Board Policy 03.17 Discipline/Nonrenewal/Resignation by Employee (Certified), a certified employee shall comply with 16 KAR 1:020 Professional Code of Ethics for Kentucky School Certified Personnel, which requires that:

Certified personnel in the Commonwealth...shall strive to uphold the responsibilities of the education profession, including the following obligations to students:

1. Shall provide students with professional education services in a nondiscriminatory manner and in consonance with accepted best practice known to the educator;
2. Shall respect the constitutional rights of all students;
3. Shall take reasonable measures to protect the health, safety, and emotional well-being of students;
4. Shall not use professional relationships or authority with students for personal advantage;
5. Shall keep in confidence information about students which has been obtained in the course of professional service, unless disclosure serves professional purposes or is required by law;
6. Shall not knowingly make false or malicious statements about students or colleagues;
- 4-7. Shall refrain from subjecting students to embarrassment or disparagement; and
8. Shall not engage in any sexually related behavior with a student with or without consent but shall maintain a professional approach with students.³

Violation of 16 KAR 1:020 Professional Code of Ethics for Kentucky School Certified Personnel may result in cause to initiate proceedings for revocation or suspension of Kentucky certification.^{3,4}

An employee who violates provisions of the Professional Code of Ethics for Kentucky School Certified Personnel may be subject to disciplinary action, up to and including termination.

The intentional, repeated, and ongoing misgendering or harassment of a student, including, but not limited to, the use of non-preferred pronouns of the student, is considered by the District to may constitute a violation of the Professional Code of Ethics for Kentucky Certified Personnel and Board Policy 03.17 and may subject an employee to proceedings to revoke or suspend certification and disciplinary action by the District. An employee does so at his/her/their own risk.

DISRUPTING THE EDUCATIONAL PROCESS BY AN EMPLOYEE

Board Policy 03.1325 (Certified) and 03.2325 (Classified) states that “any employee who participates in or encourages activities that disrupt the educational process, may be subject to disciplinary action, including termination.” Under these policies, disrupting the educational process includes “conduct that interferes with a student's access to educational opportunities or programs, including ability to attend, participate in, and benefit from instructional and extracurricular activities.” The intentional, repeated, and ongoing misgendering or harassment of a student, including, but not limited to, the use of non-preferred pronouns of the student,

Equal Educational Opportunities**DISRUPTING THE EDUCATIONAL PROCESS BY AN EMPLOYEE CONTINUED)**

constitutes a violation of Board Policy 03.1325 or 03.2325 and may subject an employee to disciplinary action by the District, including termination.

FEDERAL LAW PREEMPTS STATE LAW

As discussed in depth in Board Policy 01.52, when a state law is in clear and explicit conflict with federal law, the federal provisions prevail and preempt state law, and district is obligated to comply with the federal law. The Board believes that KRS 158.159, created by Section 3 of Senate Bill 150 (2023 RS) constitutes sex discrimination under Title IX of the Education Amendments Act of 1972. This policy is reflective of that finding.

SEXUAL HARASSMENT UNDER TITLE IX

As set forth in Board Policy 09.428111 and under the federal regulations implementing Title IX law, sexual harassment in educational programs or activities of the District is prohibited.^{6,7}

The definition of sexual harassment includes “unwelcome sexual conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District’s education program or activity.”⁶

The intentional, repeated, and ongoing misgendering or harassment of a student, including, but not limited to, the use of non-preferred pronouns of the student, ~~constitutes~~ may constitute sexual harassment as defined in Title IX and may subject the teacher to formal grievance proceedings under federal law and set forth in Board Policy 09.42811 and may result disciplinary action by the District. An employee does so at his/her/their own risk.

RESEARCH REGARDING GENDER-AFFIRMING PRACTICES AND ENVIRONMENTS TO SUPPORT STUDENT WELL-BEING

Every District student deserves fair treatment and equal access to a quality education regardless of sexual orientation, gender identity, or gender expression. The District shall strive to foster a healthy and positive school culture in every school in which every student can experience equally supportive learning environments and opportunities that help them learn and thrive.

As determined by the Superintendent/designee, the District shall distribute to all employees, on an annual basis, credible, peer-reviewed research, regarding the impact on the health and well-being of transgender, nonbinary, and gender-nonconforming children of gender-affirming practices and environments.

REFERENCES:

¹34 C.F.R. § 106.8

²Bd. of Educ., etc. v. Rowley 102 S.Ct. 3034 (1982)

³16 KAR 1:020

⁴KRS 161.120, 16 KAR 1:030

⁵Board Policy 03.17

⁶Title IX of the Education Amendments of 1972 (20 USC § 1681, et seq.); § 34 C.F.R. 106.30

Equal Educational Opportunities

REFERENCES (CONTINUED)

⁷ [Board Policy 09.428111](#)

District special education policy and procedures manual; District 504 procedures

[KRS 157.200](#); [KRS 157.224](#); [KRS 157.230](#); [KRS 157.350](#); [KRS 158.183](#)

[KRS 160.295](#); Age Discrimination Act of 1975

Section 504 of Rehabilitation Act of 1973, Americans with Disabilities Act

Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972

Vietnam Era Veterans Readjustment Assistance Act of 1974

-Kentucky Education Technology System (KETS); 28 C.F.R. 35.101 et seq.

Bostock v. Clayton County, Georgia 140 S.Ct. 1731 (2020)

RELATED POLICIES:

03.113; 03.1621; [03.17](#); 03.212; 03.2621; 05.11; 08.131; 09.3211; 09.428111

Adopted/Amended: 7/13/2021

Order #: 2021-114

VERSION 2 – SAME AS VERSION 1

ALL LANGUAGE IS PROVIDED BY JCPS STAFF.

STUDENTS

09.13 AP.1

**Research Regarding Gender-Affirming Practices and Environments
to Support Student Well-Being**

The District shall distribute to all employees, on an annual basis, the following summary of credible, peer-reviewed research regarding the impact on the health and well-being of transgender, nonbinary, and gender-nonconforming children of gender-affirming practices and environments.

“Gender-Affirming Policies Support Transgender and Gender Diverse Youth’s Health” Society for Research in Child Development. January 2022.

<https://www.srcd.org/sites/default/files/resources/SRCD%20SOTE-Gender%20Affirming%20Policies%202022.pdf>

“Chosen Name Use is Linked to Reduced Depressive Symptoms, Suicidal Ideation and Behavior among Transgender Youth” Journal of Adolescent Health. March 30, 2018.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6165713/>

“A Right to Disclose: LGBTQ Youth Representation in Data, Science, and Policy.” Advances in Child Development and Behavior. Volume 50, 2016.

<https://www.sciencedirect.com/science/article/abs/pii/S006524071500052X?via%3Dihub>

“Gender Affirmation Is Associated with Transgender and Gender Nonbinary Youth Mental Health Improvement” LGBT Health. July 13, 2020.

<https://www.liebertpub.com/doi/10.1089/lgbt.2019.0046>

“Does a Decade of School Administrator Support for Educator Training on Students' Sexual and Gender Identity Make a Difference for Students' Victimization and Perceptions of School Climate?” Prevention Science. January 23, 2022.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9171694/>

“School Climate for Transgender Youth: A Mixed Method Investigation of Student Experiences and School Responses” Journal of Youth and Adolescence. April 15, 2010.

<https://link.springer.com/article/10.1007/s10964-010-9540-7>

VERSION 2 – SAME AS VERSION 1

LEGAL: SB 150 (EFFECTIVE NOW) CREATES A NEW SECTION OF KRS 158 TO REQUIRE THE BOARD TO ADOPT POLICIES NECESSARY TO PROTECT THE PRIVACY RIGHTS OF STUDENTS.

KSBA DID NOT PROVIDE ANY RECOMMENDED LANGUAGE.

TEXT IN BLUE REFLECT JCPS RECOMMENDED LANGUAGE CHANGES. THE PRIVACY RIGHTS OF STUDENTS INCLUDE PROTECTIONS UNDER FERPA FOR STUDENT INFORMATION TO BE ASSESSED ONLY BY AN AUTHORIZED PERSON WITH A LEGITIMATE EDUCATIONAL INTEREST.

STUDENTS

09.14

Student Records

Except as otherwise provided by law, student education records are those records recorded in any medium that are directly related to a student and maintained by the District or by a party acting for the District.

TYPES OF STUDENT RECORDS

Student records include, but are not limited to:

1. Personal and family data;
2. Evaluation and test data;
3. Medical and psychological reports;
4. Records of school achievement, progress reports and portfolios;
5. Records of conferences with students and/or parents (including Individual Education Programs for exceptional children);
6. Copies of correspondence concerning a student;
7. Photographs/video records of a student;
8. Discipline records;
9. Other information or data that may be useful in working with a student and/or required by state or federal law.

Student records shall be retained as required by law.

PROCEDURE TO BE ESTABLISHED

The Superintendent/designee shall develop procedures for the development, maintenance, use, storage, dissemination, and destruction of student records and to promote effective notification of parents and eligible students of their rights under the Family Educational Rights and Privacy Act (FERPA) and to ensure District compliance with applicable state and federal student record requirements.

DISCLOSURE OF RECORDS

Student records shall be made available for inspection and review to the parent(s) of a student or to an eligible student on request. Legal separation or divorce alone does not terminate a parent's record access rights. Eligible students are those 18 years of age or older or those duly enrolled in a post-secondary school program. In general, FERPA rights pass to the eligible student upon either of those events. Parents may be provided access to the educational records of an eligible student 18 years old or older if the student is dependent under federal tax laws.¹

Student records shall be developed, maintained, stored, used, released, disseminated, and destroyed in compliance with applicable state and federal laws and regulations.

State and federal laws and regulations assuring parent/student rights to review and access student records, and to provide for the privacy and confidentiality of student records shall be followed.

Student Records**DISCLOSURE OF RECORDS (CONTINUED)**

Considering the totality of the circumstances, the District may disclose information from education records to appropriate parties, including parents of eligible students, whose knowledge of the information is necessary to protect the health or safety of a student or another individual, if there is an actual, impending, or imminent articulable and significant threat to the health or safety of a student or other individual. In such instances, the basis for a decision that a health or safety emergency existed shall be recorded in the student's education records.

Authorized District personnel also may disclose personally identifiable information to the following:

- Officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll or is already enrolled, so long as the disclosure is for purposes related to the student's enrollment or transfer;
- School officials (such as teachers, instructional aides, administrators, including health or medical staff and law enforcement unit personnel) and other service providers (such as contractors, consultants, and volunteers used by the District to perform institutional services and functions) having a legitimate educational interest in the information.

ACCESS TO INFORMATION REGARDING THE BIOLOGICAL SEX OF STUDENT

KRS 158.189 defines "Biological sex" to mean "the physical condition of being male or female, which is determined by a person's chromosomes, and is identified at birth by a person's anatomy."

Except as provided in KRS 156.070(2)(g), and in accordance with 34 CFR § 99.31 implementing the federal Family Educational Rights and Privacy Act, District and school officials/staff may only access student education record information in which the District determines they have a legitimate educational interest.

The biological sex of a student is required under state law to be entered into the student data system based on the student's birth certificate, or if no birth certificate is provided, based on information provided by the parent/guardian to the school or District. Such information may only be accessed by an employee who has a legitimate educational interest to comply with state or federal law and who has been trained and given registrar rights to access information in the student data system. Beyond that limited use, there is no legitimate educational interest in knowing the biological sex of a student defined in KRS 158.189.

Beyond requesting a birth certificate of a student from a parent/guardian as permitted under law, District and school officials and staff are prohibited from asking a student or parent/guardian for information regarding or requiring proof of a student's biological sex based on a student's chromosomes or anatomy.

DISCLOSURE TO REPRESENTATIVES FOR FEDERAL OR STATE PROGRAM PURPOSES

Personally identifiable student information may be released to those other than employees who are designated by the Superintendent in connection with audit, evaluation, enforcement, or compliance activities regarding Federal or State programs. Such designation must be executed in writing with the authorized representative and specify information as required by 34 C.F.R. Part 99.35.

Duty to Report

If it is determined that the District cannot comply with any part of FERPA or its implementing regulations due to a conflict with state or local law, the District must notify the Family Policy

Student Records**DUTY TO REPORT (CONTINUED)**

Compliance Office (FPCO) within forty-five (45) days of the determination and provide the text and citation of the conflicting law.

DIRECTORY INFORMATION

The Superintendent/designee is authorized to release student directory information to organizations or individuals upon written request. A student's name, school mailing address, guardian email address, grade level, honors and awards, photograph including use of student photographs in school District publications, school District social media, on the school District's website and to news media, video or film of students when filmed by the District for educational purposes or for promotional use or filmed by news media, and major field of study shall constitute directory information. Photos and video that would generally be considered harmful or an invasion of privacy if disclosed are not directory information. A student's date of birth shall constitute directory information only for purposes of the U.S. Department of Education Free Application for Federal Student Aid (FAFSA) Completion Project. The Superintendent/designee shall develop a form to permit parents and eligible students to opt-out of the release of directory information.

Information about the living situation of a student designated as homeless is not to be treated as directory information and is not to be disclosed unless prior written consent is given or unless the information meets one of FERPA's exceptions to required consent. The living situation is not considered directory information.

The District allows for disclosure of directory information only to specific parties for specific purposes. Such limitations are specified in the student directory information notification.

Parents/guardian/eligible students must either permit release of all directory information or opt out of release of all directory information.

Unless the parent/guardian or student who has reached age 18 requests in writing that the District not release such information, the student's name, address, and telephone number shall be released to Armed Forces recruiters and institutions of higher education upon their request.

SURVEYS OF PROTECTED INFORMATION

The District shall provide direct notice to parents/guardian to obtain prior written consent for their minor child to participate in any protected information survey, analysis, or evaluation, if the survey is funded in whole or in part by a program of the U.S. Department of Education.

Parents/eligible students also shall be notified of and given opportunity to opt their child out of participation in the following activities:

1. Any other protected information survey, regardless of funding;
2. Any non-emergency, invasive physical exam or screening required as a condition of attendance, administered by the school or its agent, and not necessary to protect the immediate health and safety of a student, except for any physical exam or screening permitted or required under State law; and
3. Activities involving collection, disclosure, or use of personal information obtained from students for marketing or to sell or otherwise distribute the information to others.

Student Records

SURVEYS OF PROTECTED INFORMATION (CONTINUED)

Parents/eligible students may inspect, upon written request and prior to administration or use, materials or instruments used for the collection, disclosure, or use of protected information.

These requirements do not apply to evaluations administered to students in accordance with the Individuals with Disabilities Education Act (IDEA).

WELL-BEING QUESTIONNAIRES, ASSESSMENTS, OR HEALTH SCREENING FORMS

Prior to a well-being questionnaire or assessment, or a health screening form being given to a student for research purposes, the District shall provide the student's parent/guardian with access to review the material and shall obtain parent/guardian consent. Parental consent shall not be a general consent to these assessments or forms but shall be required for each assessment or form.

A parent's refusal to consent shall not be an indicator of having a belief regarding the topic of the assessment or form.²

STUDENTS WITH DISABILITIES

The District's special education policy and procedures manual shall include information concerning records of students with disabilities.

RECORDS RELEASE TO JUVENILE JUSTICE SYSTEM

Once a complaint is filed with a court-designated worker alleging that a child has committed a status offense or public offense, schools shall provide all records specifically requested in writing, and pertaining to that child to any agency listed as part of Kentucky's juvenile justice system in [KRS 17.125](#) if the purpose of the release is to provide the juvenile justice system with the ability to effectively serve, prior to adjudication, the needs of the student whose records are sought. The authorities to which the data are released shall certify that any educational records obtained

pursuant to this section shall only be released to persons authorized by statute and shall not be released to any other person without the written consent of the parent of the child. The request, certification, and a record of the release shall be maintained in the student's file.

RECORDS OF MISSING CHILDREN

Upon notification by the Commissioner of Education of a child's disappearance, the District shall flag the record of such child in a manner that whenever a copy of or information regarding the child's record is requested, the District shall be alerted to the fact that the record is that of a missing child. Instead of forwarding the records of a child who has been reported missing to the agency, institution, or individual making the request, the District shall notify the Justice Cabinet.

COURT ORDER/SUBPOENA

Prior to complying with a lawfully issued court order or subpoena requiring disclosure of personally identifiable student information, school authorities shall make a documented effort to notify the parent or eligible student. However, in compliance with FERPA, when a lawfully issued court order or subpoena requires disclosure be made without notification of the student or parent, the District shall comply with that requirement. If the District receives such an order, the matter may be referred to the General Counsel for advice.

STUDENTS

09.14
(CONTINUED)

Student Records

REFERENCES:

¹[KRS 158.153](#); [KRS 610.320](#); [KRS 610.340](#); [KRS 610.345](#)

²[KRS 158.191](#)

[KRS 7.110](#); [KRS 15A.067](#); [KRS 17.125](#); [KRS 158.032](#); [KRS 159.160](#); [KRS 159.250](#)

[KRS 160.990](#); [KRS 161.200](#); [KRS 161.210](#)

[KRS 365.732](#); [KRS 365.734](#)

[702 KAR 001:140](#); [702 KAR 003:220](#)

20 U.S.C. 1232g, 34 C.F.R. 99.1 - 99.67

20 U.S.C. 1232h (Protection of Pupil Rights Amendment); 34 C.F.R. 98

[OAG 80-33](#); [OAG 85-130](#); [OAG 85-140](#); [OAG 86-2](#); [OAG 93-35](#)

Kentucky Family Educational Rights and Privacy Act ([KRS 160.700](#); [KRS 160.705](#)

[KRS 160.710](#); [KRS 160.715](#); [KRS 160.720](#); [KRS 160.725](#); [KRS 160.730](#))

20 U.S.C. § 1400 et seq. Individuals with Disabilities Education Act (IDEA)

Kentucky Education Technology System (KETS)

P. L. 114-95, (Every Student Succeeds Act of 2015)

42 U.S.C. 11431 et seq. (McKinney-Vento Act)

RELATED POLICIES:

09.111; 09.12311; 09.43

Adopted/Amended: 6/8/2021

Order #: 2021-95