

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

HIGHLIGHTED CHANGES HAVE BEEN INCORPORATED BY JCPS FOR VERSION 3

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:

- a) Abstinence from sexual activity is the desirable goal for all school age children;
- b) Abstinence from sexual activity is the only certain way to avoid unintended pregnancy, sexually transmitted diseases, and other associated health problems;
- c) The best way to avoid sexually transmitted diseases and other associated health problems is to establish a permanent mutually faithful monogamous relationship;
- d) A school policy to respect parental rights by ensuring that:
 - 1. Children in grade five (5) and below do not receive any instruction through curriculum or programs on human sexuality or sexually transmitted diseases; or
 - 2. 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):

- e) A student in grade five (5) or below shall not receive any instruction through curriculum or programs on human sexuality or sexually transmitted diseases. Notwithstanding this requirement and as required by KRS 156.095(8), elementary schools shall implement child sexual abuse prevention strategies based on Kentucky Academic Standards and trainings approved by the Kentucky Department of Education and adopted by the District.
- f) 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;

Human Sexuality

CURRICULUM REQUIREMENTS (CONTINUED)

- b) Be subject to an inspection by parents of participating students that allows parents to review the following materials:
 - 1) Curriculum;
 - 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

Human Sexuality

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 REFLECTS JCPS RECOMMENDED LANGUAGE CHANGES

HIGHLIGHTED CHANGES HAVE BEEN INCORPORATED BY JCPS FOR VERSION 3.

STUDENTS

09.141

Student Right to Physical Privacy and Safety Privacy Rights

STATEMENT OF CONCERN REGARDING THE PROVISIONS OF SENATE BILL 150 (2023 RS)

As a public school system, the District is obliged to serve all children whose parents/guardians wish to enroll their children in a District school. KRS 160.290 requires the Board to “make and adopt, and may amend or repeal, rules, regulations, and bylaws...for the management of the schools.” Board must therefore adopt policies that ensure that all students have equal access to educational opportunities and are protected from discrimination.

The Board believes that Senate Bill 150 (2023 RS), which targets transgender students simply because of their non-conforming gender identity, is discriminatory, may create barriers to access to equal educational opportunity, may limit the rights of parents/guardians, and may endanger the health, safety, and lives of hundreds of children in District schools.

By forbidding the Board to adopt a policy to prohibit the intentional, repeated, and ongoing misgendering of students, Senate Bill 150 nullifies the rights of trans-affirming parents/guardians to make personal decision impacting the education of their children and may create barriers to transgender students having equal access to educational programs and activities. The legislation creates uncertainty regarding the degree to which the confidentiality of students must be protected by employees, possibly creating dangerous, potentially life-threatening situations for some students. Certain provisions of Senate Bill 150 may create a mechanism for systematic and repeated trauma of children through a misguided bathroom policy, which may cause increased levels of anxiety, depression, and potential self-harm of transgender children.

While not settled law, the persuasive authority of a majority of opinions in federal U.S. Courts of Appeals and District Courts suggest that many of the school-related provisions of Senate Bill 150 (2023 RS) may 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. The Board strongly supports efforts for impacted children and their parents/guardians to seek relief through the courts to protect their rights to equal educational opportunities in public schools. The Board looks forward to clarification from the courts that will hopefully ensure equal educational opportunity for all students. Until that time, the Board reluctantly implements Senate Bill 150 (2023 RS) via the following policy.

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 alternative uses of existing facilities, the alteration and renovation of existing facilities, and the design and construction of new facilities.

Student Right to Physical Privacy and Safety

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.

SCHOOL POLICY ON PHYSICAL PRIVACY AND SAFETY OF STUDENTS

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:

- a) ~~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 a different the opposite~~ biological sex while students of a different ~~the opposite~~ biological sex are present or could be present.

Acceptable accommodations may include but are not limited to access to, single-stall restrooms or controlled use of faculty bathrooms, locker rooms, or shower rooms.

EXCEPTION TO POLICY FOR A STUDENT WITH GENDER DYSPHORIA

The American Psychiatric Association describes Gender Dysphoria as a condition characterized by "psychological distress that results from an incongruence between one's sex assigned at birth and one's gender identity."² In order to meet the criteria for a diagnosis of Gender Dysphoria under the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5), the condition must be associated with clinically significant distress or impairment in social, occupational and other important areas of functioning. Research shows that 73 percent of transgender men and 78 percent of transgender women experience gender dysphoria by age seven.³

A diagnosis of gender dysphoria may support a finding that a student has a disability and is eligible for either a 504 Plan under Section 504 of the Rehabilitation Act of 1973 or an Individual Education Program (IEP) under the Individuals with Disabilities Education Act (IDEA). The Fourth Circuit Court of Appeals has held that gender dysphoria can be a "physical or mental impairment" for purposes of the Americans with Disabilities Act (ADA) and Section 504.⁴ The ADA excludes gender identity disorders not resulting from physical impairments."⁵ In *Williams*, however, the Fourth Circuit found that gender dysphoria is not a gender identity disorder.

This holding and the new definition contained in the DSM-5 allows the recognition of gender dysphoria as a disability. That could entitle a student with gender dysphoria to certain accommodations on a 504 Plan or IEP, as determined by a Section 504 Committee or an IDEA Admissions and Release Committee. Such accommodations may include permitting access and use of a certain restroom for a student.

Student Right to Physical Privacy and Safety

REFERENCES:

KRS 158.189

20 U.S.C. § 1400 et seq. Individuals with Disabilities Education Act (IDEA)
Section 504 of the Rehabilitation Act of 1973

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

² “What is Gender Dysphoria?” American Psychiatric Association. Accessed on July 28, 2023 at:

[https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria.](https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria)

³Age at First Experience of Gender Dysphoria Among Transgender Adults Seeking Gender-Affirming Surgery. Michael Zaliznyak, BA; Catherine Bresee, MS; Maurice M. Garcia, MD, MAS. *JAMA Netw Open.* 2020;3(3):e201236. doi:10.1001/jamanetworkopen.2020.1236

⁴ *Williams v. Kincaid*, 45 F.4th 759 (4th Cir. 2022)

⁵42 U. S. C. § 12211(a) and (b)(1)

RELATED POLICY:

09.14

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 COMLIANCE 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

Student Health and Safety

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

- b. Provided by an external health care provider or mental health care provider as defined in KRS 158.191.

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

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](#)

Student Health and Safety

RELATED POLICY:

09.2241

09.14

Adopted/Amended: 7/21/2020

Order #: 2020-101

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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:

[KRS 158.191](#)

[KRS 600.020](#)

[KRS 620.030](#)

RELATED POLICY:

09.22

ALL CHANGES ARE PROVIDED BY JCPS STAFF.

HIGHLIGHTED CHANGES HAVE BEEN INCORPORATED BY JCPS FOR VERSION 3.

STUDENTS

09.13

Equal Educational Opportunities

STATEMENT OF CONCERN REGARDING THE PROVISIONS OF SENATE BILL 150 (2023 RS)

As a public school system, the District is obliged to serve all children whose parents/guardians wish to enroll their children in a District school. KRS 160.290 requires the Board to “make and adopt, and may amend or repeal, rules, regulations, and bylaws...for the management of the schools.” Board must therefore adopt policies that ensure that all students have equal access to educational opportunities and are protected from discrimination.

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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

Equal Educational Opportunities

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.

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;

Equal Educational Opportunities

CERTIFIED EMPLOYEE ETHICAL OBLIGATIONS TO STUDENTS (CONTINUED)

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;
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

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.

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 by the Education Professional Standards Board (EPSB).^{3, 4}

KRS 161.120 establishes the duty of the Superintendent/designee to report to the ESPB misconduct by a certified employee that “might reasonably be expected to warrant consideration for action” against the employee’s educator certificate. This includes violation of the Professional Code of Ethics for Kentucky School Certified Personnel.

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, 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. Such conduct shall also be reported to the EPSB as required under KRS 161.120.

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.” Behavior that disrupts 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, may constitute a violation of Board Policy 03.1325 or 03.2325 and may subject an employee to disciplinary action by the District, including termination.

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}

STUDENTS

09.13
(CONTINUED)**Equal Educational Opportunities****SEXUAL HARASSMENT UNDER TITLE IX (CONTINUED)**

The definition of sexual harassment under Title IX 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, 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.

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

⁷Board 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

STUDENTS

09.13
(CONTINUED)

Equal Educational Opportunities

Adopted/Amended: 7/13/2021

Order #: 2021-114

ALL LANGUAGE IS PROVIDED BY JCPS STAFF.

HIGHLIGHTED CHANGES HAVE BEEN INCORPORATED BY JCPS FOR VERSION 3.

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.

Summary: Transgender and gender diverse (TGD) youth are more likely to experience poor health than their peers whose gender identity aligns with their assigned sex at birth due to stigma and marginalization. School policies that protect, include, and affirm TGD youth’s gender identities are associated with positive mental health and academic outcomes. TGD youth who have access to gender-affirming medical care experience improvements in mental health and often show mental health comparable to their cisgender peers... This brief discusses policies and practices that recognize and support TGD youth’s identities and expression, “gender-affirming care”, and highlights opportunities to ensure the healthy development of all TGD youth. It highlights how medical and school contexts are critical for TGD youth’s development and health and offers evidence-informed policy and practice recommendations to guide efforts that support youth.

<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.

Summary: After adjusting for personal characteristics and social support, chosen name use in more contexts was associated with lower depression, suicidal ideation, and suicidal behavior. Depression, suicidal ideation, and suicidal behavior were lowest when chosen names could be used in all four contexts. For transgender youth who choose a name different than the one given at birth, use of their chosen name in multiple contexts affirms their gender identity and reduces mental health risks known to be high in this group.

<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.

Summary: There has been growing attention to sexual orientation and gender identity (SOGI) in child and adolescent development, public discourse, and research. A strong tension is clear: The right for participation, and thus representation in data, science, and policy, is often understood as conflicting with the right for protection; that is, safety from disclosure of a marginalized orientation or identity. Both participation and protection rights are also closely tied to young people’s rights to privacy (or lack thereof). The article suggests that one solution to the dilemma would be that youth have the right to disclose their SOGI information to whom and when they choose.

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

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

(CONTINUED)

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

Summary: The study aimed to evaluate the impact of each domain of gender affirmation (social, legal, and medical) on the mental health of transgender and gender nonbinary youth. Having access to multiple sources of gender affirmation (social, legal, and medical) was associated with fewer symptoms of depression and less anxiety. Furthermore, engaging in gender affirmation processes helped youth to develop a sense of pride and positivity about their gender identity and a feeling of being socially accepted. Enabling transgender and gender nonbinary youth to access gender affirmation processes more easily should be considered as a strategy to reduce depression and anxiety symptoms, as well as to improve gender positivity.

<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.

Summary: This study explores whether students’ experiences of victimization and school climate vary as a function of school administrator support for professional development on issues of sexual orientation and gender identity (SOGI). More positive school climates were found in schools with SOGI training support, and LGBT students reported the lowest rates of victimization. SOGI training by school administration is an effective way to improve school contexts for LGBT and all students.

<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.

Summary: Transgender youth experience negative school environments and may not benefit directly from interventions defined to support Lesbian, Gay and Bisexual (LGB) youth. This study considers the issues that transgender students encounter in school environments, including transgender youth’s experience of school harassment, school strategies implemented to reduce harassment, the protective role of supportive school personnel, and individual responses to harassment, including dropping out and changing schools. The research found that school harassment due to transgender identity was pervasive, and this harassment was negatively associated with feelings of safety. When schools took action to reduce harassment, students reported greater connections to school personnel. Those connections were associated with greater feelings of safety. The indirect effects of school strategies to reduce harassment on feelings of safety through connection to adults were also significant.

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

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.

Student Records**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 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

Student Records

SURVEYS OF PROTECTED INFORMATION (CONTINUED)

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.

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,

Student Records

COURT ORDER/SUBPOENA (CONTINUED)

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.

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