

**DIVISION OF ELEMENTARY AND SECONDARY EDUCATION RULES  
GOVERNING PUBLIC SCHOOL POLICIES RELATING TO OVERNIGHT TRAVEL  
AND USE OF PUBLIC SCHOOL LAVATORIES**

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Commenter Name: Lucas Harder, April 4, 2024

Comments: *Submitted Electronically*

3.01.2: There appears to be an extra “individuals” between “area” and “designated”.

Division Response: **Comment considered; a non-substantive change was made to correct a scrivener’s error consistent with the comment.**

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Commenter Name: Rachael R. Vaughn, J.D., Marion School District, Director of HR/Legal Affairs, April 15, 2024

Comments: *Submitted Electronically*

OVERNIGHT TRAVEL AND LAVATORIES: 2.02.1.2 and 3.02. This rule applies to locker rooms. The exceptions apply to circumstances involving custodial, maintenance, or inspection; rendering emergency medical assistance; or addressing an ongoing emergency. Should there be an exception for coaches talking to players, during periods such as halftime? Otherwise, districts will be restricted in who they can hire for each sport - men for male sports and women for female sports. This forces districts to engage in gender discrimination, which sets them up for another type of liability.

Division Response: **Comment considered; Additional language was added to the rule to address the concerns expressed in this comment and the rule was re-released for public comment.**

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Commenter Name: Mike McSpadden, April 15, 2024

Comments: *Submitted Electronically*

If my understanding is correct, this rule would prohibit a Coach from entering a Team's Locker Room if the Coach is not the same gender as the Players on the team. This would mean a male coaching a Girls Basketball team could not address his team at halftime. It also means that a Female Coach who is a practicing homosexual has full access to the locker room. Has there been a huge epidemic of Coaches sexually abusing athletes of a different gender at halftime of Athletic contests?

**Division Response: Comment considered; Additional language was added to the rule to address the concerns expressed in this comment and the rule was re-released for public comment.**

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Commenter Name: Kaemo Mainard O’Connell, Little Rock Arkansas, April 16, 2024

Comments: *Submitted Electronically*

To whom it may concern,

Thank you for the opportunity to comment on the proposed rule. I am a transgender minor attending public school in the LRSD.

The proposed rule actively jeopardizes the safety of many students, and the accommodation provided is not effective enough to address the need that the rule creates.

Due to this rule, I cannot legally use the men’s room, but I present in a masculine manner, am on testosterone, and I am known in the school by my preferred name, which is not traditionally feminine. This rule claims to “ensure privacy and safety”, but I am supposed to use the women’s restroom as a masculine-appearing individual. This puts me at risk of being outed to those who may be unsafe, which puts my well-being at risk, and makes those in the women’s restroom uncomfortable, as I frequently look more like a member of the opposite sex than someone who is a woman, transgender or cisgender. Since I do not like feeling unsafe, nor do I like making others uncomfortable, I opt for the gender neutral option most of the time.

The proposed rule states, in section 3.01.2, that the school must “Provide a reasonable accommodation to an individual who is unwilling or unable to use a multiple occupancy restroom or changing area individuals designated for the individual’s sex.” The rule also states that restrooms, locker rooms, changing rooms, and shower rooms are all included, but what is considered “reasonable” (in relation to how many are needed per school), is not specified.

The only gender neutral bathroom, changing room, locker room, or shower room in my school is the nurses restroom (which is out of the way of classes), and the rule has not provided schools any funding to build additional facilities. I need to sign into the nurse’s office to use it, and it is frequently locked. When the nurse is absent, at lunch, or at a meeting, it is not available. And not only do most of the transgender students use it, the students who are sick also need it. This is a disservice to both groups of students. Those who are sick need it immediately and have to wait in a line. When the transgender students still need the bathroom, they have to wait long periods of time for the sick students to finish or be sent home, using it right after them, which puts us at an increased risk of illness. I can’t use it during the passing period, because I will be late for class, so in order to complete necessary bodily functions, I need to disrupt my learning and use it during class time. Because it is so frequently inaccessible, I often find myself having to use the women’s restroom anyway, where I feel uncomfortable and know I am unwelcome.

Again, the proposed rule claims to “ensure privacy and safety”, however, it visually separates transgender students from their cisgender peers. Either we obviously present differently from our counterparts in the multiple occupancy bathrooms, or we are actually separated into an entirely different room. In an attempt to ensure safety, the proposed rule jeopardizes the privacy of students who are already at risk for bullying and harassment based upon their identity. It singles us out, and makes us appear like an “other,” and by doing so puts our safety at risk.

Once again, this rule harms the safety and privacy of a minority population, and the accommodations it proposes are ineffective and difficult to enforce due to a lack of specificity and funding.

**Division Response: Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and; therefore, the changes proposed in the comment would require a legislative change.**

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Commenter Name: Roland Popejoy, NBCT, Valley View School District, Superintendent, April 15, 2024

Comments: *Submitted Electronically*

Please accept the following comments on the proposed rules governing public school policies relating to overnight travel and use of public school lavatories.

- Section 3.02 - Replace 3.02 with 3.01 as it refers to the prior section. "The provision of Section 3.02 3.01 does not apply..."
- Section 3.02 - This section does not provide a much needed allowance for coaches of the opposite sex of their players to enter a locker room (aka 'changing area') at halftime or before/after a game. Our district has multiple coaches that would be impacted by this exclusion and revision to this section of the rule is imperative to ensure coaches of the opposite sex of their players have the same opportunity to fulfill the coaching role they are employed to provide our student athletes during the pre-game, halftime, and post-game. Without a change to this section, the rules would result in an inequity between competing teams depending on the sex of coaches employed by each district competing.
- Section 3.02 - Along similar lines as described above, athletic trainers of the opposite sex of student athletes should be allowed to enter locker rooms for needed evaluation, taping, and other medical care that may not be perceived to rise to the level of 'emergency medical assistance.' In the absence of a trainer's room or due to other circumstances, athletic trainers routinely enter locker rooms during pre-game, game time, halftime, and following the game for routine sports medicine tasks that could easily be argued are not 'emergency medical assistance.'

**Division Response: A change was made to correct an erroneous internal citation consistent with the comment. An additional change was made to add language to the rule to address the concerns expressed in this comment and the rule was re-released for public comment.**

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Commenter Name: Aaron M. Randolph, Cabot School District, Assistant Superintendent, April 15, 2024

Comments: *Submitted Electronically*

- The definition of “immediate family” is important because it describes who can share a room on an overnight trip (4.02, p. 3, and 5.02.1.2, p. 4). We have many atypical families. This needs to include legal guardians, a person standing in loco parentis, foster parents, etc. (2.01, p. 1)
- The clarifying language stating that a school district may rely on a student’s original birth certificate to determine sex (2.03.1, p. 1) provides no guidance on how we determine the sex of chaperones. Do we ask for the birth certificate of each chaperone that will be staying overnight with students to be sure? If an adult/staff member has a substituted birth certificate that changes their sex from their sex at birth, are we not allowed to accept it for the purposes of overnight stays?
- Additionally, is every staff member assumed to be aware of the sex that appears on every student’s birth certificate? (2.03.1, p. 1) If students appear to be the opposite sex from what is stated on their birth certificate, how are all staff members supposed to be aware?
- Section 3.02 (p. 2) lists the exceptions for who and when an individual is allowed into the multiple occupancy restroom or changing area of the opposite sex. We need to include coaches, assistant coaches, trainers, etc. should be allowed to enter the locker rooms of their teams before, at half time, and at the end of games.
- Section 3.02.2 (p. 2) allows for someone to enter a restroom or changing room to “render emergency medical assistance.” We would rather our staff provide medical assistance if it’s needed without having to send someone else in to assess if it would qualify as an “emergency.” This could create apprehension in staff to take care of situations that are indeed emergencies. To remedy this, it would be helpful to drop the possibly subjective word “emergency” and just note that a person can “render medical assistance.”
- Section 4.01.2 (p. 3) states that a student can be provided single-occupancy sleeping quarters. Can we add that students would be expected to bear the additional cost if that is their choice?
- What definition should be used for “noncompliance” in section 5.01 (p. 3)? Is that negligent noncompliance? Knowing noncompliance? Intentional noncompliance? For example, if a teacher assigns rooms on an overnight trip with respect to keeping sexes separate, but a member of the opposite sex sneaks into the other room and the teacher does not check again that night, is it noncompliance? If a female adult uses the designated male bathroom at a band concert when staff members are not actively monitoring, is it noncompliance? If a student that appears to be a female asks where the bathroom is and a teacher directs this male student to the female restroom, is it noncompliance?

**Division Response: Comment considered; Additional language was added to the rule to address the concerns expressed in this comment and the rule was re-released for public comment.**

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Commenter Name: Karen C. Walters, Bryant School District, Superintendent April 22, 2024

Comments: *Submitted Electronically*

Section 3.02 Provides a list of three circumstances that are exempt from the rule. We recommend that an additional circumstance be added, as follows:

3.02.4 For a coach/athletic trainer/manager to address a team during an athletic event or in the performance of his/her coaching duties.

If this language is not added, it seems a male coach would not be able to enter the locker room of a female team (or a female coach for a male team) during pre-game, post-game, halftime or any other time.

Section 3.03 Does this section require a district to set a policy outlining the age of students who can enter a restroom with a parent of the opposite sex? For example, would a policy have to include the maximum age, such as, “Children who are eight and under may enter the restroom of the opposite sex with an adult. Children nine and older must use the bathroom of their sex.”

If the answer to the above question is yes, is the district responsible for monitoring the bathrooms during large events outside of the school day to enforce the policy?

Section 5.0 Outlines enforcement of these rules. It states that noncompliance shall be referred to PLSB with a minimum fine of \$1,000. It includes a provision allowing the superintendent and principals to be included for noncompliance. It goes on further to provide a cause of action and take the district’s sovereign immunity.

Noncompliance needs further definition/clarification. In order to be found to be noncompliant, there should be evidence that the educator knowingly violated the rules.

Please respond if districts are responsible for monitoring large restrooms at after school events such as football and basketball games and if the same penalties will be applied in these situations.

If the answer to the above request is in the affirmative, it will be very problematic for district staff to monitor this during these large crowd events.

Division Response: **Comment considered; Additional language was added to the rule to address the concerns expressed in this comment and the rule was re-released for public comment.**

Commenter Name: Mike Mertens, Arkansas Association of Educational Administrators, Assistant Executive Director April 22, 2024

Comments: *Submitted Electronically*

Section: 3.01.2 - Provide a reasonable accommodation to an individual who is unwilling or unable to use a multiple occupancy restroom or changing area individuals designated for the individual's sex.

Suggested Change/Concern: Remove the extra "individuals" between "area" and "designated".

Rationale: There appears to be an extra "individuals" between "area" and designated".

Section: 3.02 - The language in this section provides a list of three circumstances that are exempt from the rule.

Suggested Change/Concern: We recommend that an additional circumstance be added: 3.02.4 For a coach/athletic trainer/manager to address a team during an athletic event or in the performance of his/her coaching duties.

Rationale: If this language is not added, it appears a male coach would not be able to enter the locker room of a female team (or a female coach for a male team) during pre-game, post-game, halftime or any other time.

**Division Response: A change was made to correct a scrivener's error consistent with the comment. An additional change was made to add language to the rule to address the concerns expressed in this comment and the rule was re-released for public comment.**

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Commenter Name: Elisabeth O'Connell, Student in Searcy Arkansas, April 23, 2024

Comments: *Submitted Electronically*

To Whom It May Concern,

Thank you for the opportunity to comment on this proposed rule. I am an Arkansas resident and am concerned about this policy. I have some concerns to raise.

My first concern is that this policy is very obviously targeting transgender youth within the public school system. Targeted policies often lead to harassment and bullying on a personal level, as can be seen in the case of the assault on Nex Benedict in Oklahoma.<sup>1</sup> Oklahoma passed legislation requiring public school students to use the bathrooms matching the sex listed on their birth certificates. Shortly after, Nex began to experience intense bullying related to their

transgender identity. This bullying culminated when a few students assaulted Nex in the restroom (they were using the one that matched their sex). Nex passed away following this assault.

I am concerned that if this legislation is passed in Arkansas, it will open a door to increased bullying of transgender and other LGBTQ+ youth, a population already known to be at great risk for bullying, especially on school property.<sup>2</sup> I believe that it should be the state's first priority to protect all students, especially students who belong to minority and at-risk populations. This legislation may also force already transitioned individuals to come out as transgender, needlessly putting them at risk.<sup>3</sup>

I believe that this harmful legislation is not only unnecessary and a violation of these students' privacy, it also alienates these students and places them at greater risk of bullying and violence at the hands of their peers. This legislation is cruel and simply unnecessary.

<sup>1</sup><https://www.independent.co.uk/news/world/americas/nex-benedict-dead-oklahoma-b2501844.html>

<sup>2</sup><https://www.hrc.org/news/new-cdc-data-shows-lgbtq-youth-are-more-likely-to-be-bullied-than-straight-cisgender-youth>

<sup>3</sup><https://www.ama-assn.org/delivering-care/population-care/exclusionary-bathroom-policies-harm-transgender-students>

**Division Response: Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change.**

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Commenter Name: Kendra Clay, Springdale Public Schools, General Counsel, and April 23, 2024

Comments: *Submitted Electronically*

- While there are many concerns, it is acknowledged that the rules mirror the law and legislative changes are necessary.
- Concerns include:
  - A coach of the opposite sex would not be able to enter a locker room at halftime to meet with his/her athletes
  - What it means to be “specifically noncompliant” is vague; the law requires public school districts to 1) label each multioccupancy restroom for the exclusive use of

one sex and 2) provide a reasonable accommodation to those who are unwilling or unable to use the facility of their birth certificate assigned sex; it is unclear the district's role in actually enforcing the use of the facilities. Additionally, if districts are required to enforce, the following must be addressed:

- How is a school official to know the birth certificate sex of every student?
- How is a school official to know the birth certificate sex of every staff?
- How is a school official to know the birth certificate sex of every patron that may use their facilities?
- How is the school official to make a reasonable accommodation if a reasonable accommodation is not requested?

**Division Response: Comment considered; Additional language was added to the rule to address the concerns expressed in this comment and the rule was re-released for public comment. As to the questions presented, student and employee records will likely address those concerns.**

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Commenter Name: Joshua R Johnson, Parent of children in Roland, Arkansas, April 23, 2024

Comments: *Submitted Electronically*

To Whom It May Concern,

Thank you for the opportunity to comment on this proposed rule. I am a parent and uncle of multiple children in the state of Arkansas. I was born here and went through the Arkansas school system myself. I have multiple people in my family, younger family members included, who fall outside of the "normal" spectrum of gender and sexual orientation.

Rules like this are both harmful and unhelpful for a variety of reasons, but beyond everything else this feels like an attempt at keeping kids from being their authentic selves and how they express their gender in school, which is ultimately harmful.

At the end of the day, the Arkansas Department of Education should not be placing blanket policies like this which can lead to bullying and a declining mental health of our most vulnerable students.

Please reconsider this proposed rule.

**Division Response: Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change.**



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Commenter Name: Evan Erzar, Arkansas Resident, April 23, 2024

Comments: *Submitted Electronically*

Hello Arkansas Department of Education,

My name is Evan Erzar, I am a transgender individual, and I grew up in Arkansas. I want to make a few comments about upcoming decisions being made about transgender students.

First, I want to acknowledge the fear that drives people to exclude those who are transgender. When you're asked to think of a person assigned male at birth in a women's space or a person assigned female at birth in a men's space, you probably imagine people of opposing sexes being in the same spaces. This not only forgets the reality of intersex and transitioning individuals, but also demands focus to be placed on genitals, which is inappropriate when applied to minors trying to use the bathroom or fall asleep on a school trip. I also understand the fear that perhaps a boy would simply go into the girls' spaces and vice versa. This fear, though, is of manipulative cisgender people being sexually perverse, not of transgender individuals minding their own business. I am not a woman using men's rooms, I am a man who minds his own business while using vulnerable spaces such as bathrooms and locker rooms. Sexual perversion is not allowed in school spaces even among cisgender individuals of the same sex, so the expectation that a trans person would be any more likely to be a problem than other boys in boys' spaces or girls in girls' spaces is based solely on stereotypical thinking. We are not inherently sexually preoccupied. Rather, it is others who question and attempt to investigate our bodies that are invading personal boundaries.

Secondly, I would like to highlight the safety of transgender students. We may be a small group of people, but we are still Arkansas citizens who make daily contributions to our community. We also deserve consideration and safety. While in high school, I still tried using the women's bathroom and locker room, but there were several times when girls screamed and ran away because they recognized that I was a boy. I was even yelled at by frightened women in my gym's locker room, hidden from in multiple public restrooms, and asked to leave countless times. This all happened before I became an adult and started my medical transition from female to male. Transgender individuals are not girls dressed as boys and boys dressed as girls; we know who we are and others do too at times. I tried doing what I thought would help me avoid confrontation, but by doing so I encountered frightened and angry individuals. Not every transgender teenager wishes to use the spaces that align with their genders. After all, I was not comfortable with doing so, but allowing trans students to do what makes them and their peers most comfortable should be your upmost priority. I am afraid, though, that your ideas about transgender people are based in the ideas and expectations of unknowing cisgender individuals, not on the reality of transgender experience, appearance, and expression. Men wearing skirts aren't transgender women and women wearing pants aren't transgender men. The intricacies of gender, sex traits, and personality are all much more nuanced than an either-or classification determined by an impersonal governing body. There are as many ways to be a human as there have been humans on our planet, and the disregard of individuals' needs and safety on the basis of being transgender is at best ignorant and at worst prejudiced. I would also like to highlight the fact that transgender students have not been any more problematic in these spaces than their peers have been.

Thirdly, I would like to address the possible impacts that such a decision could have. I was raised in the Cabot School District, which receives much admiration from my community. Despite its positive reputation, I faced much hardship while growing up. My grades were amazing, I made many friends, and I started and joined clubs, but I was still called slurs, spat on, shoved, hit, threatened, chased, and bullied for being transgender regularly inside and outside of school by both classmates and adults. My friends and I started a GSA in which we decided to help students make reports about bullying. Many of the students who sought help for harassment and threats were transgender. I graduated in 2021, so, given my current understanding of the treatment of transgender youth and adults in Arkansas, I believe that cisgender individuals are much more of a threat to transgender people than transgender individuals are to cisgender ones. This fear seems to be driven by thoughts rather than reality. Treating a group of people as if they are a threat when they are already mistreated shows a severe lack of concern for them. Making decisions about the rights of a group of minority students during such a heavily politicized time would take a toll on them, and transgender youth are already committing suicide at a higher rate because of discrimination, bullying, rejection, and prejudice. A rule based on transgender stereotypes and fear mongering would surely be a failure to our students.

Transgender people have existed since at least the first recorded human civilization in Mesopotamia. We are not a new or political creation. We have always and always will exist whether we decide to be visible or not. Your decisions on whether or not to respect and protect us will only lessen our numbers via suicide, but more transgender people will be born each day across the world. I ask that you take a biopsychosocial and cultural approach to your decisions about the rights of people who are already treated so poorly. We are only as strong as our weakest links, and fostering an environment in which people are scrutinized and judged based on uncontrollable characteristics is not indicative of a free or growing society. It is a hint at the opposite. The first book burning by the Nazis was of the work done by the Institute for Sexual Research in Berlin, a transgender and queer health clinic, because the easiest people to target at the time were transgender youth. We should not follow the same path of prejudice of hatred. We are smart enough to stop repeating the ebb and flow of history. It's up to institutions such as boards of education to determine whether or not we repeat such grave mistakes, though, and I hope that you do not choose the prejudicial path. Even if the decision seems small to you, small decisions all accumulate into bigger pictures for those affected. I ask that you consider more than just cisgender students and beliefs while making your decision.

Thank you for your time,

**Division Response: Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change.**

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Commenter Name: Jerry Cox, Family Council, President, April 24, 2024

Comments: *Submitted Electronically*

I am writing to express Family Council's support for the DESE Rule Governing Public School Policies Relating to Overnight Travel and Use of Public-School Lavatories. The language in the rules is consistent with Act 317 of 2023, a law Family Council supported during the 94th General Assembly. The rules adequately address public school policies concerning the designation of shower rooms, changing areas, restrooms, locker rooms, and similar facilities at public schools. They also properly address sleeping accommodations for students on overnight school trips.

According to a demand letter by attorneys at Alliance Defending Freedom, in June of 2023, the Jefferson County Public Schools in Colorado assigned two girls to share a hotel room with a male student during a school-sponsored, overnight trip for fifth-graders to Philadelphia and Washington, D.C. This decision jeopardized the physical privacy and safety of the students and caused them unnecessary stress. DESE's proposed rules promulgated in accordance with Act 317 will help ensure that students in Arkansas do not encounter a similar situation.

Boys and girls deserve privacy when they shower, sleep, change clothes, or use the restroom at school or on a school trip. These rules promulgated in accordance with Act 317 will protect the physical privacy and safety of public school students. We fully support the rules and look forward to their implementation.

Division Response: **Comment considered; no changes made.**

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Commenter Name: Max Calabotta, Northwest Arkansas Coordinator, Intransitive, April 24, 2024

Comments: *Submitted Electronically*

To Whom It May Concern,

Thank you for the opportunity to comment on this proposed rule. I am a community organizer, an artist, and a concerned community member. I am the NWA Coordinator for Intransitive, a Trans-led nonprofit based in Mabelvale. I work from Fayetteville, extending our reach to the Northwest region of our Diamond State.

I would like to inform you of the potential effects regarding this proposed rule.

As of Friday, April 19th, the US Department of Education has released a final rule for Title IX protections regarding Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance. This ruling by the US Dept. of Ed. states that Transgender students cannot be denied the use of gender-based facilities that match their gender identities. This ruling of Title IX goes into effect in August of this year, and if the Arkansas Department of Education adopts a rule that is in opposition with the U.S. Department of

Education's rule, it will likely cause Title IX penalties, potentially in the removal of federal funds from Arkansas schools.

Data from The National Center for Transgender Equality's 2022 Trans Survey suggests that at least 4% of transgender people surveyed (3800+ people) using restrooms experienced harassment. Harassment can lead to further violence, and is not good for students' health. Enforcing a rule that does not allow transgender students to use a bathroom that matches their gender identity can cause more problems for students. It may also cause students to avoid using the restroom at all, which can cause health problems like UTIs. [https://transequality.org/sites/default/files/2024-02/2022%20USTS%20Early%20Insights%20Report\\_FINAL.pdf](https://transequality.org/sites/default/files/2024-02/2022%20USTS%20Early%20Insights%20Report_FINAL.pdf) & <https://www.apa.org/topics/lgbtq/all-gender-restrooms> are good resources for understanding why single-use restrooms should be installed at the very least, if this rule is to go into effect.

I think this rule needs to be changed so that transgender students can access the restroom that matches their gender identity so that they can have an equitable experience in school, so that the rule reflects Title IX protections so that Arkansas does not lose federal funding, and for the health and safety of students in Arkansas schools.

**Division Response: Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change. Additionally, the federal regulation has been enjoined in multiple jurisdictions and the State of Arkansas is likewise seeking an injunction from enforcement of the regulation.**

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Commenter Name: Emilee Annabelle Shrable, Public School Employee, Bella Vista Arkansas, April 24, 2024

Comments: *Submitted Electronically*

To whom it may concern,

Thank you for the opportunity to comment on this proposed rule. I am Emilee Annabelle Shrable, a resident of Arkansas and public school paraprofessional who cares about students in my school district.

I would like to inform you of the potential effects that would impact said students and faculty in my district regarding this proposed rule.

First of all I noticed in section 3.02 of this bill there is no clause to protect paraprofessionals that service students in need of personal care in restrooms. Personal care is not defined as emergency medical assistance or an emergency of any kind. If a male student was to require toileting assistance in the male restroom we are required by his IEP to give him care. However, as I and most paraprofessionals in my school have a birth certificate designating female at birth we would be unable to enter the restroom under this bill.

I think this rule needs to be changed because it does not encompass all services that are required by a public school district in the restrooms for students.

**Division Response: A change was made to add language to the rule to address the concerns expressed in this comment and the rule was re-released for public comment.**

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Commenter Name: Monica Davidson, Parent, Shannon Hills, Arkansas, April 24, 2024

Comments: *Submitted Electronically*

To Whom It May Concern,

Thank you for the opportunity to comment on this proposed rule. I am a lifelong Arkansan, my family has been here for generations, and I am the mom of 2 school-age Arkansans.

I would like to raise concerns regarding this proposed rule. This rule would harm transgender and gender non-conforming children and teens throughout the state, by making their existence as a trans or gender non-conforming person more obvious to the surrounding student body, thus increasing their susceptibility to bullying and harassment by their peers. Further, placing transgender students in accommodations with those who identify as the sex aligned with their same (or similar) genitalia could open those students up to sexual assault or harassment in a way that trans kids do not pose to cisgender students. Trans kids are no more likely to commit sexual assault than their cisgender peers, and treating them as some kind of grenade is unfair and discriminatory.

Many students, especially those in elementary school, can likely fly under the radar as far as their gender identity if allowed to use the restroom which aligns with their gender identity. Throughout their adolescence, trans students are likely to take efforts to conceal any discrepancy between their gender and their genitalia any way. It's entirely likely you would never know you were using the restroom with a trans person if they aren't known to be trans. Even when known to be trans, they deserve the same respect and discretion given to any other student- the ability to use the restroom in peace.

Students who are gender non-conforming are far more likely to be sexually assaulted in their adolescence than their cisgender peers, with trans/gender non-conforming youth who were assigned female at birth having an 18-27% prevalence of having been sexually assaulted in the last 12 months, according to a 2019 study published in Pediatrics, and 17% for transgender students assigned male at birth. Both of these rates are substantially higher than that of 15% for cisgender females and 4% for cisgender males. Rates of sexual harassment and assault were much higher in states that restricted students' ability to use the bathroom/locker room/accommodations associated with their gender identity.

Also, this flies in the face of the new Title IX rules going into effect on August 1. Arkansas schools need those federal funds.

I am the parent of children who are school age in Arkansas, and I have no concerns about children who are gender non-conforming using the restroom best aligned with their gender identity. If there is a problem of sexual assault, that is not on these children- that is on the perpetrator. I do not support this policy.

**Division Response: Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change. Additionally, the federal regulation has been enjoined in multiple jurisdictions and the State of Arkansas is likewise seeking an injunction from enforcement of the regulation.**

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Commenter Name: Olivia Gardner, Arkansas Advocates for Children and Families, Director of Education Policy, April 24, 2024

Comments: *Submitted Electronically*

To Whom It May Concern,

Thank you for the opportunity to comment on this proposed rule. My name is Olivia Gardner, and I am the Education Policy Director with Arkansas Advocates for Children and Families. We would like to raise concerns regarding this proposed rule.

This rule risks the continuation of the narrative that transgender and non-binary children are a danger to others when using the bathroom that they feel most comfortable in. Notably, there is no data to support this narrative. Instead, we know that bathrooms are a place where transgender and non-binary people routinely experience harassment, mistreatment, and even violence.

We acknowledge that the rule provides for “accommodations” for students whose gender does not conform to the one assigned at birth, but it is not clear in the rule what sort of accommodation is required and whether that will be sufficient to address the needs of these students. Additionally, because each school district gets to write their own policies regarding those accommodations, children will receive different treatment based on what school district they are in.

Regarding the overnight travel component, it seems that the rule is offering the option of having a single-occupancy room while on overnight school trips, but the vagueness of this section means that transgender students may have to share a room with a member of the opposite gender from their own. This has the potential to lead to discrimination, bullying, and harmful attacks on transgender students.

Overnight trips are often for those activities such as choir competitions, sports championships, or national competitions that students have worked hard to participate in. Because the rule requires only that school districts provide either shared sleeping quarters or individual sleeping quarters, districts can choose not to provide the option of private rooms and again there will be disparate

treatment for students across the state. This may also lead transgender students or their families choosing to opt out of these important activities because the risk of harm is too high.

We can all agree that every student should have a fair chance to succeed in school. But many transgender students face hostility, discrimination, and bullying already. Forcing transgender students into potentially dangerous situations will not improve safety. It will only serve to make it harder for these students to go to school because school will feel unsafe. Ultimately, we believe that this rule will hurt LGBTQ+ students' academic achievement as well as their mental health. We urge DESE to consider changes to this rule that can mitigate the potential harm this proposed rule has the capacity to cause.

**Division Response: Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change.**

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Commenter Name: Michala Gallup, April 24, 2024

Comments: *Submitted Electronically*

To Whom It May Concern,

Thank you for the opportunity to comment on this proposed rule. I am the parent of a non-binary youth in Central Arkansas. I am very concerned about the safety of my non-binary/trans child under this proposed rule.

I would like to make sure that you are aware of the life of an individual youth that this proposed rule would affect. I was shocked to discover recently, with the talk of this proposed rule, that my non-binary child currently chooses not to use any restroom while at school because of the overwhelming fear they have of being seriously hurt, emotionally traumatized, outed, or penalized for going in the wrong one. They are so afraid that they physically force themselves to hold their bladder for 8 hours while on campus. Everyday. They were assigned female at birth but do not feel safe to use the bathroom assigned to the female sex especially as they appear to look more like they should use the male sex bathroom. Asking them to use the bathroom according to the hidden sexual body parts they were born with instead of how their outside frame, face, hair and clothes make them appear puts them at risk of physical, emotional and mental harm.

This may seem like a small worry instead of the actual life threatening day to day experience that it is. Let me assure you, after the horrifying murder two months ago of non-binary youth Nex Benedict who was beaten to death in the female sex bathroom in Oklahoma, by peers in their high school, this is an ever present reality for my teen. This proposed rule could force my child to walk the same path that Nex did. Passing this rule would be forcing my non-binary teen to live with the fear of death/harm instead of allowing them to simply learn at school.

Please be aware that if this rule is passed you will have specifically and knowingly created harm towards an amazing youth who does not want nor did they deserve your interfering with their desire to simply exist with the body that God gave them.

**Division Response: Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change.**

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Commenter Name: Rayne Stephens, April 24, 2024

Comments: *Submitted Electronically*

To Whom It May Concern,

Thank you for the opportunity to comment on this proposed rule. I am a freshman in college. I have communicated with Intransitive about this rule, as this rule directly affects me and other close friends.

I would like to raise concerns of the potential effects regarding this proposed rule.

Recently, the Federal Department of Education announced final regulations stating that Title IX must protect LGBTQ+ individuals of discrimination and harassment. This also includes verbal and physical discrimination on the basis of sex. Not following this rule will likely result in the Federal Department of Education to sue the Arkansas Department of Education.

Rules enforcing students to go to the bathroom, locker room, etc that aligns with their sex promotes further harassment and bullying to transgender and intersex students. According to the Trevor Project, 53% of assumed LGBTQ+ students were verbally assaulted, 20% were sexually assaulted, and 9% were physically attacked. Some transgender individuals do look and sound like the gender that they are aligned with, which can further increase harassment in school settings. If allowing transgender and intersex people to go to safe and comfortable school settings is not possible, please install gender neutral bathrooms for students to safely meet their needs.

Again, this rule promotes bullying and harassment, which will decrease LGBTQ+ students' health and safety. The Federal Department of Education will likely sue the Arkansas Department of Education for having rules that discriminate LGBTQ+ students.

Sincerely,

Rayne Stephens  
Little Rock, Arkansas

Sources:



<https://www.thetrevorproject.org/survey-2023/#:~:text=Physical%20Harm&text=18%25%20of%20LGBTQ%20young%20people,du%20to%20their%20sexual%20orientation.&text=27%25%20of%20transgender%20and%20nonbinary,du%20to%20their%20gender%20identity>.

<https://www.ed.gov/news/press-releases/us-department-education-releases-final-title-ix-regulations-providing-vital-protections-against-sex-discrimination>

**Division Response: Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change. Additionally, the federal regulation has been enjoined in multiple jurisdictions and the State of Arkansas is likewise seeking an injunction from enforcement of the regulation.**

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Commenter Name: Daphne McKee, Life Strategies Counseling, Inc, April 24, 2024

Comments: *Submitted Electronically*

To Whom It May Concern,

Thank you for the opportunity to comment on this proposed rule. I am a school-based social worker and therapist in Northeast Arkansas. I work with school-aged young people, including some who are thinking of identifying as trans.

I would like to express support for points 3.01.2 and 4.01.2, and stress the importance of specifying more details on “reasonable accommodation” here. My understanding is that points 3.01.2 and 4.01.2 specify that kids who do not want to use a group restroom or stay in a motel room on an overnight trip that matches birth sex are allowed to access a single-user restroom or a motel room on their own or with a chaperone.

I am in complete support of this, and I suggest that the language be updated to be more specific. For example, 3.01.2 could say “Provide a reasonable accommodation, such as a single-user restroom, to an individual who is unwilling or unable to use a multiple-occupancy restroom or changing area individuals designated for the individual’s sex.” With this more specific language, different school systems have a standard example for a reasonable accommodation. Disparate school systems do not have to waste more of DESE’s time arguing amongst themselves about LGBT kids, and can focus on improving education outcomes for kids in our state.

**Division Response: Comment considered; no changes made. The rule is intended to provide necessary flexibility to school districts to determine how to utilize existing facilities consistent with the requirements of state law.**

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Commenter Name: Mary Dann Betbeze, Resident of Sherwood, Arkansas, April 24, 2024

Comments: *Submitted Electronically*

Good afternoon,

I am writing as a concerned citizen regarding the rule about Overnight Trips and School Bathrooms. In a state with one of the worst public education systems and too many kids going hungry, it is concerning that our government is choosing to make the school day even more stressful for transgender students in Arkansas. Protect these children, when they are at increased risk of bullying, hate crimes, and suicide. Don't allow those statistics to rise. Take your job seriously and protect your transgender constituents who rely on you for safety and rights in Arkansas. Please.

Thank you for your time and consideration,

**Division Response: Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law.**

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Commenter Name: Aracely Mondragon, Intransitive, Youth Coordinator, April 24, 2024

Comments: *Submitted Electronically*

To Whom It May Concern,

Thank you for the opportunity to comment on this proposed rule. I am a Youth Coordinator with Intransitive, an organization by and for trans people in Arkansas. I have previously worked in education as a college counselor and as an instructor. I am writing to express my concern about this proposed rule as someone who has worked in education and who currently works with trans youth.

This proposed rule limits access to restrooms for trans students and will be detrimental to trans students' health and their ability to learn at school without fear of harassment. Forcing students to use restrooms that do not match their gender identity can put trans students at risk of bullying and harassment. In a 2021 national report from GLSEN about the experience of LGBTQ+ youth in schools, "83% of LGBTQI+ youth reported facing harassment, bullying, discrimination, or assault in K-12 school settings." This proposed rule can lead to increased bullying for trans youth in spaces like bathrooms and locker rooms, spaces where many trans students already avoid because of bullying and misgendering. That same GLSEN report shows that "LGBTQ+ students most commonly avoided school bathrooms, locker rooms, and physical education or gym classes, with approximately 4 in 10 students avoiding each of these spaces because they felt unsafe or uncomfortable (45.1%, 42.6%, and 39.4% respectively)." This rule encourages other students and staff to misgender trans students, making these spaces unsafe for trans students.

Trans youth not being able to use the restroom at school can lead to physical health problems, students missing school, or not being able to focus during school hours because they don't have access to this basic need and face a lot of stress and distress from being misgendered and harassed in these spaces. For these reasons and many others, the federal government has updated Title IX to clarify that sex based discrimination prohibited in Title IX includes discrimination based on gender identity. I encourage the Department of Education to consider how this rule would violate Title IX and that instead of implementing this proposed rule, we advocate that more single use bathrooms be made available in schools. Single use bathrooms can increase accessibility for trans students, disabled students, and other students who may need it. Moreover, I hope that trans students are able to access bathrooms that match their gender identity and do not have to fear being harassed or bullied or have to avoid using the restroom all together while at school.

I hope that the Department of Education will consider the harm this rule will cause trans students in schools and not move forward with it. Please ensure students' well-being and their ability to access a safe and nurturing learning environment.

Source Mentioned:

<https://www.glsen.org/sites/default/files/2022-10/NSCS-2021-Full-Report.pdf>

**Division Response: Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change. Additionally, the federal regulation has been enjoined in multiple jurisdictions and the State of Arkansas is likewise seeking an injunction from enforcement of the regulation.**

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Commenter Name: Tien Estell, Intransitive, Policy Coordinator, April 24, 2024

Comments: *Submitted Electronically*

To Whom It May Concern,

Thank you for the opportunity to comment on this proposed rule. I'm Tien Estell, a Transgender Arkansan and Policy Coordinator for intransitive, a Trans-led nonprofit located in Southwest Little Rock. We serve Trans folks statewide who know the harm of the public school policies relating to overnight travel and use of bathrooms, and Trans Youth who must choose between bathroom bullying and suppression of basic bodily functions.

In February I attended a local vigil for Nex Benedict, an Indigenous Trans Youth who died the day after being brutally beaten in the bathroom of his Oklahoma high school. In 2022, the governor of OK signed into law a bill that required public school students to use bathrooms according to the sex that was listed on their birth certificates. Our states share this law, and our youth share the same fear- "Am I next?"

March 13, 2024, the Washington Post reported “School hate crimes targeting LGBTQ+ people have sharply risen in recent years, climbing fastest in states that have passed laws restricting LGBTQ+ student rights and education.” And “In states with laws targeting LGBTQ issues, school hate crimes quadrupled.” Arkansas is a state that has passed numerous laws targeting LGBTQ people, and our bullying statistics for all students is alarming. Needs assessments continuously prove that bullying is horrific in AR schools, and Arkansas high schools rank second among “States with the Biggest Bullying Problems” Arkansas Bullying Statistics 2024 – Everything You Need to Know. The risk is exponentially greater for Trans and Queer students, especially when they’re also Students of Color.

The law and policies governing public school bathroom use and overnight trips negatively impacts Trans and Gender Non-Conforming students, their families, and our community at large. We’ll see an increase in school bullying, health issues related to suppression of bodily functions, and students being forced out of participating in activities that involve overnight travel.

**Individual, single-person occupancy bathrooms available in every school could alleviate dreaded decision making and offer a private space for any student needing an accessible bathroom.**

Sincerely,

Division Response: **Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change.**

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Commenter Name: APSRC April 24, 2024

Comments: *Submitted Electronically*

- 1) Section 2.01, Page 1: The Definition of “immediate family” is not contained in statute.
- 2) Section 4.03. Page 3: This Language is not contained in the statute (Ark. Code Ann. §6-10-137).

Division Response: **Comment considered; no changes made. The definition of “immediate family” is limited to a common understanding of individuals that would be in a student’s household with the addition of grandparents to the extent necessary. Section 4.03 simply incorporates present practice into the rule.**

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Commenter Name: Kaemo Mainard O'Connell, Student, Little Rock, Arkansas, April 18, 2024

Comments: *Written Statement Submitted in Person*

To whom it may concern,

Thank you for the opportunity to comment on the proposed rule. I am a transgender minor attending public school in the LRSD.

The proposed rule actively jeopardizes the safety of many students, and the accommodation provided is not effective enough to address the need that the rule creates.

Due to this rule, I cannot legally use the men's room, but I present in a masculine manner, am on testosterone, and I am known in the school by my preferred name, which is not traditionally feminine. This rule claims to "ensure privacy and safety", but I am supposed to use the women's restroom as a masculine-appearing individual. This puts me at risk of being outed to those who may be unsafe, which puts my well-being at risk, and makes those in the women's restroom uncomfortable, as I frequently look more like a member of the opposite sex than someone who is a woman, transgender or cisgender. Since I do not like feeling unsafe, nor do I like making others uncomfortable, I opt for the gender neutral option most of the time.

The proposed rule states, in section 3.01.2, that the school must "Provide a reasonable accommodation to an individual who is unwilling or unable to use a multiple occupancy restroom or changing area individuals designated for the individual's sex." The rule also states that restrooms, locker rooms, changing rooms, and shower rooms are all included, but what is considered "reasonable" (in relation to how many are needed per school), is not specified.

The only gender neutral bathroom, changing room, locker room, or shower room in my school is the nurses restroom(which is out of the way of classes), and the rule has not provided schools any funding to build additional facilities. I need to sign into the nurse's office to use it, and it is frequently locked. When the nurse is absent, at lunch, or at a meeting, it is not available. And not only do most of the transgender students use it, the students who are sick also need it. This is a disservice to both groups of students. Those who are sick need it immediately and have to wait in a line. When the transgender students still need the bathroom, they have to wait long periods of time for the sick students to finish or be sent home, using it right after them, which puts us at an increased risk of illness. I can't use it during the passing period, because I will be late for class, so in order to complete necessary bodily functions, I need to disrupt my learning and use it during class time. Because it is so frequently inaccessible, I often find myself having to use the women's restroom anyway, where I feel uncomfortable and know I am unwelcome.

Again, the proposed rule claims to "ensure privacy and safety," however, it visually separates transgender students from their cisgender peers. Either we obviously present differently from our counterparts in the multiple occupancy bathrooms, or we are actually separated into an entirely different room. In an attempt to ensure safety, the proposed rule jeopardizes the privacy of students who are already at risk for bullying and harassment based upon their identity. It singles us out, and makes us appear like an "other," and by doing so puts our safety at risk.

Once again, this rule harms the safety and privacy of a minority population, and the accommodations it proposes are insufficient and difficult to enforce due to a lack of specificity and funding.

**Division Response: Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change.**

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Commenter Name: Colbern Clark, April 18, 2024

Comments: *Transcript of Statement made at the Public Hearing*

My name is Colbern Clark. I live in Faulkner County and pay taxes there.

I don't have any children in Arkansas public schools. I wanted to bring to the attention of the board today that, according to Bureau of Justice Statistics, the rate of violent victimization against transgender persons, 16 or older was two and a half times the rate among cisgender persons between 2017 and 2020.

The bathroom segregation bill being discussed today. Will place students wearing dresses and the boys bathroom and masculine students and girls bathroom. This is uncomfortable situations for all students involved or not all students involved, but for them especially. There won't be perfect implementation of accommodations.

We saw that transgender stigmatization like this – What transgender stigmatization like this can do in Oklahoma where Nex Benedict took their own life. After being assaulted for being transgender. May they rest in peace? Assist gender students right to use the bathroom and the gender they identify with is protected by Arkansas law.

Transgender students are not offered equal protection of the law since they are not granted the right to use the restroom or the gender they identify with while cisgender students are. The bathroom segregation policy is a violation of the equal protections clause of the 14th amendment of the US Constitution.

Person sex is a physical characteristic a person's gender is a mental construct and not physical characteristic and to correct what I said earlier.

You know, in my experience. You know, we have kind of like mixed gender restrooms at University of Central Arkansas. They're not designated for any one particular sex. And- You know, like when I've used these restrooms and someone of another gender has been in there, you know, it just you know, there's really not an issue at stake. And, Of course, the transgender students that would be using the restrooms of the gender they identify whether they're the same gender as the other students. But, I think, today it would be better to focus on solutions.

I know a Conway High School there are no single occupancy restrooms in the auditorium or on the football field. So if a student were sick or became sick at the last minute. They would have to travel from those areas. To the main building to use the laboratories. And-You know, that's that really kind of taxing on them in a situation where they may be ill and, you know, so I would

just encourage educators in the state of Arkansas focus on solutions and be proactive and listen to transgender students. And kind of addressing the issues they may face. You know, using facilities and also dealing with the stigmatization as a result of these policies.

**Division Response: Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change.**

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Commenter Name: Tien Estell, Intransitive, Policy Coordinator, April 18, 2024

Comments: *Transcript of Statement made at the Public Hearing*

My name is Tien Esteil and I am the policy coordinator for Intransitive and thank you for the opportunity to comment on this proposed rule here today. As I said, I'm Tien and I'm with intransitive and we are a trans-led nonprofit. Located Southwest Little Rock, but we served trans folks all over the state. And who know the harm of the public school policies relating to overnight travel and use of bathrooms.

And trans youth who must choose between bathroom bullying and suppression of basic bodily functions. In February, I attended a local vigil for Nex Benedict, an indigenous trans youth who died the day after being brutally beaten in the bathroom of his Oklahoma high school.

In 2022 the governor of Oklahoma signed into law a bill that required public school students to use bathrooms according to the sex that was listed on their birth certificates.

Our states, Oklahoma and Arkansas share this law and our youth share the same fear. Will I be next? March 13, 2024 the Washington Post reported school hate crimes targeting LGBTQ plus people have sharply risen in recent years.

Climbing fastest in states that have passed laws restricting LGBTQ plus student rights and education and in states with loss targeting LGBTQ issues, school hate crimes quadrupled in states that have laws that we currently have in the books in Arkansas.

So, Arkansas is a state that is pass numerous laws targeting LGBTQ people and our bullying statistics for all students across the board. Is more than alarming. And these assessments continuously prove that bullying is horrific in Arkansas schools.

And Arkansas High School's rank second among states with the biggest bullying problems according to Arkansas bowling statistics. The risk is exponentially greater. For trans, queer, and gender non-conforming students and this is even more amplified and more increased when they're students of color.

The law and policies governing public school bathroom use and overnight trips negatively impacts trans and gender non-conforming students.

Their families and our community at large. We'll see an increase in school bullying. Health issues related to suppression of bodily functions and students being forced out of participating in activities that involve overnight travel.

These extracurriculars that they may love that may bring them life and they could help them as they pursue a higher education, trans students will not have this opportunity for overnight travel.

So individual single person occupancy bathrooms being available in every school like across our state could alleviate some of this dreaded decision making and also offer a private space for any student who needs an accessible bathroom that could be some harm reduction mitigation since we know this law is now this bill that we fought back against is now a law.

Ways to potentially reduce some harm will be to require all the schools and Arkansas public schools to have single occupancy restrooms available to trans students and all students.

Thank you very much.

**Division Response: Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change.**

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Commenter Name: Marie Maynard O'Connell, Queer Collective, Organizer, April 18, 2024

Comments: *Transcript of Statement made at the Public Hearing*

Hi, my name is Marie Maynard O'Connell and I am the organizing pastor of Queer Collective which is a group that gathers around queer families that's loosely defined as any family structure that supports LGBTQ individuals. And we meet for joy connection resources. So I'm here today in my pastoral and parental role.

I probably represent about a dozen families that have trans and non-binary students specifically as well as other queer families. I wanted to speak to you today about the harm that we are already seeing and experiencing as a result of this law and I'm gonna move out in. We already had one student this year who attend Central who became suicidal and had to leave in part because of their feeling of being othered. And not having a safe space in that building like a bathroom. Not gonna speak too much further about that, but it raised our awareness that this law is directly impacting our families right now.

At my child's school, which is Parkview. There's only one bathroom that's accessible for the many trans and non-binary kids. It's the nurse's bathroom. Unfortunately, that means that there is a line for that single-stalled restroom in almost all times because sick students and students that can't use male or female restrooms are in the same space.



What that ends up happening is that the kids have to sign in, which is basically outing yourself here at the same bathroom every day and you're not sick. But it also means that the children who are not sick have to be in the restroom of those who are and those who are sick or prevented from being able to use the restroom because someone else is.

It basically comes down to that this is not a reasonable accommodation. Unfortunately, it's the only restroom available, which would mean that we would need to see a refurbishment or a redesign the restrooms in that building. But this building is not different from any of the other buildings in Arkansas. But I know that this kind of accessible design is possible because we have it in the restroom right here outside this room.

The other thing that kind of needs to be acknowledged is that it is also causing our students to be questioned and outed by the personnel of the school even if they're really well-meaning. My own student has had the experience in the mornings. They arrive really early in order to study. I don't mind telling you my kid is in the top 10%. I think top 10 kids in their class and they just aced the ACT. 33. Good job.

But when they arrive early in the morning, they have been told they can't use that restroom for both the male and the female restroom and the nurse's restroom isn't open. So they have nowhere that they can actually go. And they know that they're one of the few students that actually speaks up about this problem.

There are other students who either hold it, don't use the restroom, or, and this is even more troubling, choose to restrict their intake of fluids so that they don't need to use the restroom during the school day. It's really approaching the accommodations concerns that are identified in the Americans with Disabilities Act and that they are not being permitted to abnormal bodily functions and normal access to needed spaces during the school day.

And then last but not least, same problem when you go away. My kid isn't here this morning. They wrote a really fantastic letter because they are in Hot Springs at the Young Artists Association event where they do not expect to find a single occupancy restroom there either. And so if we're going to have this law that is supposedly to protect and keep the privacy of individuals. It's not just the privacy of cisgender, heterosexual people. It's also kids like mine that are different and need to have their individuality respected.

And this was previously mentioned, my kid has refrained from some of the overnight opportunities because they can't imagine that being safe for them. Especially in that in order to choose the accommodations. Someone would have to ask the question. What are you? And fundamentally, that's not an appropriate question to be asking. My kid is a student, a brilliant person, incredibly kind. And it breaks my heart that Arkansas can't accommodate them on a level to bring them even higher to where they could be.

I'm happy to answer questions since I do have the experience of a number of different families in the Arkansas Public School System. And I just want to ask that with the power you have invested in you. That you helped to make this law as it currently stands healthier and safer for our kids.

Thank you

**Division Response: Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change.**

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Commenter Name: Jessica Disney, April 18, 2024

Comments: *Transcript of Statement made at the Public Hearing*

Hi. My name is Jessica Disney and I am a previous graduate of Conway High School and I've been involved in a Conway high school, sorry, Conway's school board meetings.

Where what eventually became this law was started as policy so we have a bit of experience so far in dealing with this and the way at least one school district has implemented this policy and continues to enforce it.

I'm not here on behalf of any organization, however, I do have content and stay in ready contact with both teachers and students that this policy affects on a regular basis who could not make it here at 10 am on a Thursday, but will also be individually sending in their comments through digital resources.

To speak in reference to section 3.0.1.2, which is in regards to the bathroom or other facility usage; By the designated sense of the birth certificate; In practice both students and teachers have expressed that this policy has been used in a way to punish pressure sorry, punish and pressure students that would use the single occupancy restrooms.

As a matter of rule in policy, I believe that the ADA should require schools to convert or otherwise make available every individually accessible restroom on campus including staff facilities.

Yeah, in this case, while not every school has any. Direct staff facilities. Outside of the nurse's restroom outside of that. The policy should address, a priority to get a single occupancy spaces available to Cater to the students, that need these accommodations.

We should also seek in the rule making process to include language that designates that the policy discouraged the questioning and punishment of students that are needing to take the extra time to access these limited restroom spaces. On school schedules being late to a class can result in punishment in school suspension, etc. And if their policies in this school district accommodate for these individuals. Then that will help prevent them from being sent on a path of punishment when they are just simply trying to use the restaurant.

In addition to this, I'd like to reference the overnight state policy 4.0.1.2. And I would like to say that this policy should, seek to address at the state level for consistent for consistent policy creation that the cost of the accommodation be provided for at the cost of the sponsor or the school district. To allow equitable access for overnight quarters in this; overnight trips for schools as people, making these decisions and it anyone listening to this may agree can be a

pivotal, pivotal and inform very informative part of somebody's youth whenever they're going through their public education and by requiring that the family put forward the money in and just speaking reference and add Basis for this. Conway's public school policy for this as the school board passed actually put the cost of the accommodation on the student themselves or they would have to spend their, Sorry, spend their overnight stay in an accommodation with the sets designated by their birth certificate.

By not accommodating that student who has the need to stay in the single occupancy room, due to this law and policy we will inevitably cause students to miss out on grand opportunities and various opportunities that could be created from these overnight stays. Only on the basis of their own personal finance and wealth which should not be the students responsibility to take care of it.

I don't have any other points immediately to make on this. I just urge that the policy; That the rule makers and the people who have the influence to do so, I hope that they use their ability to mitigate the harm caused by this law. And better accommodate their students by using their power to do so. I appreciate you for letting me speak. Thank you.

**Division Response: Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change. Additionally, some of the comments presented address school district policies that should be discussed with local policy makers.**

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Commenter Name: Blake Tierney, Queer Collective, April 18, 2024

Comments: *Transcript of Statement made at the Public Hearing*

Hello. My name is Blake Tierney. I'm here with Queer Collective, which, Reverend Marie already explained what that was. So I'm the graduate of Arkansas Schools and a Little Rock resident. I have years of experience supporting kids from pre-K to high school as well as their families and in my nonprofit work. My late grandma was a teacher in Arkansas schools, as are many of my friends.

So there's lots of reasons why I really hope that we can mitigate the harm that is in this rule. As you've already heard, there's negative impacts that will be on the kids. This rule makes schools less safe for kids.

And it creates cultural fear in schools. But I don't wanna talk a little bit about three other points where I think we can make some change and mitigate some of that harm. So first, this rule makes no exception, no exception for medical issues related to GI Track or as the 1st speaker mentioned vomiting or anything of that nature. As somebody who has irritable bowel syndrome, I know that panic need of needing to use the restroom and it already being occupied or not knowing which one to go to or things of that nature. Senator Bryant when he was talking about SB 270 which the adult bathroom bill brought this up as a point against that bill in particular.

But I wanna walk you through that moment of panic that a student feels when they need to use the restroom, they need to relieve themselves and they try to go to the restroom. They don't. They want to go to the one that matches who they are, but they've been told they've been they have fear instilled in them they have to go into this other one and that extra panic, that extra fear and harm that a student feels. Is that really something that we want kids to feel is that's something that we want there to like holds responsibility for doing. And so let's not make that more difficult for students who just want to relieve themselves safely and comfortably.

So, I read you specifically, In section 3.02. If as much as possible to include considerations around medical issues and including medical issues and an exception for students.

Second, the rule uses the term individuals. So this rule applies to anyone of any age who uses multiple occupancy rooms and changing areas in a school. That mean, students, teachers, siblings, parents, and other visitors for sports events, quiz bowl tournaments, theater performances, speaking engagements and so on.

Considering that broad overreach and its implications. Specially regarding section 5.02.1.1 around receiving permission and adults who choose their own volition to use the restroom that matches their gender identity.

I urge you also again to revisit the testimony submitted against SB 270; Thinking about folks who have already, undergone gender from care whose physical parents is male or female and they are being asked to use a restroom that's that is opposite of their visual parents of who they are.

So I encourage you to change this rule to remedy this overreach and its implications around adults.

Finally, regarding section 4. The, when it comes to overnight stays, the state has been really focused on parental rights and how parents can choose how they care for their kids what they do for their kids that should extend the parents who honor their child gender identity and want to protect their kids in that way.

I think one possibility that we can add to section 4 is parents who give mutual permission, along with their children, their 2 children of different sexes, to share in overnight rooms. I think that is something that if you're honoring parental rights, if we're honoring the consent of all these parties and that should be allowed in this rule.

So those are 3 points. Again, I really hope. That you listen attentively to all the stories that have been shared today that will be shared through written comment. I hope you really feel that pain and fear the kids are feeling with this rule because it's palpable.

That's something that we as adults who care for them are feeling and trying to support them in every day and so I hope that you do what's right.

Thank you.

**Division Response: Comment considered; section 4.02 and 4.03 partially address this concern. Additionally, the remaining comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change.**

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Commenter Name: Eric Reece, Human Rights Campaign Arkansas, Director, April 18, 2024

Comments: *Transcript of Statement made at the Public Hearing*

Good morning. My name is Eric Reese. My pronouns are they, he. I service the Arkansas State Director of the Human Rights Campaign. Which is the largest lesbian, gay, bisexual, transgender, Excuse me, non-binary, gender expansive, civil rights organization in the country.

Our role here in the states to work at a state level, making sure that we have equity for everyone, specifically our LGBTQ plus individuals. Also, we work in terms of social justice here in the community.

I'm here today, actually I'm just kind of rewriting what I wanted to say because We have folks from the community who said it a lot better than I could coming from a policy perspective.

So I'm coming to you today as state director. I'm coming to you today as a social worker. I'm coming to you today as an Arkansas born here, raised here, educated here. And to point out one thing, mainly.

We understand in the community particularly that there is already been and act passed and your role here is to put in place the policy that is going to put that into effect. As you've heard from my other community folks. There is an opportunity for you to practice harm reduction, to mitigate less harm in terms of involving parents more and being able to really be there for their transgender non-binary youth.

There is a place for accommodations in specific schools all across the state, right? This bill or this bill, the act came out of Conway, but it has an effect of all public schools within the State of Arkansas.

Those large urban schools, those suburban schools, as well as rural schools. And please understand, that there are transgender non-binary youth, young adults, as well as teachers in every single school apart of the state. So I reach to you and ask you to think about as your role as how can we mitigate less harm. Right now the way the law or wave the policy is standing is that it's very strictly following that act.

In terms of you must follow your gender identity as it's on your birth certificate. Well, we've heard the previous speakers talk about those youth, young adults who have already gone through gender affirming care, Right. So it's important for them to have that complete and total identity. Even to their own restroom and public accommodation facilities. So that's what I urge you here this morning.

We've also heard that I wanna bring forward in terms of this rising suicide ideation that's going on in the State of Arkansas. We heard one example that was here in the state because of my role like the traveling work and throughout the state and those stories have become more prevalent. The Human Rights Campaign Arkansas we've undertaken this strategy this action of compiling folks to share their comments. On this ruling and they are being submitted. Electronically so you'll be having those by the 24th.

Our legal department has also submitted just some suggestions that will help this panel. And help your lawyers really do less harm with this. I'm happy to answer any questions that you may have. The human rights campaign, Arkansas is here as a resource for everyone, right, as well as those who make our policies. Thank you so much.

**Division Response: Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change. Furthermore, no suggestions were received from their legal department.**

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Commenter Name: Dean Stanley, Searcy School District, Assistant Superintendent of Support Services, May 28, 2024

Comments: *Submitted Electronically*

On behalf of the Searcy School District and as an executive board committee member of the Arkansas Activities Association, I want to express my feelings about part of the rules proposed for this piece of legislation.

6.02.3 is a major concern as some sports that we offer do not have personnel of the same sex of the student athletes available for every contest. This would put an unreasonable expectation on a district to be able to provide this arrangement in every contest of every sport.

Our situation for example is as follows:

Golf - Male coach for both teams

Tennis - Male coach for both teams

Girls Soccer - 2 Male coaches

Girls Softball - 2 Male coaches

Jr. Girls Basketball - 2 Male coaches

Swimming - Female coach for both teams

Bowling - Male coach for both teams

3.01.1 is a concern because there are some small schools that do not have the adequate dressing space for boys and girls and have actually shared locker room spaces for visiting teams. An example of this is that I have experienced a situation where a Jr. High boys basketball team would have to dress, then a Sr. High girls basketball team would have to dress after that game, and finally a Sr. High boys basketball team would then have to dress in that locker room after the girls were cleared out.

**Division Response: Comment considered; A changes made which addresses this comment. The requirement that a school employee of the same biological sex as the student athletes be present under this rule was changed to an adult that is the same biological sex as the student athletes.**

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**Commenter Name:** Aaron Buchman, May 28, 2024

**Comments:** *Submitted Electronically*

There should also be a cause of action clause for parents, legal guardians, or persons standing in loco parentis of students who are not given reasonable accommodations for restrooms or changing areas if they are unable to use the multiple occupancy restroom or changing areas. Public schools have to accommodate all students. ALL means ALL.

**Division Response: Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change.**

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**Commenter Name:** Kelvin Hudson, Flippin School District, Superintendent, June 10, 2024

**Comments:** *Submitted Electronically*

I believe 6.02.3 of the rule listed above will put a burden on school districts especially when traveling. When playing games on the road it may become impossible to find a "school employee of the same sex" to be present immediately before, during and immediately following an athletic event. These conversations could be held on the bench however I believe that could lead to an additional disadvantage for the traveling team. The only option I can see for traveling teams is to hire additional staff for the purpose of monitoring dressing rooms. This rule could also cause discriminatory hiring practices when school districts are faced with the choice of hiring coaches of the opposite sex or coaches of the same sex. Thank you for your consideration in this matter.

**Division Response: Comment considered; A changes made which addresses this comment. The requirement that a school employee of the same biological sex as the student athletes be present under this rule was changed to an adult that is the same biological sex as the student athletes.**