

Transgender students: Law, policy, and practice

By Maryam Brotine

Not a week goes by without a news article about issues surrounding transgender individuals, and many articles are about school districts accommodating transgender students. Many school board members have done preliminary homework on the matter and tried to keep up with the news, both local and national. You may have visited the IASB's webpage on *Transgender Students: Legal Issues* and learned that regardless of what's going on at the national level, Illinois law prohibits transgender discrimination via the Illinois School Code (105 ILCS 5/10-20.12; 23 Ill. Admin. Code 1.240) and the Illinois Human Rights Act (775 ILCS 5/1-102(A), 5/5-501(11), 5/1-103(O-1)).

So does that mean it is an open-and-shut matter for your district? No.

While Illinois law clearly prohibits transgender discrimination, how this could play out in your district, at the district and building levels, is far from clear — and could become unfathomably murky if you don't proactively plan for it. So what else do you need to know? How are school districts throughout Illinois managing this issue?

Equal Educational Opportunities policy

Start by reviewing your board policy on providing equal educational opportunities to all students. If your district subscribes to IASB PRESS, it may have adopted sample policy 7:10, *Equal Educational Opportunities*, which states that your district provides such opportunities without regard to, among other things, gender identity. Sample policy 7:10 further states

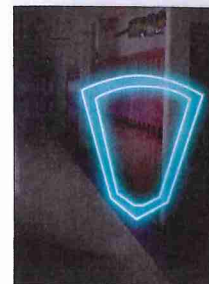
“No student shall, based on sex, sexual orientation, or gender identity be denied equal access to programs, activities, services, or benefits or be limited in the exercise of any right, privilege, advantage, or denied equal access to educational and extracurricular programs and activities.”

The policy inquiry does not end there, however, because 7:10 is a sample. Boards should consider whether the sample policy meets their local needs. Many boards, responding to the needs of their communities, students, staff, and parents, have taken 7:10 and supplemented it with additional language detailing how transgender

students will be accommodated. For example, Evanston Township High School District 202 adopted an amended version of 7:10, which explicitly provides that

“Students shall be treated and supported in a manner consistent with their gender identity. This shall include but not be limited to students having access to gendered facilities, including restrooms and locker rooms that correspond to their gender identity.”

If your district's practice is to grant students with access to gendered facilities in all cases, whether or not your board states that in policy will depend on many factors, including the political climate within your community. For example, if your district has been accommodating transgender students just fine without making a big deal about it, then amending a board policy might stir up attention that the board does not desire, or it might divert board resources from more pressing matters. On the other hand, if your district has worked hard to accommodate transgender students and



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create a climate of inclusion, then publicly proclaiming this in board policy may positively contribute to such a climate.

Administrative Procedures

Some boards choose to leave their equal educational opportunities policy as-is and instead draft administrative procedures and/or guidelines that detail how administrators and staff will meet the needs of transgender students. The beauty of administrative procedures is that they do not need board approval. This has two significant governance benefits. First, it makes administrative procedures flexible so that administrators can amend them as needed. Second, their implementation is related to staff work and draws less public attention.

Your district may of course choose to publicize them (i.e., at board meetings or on the district website) but doing so, and to what extent,

is entirely at your discretion. Please note, however, that administrative procedures are subject to disclosure via the Freedom of Information Act (FOIA). To prepare for the possibility of disclosing your district's administrative procedure in response to a FOIA request, consider beginning the administrative procedure with a purpose statement that clearly sets forth the district's reasons for implementing the procedure.

PRESS sample administrative procedure 7:10-AP, *Accommodating Transgender Students or Gender Non-Conforming Students*, guides school officials through the: 1) application of state and federal anti-discrimination laws to this student population, and 2) common needs in which transgender or gender non-conforming students may request accommodations and support at school. Districts interested in further developing administrative procedures regarding transgender

students often do so by having key administrators collaborate with relevant staff members, students, parents, their board attorney, and advocacy groups. One such group is The Illinois Safe Schools Alliance (The Alliance), whose mission includes "to promote safety, support, and healthy development for lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth, in Illinois schools and communities." Districts that have worked with The Alliance to craft administrative procedures include Berwyn South School District 100 and Harlem School District 122. Administrative procedures are meant to meet each district's local policy implementation needs, taking into account various factors, including grade levels served, number of attendance centers, district, and school climates, etc.

Berwyn South's 7:10-AP, *Administrative Procedure for Student Gender Support*, is three

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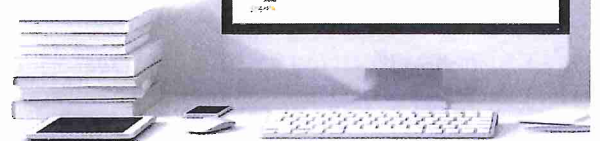
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pages long and contains subsections addressing the following:

- Definitions
- Confidentiality
- Names and Pronouns
- Gendered Facilities and School-Sponsored Programs
- Dress Codes
- Curriculum and Pedagogy
- Gender Support Team and Support Planning
- Discrimination and Harassment
- Online Accessibility

Harlem's 7:10-AP, *Gender Support Administrative Procedure*, is similarly structured, though it is four pages long as was formally approved by the school board. If you are interested in speaking with administrators from these districts regarding their experiences putting transgender policies into practice, or have questions regarding PRESS sample administrative procedure 7:10-AP, please contact the IASB Office of General Counsel.

Consider Other Board Policies

Aside from your Equal Educational Opportunities policy, keep in mind the following sample PRESS policies (or your district's equivalent policies) which may come into play when addressing transgender student needs:

2:260, *Uniform Grievance Procedure*, contains the process for an individual to seek resolution of a complaint. A student may use this policy to complain about bullying prohibited by the Illinois School Code (105 ILCS 5/27-23.7), which specifically includes bullying based on actual or perceived gender-related identity or expression.

6:65, *Student Social and Emotional Development*, requires that social and emotional learning be incorporated into the District's curriculum and other educational programs.

7:20, *Harassment of Students Prohibited*, prohibits any person from harassing, intimidating, or bullying a student based on an actual or perceived characteristic that is identified in the policy including, among other protected statuses, gender identity.

7:130, *Student Rights and Responsibilities*, recognizes that all students are entitled to rights protected by the U.S. and Illinois Constitutions and laws for persons of their age and maturity in a school setting.

7:160, *Student Appearance*, prohibits students from dressing or grooming in such a way as to disrupt the educational process, interfere with a positive teaching/learning climate, or compromise reasonable standards of health, safety, and decency.

7:165, *Student Uniforms*, encourages students to wear school uniforms in order to maintain and promote orderly school functions, school safety, and a positive learning environment, if adopted.

7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*, contains the comprehensive structure for the District's bullying prevention program. As noted above, this specifically includes bullying based on actual or perceived gender-related identity or expression.

7:250, *Student Support Services*, directs the Superintendent to develop protocols for responding to students' social, emotional, or mental health problems that impact learning.

7:330, *Student Use of Buildings – Equal Access*, grants student-initiated groups or clubs the free use of school premises for their meetings, under specified conditions.

7:340, *Student Records*, contains the comprehensive structure for managing school student records, keeping them confidential, and providing access as allowed or required. ✍

Resources

IASB's webpage on Transgender Students: Legal Issues is located at www.iasb.com/law/transgender.cfm.

The Illinois Safe Schools Alliance can be reached at www.illinoissafeschools.org

In addition to the resources noted above, to learn more about transgender students and meeting their needs please see:

Book Recommendations for Educators, The Illinois Safe Schools Alliance, illinoissafeschools.org/book-recommendations-educators

Actions to Create More Affirming School Environments for LGBTQIA+ Students & Staff, The Illinois Safe Schools Alliance, at illinoissafeschools.org/actions-create-more-affirming-school-environments-lgbtqia-students-staff

Lurie Children's Gender and Sex Development Program, at www.luriechildrens.org/en-us/care-services/specialties-services/gender-program/Pages/index.aspx, or contact Jennifer Leininger at 773/303-6056 or jleininger@luriechildrens.org.

Gender Spectrum, an organization whose mission is to help create gender sensitive and inclusive environments for all children and teens, at www.genderspectrum.org.

Transgender Students in Schools: Frequently Asked Questions and Answers for Public School Boards and Staff (Version 9.0), National School Boards Association (March 2017), at http://iasb.mys1cloud.com/Transgender_Guide.pdf.

Dealing with Legal Matters Surrounding Students' Sexual Orientation and Gender Identity, National School Board Association and other participating organizations (April 2013), at tinyurl.com/iasblink2nsba01