
Board of Education

ACTION

TITLE: Consider Adopting Student Related Policy Change

RESPONSIBLE ADMINISTRATOR: Dr. Michael Farrell
Executive Director of Student Services

BACKGROUND/CONSIDERATIONS:

The administration desires to update current policies to the most recent recommendation provided by the Arkansas School Board Association (ASBA).

The policy in question is Policy 4.11 on Student Equal Educational Opportunity. In particular, the question was whether or not the inclusion of “sexual harassment” and “gender identity” within this policy violates A.C.A. § 6-1-107 (Fairness in Women’s Sports Act), § 14-1-403(Intrastate Commerce Improvement Act), or § 16-130-101 et seq. (Gender Integrity Reinforcement Legislation for Sports (GIRLS) Act).

The Arkansas Attorney General opined that the language in Policy 4.11 on “sexual orientation” and “gender identity” is out of compliance with A.C.A. § 14-1-403(a) as the language in the statute prohibits a political subdivision of the state (which includes school districts) from adopting a policy creating a protected category that is not provided under “State law”.

Policy 4.11 originally included “sexual orientation” and “gender identity” within the language to bring districts into compliance with the U.S. Department of Education’s interpretation of Title IX, which governs sex discrimination. The U.S. Department of Education states on its [website](#) that “sex discrimination” under Title IX includes sexual orientation and gender identity. Due to Federal law governing in the event of a conflicting State law, ASBA originally left the language in Policy 4.11 to ensure compliance with the Federal law.

The Attorney General further opined that the language in Policy 4.11 would only be in conflict with A.C.A. § 6-1-107 and A.C.A. §16-130-101 et seq. if a district were to interpret the language in the policy to allow for individuals who were born biologically male on a team that was designated as for females. We do not consider this language to be applicable under these circumstances as extracurricular participation, especially for sports, is governed by Policy 4.56. Policy 4.56 provides that participation must be in accordance with the Arkansas Activities Association rules rather than putting in policy requirements that reach down to the individual team level.

An update to Policy 4.11 is attached with language that will bring the policy into compliance with the question asked and the Attorney General Opinion.

Mr. Marshall Ney has reviewed this recommendation for a policy change to Policy 4.11. It is submitted here in both redline and clean copy for board review.

RECOMMENDATION:

The administration recommends the Board approve the changes to Board Policy 4.11 as presented to be effective upon board approval. If the Board agrees, the motion would read:

Move to approve the Board Policy 4.11 as presented to be effective on board approval.