

541 GENDER INCLUSION

STATEMENT OF SUPPORT

The students and staff of Duluth Public Schools deserve respectful and inclusive learning environments that value students' gender identity and gender expression. Duluth Public Schools ensures that all students have access to programming and facilities in which they feel comfortable, supported, and safe. This policy addresses the inequities some students, including intersex, transgender, two-spirit, gender nonconforming students and gender-questioning students, confront as they navigate a system designed using a gender binary model. These Guidelines do not and cannot anticipate every situation that may occur, as every student is unique. The support for each student must be assessed and addressed individually based upon the student's specific requests and needs.

These Guidelines are supported by District Policy:
102 Equal Education Opportunity,
413 Prohibiting Harassment and Violence,
514 Bullying Prohibition,
522 Title IX Student Sex Nondiscrimination,
526 Hazing Prohibition

I. DEFINITIONS

The definitions contained in these Guidelines are not intended to label students, but rather to assist in understanding these Guidelines and the legal obligations of district staff. It is recognized that students might or might not use these terms to describe themselves.

"Gender" refers to the socially constructed roles, behaviors, activities, and attributes that a given society attaches to femininity or masculinity.

"Gender Identity" is a person's deeply held sense or psychological knowledge of their own gender. A person's gender identity can be the same or different than the sex or gender assigned at birth.

"Sex Assigned at Birth" refers to the sex designation recorded on an infant's birth certificate should such a record be provided at birth.

"Gender Expression" refers to the manner in which a person represents or expresses that person's gender identity to others, often through behavior, clothing, hairstyles, activities, or mannerisms. Although transgender people typically seek to make their gender expression match their gender identity, rather than their sex assigned at birth, gender expression may or may not conform to a person's gender identity.

"Gender non-conforming" is an umbrella term that is used to describe individuals whose gender expression, gender identity, or gender role differs from gender norms associated with their sex assigned at birth. This term also includes people who identify outside of traditional gender categories or identify as both or several genders. Other terms that can have a similar meaning include "gender diverse," "gender expansive," "genderqueer," and "nonbinary."

"Transgender/Trans" describes people whose gender identity or expression is different from that traditionally associated with an assigned sex at birth. Transgender identity is not dependent on medical procedures or other physical changes.

"Transition" refers to the process in which transgender individuals begin asserting the sex that corresponds to their gender identity instead of the sex they were assigned at birth.

II. PRIVACY

All students have a right to privacy, including the right to keep private one's transgender or gender-non-conforming status at school. Transgender and gender-non-conforming students have the right to discuss and express their gender identity and expression openly and to decide when, how, and with whom to share private information, well as to determine what information will be shared.

Information about a student's transgender or gender-non-conforming status is classified as private data under state and federal law. School district personnel may only disclose a student's gender identity to other school district employees if they have a "need to know" the information in order to perform their job duties. The fact that a student chooses to disclose his or her transgender status to staff or other students does not authorize school staff to disclose such information about the student.

A school district employee may not confirm or otherwise disclose a student's transgender status to the parents of other students in the school or community members.

III. OFFICIAL SCHOOL RECORDS

The school district is required to maintain a mandatory and permanent student record ("official record") that includes a student's legal name and gender. The school district will change a student's official record to reflect a change in legal name or gender upon receipt of documentation that such change has been made pursuant to a court order or other official government action.

At the request of a transgender or gender-non-conforming student in all grades, the District will use the student's preferred name, gender identity, and

preferred pronouns when referring to the student in education records. At the request of the parent/guardian of a transgender and/or gender-non-conforming student in any grade, the district will use the student's preferred name, gender identity, and preferred pronouns when referring to the student in education records.

IV. STUDENT NAMES, PRONOUNS, AND GENDER MARKERS

At the student's and/or parent's/guardian's request, a transgender and/or gender-non-conforming student in all grades has the right to be referred to at school by a name and pronouns that align with their gender identity. At the parent's/guardian's request, a transgender student in all grades has the right to be referred to at school by a name and pronouns that align with the student's gender identity. A court-ordered name change or official gender change is not required, and the parent/guardian or student is likewise not required to change the school's official records in order for the student to be addressed by the name and pronouns that correspond to the student's gender identity.

V. GENDER-SEGREGATED FACILITIES

All students shall have access to gendered facilities and school-sponsored programs that are consistent with the student's gender identity. This includes, but is not limited to, multi-stalled gendered restrooms, locker rooms, and school programs, trips, and athletic programs.

A. Restroom Accessibility

Pursuant to Minn. Stat. 363A.13, subd. 1 (*N.H. v. Anoka-Hennepin Sch. Dist. No. 11, 950 N.W.2d 553 (Minn. Ct. App. 2020)*) students shall have access to the restroom that corresponds to their gender identity asserted at school:

1. Any student who has a need or desire for increased privacy, regardless of the student's gender identity or expression, and regardless of the underlying reason for the student's need or desire for increased privacy, should be provided access to a single-user restroom.
2. No student shall be required to use a single-user restroom because they are transgender or gender-non-conforming.
3. The District shall work with each transgender and gender-non-conforming student to determine which restrooms are most comfortable for the student.
4. In no case shall any student be required to use a restroom that conflicts with the student's gender identity.

B. Locker Room Accessibility

Pursuant to Minn. Stat. 363A.13, subd. 1 (*N.H. v. Anoka-Hennepin Sch. Dist. No. 11, 950 N.W.2d 553 (Minn. Ct. App. 2020)*), the use of locker rooms by transgender and gender-non-conforming students shall be assessed on an individualized basis with the goals of maximizing the student's social integration and equal opportunity to participate in physical education classes and sports and other school activities, ensuring the student's comfort, and minimizing stigmatization of the student.

1. Unless the student requests otherwise, transgender and gender-non-conforming students should have access to the locker room that corresponds to the student's gender identity asserted at school, like all other students.
2. Any student who has the need or desire for increased privacy, regardless of the student's gender identity or expression, and regardless of the underlying reason for the student's need or desire for increased privacy, should, if possible, be provided with a reasonable alternative changing area such as the use of a private area (e.g., a nearby restroom stall with a door, an area separated by a curtain, a physical education instructor's office in or near the locker room, or a nearby health office restroom), or with a separate changing schedule (e.g., using the locker room that corresponds to gender identity before or after other students).
3. Any alternative arrangement should be provided to protect the student's ability to keep the student's transgender or gender-non-conforming status confidential.
4. The District shall work with each gender-non-conforming student to determine which restrooms and locker room facilities are most comfortable for the student.
5. In no case shall a transgender student be required to use a locker room that conflicts with the student's gender identity.

VI. PHYSICAL EDUCATION AND HEALTH EDUCATION CLASSES AND INTRAMURAL SPORTS

All students shall be permitted to participate in physical education classes, health education classes, and intramural sports and activities in a manner consistent with their gender identity.

VII. SCHOOL TRIPS

All students shall be permitted to participate in all school trips in a manner that corresponds with their gender identity. In planning school trips, staff is expected to assess the student's needs in collaboration with the student and/or the student's parent(s)/guardian(s) and make reasonable efforts to provide an acceptable accommodation to the student. Accommodations will be discussed in advance of the trip on a case-by-case basis.

VIII. DRESS CODES

All students have the right to dress in a manner consistent with their gender identity or gender expression, at school and at school-sponsored functions. This includes, but is not limited to dances, after-school activities, and graduation.

IX. INTERSCHOLASTIC COMPETITIVE SPORTS TEAMS/ACTIVITIES

All students shall be permitted to participate in interscholastic athletics in a manner consistent with their gender identity and in compliance with the applicable regulations of the Minnesota State High School League (MSHSL).

X. OTHER GENDER-BASED ACTIVITIES, RULES, POLICIES AND PRACTICES

As a general matter, Duluth Public Schools will evaluate, on an ongoing basis, all gender-based activities, rules, policies, and practices, including but not limited to classroom activities, school ceremonies, yearbooks and school photos. Students will be permitted to participate in any such activities or conform to any such rule, guidelines, or practice consistent with their gender identity.

XI. DISCRIMINATION/HARASSMENT/BULLYING

It is the policy of the District to maintain a safe and supporting learning and educational environment that is free from harassment, intimidation, violence, and/or bullying and free from discrimination on account of gender, gender identity, and gender expression.

Complaints alleging discrimination or harassment based on a student's actual or perceived transgender status or gender non-conformity generally are to be handled in the same manner as sex discrimination, harassment or bullying complaints. For information about the types of conduct that constitute a violation of the school district's policy on harassment and violence and the school district's procedures for addressing such complaints, refer to the school district's policy on harassment and violence (Policy 413). For information about the types of conduct that constitute a violation of the school district's policy on bullying and the school district's procedures for addressing such complaints, refer to the school district's policy on bullying (Policy 514).

Legal References: Minn. Stat ch. 363A (Minnesota Human Rights Act)
Minn. Stat. § 121A.031 (Safe and Supportive Minnesota Schools Act)
Minn. Stat. § 121A.03, subd. 2 (Sexual, Religious and Racial Harassment and Violence Policy)

Minn. Stat. § 121A.04 (Athletic Programs; Sex Discrimination)
20 U.S.C. § 1681 et seq. (Title IX)
20 U.S.C. § 1701 et seq. (Equal Educational Opportunities)

Cross References:

102 Equal Education Opportunity
413 Prohibiting Harassment and Violence
514 Bullying Prohibition
522 Title IX Student Sex Nondiscrimination
526 Hazing Prohibition
MSHSL Handbook
MSHSL ByLaws Duluth Public School District ISD #709

First Reading: