



NEWS:

State Lawmaker Says Proposed Education Regulations Could Violate Parental Rights, Spark Lawsuits

October 13, 2017 – A proposed anti-discrimination [policy](#) and [regulations](#) that could soon be applied to Delaware public schools are raising questions and concerns.

"It opens Pandora's Box," said State Rep. Rich Collins, R-Millsboro. "It has the potential to twist schools up in knots."

The process began in mid-July with the issuance of a brief memorandum from Gov. John Carney to Sec. of Education Susan Bunting. In the memo, the governor directed the agency to promulgate regulations providing clear guidance to schools "to prohibit unlawful discrimination in educational programs, and activities for students, on the basis of any legally protected characteristic."

The memo set a deadline of November 1st for the proposed rules to be posted in the Delaware Register of Regulations, a needed step preceding implementation. Four "community conversations" were held -- one in each county, and one in the City of Wilmington -- to gather public input.

State Rep. Ruth Briggs King, R-Georgetown, attended the Sussex County event last week. She said the meetings - which all took place between 6:30 p.m. and 8 p.m. over a period of just ten days - were, perhaps intentionally, inconveniently staged for parents to

participate. "They were held when families are collecting students from school activities, having dinner and assisting with homework," she said.

Rep. Collins noted that the forums appeared to have been deliberately engineered to thwart public criticism, with participants broken into small discussion groups, limiting interaction and open debate.

He added that an [online survey form](#) for public feedback on the proposed policy and regulations posed questions that specifically called for participants to provide three things they liked about each but avoided any such pointed solicitation of negative comments.

The draft regulations include "gender identity or expression" among its protected characteristics.



State Rep. Ruth Briggs King

Among the more controversial aspects of the [proposed rules](#) are the following:

- All students enrolled in a Delaware public school would be able to self-identify gender or race. (Rule 7.4)
- A student would have the opportunity to participate on the sports team that is consistent with the student's gender identity, regardless of the student's assigned sex at birth. (6.4)
- A student would have the opportunity to participate in the program of instruction dealing with human sexuality that is consistent with the student's gender identity, regardless of the student's assigned sex at birth. (3.4)
- Regarding physical education programs - goals, objectives and skill development standards could not be designated on the basis of gender. (5.2)
- School districts and charter schools would be required to work with students and families on providing access to locker rooms and bathrooms that correspond to students' "gender identity or expression." (8.1)
- Even if a student does not legally change his or her name, he or she can select a "preferred name" based on a "protected characteristic" that school officials would be obligated to use except on official records. (7.3)

The proposed regulations direct school districts to establish antidiscrimination policies within 90 days of the rules' implementation or the start of the next academic year, whichever is earlier. The policies would be required to contain informal and formal complaint procedures.

"The regulations and policy contain no mention of a student's age, so I question the wisdom of allowing very young students to make some of these decisions," Rep. Collins said. "These proposals also seem to undercut parental authority; giving parents less say in some of these processes than I think is appropriate."

State Reps. Collins and Briggs King say the proposed regulations are invalid, noting that "gender identity or expression" is not a legally protected classification under the Delaware Code covering public education.

[Delaware's Gender Identity Nondiscrimination Act of 2013](#) -- which forbids discrimination on the basis of gender identity in housing, employment, public works contracting, public accommodations, and insurance - added new language to seven titles of the state code. However, those changes were not applied to Title 14, which covers public education.

"Neither the proposed regulation nor the model policy document, are legitimate because they are not based on any legal authority granted by the General Assembly," Rep. Collins said.

Rep. Briggs King points to language in [House Joint Resolution 6](#) - which is still pending action in the Senate - as further proof. The measure contains a provision explicitly stating that Delaware's laws on public education do not "prohibit discrimination based on gender identity or expression."

Rep. Collins said there has been a rapid push to implement the anti-discrimination regulations, outside the authority of law and escaping the attention of most parents and elected officials. He said the new rules would produce confusion and likely create additional disputes and lawsuits.

In a recent communication to the Department of Education, Rep. Collins urged the agency to delay action to address the growing concerns about the proposals.