



DELAWARE CHIEF SCHOOL OFFICERS ASSOCIATION

MISSION: The mission of DCSOA is to build the capacity of public schools to meet the needs of all students, deliver quality teaching and learning experiences, provide relevant curriculum, assure effective use of resources, and maintain safe, healthy learning environments.

2017-2018 Officers

Heath B. Chasanov
President

D. Dusty Blakey, Ed.D.
Vice President

Kevin Dickerson
Secretary

Kevin Fitzgerald
Treasurer

November 27, 2017

Secretary Susan Bunting
Department of Education
401 Federal Street, Suite 2
Dover, DE 19901

Dear Secretary Bunting:

The Delaware Chief School Officers Association (DCSOA) is an organization that consists of the school superintendents from 19 school districts in Delaware. On behalf of our membership, the DCSOA expresses concerns regarding the proposed Regulation 225 – the Anti-Discrimination Regulation Policy being considered by the Delaware Department of Education. The DCSOA does not condone any form of discrimination against any student or staff member for any reason, however, we have the following legal concerns with the policy as it has been advanced:

Participation on the Team Consistent with the Student's Gender Identity

Section 6.4 is inconsistent with the Delaware Interscholastic Athletic Association's Regulation 5.1.4.1, and DIAA's "FAQ's" concerning 1009.51. Section 6.4 of the regulation, when read together with Section 7.4 appears to permit participation on the team that is consistent with the student's self-identified gender. Current DIAA regulations require that the transgender policies of member schools impose specific conditions. Thus, unlike the DIAA regulations, Section 7.4 prohibits schools from scrutinizing whether the self-identified gender is legitimate and based on clinical consultation or treatment.

Students may Self-Identify Gender or Race

Section 7.4.1 requires that a school ask the student whether the student's parent or legal guardian is aware of the self-identification of gender or race, and consider the safety, health and well-being of the student in deciding whether to request permission from the parent or legal guardian. Thus, section 7.4.1 suggests that there are situations in which a school district should **NOT** inform the parents of a student that the student self-identifies a gender which differs from the student's assigned sex at birth.

This puts school districts in an untenable position. Suggesting that, under **ANY** circumstances, a school district should withhold information from a parent as significant as a change in gender identity of the parent's child conflicts with the fundamental right of a parent to direct the upbringing and education of the parent's child.

Providing Access to Locker Rooms and Bathrooms

Section 8.0 of the Regulations, and the model policy school districts are required to adopt prohibit denying a student's access to locker rooms or bathrooms on the basis of a student's gender identity or expression. We know



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two things about permitting transgender students access to locker rooms or bathrooms on the basis of their gender identity. First, there is likely to be litigation. Second, the law surrounding this issue is unsettled.

Courts have recently summarized that the use of common restrooms by transgender students is so clouded with uncertainty that they are not in the position to conclude which party has the likelihood of success on the merits of their claims. In addition, there have been law suits on behalf of transgender students seeking access to common bathrooms and locker rooms under the Equal Protection Clause of the U.S. Constitution that have been successfully asserted. However, these favorable decisions were in part decided based on the fact that the physical layout of these areas still allowed for individual privacy. This is not the case for many such areas in Delaware schools today.

School districts permitting the use of bathrooms consistent with the gender identity of students have also been subject to claims by parents of students asserting that the policy violates the privacy rights of other students. In all events, the mandate incorporated in the model policy subjects school districts to the substantial risk of defending costly litigation.

DCSOA Position

The DCSOA position is that an issue of this importance should be resolved through the legislative process and not through a cabinet level regulation and subsequent School Board policy. If you have any questions, please do not hesitate to contact me.

Sincerely,

Heath B. Chasanov
DCSOA President