



August 22, 2024

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Board of Trustees

Dr. Tracy Johnson, Superintendent
Keller Independent School District ("Keller ISD")
350 Keller Parkway
Keller, TX 76248

Via E-mail

Re: Revisions to Local Board Policies

Dear Keller ISD Board of Trustees and Superintendent Johnson,

We write to express concerns about the policy revisions you are considering at your upcoming board meeting. Because portions of these revisions amount to discriminatory restrictions on LGBTQIA+¹ youth and risk the creation of a hostile educational environment, we urge you to reject them. Enacting such policies would violate the U.S. and Texas Constitutions and harm and stigmatize the District's students, staff, and families, in violation of federal anti-discrimination law.

LGBTQIA+ students in Keller ISD have a constitutional right to equal treatment under the law—a right echoed and reinforced by Title IX's non-discrimination mandate. This right encompasses many essential aspects of the student experience, and a school board's policies cannot reject or supersede the U.S. or Texas Constitutions or federal laws. But the following policy revisions raise serious discrimination concerns.

¹ LGBTQIA+ refers to people who are lesbian, gay, bisexual, transgender, queer, questioning, intersex, asexual, aromantic, or other identities that reflect the full diversity of gender identity and sexual orientation.

“Official Birth Certificates”

Many of the proposed policy revisions—including FM(Local), FMG(Local), FI(Local), and FL(Local)—rely on a student’s official birth certificate to determine a student’s “biological sex.” But the concept of “biological sex” is scientifically complex and reducing it to this rigid, binary formula will lead to inaccuracies, violations of privacy, and discrimination.

Indeed, the American Medical Association (AMA) and other scientific organizations recognize that sex designations on birth certificates are problematic because sex is not “simple and binary,” and requiring the notation of binary sex designations “fails to recognize the medical spectrum of gender identity.”² And because approximately 1.7% of people are born intersex, with many possible variations in hormones, anatomy, and/or chromosomes,³ it is scientifically inaccurate and impossible for school districts to set policy based on a binary view of “biological sex.”

Further, the proposed birth certificate policy not only seeks to categorize students based on a rigid and unscientific system, but it would also allow Keller ISD administrators to challenge or second-guess students’ official birth certificates. The policy would seemingly require school administrators to ask whether the sex listed on a student’s birth certificate was “[e]ntered at or near the time of the person’s birth” or “[m]odified only to the extent necessary to correct any type of scrivener or clerical error in the person’s biological sex.” In some cases, it may not be possible for administrators to make these determinations without demanding access to students’ medical and legal records. ***But is deeply invasive and unlawful for school administrators to interrogate students’ private information in this way.*** School districts have no right to question students’ sexual characteristics such as hormones, anatomy, or chromosomes or to review medical documents or invalid, outdated legal documents that may reveal private medical information. Such a gross invasion of privacy would violate students’ federal and state privacy rights.

FM(Local)

FM(Local) would require students to be divided based on “biological sex” for any gender-specific activities, including extracurriculars. In addition to the concerns regarding the birth certificate rule explained above, this policy raises concerns that the district may be separating students on the basis of sex beyond what is permitted by federal law. The district

² See Report 10 of the Board of Trustees, American Medical Association at 14 (June 2021), <https://www.ama-assn.org/system/files/2021-05/j21-handbook-addendum-ref-cmte-d.pdf>.

³ Caroline Medina and Lindsay Mahowald, *Key Issues Facing People with Intersex Traits*, Center for American Progress (Oct. 26, 2021), available at <https://www.americanprogress.org/article/key-issues-facing-people-intersex-traits/>.

should keep in mind that longstanding Title IX regulations prohibit separation on the basis of sex in “any . . . educational programs or activities,” with very limited exceptions.⁴

FM(Local) would also require parental permission for students to participate in student club meetings and activities. This policy has the potential to deprive students of valuable resources and peer-group support. Some students may not feel comfortable revealing to their parents that they are seeking to join, for example, an LGBTQIA+-affirming student group or a religious student organization, for fear of parental rejection or discipline. FM(Local) would impose significant administrative burdens on students, parents, and staff—seemingly impeding students from even trying out a single club meeting without parental approval. If this policy passes, the district also risks violating the First Amendment and Equal Access Act if staff members enforce this rule differently or inconsistently among student groups—adding legal liability onto significant bureaucracy.

FI(Local)—Student Names

FI(Local)’s proposed revisions threaten to increase the policy’s already discriminatory pronoun usage provision.⁵ The revisions would allow district personnel to refer to a student only by the name that appears on the student’s “originally issued” birth certificate or by a “nickname commonly associated with the name that appears in the student’s birth certificate.”⁶ But this policy makes no sense and will lead to even more bureaucracy and blatant discrimination.

First, this policy deputizes and requires district staff to become arbiters of whether a nickname is “commonly associated” with the name on a student’s birth certificate. This bizarre requirement will add more unnecessary work for the district’s already busy staff. It will also lead to discrimination against, and enhanced scrutiny of, students with names that are unfamiliar to district staff, particularly students from diverse racial, cultural, and religious backgrounds. For example, a Keller ISD teacher might quickly determine that “Matt” is a common nickname for “Matthew,” but they might not appreciate or understand many other common nicknames, particularly those based on other languages or cultural traditions. This rule seems to require district staff to engage in impermissible stereotyping that will subject students to unnecessary,

⁴ 34 C.F.R. § 106.34(a).

⁵ As we have previously warned the district, the pronoun policy would allow and essentially encourage staff members, and the students who look to them for guidance, to purposefully misgender other students at school, in violation of federal law. But it is a moral and legal imperative that school districts protect students from being harassed or bullied at school, including by being deliberately called pronouns that do not align with who they are. Supporting students’ pronouns helps preserve their safety and privacy, prevents unwanted “outing,” and defends against a hostile environment of bullying and harassment.

⁶ The policy would seemingly allow parents to authorize the use of another name for their children, but the policy also states that “the District shall not compel District personnel or other students to address or refer to students in any manner that would violate the speaker’s constitutionally protected rights”—seemingly authorizing district staff to ignore parental requests.

embarrassing attention. What if some students have always gone by their middle names⁷ or initials, which are not mentioned in this policy? The implementation concerns with this policy are limitless and gratuitously harmful.

Further, this rule—especially as it is situated amongst other provisions that explicitly target transgender and non-binary students—raises the specter of unconstitutional sex discrimination. Courts have recognized that deliberately refusing to address transgender individuals by the name and pronouns consistent with their gender identity can constitute gender-based harassment under the Constitution and federal anti-discrimination law.⁸ Further, if school administrators use a student’s “dead name,” or name assigned at birth, that could violate federal privacy laws by “outing” the student as transgender. Students have the right to share or withhold information about their gender identity under federal law.⁹ And, under state law—section 25.0021 of the Texas Education Code—schools are only required to identify students “by the student’s legal surname,” so that students’ affirming first names and pronouns may be used in class, at graduation and school events, and in all non-official documents or records.

Further, when school administrators deadname transgender and non-binary students—as they will be required to do under FI(Local)—it can cause immense and irreparable trauma and spur bullying and harassment from other students. A student’s need to undergo gender transition during their school years—including through the use of affirming names and pronouns—is part of the essential process of living consistently as their authentic self. When transgender students can use their affirming name at school, they are 29% less likely to experience suicidal ideation and 56% less likely to engage in suicidal behavior.¹⁰ School boards’ decisions with respect to the use of affirming names and pronouns therefore have a direct and immediate impact on students’ mental health, and you have an obligation to keep your students safe from harm.

FI(Local)—Notice to Parents

FI(Local) also seeks to require parental notification of a student’s transgender or non-binary identity, which could be unlawful and extremely harmful. Texas state law prohibits all educators from “reveal[ing] confidential information concerning students unless disclosure

⁷ Or a nickname associated with their middle name? See *Bette Perot Elementary School*, Keller ISD, <https://bpes.kellerisd.net/> (Keller ISD school named after Margaret Elizabeth “Bette” Perot).

⁸ See, e.g., *Doe v. City of New York*, 976 N.Y.S.2d 360 (N.Y. Sup. Ct. 2013) (holding transgender woman had sufficiently alleged discrimination under state sex discrimination law when the state HIV/AIDS Service Administration continued to address her by her former male name and male pronouns).

⁹ See Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. §§ 99.00 et seq. Disclosure of private information related to sex or gender can also violate sex discrimination laws. See *Roberts v. Clark Cty. Sch. Dist.*, 215 F.Supp.3d 1001 (D. Nev. 2016) (claims of disclosure of private information about employee’s transgender status could proceed to trial via a harassment/hostile environment theory under Title VII’s sex discrimination prohibition).

¹⁰ Stephen T. Russell, et al., *Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior Among Transgender Youth*, *J. Adolesc. Health* (Oct. 2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6165713/>.

serves lawful professional purposes or is required by law” and bars them from “intentionally, knowingly, or recklessly treat[ing] a student or minor in a manner that adversely affects or endangers the learning, physical health, mental health, or safety of the student or minor.”¹¹ But “outing” a student to their parents without that student’s explicit consent inherently reveals confidential information in a manner that may adversely affect or endanger them, and could also lead to abuse or neglect.¹²

Conclusions

You are considering this policy at a time of extreme hostility for Texas LGBTQIA+ youth, including hostility engineered by this very school board.¹³ If passed, these policy revisions will be a cruel escalation of the attacks on an already vulnerable group. In addition to the challenges and worries that all youth face, transgender and non-binary young people have been recently confronted with significant harm and discrimination here in Texas. During and since the 2023 legislative session, these Texas youth have endured attacks on their health care, their ability to play sports, their access to inclusive educational materials, and their very existence.

We urge you to refrain from causing further harm and to reject any policies that would lead to the stigmatization, ostracization, harassment, and forced outing of LGBTQIA+ students in your district.

Sincerely,

The American Civil Liberties Union (ACLU) of Texas
Equality Texas
Finn’s Place
Human Rights Campaign
Pride Frisco

¹¹ Tex. Admin. Code § 247.2(3)(A)-(B).

¹² For example, a student’s ability to keep their sexual orientation or gender identity discrete from their parents can be, and often has been, the difference between having a place to come home to or not. The Williams Institute at UCLA School of Law reported in 2020 that LGBTQ+ youth comprise up to 45% of homeless youth. *See* <https://williamsinstitute.law.ucla.edu/press/lgbt-housing-press-release/>. Family rejection is a significant factor—40% of LGBTQ+ youth that were kicked out of the home or abandoned by their families report that they were kicked out or abandoned because of their LGBTQ+ identity, contributing to LGBTQ+ youth homelessness. *See* <https://www.thetrevorproject.org/research-briefs/homelessness-and-housing-instability-among-lgbtq-youth-feb-2022/>. Further, in a survey of 5,000 gender-expansive youth conducted by the Human Rights Campaign and the University of Connecticut, many described sharing their gender identity with their families as “incredibly stressful”—only 23% of all gender-expansive youth surveyed felt that they could “definitely be themselves at home.” *See* <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/files/assets/resources/Gereport1.pdf>.

¹³ Wayne Carter and Ben Russell, *Keller ISD Approves Measure to Ban Books on ‘Gender Fluidity’*, NBCDFW (Nov. 14, 2022), <https://www.nbcdfw.com/news/local/keller-isd-bans-books-on-gender-fluidity/3124574/>; Bill Zeeble, *Keller ISD trustees adopt controversial bathroom and pronoun policies*, KERANews (Jun. 29, 2023), <https://www.keranews.org/education/2023-06-29/keller-isd-trustees-adopt-controversial-bathroom-and-pronoun-policies>.