

## Atherton Non-Discrimination Policy

Atherton is reviewing the addition of a non-discrimination statement into SBDM policy on use of school space that includes protection of discrimination based on gender identity. This policy would support the current practice of allowing transgender students, upon prior approval and parameters set by the administration, to use the facilities of their gender identity.

# Gender Identity and Transgender

Please take five minutes to familiarize yourself with the information that will be discussed at the SBDM Council meeting:

What is “gender identity” and “transgender”?

- Excerpt from Bowers, G. & Lopez, W. (April 2012). Which Way to the Restroom? Respecting the Rights of Transgender Youth in the School System. National School Board Association Council of School Attorneys. Pp 1-2.

Freedom from discrimination based on sex is a right. However, when a person whose gender identity, gender expression, or behavior does not conform to that typically associated with the sex to which they were assigned at birth, respecting this right can become complicated, especially at school. Such a person is usually referred to as “transgender,” or simply “trans.” A recent example gained national attention when a transgender girl (born male) who had been identifying as a girl since age two was admitted at age nine to a Girl Scout troop in Denver Colorado. This issue is problematic because it places school boards in a position of balancing the rights of transgender students to freedom from discrimination and expression with the rights of other students and parents to freedom of religion and expression, among others. The problem is further complicated because the rights of transgender students found in legislation are fairly new and evolving, and there is limited case law interpretation by tribunals, commissions and courts.

To deal effectively with gender equality issues, a knowledge of the terminology is essential. Gender identity relates to a person’s inner sense of being male, female or something on a continuum between—or even beyond—these two concepts. Gender expression relates to the way in which a person communicates gender identity through clothing, hairstyle, grooming or voice. When a trans person surgically alters their body, it is often called “sex/gender reassignment” or “affirmation.” Gender identity does not equate to sexual preference or orientation. For example, a trans girl (born as a boy by sex) who is attracted to males is heterosexual, not gay. Trans persons can have the same spectrum of orientation as anyone else, and they can be straight, gay, bi-sexual or asexual. People who experience intense, persistent gender incongruence may be diagnosed with gender identity disorder (GID). However this “diagnosis” is highly controversial among some mental health professionals and transgender communities. Some contend that the diagnosis inappropriately pathologizes gender incongruence and should be eliminated.

It is generally understood that gender identity develops in the brain and is most likely determined before a child is born. It is a misconception that children choose to feel like a girl or a boy. Children can manifest their identity at pre-school age levels by the choice of toys and clothing. Thus, a “boy” may wish to wear a dress to attend kindergarten. Stephanie Brill and Rachel Pepper, authors of *The Transgender Child*, state, “four to six year olds associate gender with specific behaviors...girls wear makeup, so anyone with make-up is a girl. Boys lift weights and play with trucks, so anyone lifting weights and playing with trucks is a boy . . . school has a great influence on children of this age so it is essential that preschools and grade schools incorporate gender differences and tolerances of such differences in their programs...it is normal for four to six year olds to think they can grow up to be the opposite sex.” When such children are frustrated and cannot express their felt identity, behavioral problems can surface and in some cases suicide ideation occurs.

## When does gender identity emerge?

When does gender identity emerge?

- Excerpt from Bowers, G. & Lopez, W. (April 2012). Which Way to the Restroom? Respecting the Rights of Transgender Youth in the School System. National School Board Association Council of School Attorneys. Pp 2-3.

Sometimes gender identity can emerge in the period just before or during early stages of puberty, ages nine to fourteen. At this age, it is not unusual for a transgender child to simply announce to parents that they have a new name, reflective of gender identity; "Jack" becomes "Jill," for example. In other cases, post-pubescent adolescents may "try on" different sexualities to see what fits best, only slowly realizing that they are transgender. At this stage, the underlying contradiction between the sex of pubertal changes and the underlying gender identity can in some individuals cause depression, self-neglect and self-destructive behaviors.

Post-puberty is where gender identity generally becomes fully developed. According to Brill and Pepper, "...the hormonal and concurrent physical changes of puberty clarify for the child that they are going through the 'wrong' puberty." This can cause an increased urgency to communicate, greater anxiety and exploration of options such as transitioning to the "proper" sex. This is also the age when differences between sexual orientation and gender identity can also develop. For example, remember that if a transgender child identifies as a male and is attracted to females, "he" is straight, not gay and vice versa. On the other hand, a trans teen may in fact be gay when they are attracted to persons of the opposite sex.

## The Law

What is the law?

- From Questions and Answers on Title IX and Sexual Violence. United States Department of Education: Office for Civil Rights. April 29, 2014.

### B. Students Protected by Title IX

B-1. Does Title IX protect all students from sexual violence?

Answer: Yes. Title IX protects all students at recipient institutions from sex discrimination, including sexual violence. Any student can experience sexual violence: from elementary to professional school students; male and female students; straight, gay, lesbian, bisexual and transgender students; part-time and full-time students; students with and without disabilities; and students of different races and national origins.

B-2. How should a school handle sexual violence complaints in which the complainant and the alleged perpetrator are members of the same sex?

Answer: A school's obligation to respond appropriately to sexual violence complaints is the same irrespective of the sex or sexes of the parties involved. Title IX protects all students from sexual violence, regardless of the sex of the alleged perpetrator or complainant, including when they are members of the same sex. A school must investigate and resolve allegations of sexual violence involving parties of the same sex using the same procedures and standards that it uses in all complaints involving sexual violence.

Title IX's sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity and OCR accepts such complaints for investigation. Similarly, the actual or perceived sexual orientation or gender identity of the parties does not change a school's obligations. Indeed, lesbian, gay, bisexual, and transgender (LGBT) youth report high rates of sexual harassment and sexual violence. A school should investigate and resolve allegations of sexual violence regarding LGBT students using the same procedures and standards that it uses in all complaints involving sexual violence. The fact that incidents of sexual violence may be accompanied by anti-gay comments or be partly based on a student's actual or perceived sexual orientation does not relieve a school of its obligation under Title IX to investigate and remedy those instances of sexual violence.

If a school's policies related to sexual violence include examples of particular types of conduct that violate the school's prohibition on sexual violence, the school should consider including examples of same-sex conduct. In addition, a school should ensure that staff are capable of providing culturally competent counseling to all complainants. Thus, a school should ensure that its counselors and other staff who are responsible for receiving and responding to complaints of sexual violence, including investigators and hearing board members, receive appropriate training about working with LGBT and gender-nonconforming students and same-sex sexual violence.

## 1. What is your role group?

- Student
- Parent
- Staff
- Community Member

## 2. Please provide your input below. All responses will be printed and supplied to all members of the Atherton High School SBDM Council.