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PROPOSED BUSD POLICY:

TRANSGENDER AND GENDER NONCONFORMING STUDENTS

Policy Subcommittee Meetings

- First Discussion, September 10, 2020
 - Second Discussion, October 8, 2020
 - Third Discussion and Action, November 12, 2020
 - First Reading, Board of Education, November 18, 2020
 - Final Approval, Board of Education, December 9, 2020
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The purpose of this policy is:

(1) to foster an educational environment from PreK through Adult Education that is safe, welcoming, and free from stigma and discrimination for all students, regardless of gender identity or expression,

(2) to facilitate compliance with local, state and federal laws concerning bullying, harassment, privacy, and discrimination,

(3) to ensure that all students have the opportunity to express themselves and live authentically.

DEFINITIONS

The definitions provided here are not intended to label students but rather to assist in understanding this policy and the legal obligations of District staff. Students might or might not use these terms to describe themselves.

- “Gender identity” is a person’s deeply held sense or psychological knowledge of their own gender, regardless of the gender they were assigned at birth. Everyone has a gender identity.
- “Transgender” describes people whose gender identity is different from their sex assigned at birth.
- “Gender expression” refers to the way a person expresses gender, such as clothing, hairstyles, activities, or mannerisms.
- “Gender nonconforming” Denoting or relating to a person whose behavior or appearance does not conform to prevailing cultural and social expectations about what is appropriate to the female or male sex they were assigned at birth. This often includes students who use “they/them” as pronouns. “Gender

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nonconforming” includes students who identify themselves as nonbinary or gender expansive.

Privacy

All persons, including students, have a right to privacy. This includes the right to keep private one’s transgender status or gender nonconforming presentation at school. Information about a student’s transgender status, legal name, or gender assigned at birth also may constitute confidential medical information. School personnel should not disclose information that may reveal a student’s transgender status or gender nonconforming presentation to others, including parents and other school personnel, unless legally required to do so or unless the student has authorized such disclosure. Transgender and gender nonconforming students have the right to discuss and express their gender identity and expression openly and to decide when, with whom, and how much to share private information.

When contacting the parent or guardian of a transgender or gender nonconforming student, school personnel should use the student’s legal name and the pronoun corresponding to the student’s gender assigned at birth unless the student, parent, or guardian has specified otherwise.

Official Records

The District is required to maintain a mandatory permanent pupil record (“official record”) that includes a student’s legal name and legal gender. However, the District is not required to use a student’s legal name and gender on other school records or documents. The District will change a student’s official record to reflect a change in legal name or legal gender upon receipt of documentation that such change has been made pursuant to a court order. In situations where school staff or administrators are required by law to use or to report a transgender student’s legal name or gender, such as for purposes of standardized testing, school staff and administrators shall adopt practices to avoid the inadvertent disclosure of such confidential information.

Names/Pronouns

A student has the right to be addressed by a name and pronoun that corresponds to the student’s gender identity. A court-ordered name or gender change is not required, and the student need not change their official records.

The intentional or persistent refusal to respect a student’s gender identity (for example, intentionally referring to the student by a name or pronoun that does not correspond to the student’s gender identity) is a violation of this policy.

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Gender-Segregated Activities

To the extent possible, schools should reduce or eliminate the practice of segregating students by gender. This includes class activities and groupings, including lines of students by gender. In situations where students are segregated by gender, such as for health education classes, students should be included in the group that corresponds to their gender identity.

Student Information Systems

BUSD has modified its student information system to prevent disclosure of confidential information and ensure that school personnel use a student's name and pronouns consistent with the student's gender identity. Instructions for using that system are attached to this policy.

Restroom Accessibility

Students shall have access to the restroom(s) that corresponds to their gender identity consistently asserted at school. Any student who has a need or desire for increased privacy, regardless of the underlying reason, should be provided access to a single stall restroom, but no student shall be required to use such a restroom. The District shall establish a standard for an adequate number of gender-neutral restrooms on each campus.

School Curriculum

A school curriculum that is inclusive of diverse identities may help to instill beliefs in the intrinsic value of all individuals. BUSD educators and central office staff shall make ongoing efforts to identify and create an LGBTQ curriculum to mitigate anti-LGBTQ victimization, as well as racist victimization for LGBTQ students of color.

Locker Room Accessibility

In most cases, transgender students should have access to the locker room that corresponds to their gender identity consistently asserted at school. The use of locker rooms by transgender students shall be assessed on a case-by-case basis with the goals of maximizing the student's social integration and equal opportunity to participate in physical education classes and sports, ensuring the student's safety and comfort, and minimizing stigmatization of the student. Any student who has a need or desire for increased privacy, regardless of the underlying reason, should be provided with a reasonable alternative changing area such as the use of a private area (e.g., a

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nearby restroom stall with a door, an area separated by a curtain, a P.E. instructor's office in the locker room, or a nearby health office restroom), or with a separate changing schedule (e.g., using the locker room that corresponds to their gender identity before or after other students). Any alternative arrangement should be provided in a way that protects the student's ability to keep their transgender status confidential. In no case shall a transgender student be required to use a locker room that conflicts with the student's gender identity.

Physical Education Classes & Intramural Sports

Transgender and gender nonconforming students shall be permitted to participate in physical education classes and intramural sports in a manner consistent with their gender identity.

Interscholastic Competitive Sports Teams

Transgender and gender nonconforming students shall be permitted to participate in interscholastic athletics in a manner consistent with their gender identity.

Dress Codes

Transgender and gender nonconforming students have the right to dress in a manner consistent with their gender identity or gender expression. In general, schools may not adopt dress codes that restrict students' clothing or appearance on the basis of gender.

Other Gender-Based Activities, Rules, Policies and Practices

As a general matter, schools should evaluate all gender-based activities, rules, policies, and practices—including classroom activities, school ceremonies, and school photos—and maintain only those that serve an important educational purpose. Students shall be permitted to participate in any such activities or conform to any such rule, policy, or practice consistent with their gender identity.

Student Transitions

The school shall accept the gender identity that each student asserts. There is no medical or mental health diagnosis or treatment threshold that students must meet in order to have their gender identity recognized and respected. The assertion may be evidenced by an expressed desire to be consistently recognized as the sex consistent with their gender identity. Students ready to socially transition may initiate a process to change their name, pronoun, attire, and access to gender-related programs,

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activities, and facilities consistent with their gender identity. Each student has a unique process for transitioning. The school shall customize support to optimize each student's equal access to the District's educational programs and activities.

Discrimination/Harassment

It is the responsibility of each school and the District to ensure that transgender and gender nonconforming students have a safe school environment. This includes ensuring that any incident of discrimination, harassment, or violence is given immediate attention, including investigating the incident, taking appropriate corrective action, and providing students and staff with appropriate resources. Complaints alleging discrimination or harassment based on a person's actual or perceived transgender status or gender nonconformity are to be handled in the same manner as other discrimination or harassment complaints. (See the "Related Resources" and the "Assistance" sections of this policy for further information regarding the filing of discrimination or harassment complaints.)

Transferring a Student to Another School (Opportunity Transfers)

In general, schools should aim to keep transgender and gender nonconforming students at their original school site. Opportunity transfers to another school should not be a school's first response to harassment and should be considered only when necessary for the protection or personal welfare of the transferred student, or when requested by the student or the student's parent. The student or the student's parent or guardian must consent to any such transfer.

Training and Professional Development

The District shall conduct ongoing training for all staff members on their responsibilities under applicable laws and this policy, including teachers, administrators, counselors, social workers, and health staff. Information regarding this policy shall be incorporated into training for new school employees. To the extent funding is available, the District shall implement ongoing professional development to build the skills of all staff members to prevent, identify and respond to bullying, harassment, and discrimination. The content of such professional development shall include, but not be limited to: (i) terms, concepts, and current developmental understandings of gender identity, gender expression, and gender diversity in children and adolescents; (ii) developmentally appropriate strategies for communication with students and parents about issues related to gender identity and gender expression that protect student privacy; (iii) developmentally appropriate strategies for preventing and intervening in bullying incidents, including cyberbullying; (iv) classroom-management practices, curriculum, and resources that educators can

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integrate into their classrooms to help foster a more gender-inclusive environment for all students; (v) school and District policies regarding bullying, harassment, discrimination, and suicide prevention and responsibilities of staff. Berkeley students will receive lessons at appropriate stages consistent with this policy that the District will plan and institute.

Complaints about violations of this policy should be handled through the Uniform Complaint Procedures. Cal. Code Regs. tit. 5, §§ 4600-4687.