

TESTIMONY IN OPPOSITION TO

L.D. 678

AN ACT TO REQUIRE PARENTAL APPROVAL FOR PUBLIC SCHOOL EMPLOYEES TO USE A NAME OR PRONOUN OTHER THAN A CHILD'S GIVEN NAME OR PRONOUN CORRESPONDING TO THE GENDER ON THE CHILD'S BIRTH CERTIFICATE

Senator Carney, Representative Moonen and members of the Judiciary Committee. I am Victoria Wallack, director of communications and government relations for Maine School Management Association, testifying on behalf of the legislative committees of the Maine School Boards Association and Maine School Superintendents Association, in opposition to L.D. 678.

Our position is based on two important factors.

The federal Civil Rights Act bans sex discrimination in public schools and that ban includes protection for gender nonconforming students. We believe it is discriminatory to refuse to address a student by a name he or she has requested because of their gender identification.

The U.S. Department of Education, in its policy on "Supporting Transgender Youth in School" recommends that support should include local policy that respects gender identities such as "using the name a student goes by, which may be different from their legal name, and pronouns that reflect a student's gender identity".

It is as important to us that with or without the federal law, Maine public schools and their staff support all students who come through our doors and adopt policies and practices that support all students.

School Board Policy ACAA reads:

Harassment of students because of race, color, sex, sexual orientation, gender identity, religion, ancestry or national origin or disability is prohibited. Such conduct is a violation of Board policy and may constitute illegal discrimination under state and federal law.

Our two associations also discussed another more common occurrence. Students have their given name at birth. Often, either through parents, friends or the student themselves, they will ask to be called a nickname or name shortened from their given name at birth. Steve instead of Steven, Jonesy instead of Kerry, Huck instead of Hudson, Addy instead of Adalyn, Sam instead of Samantha, and the list could go on...and these are just within our own family. L.D. 678 would prevent and make it unlawful to use any name other than what is on the child's birth certificate. A very important part of public schools is the relationship that is developed between students and teachers, and the name used should be one that coincides with the wishes of the student.

With this said, depending upon the circumstances, efforts will also be made to connect with parents of the student in an attempt to both understand and work collaboratively should there need to be common understanding of a request for a name use that is different from that on the student's birth certificate.

We believe it is important to follow the law, and as important to treat all our students with respect, and that includes respecting their wishes as to the name or pronoun they choose to be referred to while in school.

[Note: This revised sample policy recognizes the Maine Legislature’s 2022 enactment of LD 598, “An Act To Prohibit Discrimination in Employment and School Based on Hair Texture or Hairstyle,” amending the Maine Human Rights Act.]

HARASSMENT AND SEXUAL HARASSMENT OF STUDENTS

Harassment of students because of race, color, sex, sexual orientation, gender identity, religion, ancestry or national origin, or disability is prohibited. Such conduct is a violation of Board policy and may constitute illegal discrimination under state and federal laws.

For the purpose of this policy, “race” includes traits associated with race, including hair texture, Afro hairstyles, and protective hairstyles, including braids, twists, and locs.

School employees, fellow students, volunteers, visitors to the schools, and other persons with whom students may interact in order to pursue or engage in education programs and activities, are required to refrain from such conduct.

Harassment and sexual harassment of students by school employees is considered grounds for disciplinary action, up to and including discharge. Harassment and sexual harassment of students by other students is considered grounds for disciplinary action, up to and including expulsion. The Superintendent will determine appropriate sanctions for harassment of students by persons other than school employees and students.

A. Harassment

Harassment includes, but is not limited to, verbal abuse and other offensive conduct based on race, color, sex, sexual orientation, gender identity, religion, ancestry or national origin, or disability. Harassment that rises to the level of physical assault, battery and/or abuse, and/or bullying behavior are also addressed in Board Policies JICIA – Weapons, Violence and School Safety and JICK – Bullying.

B. Sexual Harassment

Sexual harassment is addressed under federal and state laws/regulations. The scope and definitions of sexual harassment under these laws differ, as described below.

1. TITLE IX SEXUAL HARASSMENT

Under the federal Title IX regulations, sexual harassment includes the following conduct on the basis of sex which takes place within the context of the school unit's education programs and activities:

- a. "Quid pro quo" sexual harassment by a school employee: Conditioning a school aid, benefit or service (such as a better grade or a college recommendation) on an individual's participation in unwelcome sexual conduct;
- b. "Hostile environment" sexual harassment: Unwelcome conduct based on sex that a reasonable person would determine is so severe, pervasive and objectively offensive that it effectively denies an individual's equal access to the school unit's education programs and activities; or
- c. Sexual assault, dating violence, domestic violence and stalking as these terms are defined in federal laws.

2. Sexual Harassment Under Maine Law

Under Maine law, sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature in the following situations:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of a student's educational benefits;
- b. Submission to or rejection of such conduct by a student is used as the basis for decisions on educational benefits; or
- c. Such conduct has the purpose and effect of substantially interfering with a student's academic performance or creates an intimidating, hostile or offensive environment.

C. Reports and Complaints of Harassment or Sexual Harassment

All school employees are required to report possible incidents of harassment or sexual harassment involving students to the Affirmative Action Officer/Title IX Coordinator. Failure to report such incidents may result in disciplinary action.

Students, parents/legal guardians and other individuals are strongly encouraged to report possible incidents of harassment or sexual harassment involving students to the Affirmative Action Officer/Title IX Coordinator. The Affirmative Action Officer/Title IX Coordinator is also available to answer questions and provide assistance to any individual who is unsure whether harassment or sexual harassment has occurred.

All reports and complaints of harassment or sexual harassment against students shall be addressed through the Student Discrimination/Harassment and Title IX Sexual Harassment Procedures (ACAA-R).

Legal Reference: Americans with Disabilities Act (42 U.S.C. §12101 et seq., as amended; 28 C.F.R. § 35.107)
Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 794 et seq., as amended; 34 C.F.R. § 104.7)
Title IX of the Education Amendments of 1972 (20 USC § 1681, et seq.); 34 C.F.R. Part 106
Clery Act (20 U.S.C. §1092(f)(6)(A)(v) - definition of sexual assault)
Violence Against Women Act (34 U.S.C. § 1092(f)(6)(A)(v) – definition of sexual assault; 34 U.S.C. § 12291(a)(10) – dating violence; 34 U.S.C. §12291(a)(3) – definition of stalking; 34 U.S.C. §12291(a)(8) – definition of domestic violence)
Title VI of the Civil Rights Act of 1964 (42 USC § 2000d)
Maine Human Rights Act, 5 MRSA § 4551 et seq.
20-A MRSA § 6553
MHRC/MDOE Joint Rule Chapter 94-348 and 05-071, ch. 4

Cross Reference: ACAA-R – Student Discrimination/Harassment and Title IX Sexual Harassment Complaint Procedures
AC – Nondiscrimination/Equal Opportunity and Affirmative Action
ACAD – Hazing
GBEB – Staff Conduct with Students
JFCK – Student Use of Cellular Telephones and Other Electronic Devices
JICIA – Weapons, Violence and School Safety
JICK – Bullying

Adopted: _____

PLEASE NOTE MSMA sample policies and other resource materials do not necessarily reflect official Association policy. They are not intended for verbatim replication. Sample policies should be used as a starting point for a board's policy development on specific topics. Rarely does one board's policy serve exactly to address the concerns and needs of all other school units. MSMA recommends a careful analysis of the need and purpose of any policy and a thorough consideration of the application and suitability to the individual school system.

MSMA sample policies and other resource materials may not be considered as legal advice and are not intended as a substitute for the advice of a board's own legal counsel.