

OFFICE OF THE SUPERINTENDENT

Millburn Public Schools

INFORMATION ITEM

May 3, 2010

To: Board of Education Members

From: Ellen E. Mauer, PhD

Subject: First Reading-Equal Educational Opportunities-7:10

This policy has been changed to expand the classes that are considered protected classes. We now include ancestry, age, gender identity, homelessness, and order of protection status.

We ask that you use this as your first reading period and then put this on the next BOE meeting agenda for a second reading and approval.

## Students

### Equal Educational Opportunities <sup>1</sup>

Equal educational and extracurricular opportunities shall be available for all students without regard to color, race, nationality, religion, sex, sexual orientation, ancestry, age, physical or mental disability, gender identity, status of being homeless, order of protection status, actual or potential marital or parental status, including pregnancy. <sup>2</sup> Further, the District will not knowingly enter into agreements with any entity or any individual that discriminates against students on the basis of sex or any other protected status, except that the District remains viewpoint neutral when granting access to school facilities under School Board policy 8:20, *Community Use of School Facilities*. <sup>3</sup> Any student may file a discrimination grievance by using Board policy 2:260, *Uniform Grievance Procedure*. <sup>4</sup>

### Sex Equity <sup>5</sup>

The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.

<sup>1</sup> State or federal law requires this subject matter be covered by policy and controls this policy's content.

<sup>2</sup> Many civil rights laws guarantee equal education opportunities; see citations in the Legal References.

The Ill. Human Rights Act and an ISBE rule prohibit schools from discriminating against students on the basis of *sexual orientation* and *gender identity* (775 ILCS 5/5-101(11), amended by P.A. 95-668; 23 Ill.Admin.Code §1.240). *Sexual orientation* is defined as the "actual or perceived heterosexuality, homosexuality, bisexuality, or gender related identity, whether or not traditionally associated with the person's designated sex at birth," (775 ILCS 5/1-103(O-1)). *Gender identity* is included in the definition of sexual orientation in the Act. The Act permits schools to maintain single-sex facilities that are distinctly private in nature, e.g., restrooms and locker rooms (775 ILCS 5/5-103). 775 ILCS 5/1-102(A), amended by P.A. 96-447, added *order of protection status* to the list of protected categories.

The Ill. Human Rights Act's jurisdiction is specifically limited to: (1) failing to enroll an individual, (2) denying access to facilities, goods, or services, or (3) failing to take corrective action to stop severe or pervasive harassment of an individual (775 ILCS 5/5-102.2, added by P.A. 96-814).

<sup>3</sup> 23 Ill.Admin.Code §200.40(b) prohibits entering into agreements with entities that discriminate against students on the basis on sex. Section 200.80(a)(4) contains an exception for single sex youth organizations, e.g., Boy and Girl Scouts. Note that the U.S. Supreme Court refused to apply N.J.'s public accommodation law to the Boy Scouts because forcing the Scouts to accept a homosexual as a member would violate the Scouts' freedom of expressive association. Boy Scouts of America v. Dale, 120 S.Ct. 2446 (2002). When deciding whether to allow non-school groups to use its facilities, a public school district may not engage in viewpoint discrimination. Good News Club v. Milford Central School, 121 S.Ct. 2093 (2001).

<sup>4</sup> Districts must have a grievance procedure (See Legal References following policy). Absent a specific statute or rule, there is no consensus on whether students have the right to appeal a board's decision to the Regional Superintendent and thereafter to the State Superintendent pursuant to 105 ILCS 5/2-3.8.

<sup>5</sup> Every district must have a policy on sex equity (23 Ill.Admin.Code §200.40(b). The Ill. Human Rights Act, Public Accommodation section, prohibits schools from: (1) failing to enroll an individual, (2) denying a individual access to its facilities, goods, or services, or (3) failing take corrective action to stop severe or pervasive harassment of an individual (775 ILCS 5-102.2, added by P.A. 96-814), on the basis of the individual's sex or sexual orientation, among other classifications (775 ILCS 5/5-101, amended by P.A. 95-668). Districts must periodically evaluate their policies and practices to identify and eliminate sex discrimination as well as evaluate course enrollment data to identify disproportionate enrollment based on sex. In-service training for all staff members is required (23 Ill.Admin.Code §1.420).

With some exceptions, Title IX guarantees that "[n]o person in the United States shall, on the basis of gender, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance..." (20 U.S.C. §§1681(a)). Equal participation and equal opportunity in athletics is addressed in the U.S. Dept. of Education's implementing rules (34 C.F.R. §106.41). Generally, when a school district offers a team for one gender but not for the other, a member of the excluded gender is allowed to try out for the team unless the sport is a *contact sport*. Contact sports are boxing, wrestling, rugby, ice hockey, football, basketball, and other sports involving bodily contact. The rules also list the factors that determine whether equal opportunities are available to both genders. These include: whether the selection of athletics accommodates the interests and abilities of both genders; equipment and supplies; scheduling; opportunity to receive coaching and academic tutoring; locker rooms, practice facilities, and fields; and publicity.

No student shall, based on sex, sexual orientation, or gender identity be denied equal access to programs, activities, services, or benefits or be limited in the exercise of any right, privilege, advantage, or denied equal access to educational and extracurricular programs and activities.

Any student may file a sex equity complaint by using Board policy 2:260, *Uniform Grievance Procedure*. A student may appeal the Board's resolution of the complaint to the Regional Superintendent (pursuant to 105 ILCS 5/3-10) and, thereafter, to the State Superintendent of Education (pursuant to 105 ILCS 5/2-3.8). <sup>6</sup>

#### Administrative Implementation

The Superintendent shall appoint a Nondiscrimination Coordinator. <sup>7</sup> The Superintendent and Building Principal shall use reasonable measures to inform staff members and students of this policy and grievance procedure. <sup>8</sup>

LEGAL REF.: 42 U.S.C. §11431 et seq., McKinney Homeless Assistance Act.  
20 U.S.C. §1681 et seq., 34 C.F.R. Part 106; Title IX of the Educational Amendments.  
29 U.S.C. §791 et seq., Rehabilitation Act of 1973.  
775 ILCS 35/5, Religious Freedom Restoration Act.  
Ill. Constitution, Art. I, §18.  
Good News Club v. Milford Central School, 121 S.Ct. 2093 (2001).  
105 ILCS 5/3.25b, 3.25d(b), 10-20.12, 10-22.5, and 27-1.  
775 ILCS 5/1-101 et seq., Illinois Human Rights Act.  
23 Ill.Admin.Code §1.240 and Part 200.

CROSS REF.: 2:260 (Uniform Grievance Procedure), 6:220 (Instructional Materials Selection and Adoption), 7:20 (Harassment of Students Prohibited), 7:130 (Student Rights and Responsibilities), 7:330 (Student Use of Buildings - Equal Access), 8:20 (Community Use of School Facilities)

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<sup>6</sup> Districts must have a grievance procedure and must tell students that they may appeal a board's resolution of a sex equity complaint to the Regional Superintendent and, thereafter, to the State Superintendent (23 Ill.Admin.Code §200.40).

<sup>7</sup> Required by regulations implementing Title IX (34 C.F.R. Part 106.8).

<sup>8</sup> Required by regulations implementing Title IX (34 C.F.R. Part 106; 23 Ill.Admin.Code §200.40). Comprehensive Faculty and student handbooks can provide required notices, along with other important information, to recipients. Handbooks can be developed by the building principal, but should be reviewed and approved by the superintendent and board. Faculty handbooks may contain working conditions and be subject to mandatory collective bargaining.

## Students

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### Sex Equity

No student shall, on the basis of sex, be denied equal access to programs, activities, services, or benefits or be limited in the exercise of any right, privilege, advantage, or denied equal access to educational and extracurricular programs and activities.

Any student may file a sex equity complaint by using the Uniform Grievance Procedure. A student may appeal the Board of Education's resolution of the complaint to the Regional Superintendent of Schools (pursuant to 105 ILCS 5/3-10 of The School Code) and, thereafter, to the State Superintendent of Education (pursuant to 105 ILCS 5/2-3.8 of The School Code).

### Administrative Implementation

The Superintendent shall appoint a Nondiscrimination Coordinator. The Superintendent and Building Principal shall use reasonable measures to inform staff members and students of this policy and grievance procedure.

LEGAL REF.: Title IX, 20 U.S.C. § 1681 et seq.; 34 C.F.R. Part 106.  
Rehabilitation Act of 1973, 29 U.S.C. § 791 et seq.  
Religious Freedom Restoration Act, 775 ILCS 35/5.  
Ill. Constitution, Art. I, § 18.  
Good News Club v. Milford Central School, Sup. Ct., 6-11-01.  
105 ILCS 5/10-21.3, 5/10-22.5, 5/22-19, and 5/27-1.  
23 Ill. Admin. Code §§ 1.240, 200.40, and 200.50.

CROSS REF.: 2:260 (Uniform Grievance Procedure), 6:220 (Instructional Materials Selection and Adoption), 7:20 (Harassment of Students Prohibited), 7:130 (Student Rights and Responsibilities), 8:20 (Community Use of School Facilities)

ADOPTED: May 20, 2002