



July 30, 2021

Rockbridge County Schools Families and Community,

The Rockbridge County School Board is committed to policies and practices that create a secure, safe, and supportive environment where all students have the opportunity to learn and grow academically and emotionally. The Board is further committed to providing a nondiscriminatory environment for all its students. The School Board's policies prohibit the discrimination and harassment of students on the basis of race, color, religion, national origin, sex, pregnancy, childbirth, or related medical conditions, age, marital status, genetic information, sexual orientation, gender identity, disability, or status as a veteran.

Not all of our students are the same and the individual needs of students differ. Educators must strive at all times to understand student differences and develop educational approaches that recognize students learn differently and have different emotional needs. Transgender students are educated in public schools throughout the Commonwealth of Virginia, including here in Rockbridge County. For many years, Rockbridge County school administration has worked collaboratively with transgender students and their parents to provide those students with a supportive and nurturing environment free of discrimination and harassment. This commitment is a consistent thread in the fabric of our schools: no student regardless of sex or gender identity should feel threatened, marginalized, or stigmatized. Public educators accept all students, regardless of differences, and work tirelessly to make all students feel loved and valued as members of our community with the potential to live fully realized lives as contributing and healthy members of our society.

The Board and administration have prepared responses to commonly asked questions regarding policies and practices regarding the treatment of transgender students as required by law. Those responses are provided below as part of a series of FAQs designed to inform our school community.

Frequently Asked Questions (FAQs)

1. Are all public school divisions in the United States required to prohibit the discrimination and harassment of students on the basis of sex?

Yes. The Rockbridge County School Board has long prohibited the discrimination and harassment of students on the basis of sex. Title IX of the Education Amendments Act of 1972 provides: "No person in the United States shall, on the basis of sex, 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." Additionally, the Federal courts interpret the Equal Protection Clause of the 14th Amendment to the United States Constitution to prohibit state actors (including school boards) from engaging in discrimination on the basis of sex.



2. Does Virginia law require all Virginia school boards to adopt policies regarding the treatment of transgender students?

Yes. The Virginia General Assembly passed Virginia Code § 22.1-23.3 in 2020, which directs the Virginia Department of Education to develop and make available to each school board model policies concerning the treatment of transgender students in public elementary and secondary schools that address common issues regarding transgender students.

The statute directs each school board in Virginia to “adopt policies that are *consistent with but may be more comprehensive* than the model policies developed by the Department of Education.” School boards are required to adopt policies; they *are not required* to adopt verbatim the VDOE’s specific “guidance” as included in its model policy document.

All Virginia school boards must adopt or already have in place policies by no later than the beginning of the 2021-2022 school year. The state law does not allow for any exemption from this statutory mandate. Existing RCSB policies have already provided the protections required under Virginia Code § 22.1-23.3; consequently, RCSB is in compliance with the statutory requirements without the need to adopt new policies.

3. Does RCPS “teach” gender identity or transgenderism?

No. RCPS recognizes that many parents do not support or agree with gender identity or transgenderism and feel strongly that their child should not be permitted to assert an identified gender other than the gender assigned at birth. Rockbridge County School Board policy prohibiting discrimination and harassment on the basis of sex or gender identity is not a policy intended to interfere with a parent’s right to make decisions concerning the upbringing, education, and care of the parent’s child. See Va. Code § 1-240.1.

4. Does the School Board have the legal authority to ignore the requirements of Virginia Code § 22.1-23.3?

No. Virginia school boards have significant legal authority over the management and supervision of the public schools. For example, Article VIII, Section 7 of the Virginia Constitution states, “The supervision of schools in each school division shall be vested in a school board, to be composed of members selected in the manner, for the term, possessing the qualifications, and to the number provided by law.” Virginia Code § 22.1-



28 states, “The supervision of schools in each school division shall be vested in a school board selected as provided in this chapter or as otherwise provided by law.”

Notwithstanding such broad authority, Virginia school boards do not have the authority to ignore or disregard state and federal law. For example, Virginia Code § 22.1-79 states, in pertinent part, “A school board *shall*: 1. See that the school laws are properly explained, *enforced, and observed*; . . . 7. Perform such other duties as shall be prescribed by the Board of Education *or as are imposed by law . . .*” Additionally, the regulations of the Virginia State Board of Education include 8VAC20-490-10, which states, “It is the *duty of all school officials* to acquaint themselves with the school laws and regulations and *to see that they are implemented*.” Emphasis added.

5. Will a student’s casual and isolated declaration of transgender status be sufficient to trigger the application of the Division’s policies and the requirement of nondiscrimination on the basis of sex or gender identity?

No. A student is considered transgender if, *at school*, the student *consistently* asserts a gender identity different from the gender assigned at birth. This assertion should involve more than a casual declaration of gender identity. School administration and counselors will work with students asserting transgender status and their parents to make the determination that the student is consistently asserting a gender identity different from the gender assigned at birth.

6. How will RCPS engage with transgender students and their parents to best meet the needs of those students and their parents?

When a student consistently asserts at school a gender identity different from the sex assigned at birth, RCPS will engage with the student and the student’s family on a case-by-case basis to work collaboratively to develop supportive and non-discriminatory solutions to meet the child’s unique needs. In cases where parents or guardians of a minor student (under 18 years of age) do not agree with the student’s expression of a gender identity at school that does not correspond to the student’s sex assigned at birth, the Division will work with the parents and student to identify solutions and accommodations to address the student’s emotional needs and to assist the family in developing solutions in their child’s best interests in accordance with parental rights.



7. Will RCPS report to Child Protective Services (CPS) any parent who opposes their child’s gender identity and corresponding treatment under RCPS policies?

No. Parental opposition to their child’s gender identity and application of RCPS policies to their child, in and of itself, does not constitute child abuse or neglect. A determination of suspected abuse or neglect will be made as it always is made -- based solely on the application of the state law definition of “abused or neglected child” to the particular facts and circumstances under consideration.

Neither the requirements of Virginia Code § 22.1-23.3 nor RCPS policies alter or affect the requirement imposed on public school officials to report suspected child abuse or neglect. Under Virginia law, teachers and other persons employed by a public school who, in their official and professional capacities, have reason to suspect that a child is an “abused or neglected child” must make a report to Child Protective Services (CPS). *See Va. Code § 63.2-1509 (A)(5)*. The failure to make such a mandatory report subjects the public school employee to fines and a potential Class 1 misdemeanor charge, depending on the facts and circumstances. *See Va. Code § 63.2-1509 (D)*. The term “abused or neglected child” is defined in *Va. Code § 63.2-100*.

8. How will RCPS handle the school records of transgender students?

RCPS is required to maintain a record that includes a student’s legal name and sex assigned at birth and may be required to use or report the legal name and sex assigned at birth in some limited, official situations. In cases where school staff is required to use or report a transgender student’s legal name or sex assigned at birth, such as for purposes of standardized testing, school staff and administrators will adopt practices to avoid the inadvertent disclosure of such information.

Upon the request of a student or parent, schools will use the student’s identified gender, name, and pronouns in identifying transgender students at school and on other school records or documents. Schools will change a student’s name and gender designation on ***all school records*** upon verification or submission of a legal document such as a birth certificate, state- or federal-issued identifications, passport, or court order. Records of former students may also be reissued with the submission of legal documents substantiating the amended name and gender.



9. May the school disclose a transgender student's birth assigned sex and name to other parents, students, and other third parties?

No. While RCPS will communicate openly with transgender students and their families regarding the student's transgender status to ensure that appropriate steps are taken to determine a student's needs and address any privacy concerns and associated risks to the student's well-being, RCPS shall protect and maintain confidentiality regarding a student's transgender status. Federal privacy law (FERPA) prohibits the disclosure of personally identifiable information contained in education records, except as specifically provided for under FERPA's provisions. Protecting transgender students' privacy is critical to ensuring they are treated consistent with their gender identity and minimizing the risk of harm to the students. The school will support the student's need for privacy and not disclose a student's gender identity to other students or parents. Additionally, school staff will treat a student's transgender status as being particularly sensitive information that should not be shared even internally among school personnel except to those with a legitimate educational interest or need to know.

10. Do existing laws and policies permit any male student to use or access a girls' bathroom or locker room?

No. No student will be permitted to use a bathroom or locker room that does not correspond to his or her identified gender. Cisgender boys (those whose identified gender corresponds with gender assigned at birth) will be required to use the boys' bathroom or locker room and cisgender girls will be required to use the girls' bathroom or locker room. Alternatively, if any cisgender student is uncomfortable using a communal gender-specific bathroom, they may use other designated facilities designed to provide greater privacy. See FAQ #11 below.

11. Will students who have privacy concerns about the use of a communal bathroom or locker room have other bathroom or locker room options to address their privacy concerns?

Yes. All students will have the option to use a private restroom or a private changing room if requested. The private restroom could be the office restroom, nurses' restroom, or other private space. Most, if not all, of our elementary schools, have private restrooms in each PreK, Kindergarten, and 1st grade classrooms.



12. What about locker rooms for PE?

This past year during COVID, students were not required to dress out for PE for COVID mitigation reasons. After consultation with PE teachers and the Middle School and High School principals about the relative success of this process, they recommend that schools continue with optional dress out. In addition to the COVID mitigation advantages, optional dress out saved instructional time. Students are required to have available and use proper shoes for PE. RCPS will continue the optional dress out practice.

13. Under existing federal law and the School Board's existing nondiscrimination policy, may it *require* transgender students to use either (i) a bathroom that corresponds to their gender assigned at birth and not a bathroom that corresponds to their consistently asserted identified gender; or (ii) a single-use bathroom?

No. Such a policy was specifically held to be unconstitutional and in violation of Title IX by the United States Court of Appeals for the 4th Circuit in *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020). The *Grimm* case further held that school administration may *offer* a single-user restroom facility to a transgender student -- or any student -- but the division cannot require a transgender student to use such a facility.

The decision in *Grimm* held that prohibiting a transgender boy from using the boys' bathroom violated the Equal Protection Clause of the United States Constitution's 14th Amendment and violated Title IX, which prohibits discrimination against any public school student on the basis of sex. The Gloucester County School Board appealed the decision to the United States Supreme Court and on June 28, 2021, the Supreme Court refused to grant the appeal. Because the United States Supreme Court refused to review the *Grimm* decision, the 4th Circuit's ruling is the binding, governing law in Virginia and in the other four states within the jurisdiction of the 4th Circuit Court of Appeals.

The adoption and enforcement of a policy or practice by RCPS that violates the holding in the *Grimm* case could give rise to an enforcement action by the United States Department of Education Office of Civil Rights (OCR) and the potential loss of federal funding. Additionally, any willful violation of the *Grimm* holding could give rise to a suit against the Board and individual school employees for money damages, a claim for attorneys' fees, and injunctive relief.



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14. Will transgender adult visitors be permitted to use student restrooms?

No. During school hours, all adult visitors allowed entrance into the building will use designated private/individual bathrooms and will not be permitted to use communal bathrooms designated for student use.

15. Are transgender students and cisgender students subject to school discipline for violations of the student code of conduct regarding personal conduct and improper use of gender-identified facilities?

Yes. School Staff are directed to report to an administrator any student who enters a gender-specific facility (restroom or locker room) that does not correspond to that student's identified gender. Also, any student who engages in behavior intended to invade another's personal privacy or any behavior that may constitute an assault or sexual crime will be disciplined and, if appropriate, subject to referral to law enforcement for possible criminal prosecution.

16. Do RCPS nondiscrimination policies govern transgender student participation in interscholastic athletics governed by the Virginia High School League (VHSL)?

No. VHSL rules and regulations govern transgender student participation in interscholastic sports. All students, including transgender students, participating in programs sponsored by the VHSL or other interscholastic activities shall comply with policies and rules outlined by the VHSL. See VHSL's Transgender Policy PM 54-6-1 (4) and the VHSL's "Criteria for VHSL Transgender Rule Appeals." Under the Criteria for VHSL Transgender Rule Appeals, transgender students may be approved to participate in the gender consistent with their gender identity and expression if the following criteria is met:

- A. If the student has undergone sex reassignment before puberty; **OR**
- B. If the student is verified by appropriate medical documentation as having a consistent identity different than the gender listed on the student's official birth certificate or school registration records; **OR**
- C. For any student where hormonal therapy appropriate for the assigned sex has been administered in a verifiable manner and for a sufficient length of time to minimize gender-related advantages in sports competition.

The education of all students is important to the success of our community as a whole.
That is our mission and we thank you for your support in focusing on that mission.