

DATE: October 24, 2017

TO: Board of Trustees

FROM: Darrel Robertson, Superintendent of Schools

SUBJECT: History of the Development of Board Policy HFA.BP Sexual Orientation and Gender Identity (Response to Request for Information #225)

ORIGINATOR: Marlene Hanson, Director

RESOURCE STAFF: Amanda Barrett, Kerry Maguire

REFERENCE: September 12, 2017 Board meeting (Trustee Gibson)
[Canadian Charter of Rights and Freedoms](#)
[Alberta Family Law Act](#)
[Alberta Human Rights Act](#)
[School Act](#)
[HFA.BP - Sexual Orientation and Gender Identity](#)
[HFA.AR - Sexual Orientation and Gender Identity](#)

ISSUE

The following information was requested: That, in reference to Board Policy HFA.BP Sexual Orientation and Gender Identity, administration develop a report of the legal requirements the District is obliged to follow, the safeguards embedded in District practices, the engagement process the District used several years ago in the development of the policy, and District experience since the policy was introduced.

BACKGROUND

In November 2011, Board Policy HFA.BP Sexual Orientation and Gender Identity came into effect, following a [recommendation](#) by the Board of Trustees' Policy Review Committee in March 2011, to, "develop a policy that affirms the District's commitment to providing a welcoming environment, free of discrimination and harassment, for all students and employees who self-identify as lesbian, gay, bisexual, transsexual/ transgendered and queer (LGBTQ)." The development of the policy included a review of [relevant policies](#) and legislation in Canada, resources such as publications from the Public Health Agency of Canada: [Q & A: Sexual Orientation in Schools](#), and input from students, staff and members of the public. Input from the public was gathered through a web survey from May 5 to June 9, 2011, from which 2,096 responses were received and compiled into a summary, organized by comment topic, theme and frequency. The Policy Review Committee made adjustments to the draft policy based on the totality of feedback received. Final approval was given at public board on November 29, 2011.

In September 2012, Administrative Regulation IFA.AR Sexual Orientation and Gender Identity (now HFA.AR) was approved to support the Board Policy on Sexual Orientation and Gender Identity. An Advisory Committee was created, comprised of Edmonton Public School Trustees, school and central services staff, parents, and community leaders. It met from April 2012 through to May 2013, to support implementation of the policy.

In January 2016, Alberta Education released its [Guidelines for Best Practices: Creating Learning Environments that Respect Diverse Sexual Orientations, Gender Identities and Gender Expressions](#). Our Board Policy HFA.BP Sexual Orientation and Gender Identity currently meets provincial guidelines.

CURRENT SITUATION

Edmonton Public Schools is committed to creating and maintaining welcoming, inclusive, safe and healthy learning environments, and to ensuring that personal information of students is protected.

This commitment is guided by provincial legislation, ministerial directives and policies that are in place to recognize, support and protect the rights of students, family members and school staff (Guidelines for Best Practices, Alberta Education, 2016).

Board Policy [HFA.BP Sexual Orientation and Gender Identity](#) provides that, “All members of the school community have the right to learn and work in an environment free of discrimination, prejudice, and harassment. This right is guaranteed under the [Canadian Charter of Rights and Freedoms](#), [Alberta Human Rights Act](#), and [Alberta School Act](#). These rights shall be supported, and enforced so that all members of the school community may work together in an atmosphere of mutual respect and appreciation for individual differences. The Board will not tolerate harassment, bullying, intimidation, or discrimination on the basis of a person's actual or perceived sexual orientation, gender identity, or gender expression.”

According to the *Canadian Charter of Rights and Freedoms, Section 15. (1)*, “every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”

Sexual orientation, gender identity and gender expression are expressly prohibited grounds of discrimination under the *Alberta Human Rights Act* (December 11, 2015).

The *School Act* requires that when students ask, “to establish a voluntary student organization, or lead an activity intended to promote a welcoming, caring, respectful and safe learning environment that respects diversity and fosters a sense of belonging, the principal shall:

- (a) permit the establishment of the student organization or the holding of the activity at the school, and
- (b) designate a staff member to serve as the staff liaison to facilitate the establishment, and the ongoing operation, of the student organization or to assist in organizing the activity.”

The *Act* also gives students the right to select a respectful and inclusive name for their organization, including the name Gay-Straight Alliance (GSA) or Queer-Straight Alliance (QSA).

District schools are guided by legislation which governs student privacy in relation to joining a GSA/QSA. [The Freedom of Information and Protection of Privacy Act](#) (FOIP) includes the following relevant provisions that would impact the protection of a student's privacy:

- Section 17 requires a school board to, “refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.”
- Section 38 protects all members of the school community by requiring that a school board, “protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or destruction.”

- Section 84(1)(e) would only allow a guardian to exercise privacy and access to information rights on behalf of a minor if, “the exercise of the right or power by the guardian would not constitute an unreasonable invasion of the personal privacy of the minor.”

If there is any conflict or inconsistency between FOIP and the rights of guardians under the *Family Law Act* regarding the personal information of students, the provisions under FOIP would prevail in accordance with section 5 of FOIP.

In addition, the Honourable David Eggen, Minister of Education, issued a directive to Alberta school authorities on April 3, 2017, advising school districts that parental notification should not occur in relation to students who are part of GSAs and QSAs. In his email to superintendents (Appendix I), Minister Eggen confirms that, “*While we recognize the importance of communication between students and their parents, some students may not have shared their sexual orientation, gender identity or gender expression beyond the school community.*”

Safeguards Embedded in District Practice

Safeguards to protect students and staff are embedded in [HFA.BP Sexual Orientation and Gender Identity](#). Some of these include:

- Ensuring that all staff recognize the confidentiality of the sexual orientation and gender identity of all students and protect them from unwanted disclosure of such information.
- Respecting the right to self-identification.
- Being responsive to student and family requests related to name and gender marker changes.
- Providing access to washroom and athletic facilities, to allow for appropriate privacy, and with consideration given to individual needs.
- Providing support to schools for the establishment of GSAs or QSAs.

In general, implementation of Board Policy HFA.BP Sexual Orientation and Gender Identity and Administrative Regulation HFA.AR Sexual Orientation and Gender Identity, has been very successful across the District. Due to the proactive nature of the policy and administrative regulation, and the comprehensive resources that have been put in place to support schools, Edmonton Public Schools has been a leader in implementation of this policy. From designating a person to be a ‘Safe Contact’ and establishing ‘Safe Space’ signage in every school; to providing Introductory and advanced training for Safe Contacts, complete with resource packages; to ensuring students who ask to have a GSA or QSA in a school have the support they need, there are numerous safeguards that have evolved to protect our students and staff, and to ensure that they can fully participate as members of an inclusive school community.

In addition, District Diversity Education consultants provide support to schools in relation to understanding sexual orientation, gender identity and gender expression. They provide confidential consultations to school administration, professional development of staff, presentations at School Council meetings, and they meet with families and school staff, to support the needs of the student. They organize District-level participation in Edmonton’s annual Pride Festival and in Pink Shirt Day.

During the past few years, GSAs and QSAs have been established, with consultant support, in approximately 60 schools. The scope of these groups has ranged from providing a safe space for a small group of students to meet with an adult facilitator for emotional support about their feelings and experiences, to larger groups of students who organize social activities and communicate messages about healthy relationships and prevention of bullying.

Opportunities have emerged during recent years to further refine our practices to safeguard students, staff and families. An increase in requests by families for name or gender marker changes on student records has led to an update of District records in 2016-2017, in collaboration with Alberta Education, to enable usage of preferred name and gender on student records.

An increase in requests by schools for supporting staff training, consultations about washrooms and athletic facilities, for setting up a GSA/QSA, or for consulting with parents or guardians of children who identify as gender diverse has led to an increase of Diversity Education consultants in central staffing.

Regular communication of policy implications and emerging best practices occurs with all District schools through internal mechanisms such as messages from the Superintendent, Need to Know News, Staff Bulletin Board, the Safe Contact network and training sessions, our internal District Sexual Orientation and Gender Identity website, and via a news bulletin called *Supporting our LGBTQ students, staff and families* that was sent to all schools for distribution in 2016 (Appendix II) and was posted on the District website. The news bulletin included a summary of Alberta Education guidelines regarding privacy and confidentiality, washrooms and change rooms, names, and participation on overnight trips and sports teams.

KEY POINTS

- Edmonton Public Schools was a leader in developing policy to support and protect students, staff and families who identify as gender diverse.
- District practices are guided by legislation, ministerial directives, and policies to keep students and staff safe and to protect their privacy.
- Edmonton Public Schools is committed to continuing to provide ALL students with welcoming, inclusive, safe and healthy learning environments, and to ensuring that personal information of students is protected.

ATTACHMENTS and APPENDICES

- APPENDIX I Message from Minister of Education
APPENDIX II *Supporting our LGBTQ students, staff and families*

MH:mh



Support for all students

EDC Minister <Education.Minister@gov.ab.ca>

Mon, Apr 3, 2017 at 4:35 PM

Good afternoon,

Our government has stated repeatedly that we will never waver in our support for all students. I know that all of you share this goal and that you work every day to ensure that schools you are responsible for are welcoming, caring and safe.

I have been concerned in recent days about comments with regards to parental notification of students who are part of the many Gay-Straight Alliances and Queer-Straight Alliances in this province. I am telling you today that such notification should not occur.

The School Act gives students the right to form GSAs or QSAs and name them as such. They do not need permission from a principal or superintendent.

While we recognize the importance of communication between students and their parents, some students may not have shared their sexual orientation, gender identity or gender expression beyond the school community.

We have heard loud and clear from students that GSAs and QSAs save lives. I ask all of you to support students in the establishment of these groups if they are choosing to form them.

Working together, we make life better for all students and we can continue to protect and improve education in our province.

Sincerely,

David Eggen,
Minister of Education

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Supporting our LGBTQ students, staff and families

Alberta Education recently created guidelines to help school districts support and protect LGBTQ students, staff and families. Edmonton Public Schools has had a policy in place since 2011, so very little will change about the day-to-day activity in our schools.



PRIVACY and CONFIDENTIALITY

If a student tells us about their sexual orientation or gender identity, but isn't ready to tell anyone else, we must respect their privacy until they're ready to share.

Our goal in these situations is to help students feel safe and supported. We encourage students to talk to their parents and work to bridge that conversation by giving students the support they need.



WASHROOMS and CHANGE ROOMS

All students can use a washroom that meets their needs for privacy and comfort.

Students may ask to use a different washroom or change room for a number of reasons, including medical, religious, cultural and gender identity. There are many ways we can meet their needs, depending on the situation and what kind of washrooms are in the building.



NAMES

Using a student's preferred name is an important part of helping them feel respected and supported.

The same is true of words like she/her, he/him or they/their. When a student wants to change their name or what they're called at school, we talk about it with them and their family.



OVERNIGHT TRIPS

We make decisions about sleeping arrangements for transgender or gender-diverse students on overnight trips carefully, together with the student and their family.

Because sleep spaces can vary a lot, depending on the location of the trip, there is no one-size-fits-all solution.



PHYS ED and SPORTS TEAMS

Students may participate in school sports based on the gender they identify as.

The Alberta Schools' Athletic Association's 2015-2016 Policy Handbook supports this.

MORE QUESTIONS?

If you have any questions about how our Sexual Orientation and Gender Identity policy works in your child's school, please talk to your principal or visit bit.ly/SOGI_epsb