

## Frequently Asked Questions

### Board Policy #253.1 Transgender and Gender Expansive Students

**SPECIAL NOTE:** The Pennsbury Board of School Directors approved Board Policy #253.1, titled *Transgender and Gender Expansive Students*, in November 2016. On February 22, 2017, the U.S. Departments of Justice and Education withdrew their May 2016 guidance concerning Title IX of the Education Amendments of 1972. The Departments did not issue new guidance, however, and the underlying case law interpreting Title IX remains the same. In fact, on February 27, 2017, a federal court in Pittsburgh ruled in favor of high school transgender students. As always, the School District will comply with the law and continue to honor the uniqueness of each child in Pennsbury.

The School District issued an email in January to the families of more than 10,000 Pennsbury students in order to gather and respond to commonly-asked questions concerning Board Policy #253.1.

A total of 25 emails were received from our family stakeholders. Many in this group expressed their opinions without asking questions. Some asked multiple questions in a single email. Following are responses to questions that were grouped by common theme.

#### COMFORT AND PRIVACY

**The vast majority of questions submitted dealt with the comfort level of students who will be using restrooms and locker rooms that mingle students who identify with their birth gender and those who identify with another gender.**

Until the United States Supreme Court rules otherwise, the overwhelming majority of federal decisions have found that students are entitled to use the restrooms and locker rooms corresponding to their gender identity. See e.g., *Dodds v. U.S. Dept. of Educ.*, 845 F.3d 217 (6th Cir. 2016), *Whitaker v. Kenosha Unified Sch. Dist. No. 1*, 2016 U.S. Dist. LEXIS 129678 (E.D. Wis. Sept. 22, 2016). Under these decisions, federal courts have viewed discrimination against transgendered students and individuals to be an impermissible form of discrimination on the basis of sex under Title IX. See, *Id.* These decisions in turn are based on long standing federal law that prohibits discrimination against an individual whose behavior does not conform to the sex he or she was assigned at birth. See generally, *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989). See also, *Glenn v. Brumby*, 663 F.3d 1312 (6th Cir. 2011), *Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004). In fact, the most recent federal decision found that discrimination against transgender students is unconstitutional as a violation of the Fourteenth Amendment's Equal Protection Clause regardless of what Title IX says. See, *Evancho v. Pine Richland Sch. Dist.*, 2017 U.S. Dist. LEXIS 26767 (W.D.Pa. Feb. 27, 2017).

Courts have also held that students who are uncomfortable sharing restrooms and locker rooms with transgender students are not constitutionally protected from having to share such facilities. See, *Students & Parents for Privacy v. U.S. Dept. of Educ.*, 2016 U.S. Dist. LEXIS 150011 (N.D.Ill. Oct. 18, 2016). As the court stated, “[h]igh school students do not have a constitutional right not to share restrooms or locker rooms with transgender students whose sex assigned at birth is different than theirs.” *Id.*, at \*3. Likewise, the *Evancho* court observed that “[i]t is no answer under the Equal Protection Clause that those impermissibly singled out for differential treatment can, and therefore must, themselves ‘solve the problem’ by further separating themselves from their peers.” *Evancho*, 2017 U.S. Dist. LEXIS 26767, at \*66.

Additionally, “sharing a restroom or locker room with a transgender student does not create a severe, pervasive, or objectively offensive hostile environment under Title IX” where privacy protections have been put in place in those facilities and there are alternative facilities available to students who do not want to share a restroom or locker room with a transgender student. Id.

The School District aims to provide a safe and supportive environment for all students, regardless of gender identity; therefore, single stall unisex restrooms and private changing areas will be provided to any student who requests them.

## **FUNDING**

### **Several respondents inquired about how physical changes were being funded in the schools.**

The necessary accommodations involved minor structural work, signage, and hardware expenses. These costs will be covered in the budget allocations for the individual schools and the Facilities Department.

## **LOGISTICS**

### **Some asked about when the Board Policy will take effect and how it will be monitored.**

The structural changes needed to accommodate the full implementation of Board Policy #253.1 are being completed with each passing month. All physical modifications are expected to be completed no later than April, 2017. The administration in each building is communicating with the student body as implementation is rolled out. Clear instructions will be shared with the students and the use of shared facilities will be carefully monitored by assigned staff to ensure privacy and respect for all.

## **ADDITIONAL QUESTIONS:**

### **What happens to a student who truly identifies with a gender other than their biological one and their parents do not support them?**

Principals and school counselors are prepared to assist students in unusual situations. While this is always carried out in a confidential manner, our goal is to protect students and help them feel safe at school.

### **Has this same communication been sent to parents at the elementary school level?**

Yes, the invitation to ask questions was sent to all families, K-12.