

COMMUNITY CONVERSATIONS
DRAFT ANTI-DISCRIMINATION REGULATION

225 Prohibition of Discrimination

1.0 Purpose

The purpose of this regulation is to provide guidance to School Districts and Charter Schools for the development of a policy prohibiting discriminatory treatment of students on the basis of a Protected Characteristic(s) in all Educational Programs and Activities and Extra-Curricular Activities. The intent of the policy is to foster school environments as welcoming, inclusive places where all students can flourish.

No person in the State of Delaware shall on the basis of race, ethnicity, color, religion, national origin, sex, gender, sexual orientation, genetic information, marital status, disability, age, gender identity or expression or other characteristic protected by state or federal law, known as “Protected Characteristics” under this regulation, be unlawfully excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving approval or financial assistance from or through the State of Delaware.

This regulation requires each School District and Charter School to establish an anti-discrimination policy and procedures for reviewing the policy for compliance with the stated Purpose of the regulation. The established anti-discrimination policy shall, at a minimum, be consistent with this regulation and include any required language as such is noted in the approved Anti-Discrimination Model Policy.

2.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“Anti-Discrimination Model Policy” means the policy, developed and approved by the Department, to be used by a School District or Charter School in the establishment of its anti-discrimination policy.

“Charter School” means a school established pursuant to Chapter 5 of Title 14 of the Delaware Code.

“Course of Study” or **“Unit of Study”** means academic based instruction within an Educational Program or Educational Activity.

“Department” means the Delaware Department of Education.

“Educational Program and Activity” mean an activity or program for providing education made available, sponsored or supervised by a Charter School or School District.

“Extra-Curricular Activity” means a student activity made available, sponsored or supervised by a

School District or Charter School not falling within the scope of required Charter School or School District activities or relating to formally or informally approved and usually organized student activities connected with the Charter School or School District and not carrying academic credit.

“Protected Characteristic(s)” means race, ethnicity, color, religion, national origin, sex, gender, sexual orientation, genetic information, marital status, disability, age, gender identity or expression or other characteristic protected by state or federal law.

“School District” means a reorganized school district or vocational technical school district established pursuant to Title 14 of the Delaware Code.

3.0 Admission to Educational Programs and Activities

3.1 All Educational Programs and Activities offered by a public school shall be open and available to students regardless of Protected Characteristic(s), unless the Educational Program and Activity is legally constituted as single gender or is for the purpose of assisting students with a disability.

3.2 A School District or Charter School shall not schedule students into a Course of Study or Unit of Study on the basis of Protected Characteristic(s).

3.3 No student, on the basis of Protected Characteristic(s), shall be discriminated against in accessing a Course of Study or Unit of Study.

3.4 Nothing in this regulation shall be construed to prevent School Districts and Charter Schools from providing separately to each gender those segments of a program of instruction dealing exclusively with human sexuality. A student shall have the opportunity to participate in the program of instruction dealing exclusively with human sexuality that is consistent with the student’s gender identity regardless of the student’s assigned sex at birth.

4.0 Career and Educational Guidance

4.1 School counselors and other school personnel shall present to students a broad spectrum of educational and career opportunities. School counselors and other school personnel shall make reasonable effort to depict individuals with the various Protected Characteristic(s) as representatives in educational and career opportunities.

4.2 No materials, tests or procedures shall be employed for guidance purposes that discriminate or limit educational and career choices on the basis of Protected Characteristic(s)

5.0 Instructional Materials

5.1 No School District or Charter School shall use instructional materials in a manner that encourages discrimination of individuals based on a Protected Characteristic(s).

5.2 Each school with a physical education program shall provide equal opportunity for all students. Goals, objectives and skill development standards, where used, shall neither be designated on the basis of gender nor designed to have an adverse impact on members of any gender.

6.0 Extra-Curricular Activities

6.1 Advantages and privileges of Charter Schools and School Districts include all Extra-Curricular Activities made available to, sponsored by or supervised by any Charter School or School District. No Charter School or School District shall make available, sponsor or supervise any Extra-Curricular Activities that restrict student participation on the basis of Protected Characteristic(s). This regulation does not prohibit School Districts or Charter Schools from allowing use of school premises by independent groups with restrictive membership if such premises are generally made available to the public.

6.2 No student shall be denied the opportunity in any implied or explicit manner to participate in an Extra-Curricular Activity because of the student's Protected Characteristic(s) except as provided in subsection 6.4. Participation in Extra-Curricular Activities shall be encouraged by each Charter School and School District for all students regardless of their Protected Characteristic(s).

6.3 Each School District and Charter School shall provide equal athletic opportunity for male and female students to participate in intramural, club, and interscholastic sports.

6.3.1 In order to provide equal athletic opportunity for male and female students, School Districts and Charter Schools that operate or sponsor intramural, club, or interscholastic sports teams shall:

6.3.1.1 Effectively accommodate athletic interests and abilities of both male and female students; and

6.3.1.2 Provide equivalent benefits and services, including in the provision of equipment and supplies; scheduling of games and practice times; travel and per diem allowance; opportunity to receive coaching and academic tutoring; assignment and compensation of coaches and tutors; provision of locker rooms and facilities for practice and competition; provision of medical and training facilities and services; provision of housing and dining facilities and services; and publicity.

6.4 A Charter School or School District may operate or sponsor separate teams for members of each gender where selection for such teams is based upon competitive skill or the activity involved is a contact sport, provided that the requirements of subsection 6.3.1.2 are satisfied. A student shall have the opportunity to participate on the team that is consistent with the student's gender identity regardless of the student's assigned sex at birth.

6.4.1 For the purpose of subsection 6.4, a contact sport is a sport that involves bodily contact, including wrestling, football, basketball, lacrosse, soccer, field hockey, and ice hockey.

6.5 Teams comprised primarily or solely of students of one gender shall be granted equivalent instruction, training, coaching, access to all available facilities, equipment and opportunities to practice and compete as teams engaged in a similar activity comprised primarily or solely of students of the opposite gender.

7.0 Student Records

7.1 All students entering a School District or Charter School shall be enrolled in eSchoolPLUS and assigned a DELSIS Student ID. The DELSIS Student ID is the unique identifier used to track a student throughout his/her entire educational career in Delaware.

7.2 Any student who seeks to change his or her name and does so pursuant to 10 Del.C. § 5901, shall have his or her name changed in eSchoolPLUS upon the school's receipt of the petition for change of name granted by the court. The legal name change shall be reflected only on the student's educational records from the effective date of the petition going forward; historical records shall not reflect the change.

7.3 Any student who seeks to change his or her name and does not do so pursuant to 10 Del.C. § 5901, may select a "preferred name" based on a Protected Characteristic, which the school shall enter in to eSchoolPLUS; however, the student's legal name shall continue to be the name maintained in eSchoolPLUS and displayed on all educational records for the student.

7.3.1 A school may request permission from the parent or legal guardian of a minor student before a "preferred name" is accepted; provided, however, that prior to requesting the permission from a parent or legal guardian, the school should consult and work closely with the student to assess the degree to which, if any, the parent or legal guardian is aware of the Protected Characteristic and is supportive of the student, and the school shall take into consideration the safety, health and well-being of the student in deciding whether to request permission from the parent or legal guardian.

7.4 All students enrolled in a Delaware public school may self-identify gender or race which is maintained in eSchoolPLUS.

7.4.1 A school may request permission from the parent or legal guardian of a minor student before a self-identified gender or race is accepted; provided, however, that prior to requesting the permission from a parent or legal guardian, the school should consult and work closely with the student to assess the degree to which, if any, the parent or legal guardian is aware of the Protected Characteristic and is supportive of the student, and the school shall take into consideration the safety, health and well-being of the student in deciding whether to request permission from the parent or legal guardian.

7.5 A student's preferred name cannot be placed on the student's diploma unless it is the student's legal name.

7.5.1 A student may apply for a notarized letter of certification from the Department for a legally changed name after the issuance of the diploma. The Department does not issue duplicate or revised diplomas after the diploma has been issued.

8.0 Privacy

8.1 The school board of each School District and Charter School shall include a provision within its anti-discrimination policy that accommodates all students and addresses student access to locker rooms and bathrooms. School Districts and Charter Schools shall work with students and families on providing access to locker rooms and bathrooms that correspond to students' gender identity or expression.

9.0 Notification and Student Complaint Procedure

9.1 The superintendent of each School District and head of school for each Charter School shall be responsible for ensuring that all school handbooks and codes of conduct follow this regulation. In order to ensure that such obligations are fulfilled, all school handbooks or codes of conduct shall also contain the following:

9.1.1 The anti-discrimination policy that is consistent with this regulation and affirms the school's non-tolerance for discrimination, including that which is based upon Protected Characteristic(s);

9.1.2 The school's procedures for an informal process and a formal complaint process, which includes accepting, investigating and resolving students' complaints alleging discrimination in violation of the school's policy under subsection 8.1.1, which procedure shall, at a minimum, contain:

9.1.2.1 A description of the basic procedures;

9.1.2.2 An informal process for students such as identifying specific school staff member(s) a student may speak with if the student does not wish to initiate a formal complaint;

9.1.2.3 A formal student complaint provision that allows for the complaint to be brought by the student or parent or both which includes the following;

9.1.2.3.1 The identification of the administrative position at the school that will address the formal student complaint at each level of the process and the identification of the final decision-maker at the school or School District levels;

9.1.2.3.2 A provision that the formal student complaint be in writing at each step of the process and that the formal student complaint specifies the basis for the complaint, and that it shall be filed.

9.1.2.3.3 A provision that the submitted formal student complaint be addressed during a conference with the student and parent, if requested by the student, by the school within five (5) school days of its receipt and a written determination shall be issued within five (5) school days after the conference;

9.1.2.3.4 The disciplinary or intervention measures that the school may impose if it determines that discrimination has occurred.

9.1.2.4 The appeal process for both the student who filed the formal student complaint or for the individual determined to have engaged in discrimination if either wishes to appeal the disciplinary or intervention measure decision.

(Non-regulatory note – please refer to 14 **DE Admin. Code** 605 for requirements related to student rights and responsibilities.

10.0 Implementation

10.1 The school board of each School District and Charter School shall establish an anti-discrimination policy, which shall be, at a minimum, consistent with this regulation and shall include any required language as such is noted on the approved Anti-Discrimination Model Policy.

10.2 The school board of each School District and Charter School shall periodically review its anti-discrimination policy and procedures for compliance with the stated purpose under subsection 1.0 of this regulation, and assurance that all obstacles to equivalent access to Educational Programs and Activities and Extra-Curricular Activities for all students regardless of Protected Characteristic(s) are removed.

10.3 All School Districts and Charter Schools shall strive to prevent discrimination based upon a student's Protected Characteristic(s), and all School Districts and Charter Schools shall respond promptly to such discrimination when they have knowledge of its occurrence.

10.4 The superintendent of each School District and head of school for each Charter School shall promote and direct effective procedures for the full implementation of this regulation and shall make recommendations to his/her school board for the necessary policies, program changes, and budget resource allocations needed to achieve adherence to this regulation.

10.5 Any contributions to a School District or Charter School for activities and monetary awards within or sponsored by the School District or Charter School or for scholarships administered by the School District or Charter School by any person, group or organization shall be free from any restrictions based upon Protected Characteristic(s). Schools may post or print information regarding private restricted scholarships as long as no preferential treatment is given to any particular scholarship offered and as long as the school does not endorse or recommend any such scholarship or advise or suggest to a particular student that he or she apply for such a scholarship; provided that a school may so advise or suggest such a restricted scholarship to a student if the school is aware that it is available to that student based on such student's self-identified Protected Characteristic(s).

11.0 Policy Reporting Requirements and Timelines

11.1 Each local School District and Charter School shall establish its Anti-Discrimination Policy no later than 90 days from the enactment date of this regulation or within 90 days of the beginning of a school year, whichever is earlier. An electronic copy of its current Anti-Discrimination Policy shall be on file with the Department of Education.

12.0 Application

Nothing in this regulation shall alter a School District's or Charter School's rights and responsibilities under any applicable federal or state law including, for example, the First Amendment of the U.S. Constitution, Title IX of the Education Amendments of 1972, the Individuals with Disabilities Act, or Title VI of the Civil Rights Act of 1964.

DRAFT