

Comprehensive Report on Loudoun County Public Schools Policy: 1040

Parent and Child Loudoun

August 2019

History of Policy 1040

Titled "EQUAL OPPORTUNITY," this policy was formerly known as Policy 3-1. It was adopted in 1976, revised in 1993, and revised again in 2011.[1] Prior to February 2019, Policy 3-1 stated the following:

The School Board of Loudoun County affirms a commitment to the principle of equal educational and employment opportunities for all people regardless of race, color, sex, pregnancy, childbirth or related medical conditions, marital status, age, religion, national origin, disability, or genetic information.

It is the express intent of the School Board of Loudoun County that every policy, practice, and procedure shall conform to all applicable requirements of federal and state law.

Initial Proposed Changes by Committee

On February 5, 2019, minor-appearing changes to Policy 3-1 were put on the agenda for the Legislative & Policy Committee[2]:

The School Board of Loudoun County affirms a commitment to the principle of equal ~~educational and employment~~ opportunity~~ies~~ for all people persons regardless of race, ~~ancestry~~, color, sex, pregnancy, childbirth or related medical conditions, marital status, age, religion, national origin, disability, ~~or~~ genetic information, ~~or any other characteristic provided by law~~.

It is the express intent of the School Board of Loudoun County that every policy, practice, and procedure shall conform to all applicable requirements of federal and state law.

According to the meeting minutes, the policy was moved out of Section 3000 (Administration) to Section 1000 (Foundations), making it a foundational policy to govern the other policies prescribed by law: "All student and employee policies under this umbrella policy should be cross-referenced for easy access to related policies for all concerned." [3]

The Legislative & Policy Committee has three members: Chair Brenda Sheridan (Sterling District), Beth Huck (At-Large), and Eric Hornberger (Ashburn District).

Brenda Sheridan made a motion to add the language "sexual orientation, gender identity" (aka SOGI) after the word disability to staff-revised language. Beth Huck seconded the motion.

Division Counsel was asked what the current state of the law was regarding the requested added language; he stated that the law was in a high degree of flux, and he encouraged the Committee to review his recent legal opinion sent to the full School Board. The Committee referenced an Attorney General Opinion letter allowing the requested language to be added.

The Committee voted 2-1-0 (Hornberger opposed) to recommend staff restructured Policy 1040, as amended by the Committee, to the full School Board for consideration as an Information Item at its next regularly scheduled meeting seven (7) days later.

Meeting the Bare Minimum Standard of Informing the Public

On February 12, 2019, at the regular school board meeting[4], Equality Loudoun and their fellow supporters of the new Policy 1040 changes signed up to speak before the school board. Only one parent

speaker dissented to the changes. Apart from correspondence with LGBTQ activists, school board members had never sought input from LCPS parents and students about the proposed policy changes.

At no point during the meeting were the terms “gender identity” and “sexual orientation” defined, and even Tom Marshall (Leesburg District) admitted that he did not understand concepts related to gender identity.

After this meeting, board-appointed school board member Chris Croll (Catocin District), openly admitted on the Equality Loudoun Facebook page that the reason she applied for the position was to get these policy changes passed.[5]

The Adoption of SOGI Policy Language

On February 26, 2019, at the regular school board meeting[6], Chris Croll, Brenda Sheridan, Beth Huck, and Joy Maloney all showed up to the regular school board meeting dressed in purple shirts as a show of solidarity with the LGBTQ activists, most of whom also wore purple. Nearly 80 people spoke during the public comment period with approximately a third of them criticizing the proposed Policy 1040 changes. Many audience members held signs demanding that the school board respect girls’ privacy rights, and a petition in opposition to the proposed changes with over 1,500 signatures--the vast majority from Loudoun County residents--was presented to the school board.

During the Action Item portion of the meeting, Brenda Sheridan made a motion that the School Board adopt revised Policy 1040, as recommended by the L&P Committee, to replace Policy 3-1, Equal Opportunity. Tom Marshall seconded the motion.

Debbie Rose (Algonkian District) made a substitute motion that the policy be revised to read:

EQUAL OPPORTUNITY FOR EQUITABLE, SAFE AND INCLUSIVE ENVIRONMENT

The Loudoun County School Board is committed to providing an equitable, safe and inclusive learning and working environment.

The Loudoun County School Board affirms a commitment to this principle for all persons regardless of race, color, national origin, religion, sex, pregnancy, childbirth or related medical conditions, sexual orientation, marital status, disability, age, or genetic information.

It is the intent of the School Board of Loudoun County that ever policy, practice, and procedure shall reflect this commitment. Behavior that is not unlawful may nevertheless be unacceptable for the educational environment or the workplace. Demeaning or otherwise harmful actions are prohibited, particularly if directed at personal characteristics, including, but not limited to socioeconomic level, sexual orientation, perceived sexual orientation or gender identity.

Eric Hornberger seconded the motion.

Gender Identity Policies Based on Sexist Stereotyping

The School Board referenced non-discrimination policy language from the Loudoun County government manual, the VHSL, the VSBA, and neighboring counties such as Fairfax and Prince William. The VHSL

(Virginia High School League) language is particularly problematic as it opens female athletics programs to male students based solely on their adherence to sexist stereotypes:

The student/appellant must provide the principal or athletic director and the VHSL with the following documentation and information: ...preferably no more than one or two letters – from individuals such as, but not limited to, parents, friends and/or teachers, which affirm that the actions, attitudes, dress and manner demonstrate the student’s consistent gender identification and expression...

In addition, Stephen L. DeVita, Esq., Division Counsel for LCPS, wrote:

The student must have a consistent gender identity and expression to which the athlete relates. Once approved, the student’s eligibility on a gender-specific team need not be annually renewed.

LGBTQ Activists from Outside Loudoun County Push for Policy Changes

Among the number of LGBTQ activists from outside of Loudoun County, a Fairfax County resident and board member of the Transgender Education Association of Greater Washington (TGEA) spoke during the public comment period as did a representative from Equality Virginia of Richmond. Both organizations, TGEA and Equality Virginia, openly promote another organization known as the D.C. Area Transmasculine Society (DCATS) on their websites and ally with DCATS for LGBTQ events.[7][8]

DCATS promotes chest binding to girls and young women, going so far as to help minors receive free chest binders without parental notification. Also listed under the Resource Directory section of the DCATS website is a sex guide titled “A Sex Guide for Trans Men into Men” aimed at natal females who identify as men and want to sleep with men who are attracted to men (bisexual and gay men). This sex guide contains degrading, misogynistic and pornographic imagery and language while instructing natal females in the dangerous practice of how to find male sexual partners in public bathrooms and parks.[9]

Neither Equality Virginia nor the Transgender Education Association of Greater Washington has responded to inquiries from a Parent and Child Loudoun co-founder about their open support for DCATS.

School Board Declines to Protect Privacy Rights and Address Safety Concerns

After discussions and various motions-to-amend, Jill Turgeon (Blue Ridge District) made a motion to amend by adding “current restroom, locker room, and overnight field trip practices will remain unchanged until modified by the school board.”

Debbie Rose seconded the motion.

After further discussion during which Joy Maloney (Broad Run District) dismissed privacy and safety concerns by stating that she did not need to show a birth certificate to use the bathroom, Turgeon’s motion failed 4-5 with Croll, Huck, Maloney, Marshall, and Sheridan opposed.

The School Board then voted 5-4 with Hornberger, Jeff Morse (Dulles), Rose, and Turgeon opposed to amend Policy 1040 as follows:

Equal Opportunity for Equitable, Safe and Inclusive Environment

The Loudoun County School Board is committed to providing an equitable, safe, and inclusive learning and working environment.

The Loudoun County School Board affirms a commitment to this principle for all persons regardless of race, color, national origin, religion, sex, pregnancy, childbirth or related medical conditions, sexual orientation, gender identity, marital status, disability, age or genetic information.

It is the intent of the School Board of Loudoun County that every policy, practice, and procedure shall reflect this commitment. Behavior that is not unlawful may nevertheless be unacceptable for the educational environment or the workplace. Demeaning or otherwise harmful action are prohibited, particularly if directed at personal characteristics, including, but not limited to socioeconomic level, sexual orientation, perceived sexual orientation or gender identity.

Subsequent Proposed Policy Changes

The Agenda for the May 30th, 2019 Human Resource and Talent Development (HRTD) Committee meeting contained proposed changes to Policies 7014 and 7012 to incorporate the SOGI language of Policy 1040.[10] Neither *gender identity* nor *sexual orientation* were defined in the policy language.

The Agendas for the June 4th (and June 12th), 2019 Legislative & Policy Committee meeting contained SOGI language recommendations for the 2020 Legislative Program. In response to the posted agenda, on June 4th, 2019 a Parent and Child Loudoun co-founder asked the following questions to the committee members which have as of the writing of this report still gone unanswered:

Sexual orientation refers to what a person finds sexually arousing. Why is the school board recommending that this become a protected characteristic? Are there any limitations or parameters? And how does the school board define "gender identity" when making a recommendation that it also become a protected category? Are there any guidelines on what qualifies as a legitimate gender identity? The school board should not be incorporating vague and/or loaded language into the legislative program. It reflects poorly on the judgment of the school board.

Lack of SOGI Definitions and Parameters is Problematic

In response to the posted Agenda items for the HRTD Committee meeting on May 30th, a Parent and Child Loudoun co-founder sent the following questions and statements to the committee members (Beth Huck, Chair, Chris Croll, and Jeff Morse) on May 31, 2019:

I was looking at the [proposed changes to Policy 7014](#) and I am concerned about the lack of clarity because definitions are not being provided for terms that are increasingly being used to encompass [things most people find abhorrent](#) (see the last sentence of paragraph 2 in the *Psychology Today* article).[11] Just last year, a California school district was teaching students that [pederasty is an expression of sexual orientation](#) (see slide #5).[12] These terms need parameters if you plan on incorporating them into school policies. I am also concerned that conflicting concepts are being equated with each other:

1. Sexual Harassment and Sex Discrimination. ... No employee, male or female, shall discriminate on the basis of sex (including sexual orientation, gender identity, perceived sexual orientation or gender identity,...)

Considering that the concept of gender identity can be in direct conflict with sex in that the former is a term for psychological self-identification and the latter is a biological category based on observable and immutable physiological characteristics, it concerns me that the changes to Policy 7014 are contradictory and confusing.

For example, if someone's sex is male but gender identity is female, which is given priority under the policy? Are employees and students required to use titles and third-person pronouns based on sex or based on gender identity? Are communal bathrooms and locker room facilities to be segregated by sex or by gender identity?

In addition, as Ms. Croll pointed out in February, there are more gender identities than just male and female. How is it that Policy 7014 refers specifically to a sex binary, but then uses the term "gender identity" as a subcategory of sex when the term is widely understood to be a spectrum encompassing a variety of identities including "genderqueer," "gender-fluid," and "non-binary"?

Has the school board considered the U.S. Department of Health and Human Services [proposed rule](#) regarding the nondiscrimination provisions of the Affordable Care Act?[13] For a quick summary, please see Emily Zinos' fantastic article "[Sex is Better than Gender](#)" (*First Things*, 5/30/19).[14]

Rather than simply complain and not offer any solutions, I'd like to make a suggestion:

1. Sexual Harassment and Sex Discrimination. ... No employee, male or female, shall discriminate on the basis of sex (including sex stereotyping such as manner of dress and grooming, and presumption of attraction to a particular sex).

My questions are not meant to be rhetorical. I would like answers so as better to understand and communicate with other Loudoun County parents and residents how this policy change will affect LCPS employees and students.

I genuinely appreciate all the time and energy it takes as a School Board member. It can be a thankless job sometimes, and so I thank you in advance for considering my concerns and answering my questions.

None of the school board members bothered to respond with answers to any of the questions posed above, including the ones referencing sexual orientation. There are a number of sources, including the American Psychiatric Association, that refer to or have referred to pedophilia as a sexual orientation. For example, in his article titled "Pedophilia and DSM-5: The Importance of Clearly Defining the Nature of a Pedophilic Disorder" published in the *Journal of the American Academy of Psychiatry and Law*, Fred S. Berlin writes[15]:

[I]n discussing Pedophilia, DSM-5 makes reference to the term Pedophilic Sexual Orientation. Sexual Orientation is ordinarily used to designate the category, or categories, of persons whom

a given individual finds to be sexual appealing. Those who are heterosexually oriented are sexually attracted to adults of the opposite sex; those who are homosexual, to adults of the same sex; men with a heterosexual pedophilic orientation, to prepubescent females; and men with a homosexual pedophilic orientation, to prepubescent boys.

In the face of significant criticism of its inclusion in the DSM-5, the American Psychiatric Association (APA) has stated its intention to remove the term Pedophilic Sexual Orientation from the diagnostic manual. Removing that term in response to public criticism would be a mistake. Experiencing ongoing sexual attractions to prepubescent children is, in essence, a form of sexual orientation, and acknowledging that reality can help to distinguish the mental makeup that is inherent to Pedophilia, from acts of child sexual abuse.

According to Margo Kaplan's article "Taking Pedophilia Seriously" published in the *Washington and Lee Law Review*[16]:

2. Erotic Age Orientation: Pedophilia as a Sexual Orientation

The fifth edition of the DSM, as originally published in October 2013, referred to pedophilia as a sexual orientation. It specifically stated that an intense and persistent sexual interest in prepubescent children that is not acted on or accompanied by distress or impairment is better characterized as a sexual orientation than a mental disorder. ... While sexual orientation is commonly used to describe gender to which one is attracted, several scholars and advocates argue for a more expansive definition. ... sexuality versus asexuality ... sexual interest on others as opposed to autoeroticism ... polyamorous as opposed to monogamous ... whether one is attracted to humans, non-human animals, or inanimate objects.

Those who argue that pedophilia is a type of sexual orientation distinguish between different types of sexual orientations ... This view places pedophilia on a larger spectrum of erotic age orientation, which describes how individuals experience sexual attraction to age groups ranging from infants to the elderly...

[D]espite over a century of social science research and legal analysis, there is no one accepted definition of sexual orientation. ...

The Loudoun County School Board has failed to define sexuality-related terms and establish parameters for determining bona fide inclusion within the new policy categories, thereby making policies ripe for abuse and subsequently threatening the privacy, safety, and conscience rights of students and staff.

Current Practices in Nearby Counties

As of 2018, Fairfax County Public Schools now uses the phrase "sex assigned at birth" in all Family Life Education curriculum instead of biological sex or biological gender.[17] This change was implemented for ideological reasons rather than scientific ones since sex is not assigned at birth for +99% of infants but rather simply documented based on observable genetic and anatomical characteristics that are determined well before birth.

In the FLE curriculum for 8th graders, students are taught "... development of individual identity occurs over a lifetime and includes ... sexual orientation and gender identity. ... For most people, their gender

identity is the same as their sex assigned at birth. For some people, their gender identity is different than their sex assigned at birth.”[18]

Every year Fairfax County Public Schools administers invasive, lengthy surveys to students as young as 13 years of age (8th grade) that ask leading questions regarding sexual activities, none of which any child in Virginia under the age of 15 can legally consent to in the first place.[19] Questions include:

How old were you when you had sexual intercourse for the first time?

During your life, with how many people have you had sexual intercourse?

During the past 3 months, with how many people have you had sexual intercourse?

The last time you had sexual intercourse, what one method did you or your partner use to prevent pregnancy?

Have you ever had oral sex?

Eighth (8th) graders are also asked:

Which of the following best describes you? (The student can choose from the following options: Heterosexual, Gay or lesbian, Bisexual, or Not sure.)

Although Fairfax County Public Schools does not currently have an explicit policy allowing students to use the bathroom and locker rooms of their choice, the Fairfax County School Board has openly encouraged Virginia courts to rule in favor of interpreting current law in such a way as to make it a legal requirement of every school to allow bathroom and locker room access based on gender identity rather than biological sex.[20]

In June 2019, Arlington Public Schools (APS) adopted rules that allow students to use restrooms and locker rooms that “match their gender identity” rather than their biological sex. APS defines “gender identity” based on the 2015 American Psychological Association definition: one’s sense of self as male, female, or an alternative gender that may or may not correspond to a person’s sex assigned at birth. The new rules also permit male students to be placed in overnight field trip accommodations with female students without notifying parents. Staff will be required to use preferred pronouns and names, even if students have not legally changed their name or gender.[21]

Last month (July 2019), the Arlington County government adopted a policy for government-building restrooms and locker rooms that formally allows any individual to use a male or female restroom “that corresponds with gender identity or expression.”[22]

Conclusion

By adding ambiguous and politically-charged language to an umbrella non-discrimination policy, school districts expose students and staff to further policy changes that threaten privacy rights, a fair playing field for girls’ athletics, conscience rights, free speech rights, parental rights, and safety. As has been the established pattern throughout Virginia counties and other governmental bodies throughout the state, LGBTQ language in non-discrimination policies always translates to LGBTQ language inclusion in curriculum, whether it is Family Life Education or academic, and bathroom and locker room access based on subjective feelings rather than objective biological fact.

REFERENCES

[1] Policy 1040 Former 3-1 (as an Agenda Item of the 12 Feb 2019 2nd Tuesday School Board Meeting)

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[2] Legislative & Policy Committee Agenda, 5 February 2019

[https://go.boarddocs.com/vsba/loudoun/Board.nsf/files/B94SJJ693F8A/\\$file/L%26P%20AGENDA%20020519.pdf](https://go.boarddocs.com/vsba/loudoun/Board.nsf/files/B94SJJ693F8A/$file/L%26P%20AGENDA%20020519.pdf)

[3] Approved Legislative & Policy Committee Minutes, 5 February 2019

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[4] 2nd Tuesday School Board Meeting Agenda, Minutes, and Video, 12 February 2019

<https://go.boarddocs.com/vsba/loudoun/Board.nsf/Public>

[5] Screenshot dated 3/16/19 (FB comment made four weeks prior—so approximately 2/16/19):



Dan Johnson Turgeon is a definite "no". She doesn't see any difference between LGBTQ discrimination and fat shaming, so why should gays get a protected group? (Because people with weight issues, who stutter, who don't wear the "right" clothes don't have strangers ... [See More](#))

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Amber Beichler Dan Johnson Croll did reaffirm her decision to support the policy the day after, but you're right. She could change her mind last minute.

The big argument that kills anything the dissenting voice says about actually caring about LGBTQ people is the co... [See More](#)

Like · Reply · 4w



Amber Beichler Also, I'd like to know who Debbie Rose's kids' openly gay teachers are do we could ask them what policy they'd like

Like · Reply · 4w



Andrew Hoyler Dan Johnson I think you mean Marshall and not Williams. Williams can't vote!

Like · Reply · 4w



Chris Croll Croll is a definite yes. I have inside information. 😊 In fact, she raised her hand to be appointed to the SB to get this very policy passed. If she does nothing else this year, she will get these staff and student protections in place.

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[6] 4th Tuesday School Board Meeting Agenda, Minutes, and Video, 26 February 2019

<https://go.boarddocs.com/vsba/loudoun/Board.nsf/Public>

[7] Transgender Education Association of Great Washington – Resources

http://www.tgeagw.org/?page_id=182

[8] Equality Virginia – Resources – Community Organizations

<http://www.equalityvirginia.org/resources/political-social-organizations/>

[9] DCATS – Resource Directory

<https://www.dcats.org/resources>

- A Complete Guide to Chest Binding for Trans Men, Thomas Underwood, FTM Guide, 6 July 2017 <https://ftm-guide.com/complete-guide-to-chest-binding-for-trans-men/>
- PRIMED^2: A Sex Guide for Trans Men Into Men, Gay Men’s Sexual Health Alliance, 2016 <http://librarypdf.catie.ca/PDF/ATI-20000s/24654.pdf>

[10] Human Resource and Talent Development Committee Agenda, 30 May 2019

[https://go.boarddocs.com/vsba/loudoun/Board.nsf/files/BCFGUW458C61/\\$file/HRTD%20Comm%20Mtg.%205.30.19.pdf](https://go.boarddocs.com/vsba/loudoun/Board.nsf/files/BCFGUW458C61/$file/HRTD%20Comm%20Mtg.%205.30.19.pdf)

[11] Pedophilia, *Psychology Today*, 22 February 2019

<https://www.psychologytoday.com/us/conditions/pedophilia>

[12] Slide 5, Introduction to Sexual Orientation, Unit 4.8 – Brea Olinda Unified School District, 9th Grade Health Curriculum

<https://www.snopes.com/uploads/2019/04/4.8-Introduction-to-Sexual-Orientation.pdf>

[13] Nondiscrimination in Health and Health Education Programs or Activities, Office for Civil Rights, Department of Health and Human Services

<https://www.hhs.gov/sites/default/files/1557-nprm-hhs.pdf>

[14] Sex Is Better than Gender, Emily Zinos, *First Things*, 30 May 2019

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[15] Pedophilia and DSM-5: The Importance of Clearly Defining the Nature of a Pedophilic Disorder, Fred S. Berlin, *Journal of the American Academy of Psychiatry and the Law*, December 2014

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[16] Taking Pedophilia Seriously, Margo Kaplan, *Washington and Lee Law Review*, Volume 72 Issue 1, 1 January 2015

<https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=4438&context=wlulr>

[17] FCPS curriculum takes 'biological gender' out of its official language, Angela Woolsey, *Fairfax County Times*, 22 June 2018

http://www.fairfaxtimes.com/articles/fairfax_county/fcps-curriculum-takes-biological-gender-out-of-its-official-language/article_8fe1fd5c-763d-11e8-b0e2-4b85ebdb3813.html

[18] Fairfax County Youth Survey, School Year 2016 - 2017

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[19] ParentAndChild.org, Fairfax County Public Schools Family Life Education Evaluation (2018-2019): Grade 8 - Emotional & Social Health Lesson 2

<https://parentandchild.org/chart.php>

[20] Northern Va. school systems unite behind transgender student in landmark case, Debbie Truong, *Washington Post*, 29 April 2019

https://www.washingtonpost.com/local/education/northern-va-school-systems-unite-behind-transgender-student-in-landmark-case/2019/04/29/8a536466-6061-11e9-bfad-36a7eb36cb60_story.html?utm_term=.3976b44995dc

[21] Arlington Public Schools Policy Implementation Procedure J-2 PIP-2 Transgender Students in Schools

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[22] Arlington officials adopt take-your-pick approach to bathroom selection, Sun Gazette Newspapers, InsideNova.com, 18 July 2019

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