



Education Law



Legal Entanglement Project: Part 4

Rhonda Jones Howard

EDAS 747



Agenda

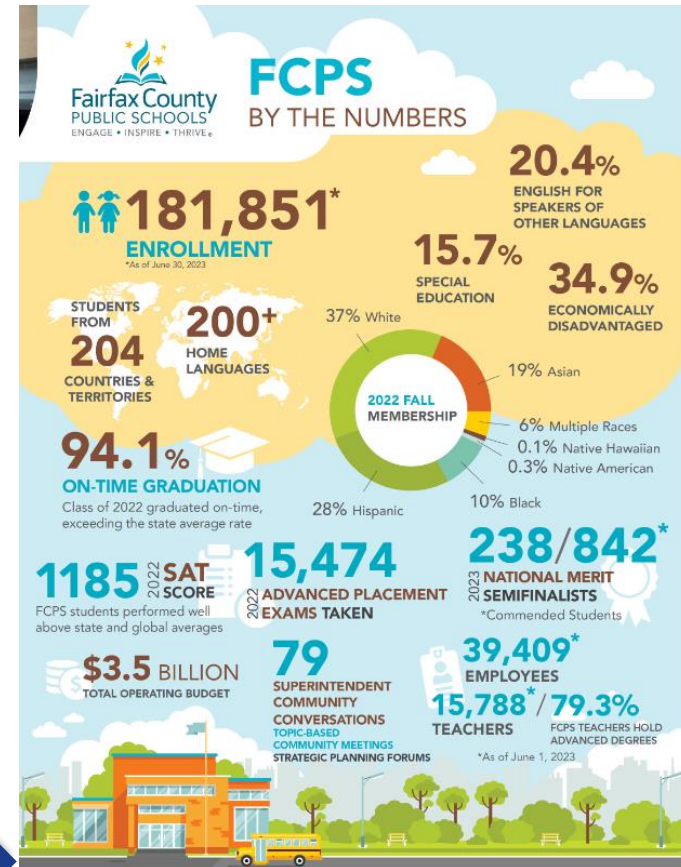
- Brief overview of the purpose of the Presentation
- Understanding Regulation 2603.2: Purpose, Scope, and Legal Requirements from literature and Cases
- Evaluate the proposed regulation and procedures
- Expectations from Implementation/Results
- Advocacy Plan
- Discussion and Q&A

Audience: Stakeholders (staff and administrators at HSS)

Fairfax County School Demographics

- 199 schools
- 181,851 enrolled students.
- 200+ home languages
- 34.9% of students are econ. disadvantaged
- 15.7% classified under Special Education
- 20.4% classified as English for Speakers of Other Languages

(Fairfax County School Board, 2024)



Fairfax County Public School Demographics



The district's minority enrollment is 60%.

- Asian 19%
- Black 10%
- Hispanic 28%
- White 37%
- Multiple Races 6%
- Native American: 0.3%
- Native Hawaiian: 0.1%

(Fairfax County School Board, 2024)

Hayfield Secondary Demographics

TRUST THE ORANGE
HAYFIELD HAWKS

Ethnicity	2020-21		2021-22		2022-23	
	#	%	#	%	#	%
Asian	114	11.86	127	13.00	110	11.21
Black (Not Of Hispanic Origin)	242	25.18	233	23.85	241	24.57
Hispanic Or Latino	232	24.14	232	23.75	229	23.34
White (Not Of Hispanic Origin)	308	32.05	320	32.75	313	31.91
Other	65	6.76	65	6.65	88	8.97

MS data

Ethnicity	2020-21		2021-22		2022-23	
	#	%	#	%	#	%
Asian	299	14.20	278	13.31	279	12.92
Black (Not Of Hispanic Origin)	563	26.73	556	26.63	597	27.64
Hispanic Or Latino	462	21.94	464	22.22	458	21.20
White (Not Of Hispanic Origin)	614	29.15	620	29.69	662	30.65
Other	168	7.98	170	8.14	164	7.59

HS data

(Fairfax County School Board, 2024)

Hayfield Secondary Demographics

School: HAYFIELD MIDDLE
School Year: 2023-24
Month: OCTOBER

Race Ethnicity Name	Ethnicity Count	Ethnic Percent
AMER INDIAN OR ALASKAN NATIVE	4	0.40
ASIAN	104	10.33
BLACK (NOT OF HISPANIC ORIGIN)	244	24.23
HISPANIC OR LATINO	231	22.94
NATIVE HAWAIIAN OR PACIFIC ISLANDER	5	0.50
TWO OR MORE	88	8.74
WHITE (NOT OF HISPANIC ORIGIN)	331	32.87
TOTAL NUMBER OF STUDENTS	1,007	

MS data

School: HAYFIELD HIGH
School Year: 2023-24
Month: OCTOBER

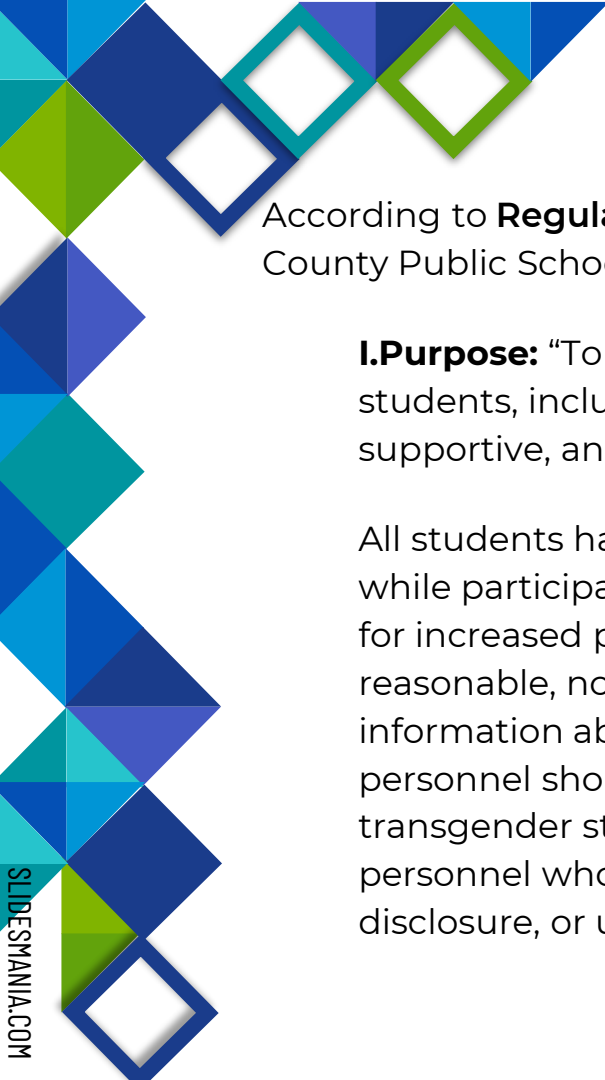
Race Ethnicity Name	Ethnicity Count	Ethnic Percent
AMER INDIAN OR ALASKAN NATIVE	13	0.59
ASIAN	261	11.84
BLACK (NOT OF HISPANIC ORIGIN)	600	27.22
HISPANIC OR LATINO	491	22.28
NATIVE HAWAIIAN OR PACIFIC ISLANDER	9	0.41
TWO OR MORE	147	6.67
WHITE (NOT OF HISPANIC ORIGIN)	683	30.99
TOTAL NUMBER OF STUDENTS	2,204	

HS data

TRUST THE ORANGE
HAYFIELD HAWKS

Over 3,100 culturally, linguistically and economically diverse students educated and served!

(Fairfax County School Board, 2024)

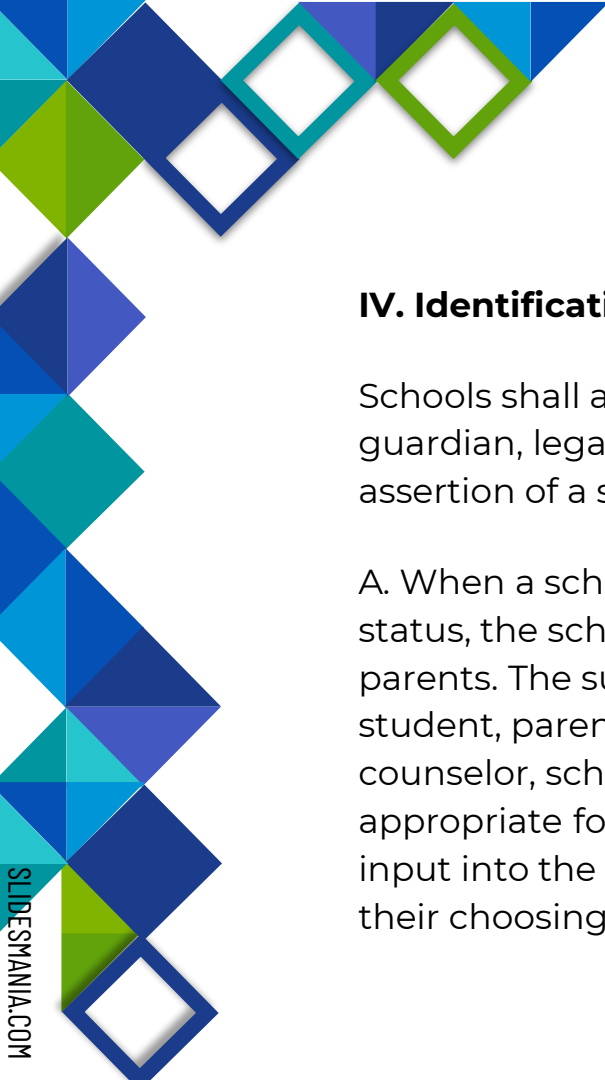


Regulation 2603.2

According to **Regulation 2603.2 Gender-expansive and Transgender Students** of Fairfax County Public Schools (FCPS), the following is articulated:

I.Purpose: “To establish procedures and guidelines for schools to ensure that all students, including gender-expansive and transgender students experience a safe, supportive, and inclusive school environment.

All students have a right to privacy in Fairfax County Public School (FCPS) facilities while participating in FCPS sponsored events. Any student who has a need or desire for increased privacy, regardless of the underlying reason, shall be provided with reasonable, non-stigmatizing accommodations. Students shall not disclose private information about another student's reason for seeking privacy. Additionally, school personnel should not disclose information about a student's gender-expansive or transgender status, legal name, or sex assigned at birth, including to other school personnel who do not have a need to know, unless the student has authorized such disclosure, or unless legally required to do so as further outlined below.”

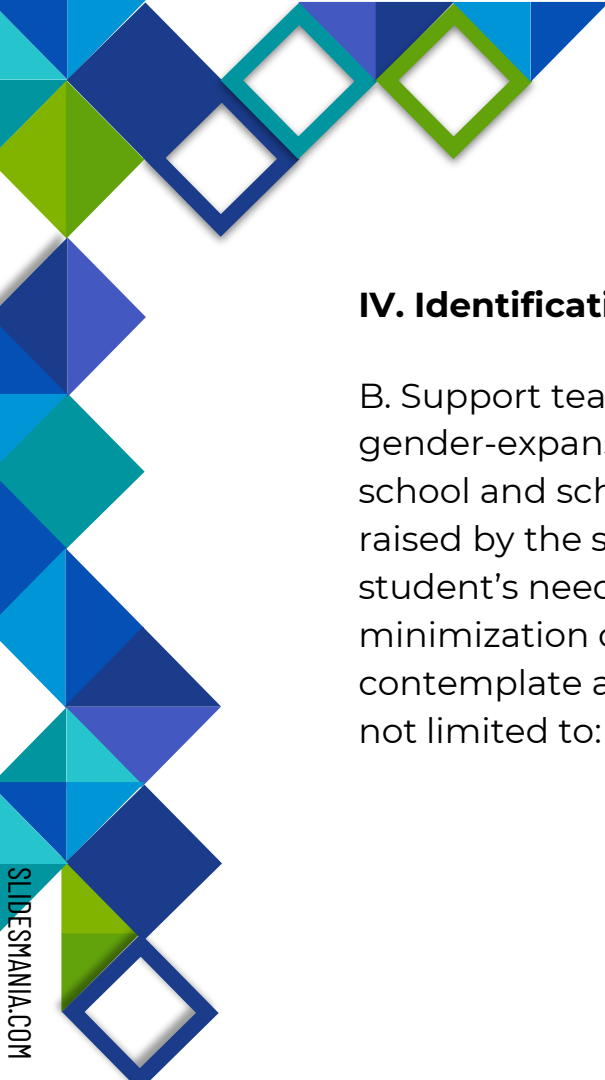


Regulation 2603.2

IV. Identification of Gender-Expansive and Transgender Students:

Schools shall accept a student or parent's (use of this term herein includes parent, guardian, legal custodian, or other person having control or charge of a child) assertion of a student's gender-expansive or transgender status.

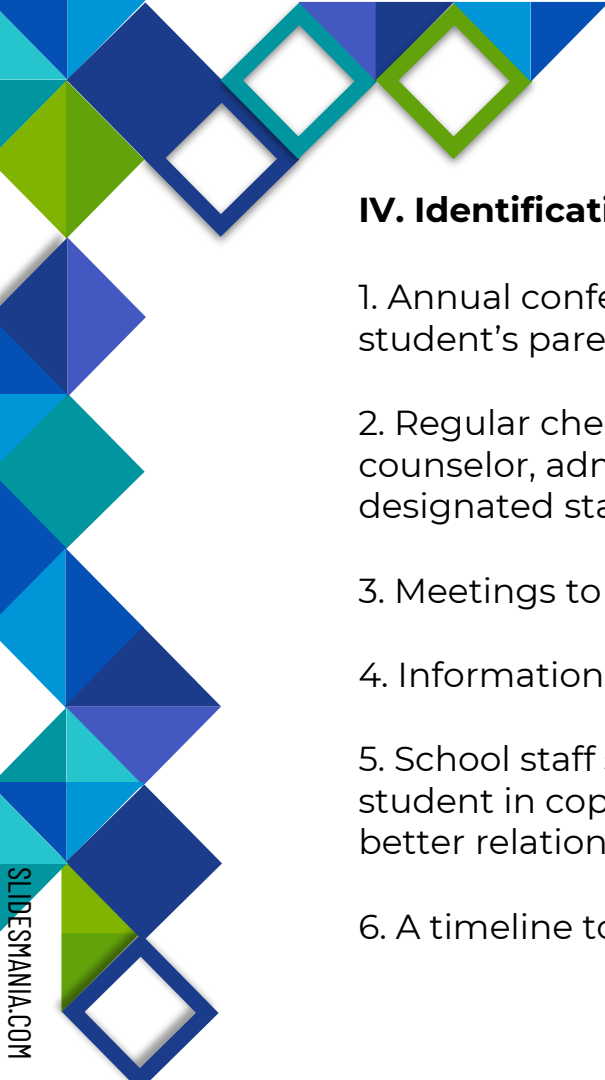
A. When a school is made aware of a student's gender-expansive or transgender status, the school shall offer to convene a support team for the student or the parents. The support team shall be a multidisciplinary team that may consist of the student, parents if the student is willing, classroom teacher(s), administrator, school counselor, school psychologist, school social worker, and/or other staff members as appropriate for this collaboration. The student or the student's parents may have input into the composition of the team and also may invite any representatives of their choosing to include physical and mental health professionals or advocates.



Regulation 2603.2

IV. Identification of Gender-Expansive and Transgender Students:

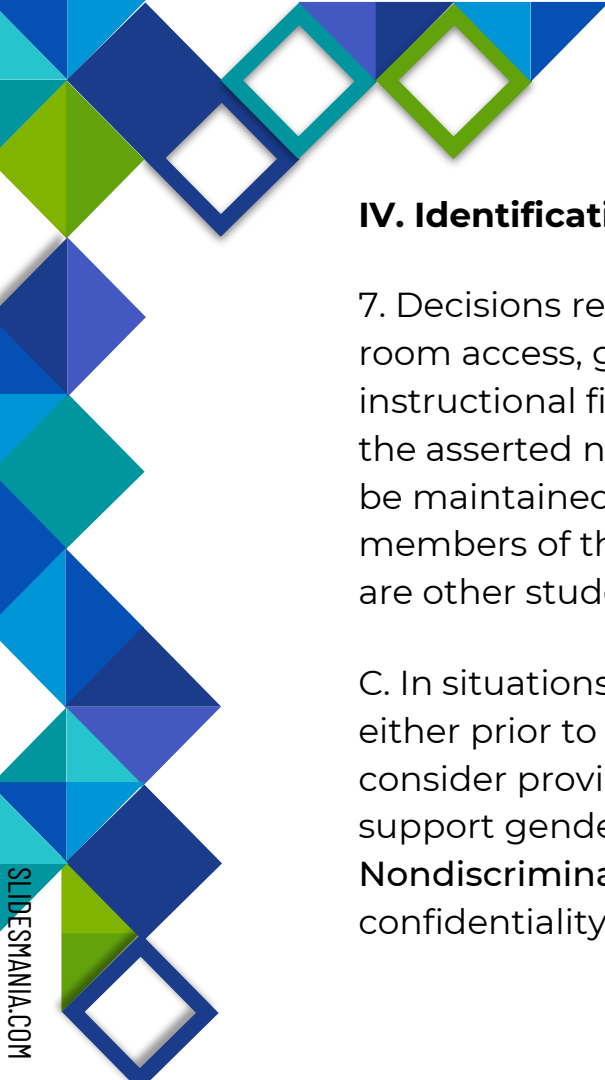
B. Support teams shall develop a student-specific support plan to provide the gender-expansive or transgender student with safe and equitable access to all school and school division facilities and activities, addressing any particular issues raised by the student or the student's parents. The support team shall consider the student's needs, protection of student privacy, maximization of social integration, minimization of stigmatization, student age, and any perceived safety risks as they contemplate appropriate supports and arrangements. The plan may include, but is not limited to:



Regulation 2603.2

IV. Identification of Gender-Expansive and Transgender Students:

1. Annual conferences with a student support team, the student, and/or the student's parents to discuss any necessary accommodations for the school year.
2. Regular check-ins with the student and/or the student's parents by the school counselor, administrator, school psychologist, school social worker, or other designated staff member deemed appropriate.
3. Meetings to support the student from academic year to academic year.
4. Information about community resources.
5. School staff should provide information and referral to resources to support a student in coping with a lack of support at home and seek opportunities to foster a better relationship between the student and their family.
6. A timeline to support student transition from one gender to another, if applicable.

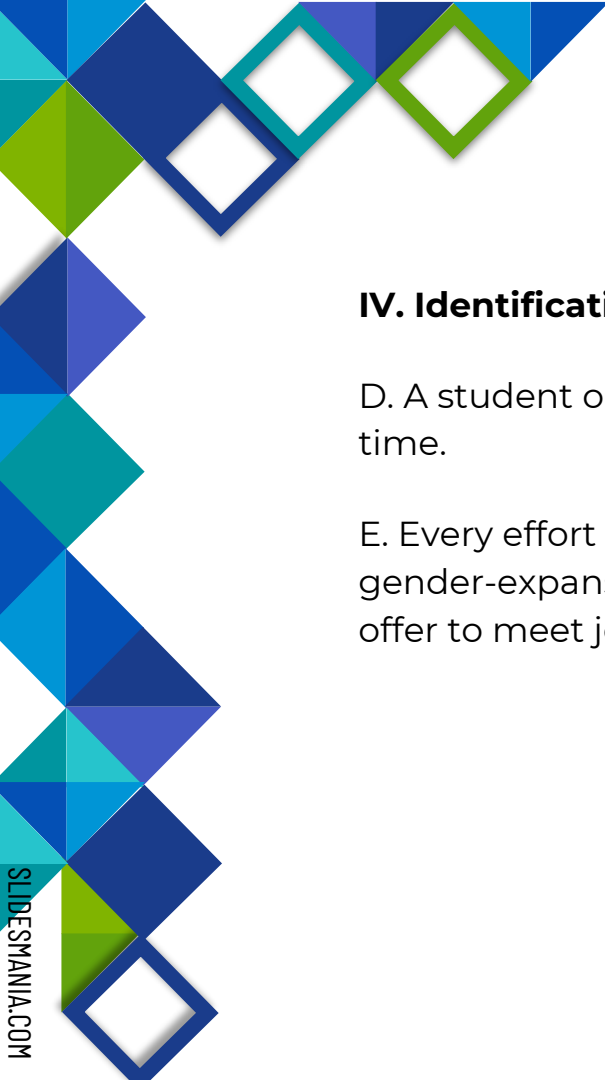


Regulation 2603.2

IV. Identification of Gender-Expansive and Transgender Students:

7. Decisions regarding use of student name and pronouns, restroom and locker room access, gender specific courses, sports, student activities, and extended instructional field trips or athletic events. School staff will address the student using the asserted name and gender as communicated by the student. This plan should be maintained in the school file (i.e., school counselor office) to be accessible to the members of the support team. This plan is subject to the same privacy guidelines as are other student records.

C. In situations where a student may be transitioning from one gender to another, either prior to the beginning of or during the current school year, school teams shall consider providing staff training on gender diversity to include responsibilities to support gender-expansive and transgender students under Title IX and **Policy 1450, Nondiscrimination**. This training should be generalized to honor the privacy and confidentiality of the student.



Regulation 2603.2

IV. Identification of Gender-Expansive and Transgender Students:

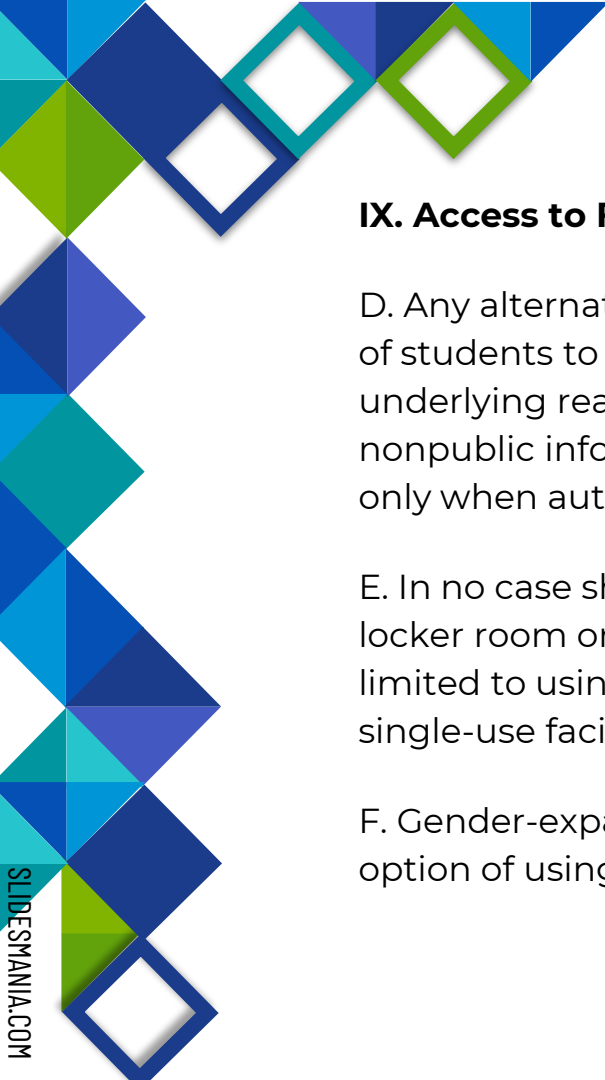
D. A student or parent may request that the support team be reconvened at any time.

E. Every effort shall be made to encourage and support communication between gender-expansive or transgender students and the student's parents. Schools may offer to meet jointly with the parents and the student at school.

Regulation 2603.2

IX. Access to Facilities:

- A. Gender-expansive and transgender students shall be provided with the option of using a locker room or restroom consistent with the student's gender identity.
- B. When an instructional or extra-curricular event requires students to be accommodated overnight, students may be assigned to a room consistent with the student's gender identity.
- C. Any student who has a need or desire for increased privacy, regardless of the underlying reason including gender identity, shall be provided with a reasonable, non-stigmatizing alternative such as the use of a private area (e.g., a nearby restroom stall with a door, an area separated by a curtain, or a nearby health or single-use/unisex bathroom), or with a separate changing schedule (e.g., using the locker room that corresponds to the student's gender identity before or after other students). Such alternative options will minimize impact to instructional time to the extent possible.



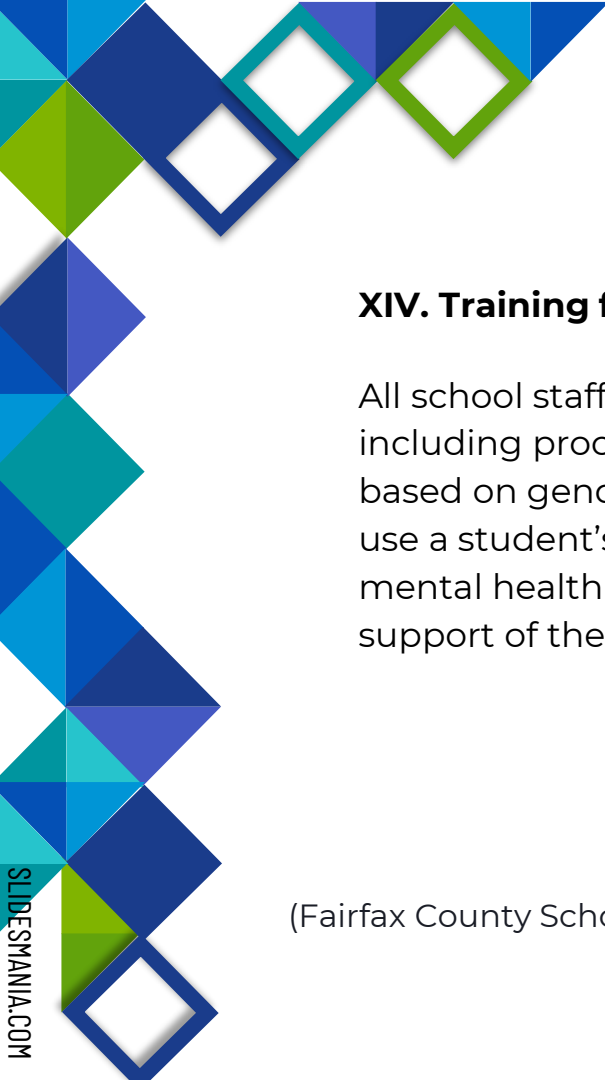
Regulation 2603.2

IX. Access to Facilities:

D. Any alternative arrangement should be provided in a way that protects the ability of students to keep their gender-expansive or transgender status or other underlying reason for the request confidential. FCPS will maintain confidentiality of nonpublic information about students, releasing this information to third parties only when authorized by a student or parent.

E. In no case shall a gender-expansive or transgender student be required to use a locker room or restroom that conflicts with the student's gender identity or be limited to using only a private area, single-occupancy accommodation, or other single-use facility as described in this section.

F. Gender-expansive and transgender students may also be provided with the option of using the facilities that correspond to the student's sex assigned at birth.



Regulation 2603.2

XIV. Training for Employees:

All school staff will be trained annually on topics relating to transgender students, including procedures for preventing and responding to harassment and bullying based on gender identity and expression. This includes that a persistent refusal to use a student's chosen name and pronouns constitutes discrimination. School mental health professionals shall be trained annually on topics relating to safety and support of these students."

(Fairfax County School Board, 2022)

Ethical Framework-Issue

1. Ensure alignment with federal and state laws to safeguard rights and protections
2. Cultivate a safe, supportive, and inclusive environment for all students.
3. Note an uptick in instances of discrimination, harassment, or marginalization linked to gender identity
4. Identified a situation at HSS: causing concerns among students, parents and teachers.
5. Administrators faced challenges addressing students' use of gender-expansive facilities due to regulatory ambiguity.



Ethical Framework-Issue

- Safeguard privacy rights of all students with FCPS facilities and during FCPS sponsors events
- Provide reasonable non-stigmatizing accommodations

(Fairfax County School Board, 2022)



Applicable MCEE Principles

MCEE Principle I: Responsibility to Profession

A: The professional educator demonstrates responsibility to oneself and the profession by:

2. Knowing and upholding the the procedures, policies, and laws relevant to professional practice regardless of personal views.



I do not believe that the regulation is in compliance with MCEE Principle I.

- Educators and staff are not consistent with upholding procedure, policies, and regulations.
- FCPS district and HSS require additional clarity and understanding.
- FCPS and HSS is not fully in alignment with Virginia Department of Education

(NASDTEC, 2023)

Applicable MCEE Principles

MCEE Principle III: Responsibility to Students

A: The professional has a primary obligation to promote health, safety and well being of all students. The professional educator treats students with dignity and respect and appropriate verbal, physical, emotional, and social boundaries.

1. Respecting students by taking into account their individual characteristics, including but not limited to age, gender, culture, setting, ability and socioeconomic context.



I do not believe that the regulation is in compliance with MCEE Principle III.

- Not all educators consistently advocate for the health, safety, and over well-being of every student.
 - Failure and violation of federal, state and district policies.
- Individual student characteristics are not consistently respected within FCPS and HSS.

(NASDTEC, 2023)

Applicable MCEE Principles

MCEE Principle IV: Responsibility to the School Community

A: The professional educator promotes appropriate effective relationships with parents/guardians by:

2. Demonstrating a commitment to equality; equity, diversity and inclusion with parents/guardians.



I do not believe that the regulation is in compliance with MCEE Principle IV.

- Staff and educators are not fulfilling their commitment to equality, equity, diversity and inclusion with respect to concerning the involvement of parents/guardians in all matters pertaining to students under the age of 18 years.

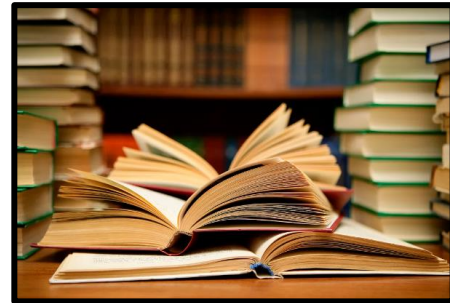
(NASDTEC, 2023)

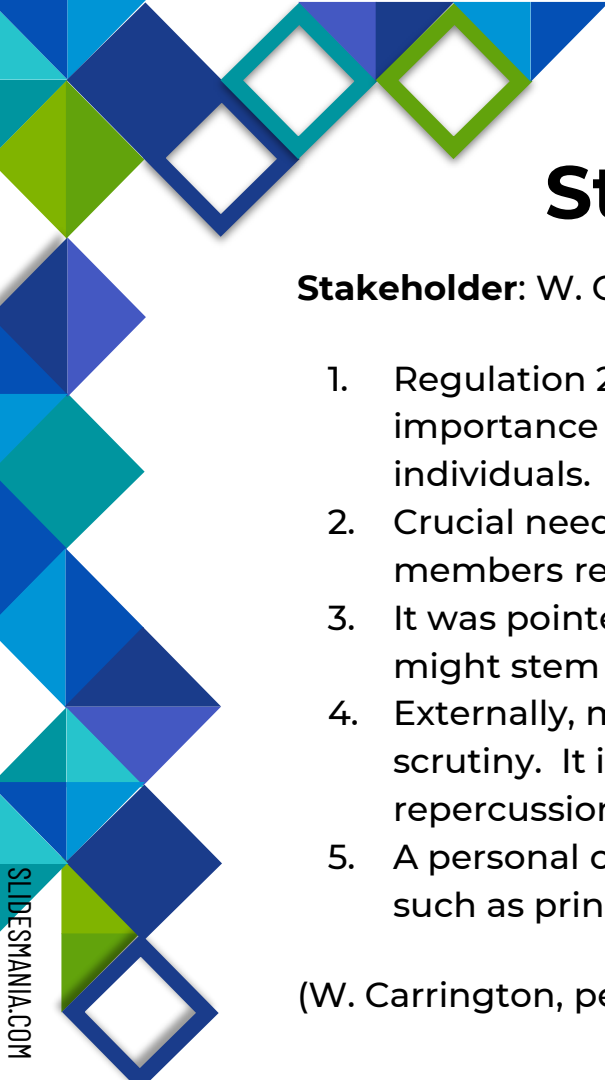


Stakeholder Perspectives

Questions:

1. Based on our discussion, what amendments should be proposed to the regulation?
1. What are the deficiencies or issues identified within Regulation 2603.2?
1. What specific apprehensions or considerations do you hold regarding Regulation 2603.2?
1. How can you champion ethical decision-making and prioritize student overall well being concerning Regulation 2603.2?



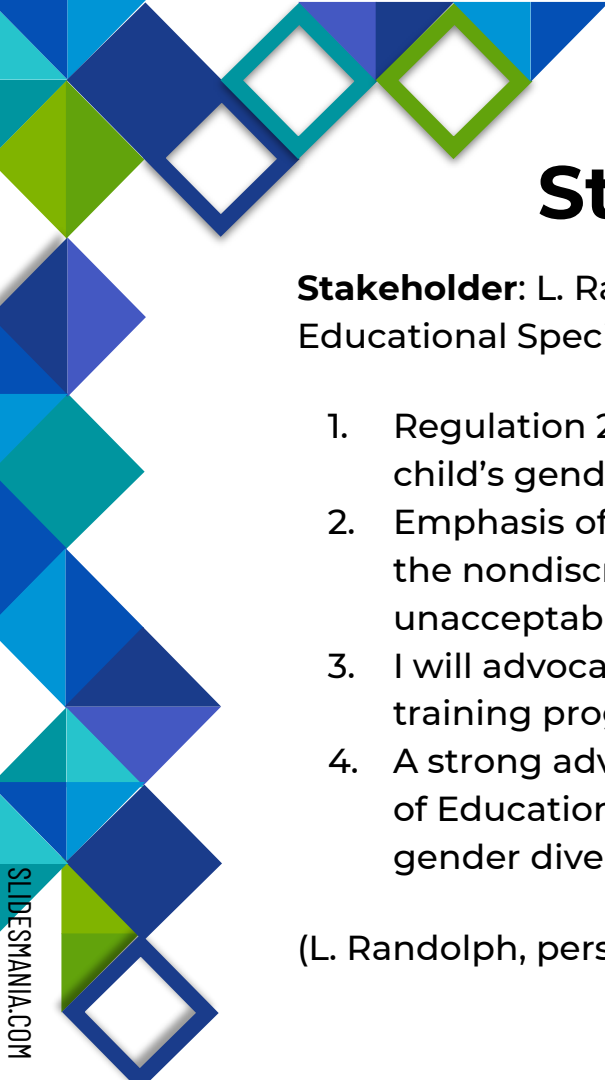


Stakeholder Perspective #1

Stakeholder: W. Carrington, Associate Principal, HSS

1. Regulation 2603.2 should be updated and revised as needed to reflect the importance of implementing checks and balances to meet the needs of all individuals.
2. Crucial need for ongoing education and cultivate awareness among staff members regarding gender diversity.
3. It was pointed out that the deliberate ambiguity in the regulation and policy might stem from past litigation and cases.
4. Externally, managing support can present challenges, especially in light of media scrutiny. It is essential to proceed with caution to mitigate any unintended repercussions.
5. A personal commitment to align with best practices and ensure stakeholders such as principals associations are on board.

(W. Carrington, personal communication, April 2, 2024)



Stakeholder Perspective #2

Stakeholder: L. Randolph, Parent of Former FCPS student and MS Gifted & Talented Educational Specialist

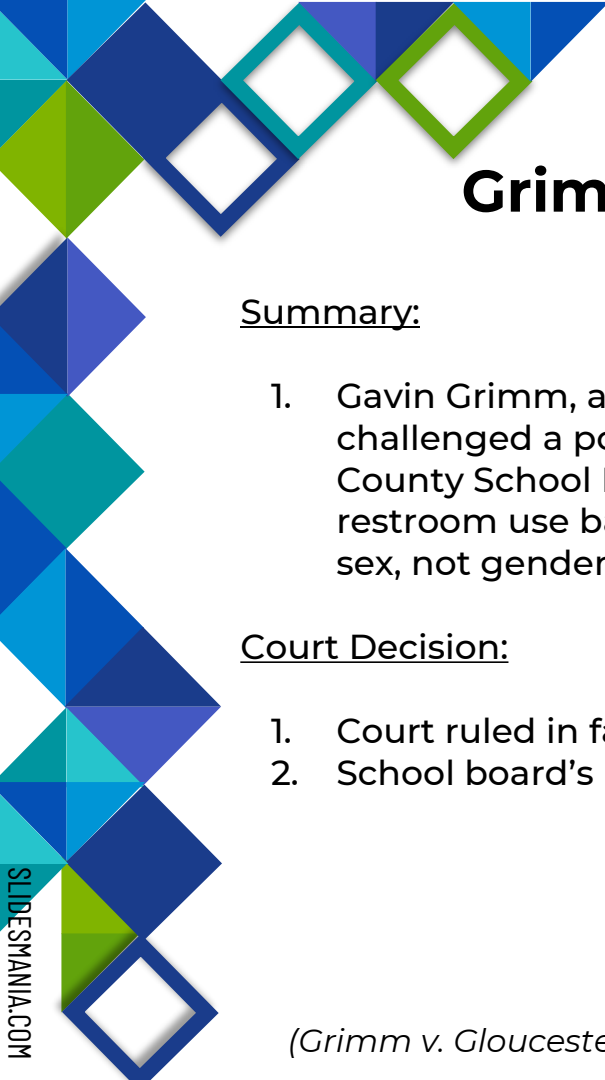
1. Regulation 2603.2 should be amended to reflect parents inclusion regarding child's gender identity.
2. Emphasis of FCPS not consistently adhering to the moral and legal imperative of the nondiscrimination policy and gender-expansive regulation is utterly unacceptable.
3. I will advocate by participating in the newly proposed mandated comprehensive training programs to improve awareness and understanding.
4. A strong advocate for state-level mandates with support of Virginia Department of Education and national organizations in standardizing training programs on gender diversity across all school districts.

(L. Randolph, personal communication, April 2, 2024)

Applicable Court Cases

1. Grimm v. Gloucester County School Board
2. Whitaker v. Kenosha Unified School District
3. Vlaming v. West Point School Board, et al.





Grimm v. Gloucester County School Board

Summary:

1. Gavin Grimm, a transgender male, challenged a policy by Gloucester County School Board mandating restroom use based on biological sex, not gender identity.

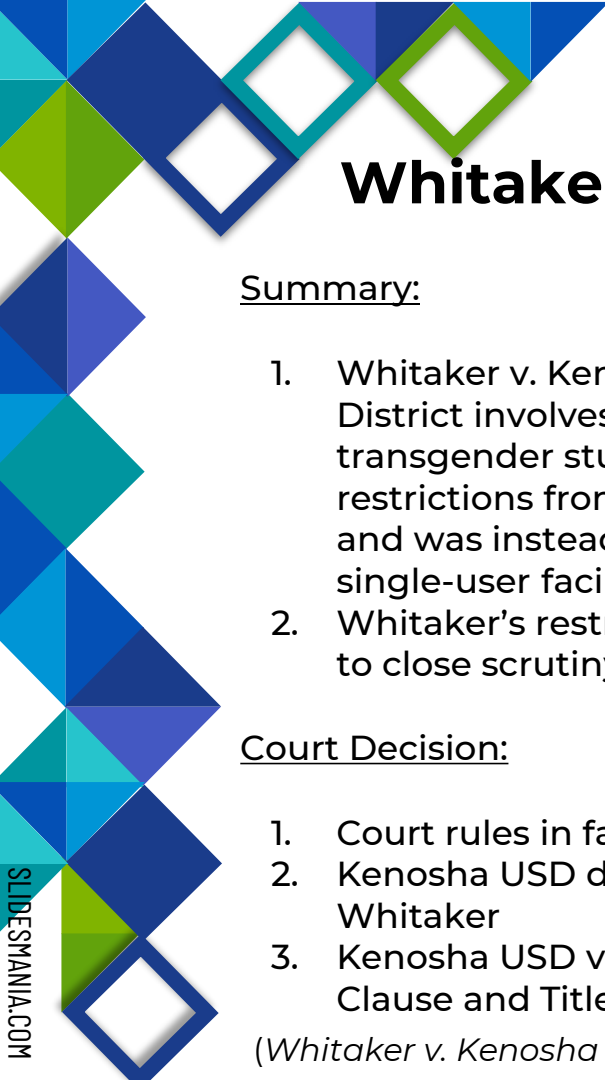
Court Decision:

1. Court ruled in favor of G. Grimm.
2. School board's policy violated Title IX

Relevance to topic:

1. It underscores the challenges when educational institutions do not provide transgender students with access to facilities aligned with their gender.
2. Staff actions lacks sensitivity in meeting the well-being and needs of students.
3. FCPS regulation is written in a that creates ambiguity and unclear language.

(Grimm v. Gloucester County School Board, 2020).



Whitaker v. Kenosha Unified School District (USD)

Summary:

1. Whitaker v. Kenosha Unified School District involves Ashton Whitaker, a transgender student who faced restrictions from using chosen restroom and was instead directed to utilize a single-user facility.
2. Whitaker's restroom usage was subjected to close scrutiny.

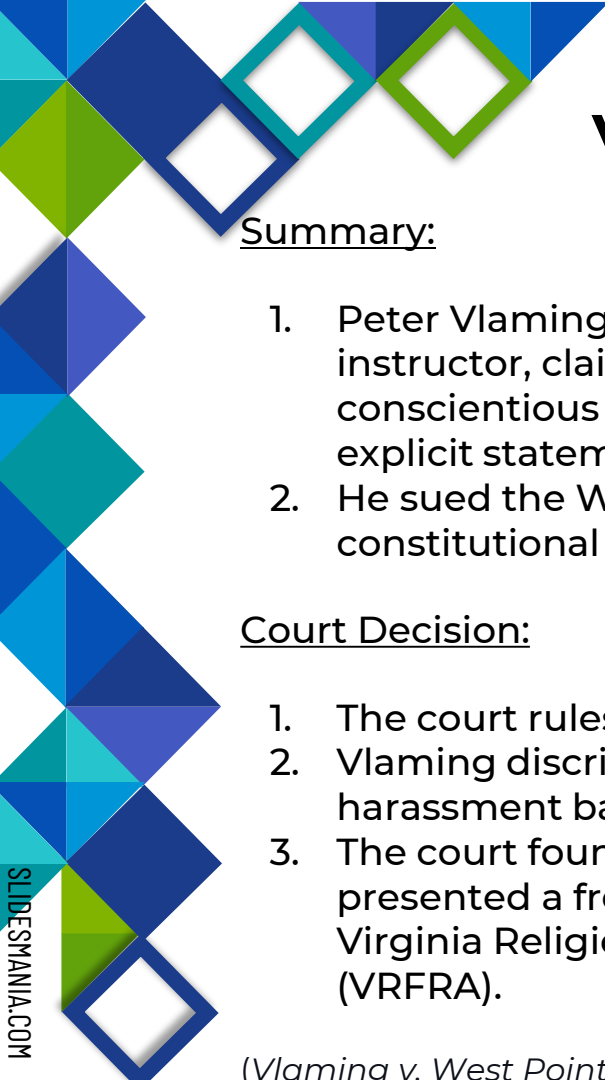
Court Decision:

1. Court rules in favor of Whitaker
2. Kenosha USD discriminated against Whitaker
3. Kenosha USD violated Equal Protection Clause and Title IX.

(*Whitaker v. Kenosha Unified School District, et al.*, 2017).

Relevance to topic:

1. Inconsistencies in regulations that are equitable and universally applied to all students.
2. Kenosha USD targeted a particular student solely on the basis of their gender identity.
3. FCPS regulations were not aligned with state or federal regulations and policies.



Vlaming v. West Point School Board

Summary:

1. Peter Vlaming, high school French instructor, claims his dismissal arose from conscientious objection rather than explicit statements.
2. He sued the West Point School Board for constitutional and contractual breaches.

Court Decision:

1. The court rules against Vlaming.
2. Vlaming discriminated and engaged in harassment based on gender identity.
3. The court found Vlaming sufficiently presented a free-exercise claim under the Virginia Religious Restoration Act (VRFRA).

Relevance to topic:

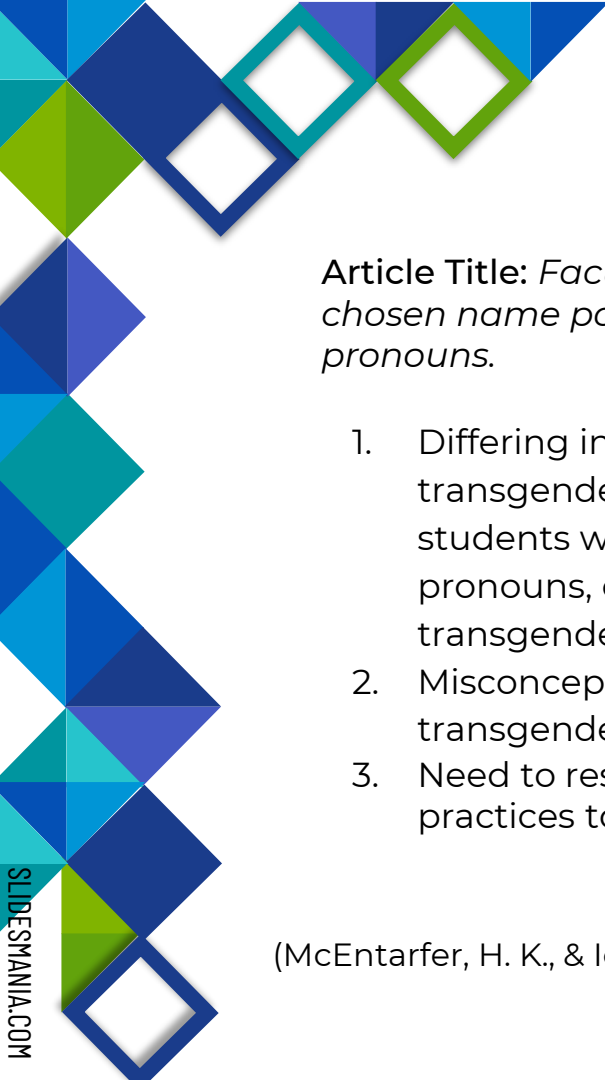
1. The implementation of legal and policy frameworks followed written provisions highlighting the importance of clear, unambiguous regulation and policies.
2. Emphasized the necessity for educators to have a thorough grasp of their rights and responsibilities.

(Vlaming v. West Point School Board. et al. 2023)

Applicable Literature Review

1. Faculty perceptions of chosen name policies and non-binary pronouns.
2. The restroom and locker room wars: where to pee or not to pee.
3. Catholic student sues Fairfax school board over transgender protections.





Literature Review #1

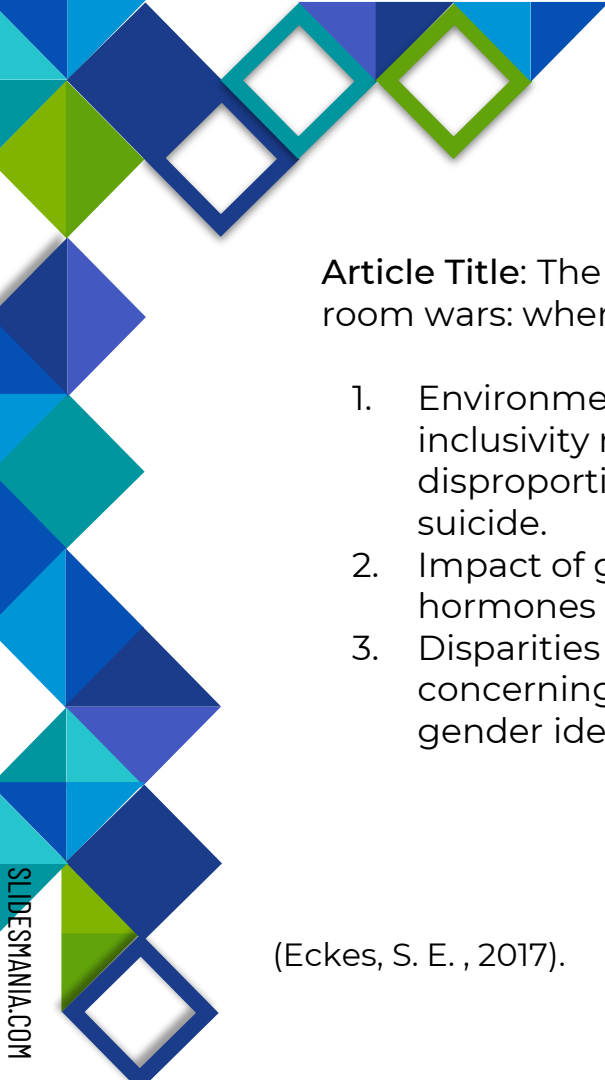
Article Title: Faculty perceptions of chosen name policies and non-binary pronouns.

1. Differing in understanding of transgender between staff and students with non-binary pronouns, chosen names and transgender identity.
2. Misconceptions about transgender identity among staff.
3. Need to reshape educational practices to promote inclusivity.

(McEntarfer, H. K., & Iovannone, J., 2022).

Emerging Trends:

1. Increase need for inclusive policies
2. Need for faculty training to broaden conceptualizations of gender to include language and practices.



Literature Review #2

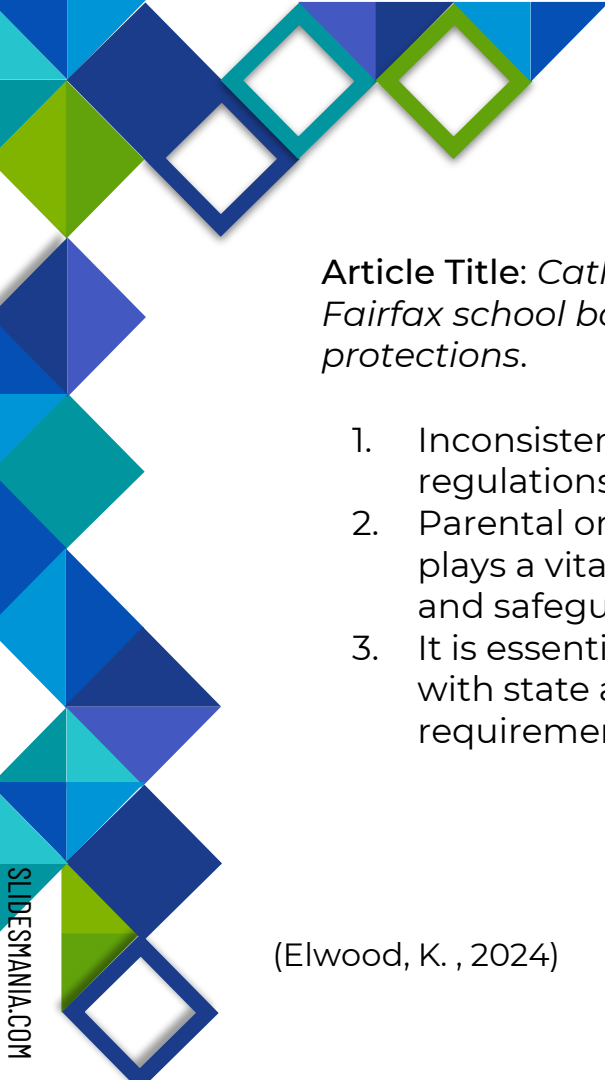
Article Title: The restroom and locker room wars: where to pee or not to pee.

1. Environments that lack inclusivity resulting in disproportionately high rates of suicide.
2. Impact of genetics and hormones on gender identity.
3. Disparities among policies concerning facilities related to gender identity.

(Eckes, S. E. , 2017).

Emerging Trends:

1. Increase in legal challenges and court cases.
2. Harmful impact of discrimination on mental-wellbeing related to gender identity.
3. Trend in legal actions commenced by transgender student and their supporters, contesting discriminatory policies and practices.



Literature Review #3

Article Title: *Catholic student sues Fairfax school board over transgender protections.*

1. Inconsistencies exist among laws, regulations, and policies.
2. Parental or guardian support plays a vital role in advocating for and safeguarding all students.
3. It is essential for policies to align with state and federal legal requirements.

Emerging Trends:

1. Rise in litigation cases pertaining to gender identity issues.
2. Navigating Parental Rights
3. Surge in lack of legal clarity observed within Virginia State legislation.

(Elwood, K. , 2024)

Proposed Regulations and Procedures

Regulation 2603.2: Gender-expansive and Transgender Students:

"I. Purpose To establish procedures and guidelines for schools to ensure that all students, including gender-expansive and transgender students, experience a safe, supportive, and inclusive school environment. All students have a right to privacy in Fairfax County Public School (FCPS) facilities or while participating in FCPS-sponsored events. Regardless of the underlying reason, any student with a need or desire for increased privacy shall be provided with **reasonable accommodations**. Students shall not disclose private information about another student's reason for seeking privacy. Additionally, school personnel should not disclose information about a student's gender-expansive or transgender status, legal name, or sex assigned at birth, including to other school personnel who do not need to know, unless the student has authorized such disclosure, or unless legally required to do so as further outlined below."

Proposed Regulations and Procedures

Regulation 2603.2: Gender-expansive and Transgender Students:

"IV. Identification of Gender-Expansive Transgender Students Schools shall accept a student or parent's (use of this term herein includes parent, guardian, legal custodian, or other person having control or charge of a child) assertion of a student's gender-expansive or transgender status.

A. When a school becomes aware of a student's gender-expansive or transgender status, the school will offer to assemble **a support team for the student and inform parents if the student is under 18 and has disclosed gender-expansive information to school authorities.** The support team will be a diverse group, including the student (if willing), parents (if student is under 18 years of age), classroom teacher(s), administrator, school counselor, school psychologist, school social worker, and other relevant staff members. The student or their parents may provide input on the team's composition and invite additional representatives, such as physical and mental health professionals or advocates.

Proposed Regulations and Procedures

Regulation 2603.2: Gender-expansive and Transgender Students:

"IX. Access to Facilities

A. Gender-expansive and transgender students will **use restrooms based on their gender assigned at birth while transitioning students will use designated gender-neutral facilities.**

B. For instructional or extra-curricular events necessitating overnight accommodations, students may be assigned to rooms aligning with their gender assigned at birth or their transitioned identity.

Proposed Regulations and Procedures

Regulation 2603.2: Gender-expansive and Transgender Students:

"XIV. Training for Employees

All school staff will receive comprehensive training twice a year on issues relevant to transgender students, covering procedures for preventing and addressing harassment and bullying based on gender identity and expression. It's important to note that persistently refusing to use a student's chosen name and pronouns is considered discriminatory. Additionally, school mental health professionals and counselors will undergo training quarterly on topics concerning the safety and support of transgender students. **This training requirement for all staff will be communicated and organized by the Office of Equity and Inclusion, demonstrating our ongoing commitment to supporting gender-expansive and transgender students.** Individuals who contravene the regulation are entitled to respond and appeal, presenting their perspective. Fairfax County Public Schools are committed to complying with all relevant laws and conducting themselves with professionalism and integrity. This approach seeks to strike a balance between upholding the rights of all students while affirming the dignity and comfort of those undergoing gender transitions and those who are not."

Expected Results from Proposed Regulation:

The regulation 2603.2 updates consideration facilitates:

1. Clear and comprehensive guidelines.
2. Ensures consistent and respectful treatment of all students
3. Promotes collaborative decision-making and inclusion to the student, parents, teachers, and various school professionals, provides personalized support, and ensures that the student's needs are addressed.
4. Promote a school culture that respects and affirms the identities of all students.

Advocacy Plan

What strategies will I employ to advocate for the implementation of this proposed regulation?

1. District wide promotional campaign
 - a. FCPS website
 - b. Staff intranet
 - c. Email newsletter

Advocacy Plan

What strategies will I employ to advocate for the implementation of this proposed regulation?

2. HSS information meet for all staff during off blocks.

- a. Cultivating an equitable, inclusive and culturally responsive practices.
- b. Discuss recent litigation and prominent cases within FCPS and nationwide



Advocacy Plan

What strategies will I employ to advocate for the implementation of this proposed regulation?



3. Mandated comprehensive training sessions facilitated by the Office of Equity and Inclusion

- Tailored to address the specific needs of educators and provide practical strategies for implementing inclusive language and practices.

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- Increased Understanding of Regulations 2603.2
- Enhanced Sensitivity and Awareness
- Regulation/Policy Implementation
- Reduced Bias and Discrimination
- Celebration of Diversity
- Provide understanding about advocacy action plan for the proposal.

For inquiries

Contact:

Rhonda Jones Howard

rjoneshoward@liberty.edu



References

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