



MONTGOMERY COUNTY PUBLIC SCHOOLS

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MARYLAND

August 2, 2019

Karen B. Salmon, Ph.D.
State Superintendent of Schools
Maryland State Department of Education
200 West Baltimore Street
Baltimore, Maryland 21201



Dear Dr. Salmon:

In recent months, Montgomery County Public Schools (MCPS) has received a number of requests from students and their parents seeking to designate students' gender in their official student records as non-binary or unspecified. Going forward, MCPS intends to accommodate these requests, and the purpose of this letter is to confirm that the Maryland State Department of Education (MSDE) does not have any objections to the approach that MCPS plans to pursue.

We expect this issue to become more pressing in light of Senate Bill 196, which was recently enacted by the Maryland General Assembly. Effective October 2019, the Motor Vehicle Administration will permit residents to designate their gender on their driver's licenses as either male, female, or "X" for unspecified or non-binary.

Our new student information system (SIS) will permit MCPS to take a similar approach. When our new SIS becomes operational in the summer of 2020, it will facilitate our efforts to accommodate non-binary students by using an "X" designation for gender identity in addition to male and female gender identifiers. In the meantime, for the 2019-2020 school year, MCPS plans to accommodate requests for non-binary or unspecified gender designations in official school records on a case-by-case basis, when students present documentation that is consistent with the guidance that you provided in your October 6, 2017 memorandum to local school superintendents, entitled: *Changing a Transgender Student's Name and Gender on "Official School Records."*

We recognize that utilizing an "X" designation for gender identity, in addition to male and female gender identifiers, has implications for state and federal reporting requirements. In this respect, it is important to note that the U.S. Department of Education (USDOE) recently revised its guidance for the ED*Facts* submission, which provides the applicable federal reporting requirements. Beginning with the 2018-2019 school year submission, USDOE adopted what the guidance calls a "new" approach to reporting students' sex:

Some jurisdictions allow for additional categories of sex for students who do not identify as either male or female. For ED*Facts* reporting, the attribute "sex" is based on the biological traits that distinguish male and female. The only

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permitted values for this attribute are ‘M’ (male), ‘F’ (female) and ‘Missing’. Students who do not identify as either male or female cannot be included in counts where sex is a required category. They **should** be included in all student counts where sex is not a required category. (Emphasis in the original).

In addition, the USDOE guidance states:

Sex is an attribute of student membership. It is based on the biological traits that distinguish male and female. The permitted values are ‘M’ (male), ‘F’ (female) and ‘Missing’.

Accordingly, it seems clear that states and school districts are authorized to use the “missing” value for a student who identifies as non-binary or unspecified. This is the approach that MCPS intends to take in reporting to MSDE going forward. Indeed, a fair interpretation of the text of the USDOE guidance appears to require MCPS to take this approach, insofar as the guidance states: “Students who do not identify as either male or female cannot be included in counts where sex is a required category.” Thus, if a student provides any of the documentation identified in your October 6, 2017, memorandum that indicates that the student’s gender is unspecified or non-binary, it would be inconsistent with USDOE guidance to require that student to be designated as male or female.

In light of the USDOE guidance, we hope that MSDE will have no objections to the approach that MCPS is proposing. Our approach also is fully consistent with the guidance in MSDE’s *Providing Safe Spaces for Transgender and Gender Nonconforming Youth: Guidelines for Gender Identity Non-Discrimination*. That guidance, which was first published in 2015, remains a critical resource for school districts across the state. For these reasons, we also urge MSDE to flag this issue for consideration in future updates to the *Maryland State Student Records Manual*, and we hope that MSDE will officially adopt our proposed approach when such revisions are made.

In developing our approach, we have identified a number of other school districts in our region that appear to be proceeding along the lines that MCPS is proposing. For example, DC Public Schools offers a non-binary option on its student enrollment form, which is available at this link:

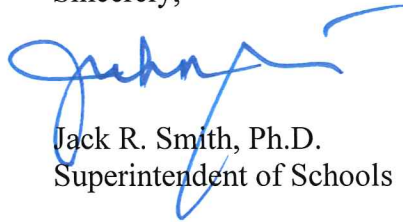
https://enrolldcps.dc.gov/sites/dcpsenrollment/files/page_content/attachments/DCPS_Enrollment_Form_19-20_FINAL_1.pdf

And at least two Virginia school districts are moving in the same direction for the coming school year. For more information, see <https://wamu.org/story/18/12/10/school-districts-expand-gender-options-to-include-transgender-and-nonbinary-students/>.

I know that you share our commitment to promoting a safe, welcoming school environment where students are engaged in learning and are active participants in the school community because they

feel accepted and valued. Given our shared commitment, I hope that MSDE will continue to collaborate with MCPS to support students so they may participate in school life consistent with their gender identity. Please feel free to have your staff contact Dr. Henry R. Johnson, chief of staff, and Mr. Joshua I. Civil, general counsel, if MSDE has any concerns about or objections to this course of action proposed in this letter, if you would like to discuss it further. We would like to receive any MSDE feedback by August 30, 2019, so we can prepare to implement our proposed approach at the beginning of the 2019-2020 school year.

Sincerely,



Jack R. Smith, Ph.D.
Superintendent of Schools

JRS:JIC:km

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