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November 15, 2023

Via Email [Commissioner@fldoe.org](mailto:Commissioner@fldoe.org); [Manny.Diaz@fldoe.org](mailto:Manny.Diaz@fldoe.org)  
and U.S. First Class Mail

Manny Diaz, Jr.  
Commissioner of Education  
Florida Department of Education  
325 W. Gaines St.  
Tallahassee, FL 32399-0400

Re: Interpretation of House Bill 1069 regarding usage of pronouns

Dear Commissioner Diaz:

I am writing to you on behalf of the School Board of Orange County, Florida on a matter of paramount importance. We are seeking clarification from the Florida Department of Education regarding the recently enacted House Bill 1069, and the issue regarding pronouns.

In the State of Florida, students who identify as lesbian, gay or bisexual are four times as likely to attempt suicide than their heterosexual peers (based on the CDC's 2021 Youth Risk Behavior Survey Results). Other data confirms that transgender and nonbinary youth are at even greater risk (The Trevor Project, 2020). Amongst those surveyed, when their preferred pronouns were respected, suicide was attempted at half the rate of those whose pronouns were not.

These are not just statistics, these are lives. The lives of our students. Their testimony during our school board meetings clearly demonstrates that the school district's implementation of HB 1069, and more specifically confusion over the intent of 1000.07, has added to their sense of isolation and rejection; and, it is adversely and unnecessarily affecting the well-being of these students. In order to prevent further suicides as a result of the bill's impact, our board is morally compelled to request clarification regarding the use of pronouns.

In short, the School Board of Orange County, Florida (School Board) believes that the law permits a parent to request school district employees to use pronouns which do not match the child's biological sex at birth; and, that under the Parents' Bill of Rights, such parental requests may be honored if a school district employee so chooses.

As you are aware, the law defines "sex" as the classification of a person as either female or male "based on the organization of the body of such person for a specific reproductive role, as indicated by the person's sex chromosomes, naturally occurring sex hormones, and internal and external genitalia present at birth," i.e. biological sex at birth.

The law then prohibits the following conduct:

- “An employee, contractor, or student of a public K-12 educational institution may not be required, as a condition of employment or enrollment or participation in any program, to refer to another person using that person's preferred personal title or pronouns if such personal title or pronouns do not correspond to that person's sex.”
- “An employee or contractor of a public K-12 educational institution may not provide to a student his or her preferred personal title or pronouns if such preferred personal title or pronouns do not correspond to his or her sex.”
- “A student may not be asked by an employee or contractor of a public K-12 educational institution to provide his or her preferred personal title or pronouns or be penalized or subjected to adverse or discriminatory treatment for not providing his or her preferred personal title or pronouns.”

Nonetheless, some have interpreted the language in 1000.071(1) that “it is false to ascribe to a person a pronoun that does not correspond to such person’s sex” to mean that an employee, contractor, or student using someone else’s preferred pronoun is prohibited by law. However, if that was the intent, the language in 1000.071(2) stating “employees, contractors, or students may not be required to use a pronoun that does not correspond to that person’s sex” would be unnecessary and misleading. Further, it makes no sense to state that an employee isn’t required to do something they are prohibited from doing. Had the legislature intended to prohibit the use of such pronouns rather than not require them, subsection 1000.071(2) would not have included the struck-through language below.

~~“An employee, contractor, or student of a public K-12 educational institution may not be required, as a condition of employment or enrollment or participation in any program, to refer to another person using that person's preferred personal title or pronouns if such personal title or pronouns do not correspond to that person's sex.”~~

Two other legal principles also support this view. The first is the School Board’s home rule authority pursuant to §1001.32(2), Fla. Stat.:

“In accordance with the provisions of s. 4(b), Art. IX of the State Constitution, district school boards shall operate, control, and supervise all free public schools in their respective districts and may exercise any power except as expressly prohibited by the State Constitution or general law.” § 1001.32(2), Fla. Stat.”

Such home rule authority has been recognized by the Florida Attorney General in AGO 86-45:

“Since the issuance of AGO 83–72, it has been the position of this office that the 1983 amendment conferred on school boards a variant of “home-rule power,” and that a district school board may exercise any power for school purposes in the operation, control, and supervision of the free public schools in its district except as expressly prohibited by the State Constitution or general law.”

Because honoring a parental right to choose pronouns is not “expressly prohibited by ... general law,” the School Board believes it has the home-rule authority to do so.

The second legal principle supporting the School Board’s position is the Parents’ Bill of Rights. In §1014.04(1)(a), the rights of a parent of a minor child includes “the right to direct the education and care of his or her minor child.” Additionally, §1014.04(1)(b) gives parents the right to “direct the upbringing and the moral and religious training of his or her minor child.” Included in those rights, in the view of our School Board and the parents of transgender students who have appeared before our board, is the right of the parent to direct what pronoun his or her child is called.

The Parents’ Bill of Rights also has a catch-all provision which states “Unless required by law, the rights of a parent of a minor child in this state may not be limited or denied.” This supports the School Board honoring parental choice of pronouns, because the rights of a parent of a minor child in this state may not be limited or denied.

Honoring parental rights to choose their child’s pronouns will also likely help reduce bullying of the child; and, based on the findings of the Trevor Project in 2020, may reduce the risk of attempted suicide. Studies have shown a connection between sexual or gender identity and bullying, as well as bullying and suicide. For example, gay, lesbian or bisexual high school students in Florida are at least seven times more likely to be teased or name-called about their sexual identity than their heterosexual peers (YRBS 2021). Nationally, 61% of transgender or nonbinary youth reported being bullied, and 32% of transgender and nonbinary youth who were bullied attempted suicide compared to 14% who were not bullied (The Trevor Project, 2021).

The State also indicated in the past that nothing in the Parental Rights in Education law (House Bill 1557 (2022)) is meant to prevent schools from dealing with bullying on the basis of a student’s transgender status. In the case of Equality Florida et al. v. DeSantis, et al., Case No. 4:22-cv-134)-AW-MJF (N.D. Fla. 2022):

“For the same reason, the statute does not prohibit intervention against LGBTQ bullying, participation in extracurricular activities (such as “Gay-Straight Alliances” or books fairs), and even after-hours tutoring, ECF 47 ¶¶ 8, 118–19, 121, 184, among many other examples. That is not ‘classroom instruction’ covered by the statute.” (Docket No. 68, State Defendant’s Motion to Dismiss and Incorporated Memorandum of Law, Page 18.)

In conclusion, our view of the law is that a parent’s right to have their child referred to by a pronoun not matching the child’s biological sex at birth is not expressly prohibited under House Bill 1069. As such, we believe that right is required under §1014.04(1)(a), Fla. Stat. and §1014.04(1)(b), Fla. Stat.

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Due to the significant adverse impact that the misinterpretation of this language has had on our students, the School Board will begin acting on its understanding of the law on December 4, 2023. We will allow our employees, contractors, and students to honor parental choice in pronouns if they so choose, unless the Department of Education informs us by then that such practice is contrary to law. Thank you for your time and consideration in this matter.

Sincerely,



Teresa Jacobs  
School Board Chair

cc: School Board of Orange County  
Dr. Maria Vazquez, Deputy Superintendent  
Amy D. Envall, General Counsel  
Dr. Michael Armbruster, Deputy Superintendent  
Dr. Bridget Williams, Deputy Superintendent  
John C. Palmerini, Deputy General Counsel