



June 16, 2016

Honorable Ken Paxton  
Attorney General of Texas  
P.O. Box 12548  
Austin, TX 78711-2548

**Re: Legality of the Fort Worth ISD's Transgender Student Guidelines**

Dear General Paxton:

The Lieutenant Governor has asked for your legal opinion on the legality of the school policy titled "Transgender Student Guidelines" recently adopted by the Fort Worth Independent School District. Texas Values respectfully submits this brief in response to that request.

Several aspects of the Guidelines violate state laws that protect the authority of parents. Consider, for example, the edict that requires school officials to conceal a student's "gender expression" at school from that student's parent or guardian:

All students have a right to privacy. This includes keeping a student's actual or perceived gender identity and expression private. School personnel may only share this information on a need-to-know basis or as the student directs. *This includes sharing information with the student's parent or guardian.* When contacting the parent or guardian of a transgender student, school personnel must use the student's legal name and

the pronoun corresponding to the student's gender assigned at birth unless the student, parent, or guardian has specified otherwise.

Guidelines at 5 (emphasis added).<sup>1</sup> This directive and policy violates section 26.008(a) of the Texas Education Code, which states in clear and unequivocal terms that "[a] parent is entitled to *full information regarding the school activities* of a parent's child except as provided by Section 38.004."<sup>2</sup>

A child's "school activities" include any actions or pursuits that a child undertakes while at school or in school-related functions. *See, e.g.,* American Heritage Dictionary of the English Language, 5th edition (defining "activities" as "[t]he state of being active"; "[e]nergetic action or movement"; and "[a] specified pursuit in which a person partakes"), available online at <http://bit.ly/24Bt0fY>. These "activities" include a child's demands to be recognized as a boy or girl while at school, his efforts to go by a certain name or pronouns while at school, and his use of school bathrooms, locker rooms, and shower stalls. If a student is presenting himself at school in a manner that contradicts his biological sex, then his parents are entitled to "full information" regarding those "activities" of their child. *See* Tex. Educ. Code § 26.008(a).<sup>3</sup>

The school district claims that students have a "right to privacy" that requires or allows school officials to conceal this information from parents. *See* Guidelines at 5. That is demonstrably untrue. The school district cites no legal authority for a "right to privacy" that would

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<sup>1</sup> *See also* Guidelines at 6 ("In most cases, transitioning is a very private matter. *Students may choose whether or not to have their parents participate in this process.* . . . Prior to notifying any parent or guardian regarding the student's gender identity or any potential transition process, *school personnel must work closely with the student to assess the degree to which, if any, the parent or guardian has been or will be involved in the process.*") (emphasis added).

<sup>2</sup> Section 38.004 of the Texas Education Code deals with reports of child abuse or neglect suffered at home, and is not relevant to the legality of the Guidelines.

<sup>3</sup> The school district's policy also violates section 26.004 of the Texas Education Code, to the extent it requires school officials to conceal information in a school's written records that reflects that the student is identifying as something other than his biological sex. *See* Tex. Educ. Code § 26.004 ("A parent is entitled to access to *all written records* of a school district concerning the parent's child") (emphasis added).

allow children to keep their parents in the dark about their actions and behavior at school. Nor does the school district explain how this supposed “right to privacy” can trump the statutory command of section 26.008(a), which entitles parents to receive “full information”—not partial information—about their child’s school activities. It is also untenable to suggest that a “right to privacy” would extend to behavior that a student is displaying openly in front of teachers and classmates.

It is crucial that your office emphasize the breadth of section 26.008(a), which gives parents the right to receive *full* information about *any* activity that their child undertakes at school. This is especially important because the proponents of the sexual revolution have been intent on subverting the authority and influence of parents, and they have often sought to enlist school officials to assist them in this effort. *See* Editorial, *Vote Yes for Condoms*, *New York Times* (February 26, 1991) (praising the plan of New York City Schools Chancellor Joseph Fernandez to distribute condoms at the city’s high schools without parental consent or opt-out). Many parents have concerns about the behaviors that some activists are seeking to normalize and promote—and other parents do not want their children engaging in those behaviors until they are older and more responsible. Hence the efforts to keep parents uninformed about their child’s access to contraception, access to abortion, and transgender behavior. But parents in Texas have a statutory right to know what their child is doing at school, and a school district cannot conspire or instruct its employees to withhold that information from the child’s parents.

Finally, the Guidelines falsely claim that the failure to fully accommodate a student’s “gender identity” issues qualifies as discrimination “based on sex.” *See* Guidelines at 4 (“The District expressly prohibits any personnel from engaging in, encouraging, or failing to report discrimination or harassment *based on sex, including* but not necessarily limited *to* a student’s gender identity, gender expression, gender transition, transgender status, or gender non-conformity.”) (emphasis added). As you have cogently explained in the complaint filed in *Texas v. United States*, the laws prohibiting sex discrimination have nothing to say about whether a school district must rely on their students’ self-selected “gender identity” rather than their biological sex when classifying them as a boy or girl. Transgender activists are relentlessly attempting to shoehorn their demands for total, unconditional accommodation

into existing legal prohibitions on sex discrimination, because they know there is insufficient political support to enact their agenda through new legislation. The Fort Worth ISD's attempt to repeat this lawless refrain of transgender activists and the Obama Administration should be called out and repudiated.

Although some have argued that the school policy is simply a list of "guidelines" and not actual school policy, the Guidelines go far beyond a mere suggestion as they carry with it punishment for school employees, including teachers, in the form of "adverse employment action" for "failure to comply." See Guidelines at 1. This clear intention to punish employees raises the question about the legality of this policy to a level that requires your immediate attention. Teachers being forced to violate the law or lose their job will create an unproductive work environment for public schools.

In closing, we encourage you to conclude that the Fort Worth ISD Transgender Student Guidelines violate state law and open up the school district and its employees to costly litigation at the expense of taxpayers, parental rights, and safety.

Respectfully submitted.

A handwritten signature in blue ink, appearing to read 'J. Saenz', with a stylized flourish extending to the right.

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