

Delaware Anti-Discrimination Development Team Work Session
Delaware Technical and Community College, Terry Campus
DEL-ONE Conference Center, Room 727
Dover, Delaware
January 31, 2018
6:00 p.m. – 8:15 p.m.

Meeting Minutes

Development Team members present:

Janis Hanwell – Cape Henlopen School Board member
Ralph Taylor – Capital School Board member
Mark Purpura –Advocate
Robert Fulton - Superintendent - Cape Henlopen School District
Greg Meece - Charter School Leader - Newark Charter School
Mark Holodick - Superintendent - Brandywine School District
Patrick Williams - Superintendent - Smyrna School District
Terry Hodges - Parent - Kent County
Andrea Rashbaum - Parent - New Castle County
Celeste Andrews - Parent - Sussex County
Secretary Bunting – Secretary of Delaware Department of Education

Secretary of Education Susan Bunting opened the meeting at 6:02 p.m. and introduced herself to the audience. She welcomed the Development Team and those in attendance for the meeting. She thanked WestEd facilitators, Kathy Dunne and the WestEd team.

WestEd's Kathy Dunne reviewed the goals and purpose of the meeting. She said that the meeting was a working meeting for the Regulation 225 Development Team so they could review public feedback received during the 30-day comment period following publication of the regulation in the Register of Regulations and consider changes to proposed Regulation 225.

Dunne asked that all attendees respectfully refrain from talking during the Development Team discussion. She reviewed the public comment process and said there would be a period of time for comment at the conclusion of the Development Team's discussion. Dunne said that comment session would open at 7:45 p.m. and close at 8:15 p.m. and would be limited to the evening's Development Team discussion or proposed changes to the regulation. Dunne also noted that because general comments regarding

Regulation 225 were accepted during the formal 30-day comment period, these would not be accepted during the meeting.

Dunne said comment sign-up sheets would be available at the start of the Development Team discussion. She reminded attendees that there would be no responses to any comments or questions during the comment period and asked that all comments remain respectful and under two minutes. Dunne said that if there was not enough time for everyone to make a verbal comment – or if anyone wants to submit a written comment – comments will be accepted in writing at the end of the meeting or via email at DOEregulations.comment@doe.k12.de.us until Thursday, Feb. 1 at 4:30pm. She said that comments accepted through Feb. 1 would apply only to this meeting and not to any future public comment periods regarding proposed Regulation 225.

Dunne said that additional information about the regulation and process that becomes available will be published online at www.doe.k12.de.us/antidiscrimination. She noted that if the Department makes any substantive changes to the regulation as a result of the evening's review, changes will be made to proposed Regulation 225 and that version will be published in the Register of Regulations with a 30-day formal comment period.

Dunne then began the Development Team discussion. She said that more than 11,000 comments were received during the 30-day public comment period during the Register of Regulations process and asked the team, "Considering the comments, what are overall observations about comments received? What is currently happening in schools and districts regarding the implementation of an anti-discrimination policy? What decisions need to be made?"

The team was divided into two groups and given two minutes to think about the questions. Development Team members present were asked to provide introductions. Dunne then gave the Development Team 20 minutes to discuss the questions. The Development Team groups subsequently shared their thoughts:

Mark Purpura (group 1) shared the observation that a lot of comments were form comments – both on the pro side and on the negative side. He said the group felt this made the comments less impactful. Purpura said the group observed a lot of negative comments regarding parental concerns and rights as well as shared locker rooms and bathrooms. Purpura said that these comments may make the team think and look more critically about the wording of the regulation.

Andrea Rashbaum (group 2) said that they agreed with the previous remark regarding form comments. She said that the group identified two major concerns in the comments: sports and parental rights. Rashbaum said that the group felt clarification was needed regarding parental

rights. She said there are currently transgender students in the schools and parents are being considered. She said the regulation was trying to keep students safe. Rashbaum said her group also talked about DIAA policy and the chiefs' concerns that Regulation 225 leaves a lot open for districts to determine concerning sports. Rashbaum said the group discussed whether the regulation should reference DIAA and also share additional clarification that the regulation is trying to follow DIAA policy.

Ralph Taylor (group 1) said his interpretation from the parental comments was that the regulation's current language regarding parental rights was not okay. He said parents do not believe the regulation or school should determine an outcome for transgender students – the parents should. Taylor said he felt all organizations should come together and that, as a parent, he cannot agree to the regulation's parental rights language.

Terry Hodges (group 2) said one of the areas her group discussed was the issue of race. She said that while it was part of the regulation, it was never part of the Development Team's discussions as a group. She said that the Development Team was confused when they saw it in the comments. Otherwise, the group said there was no impact to their personal views because of the comments, but that the comments do provide an opportunity to clarify language, dig further into existing practices at the district level, and take into consideration the amount of weight the regulations put on the districts for being part of major life decisions.

Mark Purpura (group 1) said that it was clear to the group that 2/3 of comments denied the possibility that someone's gender is different than their birth gender. Purpura said he was very troubled by all the negative comments and the lack of education around gender identity. He said he felt that the tone of the comments were dehumanizing. Dunne asked how the comments impacted his thinking. Purpura said he felt there needs to be more education around gender identity. While the regulation doesn't address curricula, he said there needs to be more education around gender identity and how young a person can be when they identify as another gender.

Greg Meece (group 2) said a lot of comments feared that students could change their identities quickly as part of a goal, like getting into another bathroom or playing different sports. He said that a student's gender decisions could not be capricious or spur of the moment. He said there needs to be continued clarification around this in the regulation.

Andrea Rashbaum (group 2) seconded Meece's statements on the need for clarification.

Ralph Taylor (group 1) said that there needs to be additional clarification around district decision-making points. For instance, if a junior high student who identifies as something other than his birth gender suddenly has a girlfriend a few weeks later, does the school change the student's gender back to his birth gender? Taylor also said that he does not believe a 2nd grade or 3rd grader is old enough to make these types of decisions.

Mark Purpura (group 1) said that he has a great respect for Taylor, but said that Taylor's example conflates sexual identity and sexual orientation. "This is why we need more education," Purpura said.

Ralph Taylor (group 1) said that he accepts that Mark is right. He said he needs education around gender identity and understands the need for more gender identity education. He said that all parties need to come to agreement and live together.

Andrea Rashbaum (group 2) said that she feels very surprised because at the previous Development Team meetings there was one dissenter (Mark Purpura) during the discussions but now publicly there are more.

Mark Purpura (group 1) said that by the final Development Team meeting everyone agreed to move forward with the regulation as written.

Andrea Rashbaum (group 2) said that the Development Team also agreed that there would be an implementation plan to help schools move forward with the regulation. She said the implementation plan was meant to clarify a lot of the regulation's language.

Terry Hodges (group 2) said it was important to note that the Development Team was in the middle of a spectrum from "I like" to "I don't like." Hodges said that while she likes the regulation, she'd like to see some changes. She said there was not an option for Development Team members to say they don't like or accept something during the Development Team process. Hodges also said that transgender is only a portion of Regulation 225 and that other populations who deal with discrimination cannot be overlooked. She said that in determining the merit of the regulation, the state needs to look at how education is effectively dealing with discrimination to date.

Pat Williams (group 2) said that when the Development Team came together, they put their minds to collaborate and create a draft and need to remain mindful that rich discussion and debate should occur. Williams said that the Development Team has a range of views (and

sometimes interests) but also respects diverse opinions and that the unanimous aim is to protect child safety.

Dunne then asked the Development Team what additional information they need as a Development Team to help make informed decisions as they revise Regulation 225. The team was provided 15 minutes to discuss this question. Following this time, the team gave these responses:

Mark Holodick (group 1) said that he does not know if the Development Team needs additional information but that the team needs more time to really think through all the feedback. He said that public feedback is part of the process, and the Development Team must thoroughly review all feedback. He also said that there is clearly concern around parental rights and that the team must dig deeper around the parental rights issue.

Janis Hanwell (group 1) said that the additional information needed is how the implementation guidance is going to work. She said the Development Team structured the regulation so that a lot of clarification would be in the model policy.

Terry Hodges (group 2) said that the Delaware PTA continually fights to increase family engagement and in order to engage, families must be informed. Hodges said there is an obligation to protect children, and she does not have the answers, but that the Development Team needs to figure out how to keep families involved in the process. Also, Hodges said a lot of comments were about how there were already anti-discrimination policies on the books. After reviewing district handbooks throughout Delaware, she said that district policies do not extend to students and that currently no language in the handbooks protects transgender students. Hodges also said the Development Team needs to make a distinction between harassment, bullying and discrimination, and that these words cannot be used interchangeably.

Bob Fulton (group 1) said the implementation guidelines are important to the regulation process because this will clarify a lot of what the regulation is trying to say.

Mark Purpura (group 1) said that everyone feels parental involvement is very important, but there is a delicate balance. He also said that while we may differ about how that balance can be struck, all of us believe parental involvement is a good thing.

Sec. Bunting thanked the team members for open conversation. She said the rich discussion is helpful for everyone and that the department would contact Development Team members soon about next steps.

She said this part of the process is providing more time for public feedback. Sec. Bunting thanked the Development Team for working diligently.

Dunne then thanked the Development Team for their participation. At 7:22pm she opened the floor for comments. Commenters were called in the order they signed up.

Public Comments:

Larry Mayo – Lewes, DE – Expressed concern over parental consent. Said that the group does not have the power to dictate what amounts to the emancipation of children without the consent of their parents. Mayo also said the group does not have the legal or constitutional authority to enforce this regulation because there is no authority or Delaware law to allow the regulation.

Paul Johnston – Smyrna, DE – Said there are already laws on the books about bullying and laws to protect students in schools, and that the regulation allows students to be educated at a younger age and to be brainwashed. Johnston said transgender students need counseling and that biology is evident. Johnston felt Delaware educators should continue protecting students and setting aside bathrooms like they already do, but that the regulation is against the public's constitutional rights.

Ken Currie – Dagsboro, DE – Said the regulation was very well-intentioned but extremely weak and inadequate at protecting such an at-risk group as transgender students. Currie said there is nobody more at risk for suicides than transgender students and that the regulation plays around the edges with marginal relief. Johnston expressed concern that other responses, such as special education, are more loving and more robust, and that the regulation was not providing the same level of support.

Kerri Fox – Dagsboro, DE – Expressed concern that the regulation still existed considering that of 11,000 comments provided on the regulation, 8,000 were against the regulation. Expressed concern over the regulation's restrictions of parental rights and that the regulation conflicts with DIAA, teaches ideology, goes against bodily privacy, and detracts from women's rights by forcing them to share locker rooms, showers, sports teams, grants, and scholarships with males as well as undress in front of males who identify as females.

Clint Brothers – Camden, DE – Said that Subsection 7.3.1 and 7.4.1 of the regulation should replace "may grant permission" with "shall grant permission." Expressed concern that if a student was able to play on a sports team with the opposite sex and without the permission of a parent, a school could be sued. Expressed concern that districts may have to make additional accommodations to locker rooms under the

regulation that could have financial implications for taxpayers. Said this was a matter for the Legislature and that legislators should go on record regarding their support.

Brandi Muehlethater – Clayton, DE – Said that the data is clear that in order to protect the health, safety and well-being of transgender students, the students must be allowed to live and express their true selves. Muehlethater said that if a student is unable to discuss their gender identity with parents, then this is a failure of parenting and not of the school. Muehlethater also said that some of the vehement objection to the regulation underscores more strongly that some students may feel unsafe going to their families.

John Hutchison – Wilmington, DE – Expressed concern that the regulation violates religious beliefs and practices, parental rights, and student's development. Said the regulation was an overreach by the state. Said the regulation would prevent businesses from moving to Delaware and that Delaware schools are becoming indoctrination centers. Said that the Department of Education has no moral or legal authority to interfere with parental rights.

Charles E. Covington, Sr. – Lewes, DE – Said that students must know people care about them. Expressed concern that God, moral values and the church were not mentioned in the conversation. Said that there needs to be more discussion about the children, especially when students are coming to school from troubled families and do not know who they are.

David L. Anderson – Dover, DE – Said that the state has no legal authority to pursue the regulation. Said that SJR6 did not pass the state senate and that the regulation should be shelved until the Legislature gives the authority to pursue it. Expressed concern that the regulation allows children to lead a double life with one identity at school and one at home. Also expressed concern regarding the use of transgender identity versus transgender. Said the regulation interferes with family, faith and the state. Requested the state shelve the regulation and let the legislature decide.

Pamela Pippin – Camden, DE – Said that parental consent should be added to the regulation. Said not adding parental consent to the regulation is an infringement of constitutional rights.

Lisa Mercaldo – Middletown, DE – Said that she was speaking on behalf of Lamar Gunn from the Central Delaware NAACP. Expressed concern that the parental rights part of the regulation is illegal and unconstitutional. Said that Delaware already has laws against bullying and that any student with an issue can go to a school or district. Mercaldo said the state should not be involved in gender identity issues and that the Legislature should decide the future of the regulation. Mercaldo called for dismantling the committee and terminating Regulation 225.

Ave Mulhern – Milton, DE – Said that 80% of gender dysmorphic children no longer experience dysmorphia. Mulhern expressed concern with indoctrinating students to becoming transgender. Mulhern said that though the regulation does not address curriculum, she does not want any parts of the regulation in curriculum. She said that there was only one dissenter on the Development Team and questioned who picked the team. She also said that an anti-discrimination policy exists at the bottom of school board documents and so the regulation is not needed. She asked the state to please teach reading and math instead.

Curtis Harris, Sr. – Felton, DE – Expressed concerns about why transgender was even an issue now. Questioned what happened to being ethical, practical, and focusing on what works. Said that boys are identified by a penis and girls are identified by a vagina by design. Requested the state to get back to the Bible and God.

Hunter Hastings – Seaford, DE – Identified as a millennial, ordained minister and a substance abuse counselor. Expressed concern regarding a lack of medical, psychological and bipartisan representation among the Development Team and said that including these will have a better result on the regulation. Said that the state must respect the rights of every individual.

Andrew Webb – Seaford, DE – Said that he wanted to echo a lot of what has been said. Said he was opposed to the bill, particularly around parents' rights.

Kathy Brown – Rehoboth, DE – Identified as a transgender person. Said there are parts of the regulation that need to be tweaked. Said there is a need for transgender representation among the Development Team. Expressed concern regarding outright discrimination of transgender students and their desire to participate in school. Said that there were no known assaults in Texas – a state with transgender bathroom laws – associated with persons using bathrooms outside their birth gender. Said that all kids deserve a chance.

Tara Sheldon – Rehoboth, DE – Identified as a parent and said she understood the concern about parents wanting to know about what's going on with their children. Said that parents who have the biggest problem with the regulation are more than likely the parents who would not accept their transgender children. Said that most of the children who are homeless are LGBT because they've been kicked out of their homes. Said that students do not become transgender just to play on sports team. Requested the audience research transgender more fully.

Rich Collins – Millsboro, DE – Identified as a state representative in the Millsboro area. Said that he was absolutely opposed to the regulation and was not opposed to someone wanting to be a transgender

person. Said he was concerned that the regulation was illegal. Said that the department cannot tell people what their public comments have to be about. Said the regulation is illegal. Said the department provided little clarity around the regulation. Noted that several Development Team members were not present and that this topic needed to be addressed in the Legislature so that there was more accountability.

Nicole Cucinotta – Rehoboth, DE – Identified as a Cape Henlopen High School parent. Said that her daughter is biracial and identifies as a particular race. Said that her daughter will determine her race and gender – not anyone else. Said that she protects her daughter and does not own her. Said that she will not let anyone bully her child. Noted that children of both genders already play each other in gym class.

Shy Dineen – Rehoboth, DE – Identified as a Sussex County resident and Cape Henlopen High School graduate. Expressed concern over having to identify her race as a young child and said that being told who she was caused a lifetime of confusion. Said that people should be able to make these types of decisions by themselves.

Robin Bazzetta – Milford, DE – Expressed concern over the previous commenter's use of the word "decides" regarding race. Said that the school should teach and notify the proper authorities of any child at risk, but that the state should allow parents to parent their children. Said that the issue should be brought before voters. Expressed concern that she has not heard about the regulation from the schools and that there was no education about the regulation. Said that the regulation was a waste of taxpayer dollars and that Governor and Secretary of Education have overstepped their bounds.

Heather Clark – Dagsboro, DE – Expressed concern that if the Development Team did not fully understand how to define transgender, how can students. Questioned the cost to school districts and the cost from other children's education. Said the first state should instead educate students so they can get jobs. Said the regulation violated parental and student rights.

Carol Burdge – Wilmington, DE – Identified as a pediatric nurse and child and family therapist. Said parents should absolutely have the right to participate in anything decided about their children. Said it was ridiculous to educate 5-6 year old students about transgender, especially if there are no transgender students in the school. Said the whole regulation should be shelved.

Jason Hoover – Wilmington, DE – Said he believes in family values, love, and in supporting vulnerable populations. Said he had a friend who was thrown out of his house because he was not accepted by his family. His friend was homeless for a while until taken in. Said people do not change genders at will and that transgender students do not choose this situation, but that we can choose how to react to it. Asked

the audience to imagine being transgender. Said there are far too few adolescents who live life true to who they are at such a young age. Said the state should do what's right and vote to protect a vulnerable population.

Maria Poloquin – Dover, DE – Said the regulation is flawed. Said the school board cannot protect students better than a parent. Asked that the state not force an immature child to make such an important decision on their own. Requested the regulation be tabled and to let the Legislature take care of it. Expressed concern that the regulation reads like parents who don't agree with these views are unsafe for their child. Does not need clarifying language. Said that gender is biology and not a decision. Said this topic is not about education, but is about personal beliefs that the state is trying to usurp. Said that form comments should not be discounted because they were duplicative. Form comments may have been sent by concerned parents who just needed help formulating their concerns.

Linda Smith – Dover, DE – Identified as a retired teacher and grandmother. Said that the regulation is reminiscent of Common Core. Said that the federal government paid principals and other educators to push Common Core and questioned how much money Delaware educators were getting to push this regulation. Asked how much the regulation would cost schools. Said this is political. Questioned where the Governor got the idea for this regulation and why is it coming about now. Asked attendees to use their heads and dig deep.