

POLICY REVIEW COMMITTEE MEETING MINUTES
Curtis R. Milteer, Sr. Recreation Center
Conference Room
132 Robertson Street
Suffolk, VA 23438
August 7, 2023

Present:

Members

- ✓ Dr. Dawn Brittingham, ***School Board Member***
- ✓ Dr. Judith Brooks-Buck, ***School Board Member***
- ✓ Mrs. Phyllis Byrum, ***School Board Member***

Participants

- ✓ Dr. John B. Gordon III, ***School Superintendent***
- ✓ Wendell M. Waller, ***School Board Attorney***

Attendees

- ✓ Members of the public, WTKR news, and the Suffolk News Herald.

➤ **Meeting called to order.**

- Dr. Judith Brooks-Buck called the meeting to order and welcomed everyone to the special meeting of the policy review committee. She stated that the committee is looking at the new mandates and policy recommendations based on changes from the Virginia Department of Education (VDOE) and the new model policies that we have received which in turn will require us to make changes in our existing policies.

➤ **Review of Section 1-6.2:1. Definitions; Discrimination, Harassment and Bullying Prohibited; Student Privacy and Confidentiality Required; Use of Name and Gender Pronouns; Legal Name and Sex at Birth Required on School Records; Dress and Grooming Codes; Segregating Students Prohibited; Access to Restrooms, Locker Rooms and Changing Facilities; Professional Development and Training; Superintendent to Develop Guidelines” (Transgender Policy) of the Policies of the Suffolk City School Board**

- Dr. Brooks-Buck asked Attorney Waller if he would review the current policy as well as he and Dr. John Gordon to speak on recommendations for the new policy changes.
- Attorney Waller stated that Suffolk Public Schools (SPS) adopted its Transgender Policy in August of 2021. The policy covers various aspects. To begin with, there is a definition section, there is also language that prohibits discrimination based on sexual orientation and gender identity. It also prohibits harassment and bullying as well. The policy emphasizes student privacy and confidentiality, use of name and gender pronouns, legal name and at birth at birth required on school records, and dress and grooming codes. There is also language in this policy regarding the segregating of students and it prohibits segregating of students based on gender

identity. It has language about access to restrooms, locker rooms, and changing facilities. There is also language about professional development and training and the superintendent was also granted the authority to develop guidelines.

One of the striking differences in our current policy and the model policy that has been proposed by VDOE is that the SPS policy is heavily geared towards students and student rights. Whereas the model policy is geared towards parents' rights and parents being able to make certain decisions for their children. The other thing that Attorney Waller recommended for the Committee to keep in mind is that this is an area that is in constant flux. There are a number of cases that are pending. Some cases have been recently decided. For example, there was a case in Indiana. The teacher sought a religious accommodation. The teacher was being asked to refer to students by their requested pronouns. The school had a policy that required this. The teacher refused to do so and as a result, the teacher was terminated by the school division. The teacher then sued the school division claiming a violation of Title VII and also alleging that the school division refused to provide the teacher with a reasonable accommodation. When the case was heard in the federal district court, the court ruled in favor of the school division and said that the accommodation requested by the teacher posed an undue hardship on the school division.

On the heels of that the Supreme Court heard a case involving a postal worker. The postal worker also requested a reasonable accommodation based on religious grounds. The postal worker was required to work on Sundays and the worker believe that it violated his religious principals and he shouldn't have to work on Sunday's. The postal service terminated him claiming it would pose an undue hardship on the postal worker to excuse the employee from working on Sundays. The case worked its way up to the Supreme Court. The court reconsidered the issue of undue hardship and whether it was posed an undue hardship on the postal service if this worker was not allowed to work on Sunday's and found that it did not pose an undue hardship on the postal service. The firing of the postal worker violated federal law. The court, in the case involving the teacher, was required to reconsider its ruling in light of the decision involving the postal worker.

Attorney Waller discussed these cases in order to remind the Committee that this area of the law is constantly changing. There is some conflict in federal law and some state laws. Federal law under Title IX provides certain rights to people with sexual gender and orientation issues. There are certain rights and protections provided to these individuals under Title IX and VII. Attorney Waller went on to explain that the model policy may be in conflict with the federal law. There are references in the model policy where it states, "to the extend allowed by federal law." Attorney Waller referenced the Grimm case out of Gloucester. That case worked its way up to the 4th Circuit Court of Appeals. The court held that Grimm had a right to make use of a bathroom that was consistent with his gender identity. The Supreme Court refused to hear the case and in that the Supreme Court refused to hear the case, Grimm is the current law regarding use of bathrooms based on gender identity.

There is also language in the model policy requiring that school divisions have discussions with the parent and the child on gender issues. Ultimately the way the model policy is structured, the parent will have the final say when it comes to receiving information regarding their child/student. The model policy requires school divisions are to disclose to parents if their child has expressed any interest in gender identity or in their sexual orientation.

- Dr. Brooks-Buck stated that her question will be, where will be stand? If the Supreme

Court to state courts and the State courts decided that the decision stand, so where are we left when it comes to deciding about something. Can we say that we are following the State law because we are complying with the state law?

- Attorney Waller stated that is why the model policy defers to the Federal law. For example, in the model policy, page 9 references “Grimm.... held that transgender students must be allowed to use restroom facilities that correspond to their gender”, and if you look on page 15 where it talks about discrimination being prohibited, it says, “the school division prohibits all discrimination, harassment, or any other characteristic protected by law”. The other characteristic protected by law that the model policy does not specifically name is gender identity, and sexual orientation. Therefore, in a limited way, the model policy seeks to incorporate federal law. Then if you look on page 17 where sex, specific activities and events, under letter G, once again you see “only to the extent required by federal law”.
- Dr. Gordon added that on a state level, the only thing that we must do is establish our own policy. The model policy is a guide, but each local school division is required to adopt its own policy.
- Attorney Waller added that “local school boards can establish policies that are consistent with but can be more comprehensive than the model policy.” This too is language found in the state code.
- Dr. Brooks-Buck questioned that if we ever got into a challenged, where would we be with regard to support from these entities who are reshaping the discussion?
- Attorney Waller said that if a local school board decided to adopt the model policy wholesale, just as it is with no changes whatsoever and is later sued by someone claiming that the model policy violates federal law, local school divisions have not been advised that the state will step in and provide legal support or representation.
- Dr. Gordon stated that there are already several school divisions that have rejected the model policy such as Arlington, Richmond and others will be coming next month. He and Attorney Waller attended a webinar that was put on by the Virginia Association of School Superintendents (VASS) with the legal consultant for VASS. The legal consultant reinforced what Attorney Waller previously said. There are several instances in the model policy that are in direct conflict with the Grimm case and federal law. One of the things that we attempted to do with this draft policy is to find a level of compromise. We were able to take some of the things that are in the model policy while still preserving some of what we put in place in 2021. Our biggest concern is that when looking at the model policy the rights of the students are completely ignored. There is also a lot of questions when it comes to participation from student athletes either based on their gender identity or their biological sex. After the model policy came out, Billy Haun, the director of the Virginia High School League sent an email to all of the school divisions that stated “Virginia High School League will continue to follow its current transgender policy and he read Section 8, page 16 of the sample policy that addresses the athletics. Dr. Haun kept the “by law” part open because of the fluidity of these changes. 90% of the time when we do have situations at the high school league level, it only becomes an issue if there is not a similar sport for biological males and biological females, for example, baseball and softball, boys and girls track, etc. But when you have one sport that is for one particular gender than that is when this comes into play. The Virginia High School policy, their transgender policy 28A-8-1 actually went into effect in 2014, way before a lot of these changes had occurred. Dr. Gordon stated that he and Mr. Waller went over this after the webinar and Mr. Waller did a good job of highlighting in yellow

some of the changes from what we had originally adopted in 2021 and also included some of the new terminology from the model policy. Overall, we understand that we must keep parents involved in what we are trying to do but there has to be some level of being able to preserve the student's rights, especially if a student does not feel comfortable with or the student's rights conflicts with that of the parents. And that was the challenge that we were having and questions that some of my colleague posed during the webinar. So, in red are some of the new language we suggested to be put in section "C".

- Dr. Brittingham chimed in stated that one of her issues is that it distinctly told us in the model policy that we are to withdraw the 2021 model policies and that it will no long be in enforcement and so we are completely skirting that terminology and that conversation that is happening in the model policy. This is the bare minimum for compliance. We can develop more strict adherences to the model but we should not loosen the framework. Dr. Brittingham wanted to address some of the concerns with section "C". Dr. Buck asked her if Dr. Gordon could finish his review and then the discussion would be open to Board members and Dr. Brittingham agreed.
- Dr. Gordon continued with his review of section "C", stating that in the middle part of section "C" it states "but must disclose to the parent of any student, unless such disclose will pose a danger to their health and mental wellness" Again we can't reinforce that part enough especially since usually what we have seen is that students who have issues with gender identity, there is a higher chance of lack of mental wellness. He reviewed further by reading the section stating "SPS will also comply with laws that prohibit disclose of information to parents, including but not limited to the Virginia Code § 22.1-272.1 (B) that prohibits parental contact where student is at imminent risk of suicide related to parental abuse or neglect." Dr. Gordon added that that statement reinforces what we are talking about a student's mental health and wellness and concluded with the change of the word from "must" to "may" at the end of paragraph "C" to highlighted the changes.
- Dr. Brooks-Buck addressed Dr. Brittingham's comment on the model policy of 2021 indicating that we developed our own policy in 2021 and some of the context in our policy was shaped from an attempted suicide that we had in our school division.
- Dr. Brittingham continued with asking Attorney Waller in 2021 when Governor Northam put forth the model policy that was adopted by SPS, how much of that policy did we delete.
- Attorney Waller replied that first of all SPS did not adopt the model policy that came from VDOE in 2021. In fact, SPS was ahead of the model policy. We were discussing its policy prior to the model policy coming out. SPS did not look at the model policy when it was formulating its policy. There is a similar focus in the mode policy, that being "student" focused. It focuses heavily on student's rights, student's ability to determine when they want parents to know about any gender identify issues that they may be having. He further clarified that local school boards do have the authority to adopt policies under this current model policy that can be different from the model policy as long as it is consistent with it, and it can be more comprehensive than the model policy. So just because it's a model policy, emphasizing "model", it is not something that says school divisions have to adopt verbatim.
- Dr. Brittingham said that there are four areas in part "C" that she would like to discuss. The first one is, who determines if services may benefit a student's well-being? How is SPS really going to determine if a student is really in danger? Both are subjective in her opinion.

- Dr. Gordon replied that this is when you have to rely on the school counselor who is a professional counselor. They are going to be the person who 90% of the time will determine if what is being shared with them is either beneficial to the student or could potentially pose a danger.
- Dr. Brittingham stated that school counselors aren't trained in that capacity. They are there in many different capacities, so my question is who?
- Dr. Gordon replied that she is looking at the school counselor as being the "end all, be all". The counselor is the one who collects the information, then meets with the administration, school psychologist, school social workers. We don't believe in making any determination in isolation, it has to be a decision based on what those experts in the field would recommend; and that could also include what the student has said, and having that immediate conversation with the parent. We are not taking that part out, but we need to understand that each student should have someone to go to within their schools to have this conversation if their gender identity is causing an issue for the student.
- Dr. Brittingham agrees to disagree with the opinion that it is not the job of SPS to be a parent. It is not our job to step into this area and interfere. We need to set this up so that parents are first because the children belong to the parents. They are their primary educators. When situations like this come up we should always go to the parents first because it is a child. Consider how you would feel if someone came between you and your child on a certain subject and how infuriated you would be at that person. That is where we are right now. Where are we standing right now? Are we going to stand with the parents and their rights? We are only partnering with them; these children do not belong to us.
- Dr. Brooks-Buck said that when the child is with us we do act as parents and "loco parentis" is the term. Along with rights comes responsibilities. If that were the case, when children are bullied, we would just say don't worry about it, just wait until the parent gets here. We can't abdicate our responsibility. There are situations where we are indeed responsible once they enter our school. If a child comes to us and they feel comfortable, and they want to come to us with an issue, we need to listen. For example, if a child comes to us and says I've been abused, we don't say let me call your parents and we take on that responsibility. School counselors are licensed and trained to work with children, they must be in order to be in a public school. We have teams of people that work with children. We don't make decisions on our own and we take it seriously. We have been partnering with parents for years and years, that's not a new thing. And we will continue to do that. We are not taking over the parent's responsibility. But the parent cannot be responsible for the child when the parent is at work and the child is in school with you.
- Mrs. Byrum said that she agrees that students do have rights and parent have rights as well. But we, as a school system, have a responsibility to these students. In our schools, as Dr. Gordon has explained, we have a procedure in place that is followed with the guidance department on issues like this. We have dealing with these issues long before 2021. We have experienced some of these things prior to this and it has given us time to set up these procedures so we can work with these students. Sometimes students will come to their teachers, their guidance counselors, an administrator and confide things that they wouldn't say to their parents. We have to consider those things. She thinks that this wording of this policy institutes that idea, that we not forget the students. In our first policy students and now we are trying to incorporate all of this and to do that but not cut out the part of the student having

some rights as well is very important. I believe if the process works effectively and we have seen it work several times already, then we will work both sides of the situation.

- Dr. Brittingham stated the word “to the extent possible”, I believe it’s too vague and can be abused and manipulated. In relationship to gender related counseling, it is not the domain of school counselors and social workers. We need to be careful as we move into this policy as an educator, especially the way this policy is being written. At what age can a child request that a parent not be informed? Is there a policy or procedure that guides that process? At what point are we stepping in and saying that this child is old enough and they don’t need to have a parent involved? Those are murky waters and hopefully we won’t wind up in court over that? I think we need to be very careful moving forward. We have federal law and cases that is in flux and yes, we have the Grimm case but how long before that gets tested in the courts? We don’t want to be on the wrong side of this.
- Dr. Gordon replied that we can’t predict that. We can only go on what’s current federal law. The Grimm case allows a student to use the bathroom of their gender identity which is federal law.
- Conversation continued between all on the provisions of counseling. It was pointed out that students can drop out of school at age 16 in Virginia, parents do have a responsibility to their children, but how can we accommodate students that do have gender identity issues and students who do not but are made to feel uncomfortable because of students who do. SPS responsibility is to come up with a policy that will make sure that we stay within the law and still have a provision for the students. Parents should take responsibility for their child if you know your child has some issues and that is not the debate here. The debate here is how are we going to address it in policy. Our job here is to make sure that we are in the boundaries of the law and not to make parents feel that we are taking over their job but to work with these students.
- Attorney Waller commented that the committee should keep in mind that the policy that there is language in the policy before you, that the superintendent is to develop guidelines/regulations. Some of the language that you may be concerning sounds broad but the superintendent through guidelines/regulations can easily give direction and definition to what appears to be broad language. It is impossible for a policy to address every single nuance. So, you have a broad brush and then by way of guidelines or regulations, you fill in the details.
- Dr. Gordon continued with paragraph “D” and reviewed the changes to that policy. This change was done because some the early discussions from the 2021 transgender policy with students were in conflict with teachers because the teacher wasn’t referring to the student by the preferred name and the foreign language piece came from the model policy.
- Dr. Brittingham asked why are we taking out that “no employee of SPS can be compelled”, that would violate constitutionally protected rights?
- Attorney Waller replied that the model policy is geared towards parents’ rights so if a parent is saying that they want their child to be called by a certain pronoun, you would think, if you are following the language of the model policy, that the employee should be required to do so. So that’s why that language is stricken, because that makes this part of the policy consistent with the overall direction of this model policy.
- Dr. Gordon continued reviewing changes in section “E”.
- Dr. Brittingham asked how are we to measure unreasonable risk? Who determines

this, will it be spelled out to access this vague and destructive statement?

- Dr. Brooks-Buck stated that if someone says that they are going to hurt themselves then there is an unreasonable risk. When a student says that they are going to hurt themselves, we take to be an unreasonable risk. If we see that a child is being bullied, that's another. If there are problems seen by an administrator, a counselor, a teacher at the school, they will have to make a judgment call, somebody and go through the proper procedures at the school. They can be outlined in guidelines/regulations if necessary but somebody has to make a judgment whether or not it's a risk to the child.
- Dr. Gordon added that you don't want to measure or define risk. You have to understand that when a school counselor, or psychologist is talking with a student, they are taking pieces of everything they say to come up with their conclusion, if a referral should occur, if there should be a crisis team discussion over what's going on with the student. And one of the things that a school counselor or an administrator always asks is do your parents know about this? Depending on that answer, do we have your permission to follow up with your parents about this? We want to make sure that when our staff are going through this, you don't want to put the process in policy but yet they do have the opportunity to carry this through to make sure that the student is in good mental health and well-being.
- Dr. Gordon reviewed changes in section "F". No questions followed.
- Dr. Gordon reviewed changes in section "G".
- Dr. Brittingham said that our policies have to be in compliance with the VHSL to specifically state gender separation versus sex could put us out of compliance?? What does the VHSL currently say about sex versus gender?
- Dr. Gordon replied that students will be able to participate based on sex. He followed by the wording highlighted in red right before section "H" in this policy is what we are going to lean on because the VHSL has already had this policy in place since 2014. He continued with reviewing section "H". Dr. Gordon further stated that these are basically the same plan and guidelines that we put in place in 2021. This protects not only transgender students but it also protects students who do not have an issue with gender identity and we have also made certain adjustments on both sides in order to make this happen. To be clear, this also varies depending on the school size and blue print, locker rooms. In most cases, there have been designated bathrooms that the students, administrators and counselors have agreed upon or when there are issues with locker room changes, a plan is also developed at the beginning of that sport season with the coach, athletic director, and that schools' principal.
- Dr. Brittingham disagrees with the gender allowed bathrooms. We can allow a gender-neutral space but not a choice. Have we not learned anything from Loudoun County at this point? Loudoun County tested the waters on this and found out that they were wrong. I see part "H" of great ambiguity and probably an area where we will find ourselves in court if we don't clean this up really well.
- Dr. Brooks-Buck disagrees and understand what happened in Loudoun County and don't have the expectation that it will happen here. She stated that we have a good system in place and have had it since 2021. Grimm is still in place whether we like it or not, it is still the law. The Loudoun case had nothing to do with a transgender student using the bathroom.
- Dr. Gordon continued explaining section "I" and section "J". He continued with the fact that we were ahead of the game when we did this policy several years ago and we tried to find levels of compromise between parent's rights, students' rights, current

practice and the overall safety of our students as well as protecting the rights of all involved. He has had conversations with our staff to make sure that he was getting the issue confused regarding practice just to make sure that we can explain this once this policy goes in affect.

- Dr. Brooks-Buck alluded to all the media that attended the meeting and reminded them that this policy is of a sensitive nature and that our job here is simply to review the policy and pass it on to the complete Board and see if it is necessary and appropriate for public review and give comment. She suggests that we pass it on for a first review.
- Dr. Brittingham suggested that we have a public hearing so that families can have a chance to hear what we are proposing.
- Dr. Brooks-Buck suggested to see how many people come to the board meeting to speak on it and see if it's necessary to have a public hearing.
- Mrs. Byrum agreed that is appropriate for a first reading and if someone has concerns they can come and sign up and address those concerns.
- Dr. Brooks-Buck stated that the Board can decide to have a public hearing at the meeting and also suggested to have a town hall meeting as well. Dr. Buck and Mrs. Byrum agreed to pass the policy on to the Board. Dr. Brittingham did not and thinks that we should have a public hearing first.
- Dr. Brittingham stated that she thinks Title IX should be considered to section "H". She asked Attorney Waller to speak to the legalities of the revisions that are suggested that appear to contradict to both the State code and the Federal code. Attorney Waller asked what codes was she referring too? Possibly 1-240.1 – Parents rights to make fundamental decision for their children? Attorney Waller asked what question was she asking? She stated that her biggest concern is that we are violating parents' rights when it comes to this policy.
- Attorney Waller addressed her concerns by stating that if she took a closer look at what you have in terms of Dr. Gordon's recommendations which incorporates much of the model policy, everything in yellow is the model policy, what is "not" is very minimal. Dr. Brittingham asked if it is okay for us to violate parent's right's as long as it's minimal. He replied that there are no parents' rights being violated.
- Dr. Brooks-Buck stated that the policy will be moved on to the Board. Parents have the right to attend the upcoming meeting and speak to the board on non-agenda items until the policy is put on the agenda for first reading.

➤ **Meeting was adjourned.**