

MEMO

To: Renee Carlson

From: Betsy Armstrong

Date: October 1, 2021

Re: Becker, MN School Board Special Session, August 18, 2021

The Becker, MN administration (I believe it was the Assistant Superintendent, Minda Anderson) arranged for a “training” session for the school board regarding the LGBTQ community as an issue with Becker LGBTQ students arose in April 2021. At that time, Dr. Omari, of [AMO Enterprise](#), came to the school to separately address the LGBTQ students and certified staff, discussing among other things, microaggressions. The August 18, 2021, training session was to “educate” the school board about the status of LGBTQ students both from a social and legal standpoint. The August 18 meeting was livestreamed and [recorded](#).

The following is a transcribed script of the oral and power point slide presentation by Eva Wood, attorney in the legal department of Education Minnesota and volunteer for OutFront MN, in conjunction with a presentation by Audra Cowin, Anti-Violence Program Director for OutFront MN, using “they” and “she” pronouns.

Agenda: (1) Introductions, (2) Ground Rules, (3) Terms and Definitions, (4) Statistics and Information, and (5) Questions and Closing. Presenting on “How to Create a Safer Environment for our LGBTQ Kids.”

[Audra Cowin](#), OutFront MN (powerpoint slides listed below) [[Gender inclusion policy toolkit](#) and [specific details, pronoun use, gender inclusion zine; MN Victim Assistance Academy](#), pg. 15, Working with LGBTQ2IA+ crime victims]:

Mission: To create a state where LGBTQ people are free to be who they are, love who they love, and live without fear of violence, harassment, or discrimination.

Vision: A state where LGBTQ individuals have equal opportunities, protection and rights. We are working toward the day when all Minnesotans have the freedom, power and confidence to make the best choices for their own lives.

Ground Rules: Due to time restrictions we will not be taking questions or comments from the audience. We are here to present to school administrators and school board members. To do this we need to stay focused on their questions and give them full answers. Our goal is to support Becker High School and help create a safe and supportive environment for all students.

Grounding: Why are we here?

- LGBTQ+ youth are at risk, and they NEED and DESERVE our support
- A national study showed 71% of LGBTQ youth reported discrimination due to either their sexual orientation or gender identity

- In Minnesota, unacceptably high levels of harassment have led to 61% of gender non-conforming children seriously considering suicide.

Eva Wood:

Judicial Landscape and Terminology: Introduction and Overview; Judicial Landscape, Growing Protections

Federal Judicial Landscape: What Laws are Implicated

Title IX – interpreted to prohibit discrimination on the basis of sex/sexual orientation (applies to transgendered status, gender non-conforming, nonbinary; often hear of Title IX and Title VII together; recent USSC extends Title VII to transgendered individuals, too; anticipate that if a case gets to the USSC Title IX protections would also be granted to transgendered individuals; currently, split in the federal circuit courts

Equal Protection Clause: all students have a right to a free and fair education, cannot discriminate against anyone on the basis of identity; Becker may have some internal policies that mirror some of those same ____; sometimes run into some sticky situations where there must be a balance between a free and fair education

First Amendment, Freedom of Expression – cuts both ways and can put schools into challenging position, and after this training there will be more tools to address those situations that might arise

Family Educational Rights and Privacy Act (FERPA) – prohibits improper disclosure of personally identifiable information of students; may need to talk over sticky issues with district’s counsel or a consultant from OutFront but don’t use actual student’s name

CASES: Courts are not a monolith and sometimes there is a split between them in recognizing and applying these protections

GG. v. Gloucester County School Board (2016)

- Transgender student challenged district policy to restrict bathroom use based on biological sex.
- 4th Circuit found that “sex” under Title IX was ambiguous and enforcing agency (USDOE) should determine meaning.
- [Supreme Court](#) ultimately stated imposition due to change in USDOE policy (and now there is a shift in how USDOE is applying these interpretations)

[ultimately student was allowed to use bathroom that aligned with their gender identity – complications if “testing” for biological sex used, e.g. testing for chromosomes is invasive, asserts biological sex is not as complicated as “people on the outside” understand as being “simple”]

Students and Parents for Privacy v. USDOE (2016)

- District entered settlement agreement with Office of Civil Rights to accommodate a student in the locker room consistent with their gender identity.

- Court rejected plaintiff's claim that allowing this settlement would violate non-transgender student privacy rights under the Constitution and Title IX.
- Court held gender identity likely protected under Title IX in schools, and districts must accommodate.

***Highland School District v. USDOE* (2016)**

- District challenged Office of Civil Rights determination that district refusal to allow student to use restroom in accordance with their gender identity was unlawful. [changing rooms, locker rooms, sports facilities being an issue for districts to handle in a sensitive and safe way]
- 6th Circuit granted an injunction in favor of student on grounds that Title IX protects rights of transgender students.

***Whitaker v. Kenosha District* (2017)**

- District denied transitioning transgender student from using bathroom in accordance with their gender identity.
- 7th Circuit granted injunction that District violated student's Title IX and equal protection rights.

***Privacy Matters v. USDOE* (2016)**

- Group filed suit against USDOE and Virginia school district claiming Obama USDOE guidance was unconstitutional based on a transgender students' activities.
- After the new administration rescinded the USDOE guidance and Supreme Court remanded in G.G., the plaintiffs dismissed their claims.

***Calgaro v. St. Louis County Public Schools* (2017)**

- Parent sued child, county, district, and health care providers alleging that their provision of medical treatment, medical assistance, and enrollment of child in school violated parent's constitutional rights to raise child
- Child had left home because parent was not supportive of their gender transition [and had allowed child to go into foster care because of identity issue] [generally parent must consent in MN unless de facto evidence]. County assumed student was emancipated. [alleged by letter from Mid-Minnesota Legal Aid and under Minn. Stat. § 256D.05, subdiv. 1(a)(9)]
- Circuit affirmed that none of the defendants engaged in a custom or practice that violated parental rights and dismissed the case. [8th Cir. 2019, No. 17-2279, [see Justia summary](#): affirms District Court judgment, and [article](#) summarizing case on appeal to USSC, seems to be less friendly to LGBTQ issues]
- The Parent appealed to the U.S. Supreme Court [October 7, 2019, the United States Supreme Court [denied](#) Ms. Calgaro's petition for certiorari, represented by [Thomas More Society](#), [see article here](#), or possibly Foundation for Moral Law, AL, might not be active currently].

*** [See recent [9/20/21 article](#) on whether a transgender student's privacy trumps parental rights, a legal analysis by Anna E. Bullock; [attorneys for plaintiff](#): Frederick W. Claybrook, Jr., and National Legal Foundation: James Alan Davids and Steven Werner Fitschen]

Minnesota Human Rights Act:

- Protection for “sexual orientation” includes those for transgender individuals
- Extends to educational setting

Safe and Supportive Schools Act (Anti-bullying bill) [goes back to 2015]

- Prohibits bullying of all students, including bullying based on gender expression, gender identity, and sexual orientation [Becker seems to already have a policy in place]

Minnesota Department of Education Toolkit

- Provides background and tools for supporting transgender and gender nonconforming students

Minnesota Government Data Practices Act

- Any data maintained by a governmental entity (public school) relating to a student is private. May be accessed by a school official with a legitimate educational interest [very similar to FERPA].

By Audra Cowin:

Common LGBTQ+ Terms:

- Lesbian: A woman who is emotionally, physically and/or sexually attracted to other women
- Gay: A man who is emotionally, physically and/or sexually attracted to other men
- Bisexual: An individual who is emotionally, physically and/or sexually attracted to multiple sexes/genders
- Transgender: A term for people whose gender identity differs from the sex they were assigned at birth
- Queer: Often used as an umbrella term used to describe anyone who is not straight or cisgender, or the community as a whole

What is the binary framework? Slide at 16:52

- Trying to educate folks to step outside our minds and ways we interact

Sex Assigned at Birth

Sex is a category assigned to each of us at birth based – almost always – on the appearance of external anatomy. Components can include:

- Chromosomes
- Genitals
- Hormones
- Internal reproductive organs
- Secondary sex characteristics

Sex assigned at birth = birth sex, natal sex, real sex, biological sex

“But there are only 2 sexes!”

Intersex: a term for a variety of instances in which someone’s reproductive or sexual anatomy does not fit what we have determined to be typical male or female biology

What does this tell us: The existence of intersex people shows us that the idea of two clear and distinct sexes – the sex binary – is a myth

Gender, what is that?

Gender Identity: A person’s internal sense of themselves as a man, woman, both, or neither. Often times influenced by their sex assigned at birth.

Transgender: A term for people whose gender identity differs from the sex they were assigned at birth. Example: Assigned female at birth, raised as a girl/woman in the binary framework, does not identify as a girl/woman.

Cisgender: A term for people whose gender matches the sex they were assigned at birth. Example: Assigned male at birth, raised as a boy/man, does identify as a boy/man

Gender Identity: Transgender people sometimes change their name, pronouns, take hormones, and/or surgically alter their bodies ... but none of these are required to be transgender. There is no one way to be transgender. (Because it is so stigmatized and LGBTQ community often erased.) [Puberty blocker is approximately \$1,200/mo. for injections and can range from \$4,500 to \$18,000 for an implant; estrogen pill between \$4 to \$30/mo.; testosterone between \$20 to \$200/vial (6/30/2015 [PBS article](#)); [Mayo Clinic article](#) on masculinizing hormone therapy; [American College of Obstetricians and Gynecologists](#) on health care for transgender teens; [Investopedia article](#) 5/21/21: lifetime hormone treatments at \$2,000/yr, bottom surgery for either approx. \$25,000, top surgery for M-F, \$9,000, F-M \$7,800-\$10,900, facial surgery for M-F, \$70,100 and F-M, \$53,700, body sculpting additional; [Investopedia](#) article 5/11/21, healthcare for LGBTQ+ people; [Transgender Patients: Calculating the Cost](#), 9/2017; [WebMD, Changing Genders: How its done](#) (4/22/2015); [Cedars Sinai](#), Most Gender Dysphoria Established by Age 7 (6/16/2020)]

Transgender Identities

- Nonbinary, genderfluid, or genderqueer: a term used by some people who experience their gender identity and/or gender expression as falling outside of the categories of man and woman.
- To Spirit: [relatively new to social media] a term used by some Indigenous people. Two spirit marks a return to Native traditions that historically recognized more than two genders.
- Transgender man: a person assigned female at birth who identifies as male, a man, a trans man, or a transgender man. May or may not medically transition.
- Transgender woman: a person assigned male at birth who identifies as female, a woman, a trans woman, or a transgender woman. May or may not medically transition.

[All evolving and not everyone has all the answers all the time, necessary to respect them]

Why is this important?

- Gender affirmation is the standard of care supported by:
 - American Medical Association
 - American Academy of Pediatrics
 - American Psychological Association
- Forcing transgender people to fit within the sex they were assigned at birth causes substantial psychological distress and is medically unethical.
- These serious health risks are reversed (minimized) when transgender students are allowed to socially transition in ways that are consistent with their gender identity, AND they receive support from parents, schools, and peers.

Student Safety: National surveys show that 75% of transgender students do NOT feel safe at school (this is only what is reported, so many do not even say anything, some for fear of being “outed” and are suspicious of everything when they feel unsafe)

- Transgender teens experience high rates of depression, anxiety, and self-harm, all of which are part due to discrimination stigma, and social rejection.
- There are also potential medical issues. (could be substantial to include mental health issues as well as physical health issues, differs on the situation)
- When transgender students do not feel safe in restrooms, many will restrict water intake to avoid the restroom. As a result, they suffer from a higher rate of bladder infections.

In Minnesota:

- Transgender and gender non-conforming children makeup nearly 3% of the student population in Minnesota. This is consistent across rural, urban and suburban districts.
- According to the MDE 2019 student survey 33.7% of LGBTQ+ 11th graders had contemplated attempting suicide in the past year, and 40.3% had considered it more than a year ago
- When it comes to Transgender and Gender Non-Conforming students, those number rise to 39.8% and 50.3% respectfully (again, keeping in mind this is only what is reported, what kids are telling us, if at all)

Why does this matter?

- Mutual care and respect
- This is part of your job!
- Student Safety!

Gender Expression: refers to the way in which a person acts to communicate their gender within a given culture. It may be communicated through one’s name, pronouns, clothing, haircut, behavior, mannerisms, etc.

- There is no one way to look a certain gender or identity (such as a girl who likes short hair and likes to wear boy clothes, ask, don't assume, so that they feel safe and affirmed in how they are showing up as themselves)
- Our identities can be communicated through our gender expression, but is not limited to physical expression

Pronouns: Why are they important? (things change, are added, not so much removed, switched, spelling, it becomes confusing when we don't know how to pronounce things, that's okay, ask)

- Pronouns are helpful tools in language that allow us to refer to someone without having to use their name
- They help us identify people and can often communicate a person's gender
- Because of gendered associations, we need to be mindful of the misuse of one's pronouns (it is easy to misgender someone so ask someone to ask what your pronouns are and most of the time the person you are asking will not be offended that you've asked them to ask you what your pronouns are, people become afraid of offending others)

(Eva: Often get pushback for using they/them/their; change thru history, Shakespeare's thou; they already being used in the singular context)

Deadnames, old names, retired names

- Deadnaming is the act of using a name someone does not use anymore instead of their current/chosen name. (do not have to transition to use new name, doesn't look one way or the other)
- What are some ways you can find out someone's chosen name? Ask them

Why use the correct name and pronouns?

In a study at the University of Texas – in the largest and most diverse studies of transgender youth in 2018, showed that:

1. When transgender youth are allowed to use their chosen name in places such as work, school and at home, and with friends their risk of depression and suicide drops
2. Young people who could use their name in all four areas experienced 71 percent fewer symptoms of severe depression, a 34 percent decrease in reported thoughts of suicide and a 65 percent decrease in suicide attempts
3. Transgender and nonbinary youth with access to binders, shapewear, and gender affirming clothing reported lower rates of attempting suicide than transgender or nonbinary youth without.

In conclusion: Using the correct name and pronouns literally saves lives. Encourage your peers and coworkers to do so also. Make it easier to have their correct name and pronouns reflected in your systems.

Gender Inclusion Policies

Three basic student rights:

1. The right to change their names, pronouns, and gender in school records.
2. The right to dress in a way that affirms their gender, gender expression, and to safely participate fully in school activities
3. The right to full and equal use of restrooms and locker rooms that match their gender identity

Gender Inclusion Policies must include professional development targeted to all teachers and staff so that the district can consistently meet the needs of gender diverse students.

Legal Issues – try and anticipate scenarios before they happen

- A lack of clear and well implemented policy exposes school districts to lawsuits. School districts have been forced to pay millions for discrimination based upon gender identity. [Eva: Anoka/Hennepin (Coon Rapids) case of transgender boy wanting to use the boy’s bathroom and changing room but school only provided a separate area and it was found not to be legally acceptable for not giving full and fair access, way in which done caused student to leave and attend another school and then sued, big settlement of \$300K; Buffalo settlement of \$218,500, no lawsuit]
- Minnesota Human Rights Act “prohibits discrimination and harassment in education based on gender expression, actual or perceived gender identity and actual or perceived sexual orientation.”
- Minnesota’s Safe and Supportive Schools Act states that “all students have the right to attend school in a safe and supportive environment where they can learn and have equal access to all educational opportunities.”

[problem when school recognizes transgender student but parents do not, graduation question as to how to handle, used legal name but ordered additional separate diploma with transgender name that student kept]

** 5 chat comments unable to be seen by board or presenters but available afterward [need to check on that!]

Audra: What are the risks in not having a policy?

- Currently, most districts handle gender non-conforming students on a case-by-case basis.
- Students experience inconsistent treatment from different building administrations as they move from school to school
- Students experience inconsistent treatment from teachers as they move from classroom to classroom
- When teachers are not educated about gender non-conforming students, they are unable to fully support them
- When students are not educated about their gender non-conforming peers, they create a hostile climate

Institutional support for Gender Inclusion Policies

- National Association of Elementary Principals
- National Association of Secondary School Principals

- National Association of School Psychologists
- American School Counselor Association
- Minneapolis Public Schools
- St. Paul Public Schools
- Richfield
- St. Louis Park
- North St. Paul – Maplewood – Oakdale School District
- Hastings Public Schools

78% of LGBTQ youth report having at least one in-person LGBTQ affirming space. 12% of those with at least one in-person affirming space attempted suicide at an 8% lower rate than those without.

You don't have to do this work alone: OutFront has many resources and trainings to share:

PreK-12 Youth, Schools, and Educators:

- LGBTQ+ 101 & Intersectional Equity
- Evidence Based Strategies for Improving School Climate

Gender and Sexuality Alliances:

- Introduction to Gender and Trans Issues
- Beyond the Gender Basics
- Intersections of Identity
- Coming Out
- Healthy Relationships

In crisis or the victim of violence? OutFront can help. 800.800.0350

Each year, OutFront Minnesota's Anti-Violence Program assists with more than 1,000 incidents of anti-LGBTQ bias/hate violence, relationship abuse, and sexual assault. We provide crisis intervention services, legal assistance, confidential crisis counseling, and other advocacy services for LGBTQ+ victims of violence and harassment. [Examples: Parents calling concerned their kid is gay and scared for variety of reasons, so parents aren't ignored]

Questions taken at 49:03: materials available to board along with supporting resources of presentation

Ryan asked what the + is in the LGBTQ+, and what about no need to transition all the way so that, for instance, a guy can go into a girl's locker room simply saying he feels he's a girl at that time. Audra: + represents changing/giving space for other things to exist, identity markers for the authentic self. Eva: GLBTQAI2, etc., where I is for intersectionality, and terms can vary, whole conversation about that includes chromosomal differences and other things, A for asexual, P for pansexual. Concern about

transgender access to any space and that is not the case as it would be pretty easy to tell, especially if it occurs one day, out of the blue, when the identity was previously and always one gender (male example) vs. a true transgender who spent a lot of time thinking about what (s)he looks like, how presented, etc. Most transgendered people have a lot of anxiety and are nervous around spaces like bathrooms, changing rooms, and the idea of just marching in there totally free and clear mostly not likely. Example of trans man leaving license as female since “he” doesn’t feel safe using the men’s room and people probably assume he’s just a butch lesbian and using restrooms still a source of great anxiety and when traveling with Eva would wait for her and both would go into the women’s restroom together, and not illegal to use women’s restroom. To answer the question, have a policy in place about how a student could use the opposite sex bathroom by evidence of transitioning such as change of name, pronouns, and that’s the only thing they want then okay to present as trans, have a case analysis of what makes sense for the kids. “You would be able to tell” a student who is beginning to transition vs. a student who is trying to subvert the policy.

Mark: Title IX and equity in education setting, Title VII re civil rights laws (more about employment), 4 areas of support: work, school, home, and friends. AMA standard of care, affirmation, surgical operation, for most kids surgical care not for those under 18. What doctors can do under a standard of care (testosterone, sex reassignment surgery, etc.) Some can get insurance to pay for breast removal, binders, etc.

Connie: How to put names in system when legal name plus social security tied in for reporting purposes

Eva: Don’t know how Becker system works but have legal name with aka, one software package has student legal name on form with name student wants to go by which is what is sent to teachers so they call student by preferred name; teachers will sometimes have the kids give their pronouns as part of the beginning of the class but most effective (at 1:04:01) is to have kids write it down so they’re not put on the spot of having to announce their pronouns in front of everyone. Audra: use software system that replaces name with preferred name and it populates all forms and is inclusive. Eva (1:05:41): It’s not just whatever a teenager says goes for any moment, they’re kids, they’re going to push boundaries, have meeting to address it but as long as it is done in an affirming and nonjudgmental way, don’t want the kid to feel they’re being interrogated, have policy that gives support and inclusion but doesn’t open up the gates to kids misusing it (I have no name, my name is a serial number, etc.) It won’t be common but there will be a jokster to use policy to cause trouble.

Jeremy: We do have a legal change of family name information form if name changed legally but also to call student by preferred name to affirm, like nickname (Tony instead of Anthony), we do that all the time to ensure a safe, warm, and welcoming environment, as long as it is appropriate and within reason.

Eva (has twins): Take a look at your forms, want Parent 1 and Parent 2 for those kids who do not fit into the usual mom/dad family structure and is also not inclusive of single mom or single dad

Audra: Problem is mostly with the other kids bullying the LGBTQ kids in school; when mocking what is otherwise serious to the student it takes away the validity of that, it is intentional

Eva: Don’t let them use policy to circumvent the purpose of a policy, e.g., I identify as an attack helicopter, trying to make a mockery of it which can be very hurtful and needs to be addressed as any other type of bullying

Mark: Question about getting other groups in to respond, Jeremy (1:11:05), reached out to other groups but they either haven't responded or don't do this type of presentation and if anyone wants to send a name his way he can certainly do that

Eva: [Reclaim](#) is another group that works with LGBTQ youth

Audra: We all plan to be back together at some point in the fall for further training so we're looking forward to that piece but if there's anything more that's hone in to specifics that you all come up together with, and if it doesn't exist we can put it together so that it can and we can have a conversation and learn from that, and that has been the practice before as well if it exists in our library, and if Reclaim or other organizations you reach out to are not being responsive that's a realistic thing at this point, I think due to the pandemic.

Aaron: This came about through the superintendent's office. Thanked the ladies for the very informational presentation and answering questions, clarifying some of the verbiage for the words that are used.

Eva: This was a brief overview, just barely scratching the surface, grappling with complex issues without a ton of reasoning or familiarity with it. We'll do our best to answer any further questions, not that we're the experts and the be all and end all and there's lots of stuff we don't know either but often we can help and point you in the right direction.

Audra: Additional trainings are on the OutFront website; trained in many institutions, schools, etc., so survey as to what was liked and not helpful for OutFront. Since this was a livestream situation, I would like a half hour to hour situation where we can in more of like a setting where we can ask questions more freely where it isn't as public but with this being a board meeting I know that that's different but that's just another example and making sure that way it's sticking because we then revisit again and we have a conversation, hey, have you seen changes, those kinds of things

Eva: And this is a topic that people have strong feelings about, maybe a spicy chat thread, doing the right thing isn't always easy, they're going to be naysayers, there's going to be people who firmly and fervently believe that what you're doing is not the right thing and they have an obligation to make you think that it's not, but data and facts don't lie and there's lots out there as to what students need to thrive in schools, and schools that have safe environments for LGBTQ students benefit all students. It's not like anyone here is trying to help LGBTQ students that make straight students think they are less than or unworthy. Where we see equity and inclusion we see people doing better across the board. The goal is for all students to thrive and sometimes in order to do that you need to do some things that make some people feel a little upset but it doesn't mean you're doing anything that is wrong or that is something that you shouldn't be doing.

Contact info: KQ@outfront.org, and Dan@outfront.org Surveys (?) and powerpoint available

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