

A Model for School Practices Relating to Sexuality and Gender

Christopher F. Rufo

SENIOR FELLOW
Manhattan Institute

CONTRIBUTING EDITOR
City Journal

SECTION 1. PURPOSE

The purposes of this policy document are:

- (1) To encourage public-school instruction conducive to developing skills and gaining factual knowledge necessary for students' future success as critical thinkers, citizens, and leaders of the state of [STATE];
- (2) To protect children against the unwarranted and harmful influence of politicized classroom instruction;
- (3) To provide a safe, healthy, supportive, respectful, and developmentally appropriate learning environment; and
- (4) To bolster parents' fundamental rights to direct the upbringing, education, and care of their children.

ABOUT US

The Manhattan Institute is a think tank whose mission is to develop and disseminate new ideas that foster greater economic choice and individual responsibility.

SECTION 2: RESPECTING PARENTS' RIGHTS REGARDING THEIR CHILDREN'S HEALTH AND WELLNESS

- A. Any public-school teacher, administrator, or other person working on behalf of a public school, including a public charter school, whether as an employee, independent contractor, or service provider, shall not:
- (1) Facilitate, encourage, coerce, or otherwise induce a student to withhold information from the student's parents regarding the student's purported gender identity or requested gender transition, where the student's purported gender identity is incompatible with the student's biological sex;
 - (2) Withhold, hide, prevent, or otherwise impede parents from obtaining, information about their child's purported gender identity or requested gender transition, where the child's purported gender identity is incompatible with the child's biological sex;
 - (3) In kindergarten through grade 8, engage in private discussions, conversations, or other communications with students about sexuality, sexual activity, gender identity, or gender-related concepts, in violation of subsection (A) of this Section, Section 3(A)(2)–(4), or Section 4(A);
 - (4) Absent express parental consent in writing, ask a student for the student's preferred pronouns or address a student by any pronoun other than the one indicated on the student's enrollment or registration form completed by the student's parent, or, if not available in such form, by any pronoun other than one corresponding to the student's biological sex;
 - (5) Absent express parental consent in writing, address a student by a name, familiar name, shortened name, or preferred name other than those provided in the enrollment or registration form completed by the student's parent, and where a reasonable person would understand the purpose of the student's name change to be gender transition;
 - (6) Absent express parental consent in writing, provide any accommodation intended to affirm a student's purported gender identity, where the student's purported gender identity is incompatible with the student's biological sex.
 - (7) Absent express parental consent in writing, require, pressure, or otherwise induce parents of students, or students themselves, to proceed with any treatment or intervention to affirm the student's purported gender identity, where the student's gender identity is incompatible with the student's biological sex, including any action to facilitate a gender transition, such as by referral or recommendation to any third-party medical provider, therapist, or counselor; or
 - (8) Require, make part of a course, or award a grade or course credit, including extra credit, for a student's political activism, including, but not limited to, lobbying, social or public policy advocacy, or participation in any internship, practicum, or similar activity to persuade members of the legislative or executive branch at the federal, state, or local level to take specific actions by direct communication, except that students may participate in an internship or practicum for a grade or course credit on behalf of a government entity or current or former public official that does not involve student engagement in political activism.

CONTACTS

To request an information packet about MI, or if you have questions about how to support us, contact SUPPORT@MANHATTAN-INSTITUTE.ORG.

52 Vanderbilt Ave.
New York, NY 10017
(212) 599-7000
INFO@MANHATTAN-INSTITUTE.ORG

- B. Each school shall adopt a written policy, formally adopted by the governing body, requiring parental notification of any change to the health or wellness of their child, including, but not limited to, any change relating to the child's gender identity and sexual health. The policy shall be distributed to parents of each enrolled student by September first of each year.
- C. Each school shall adopt a written policy providing parents with the opportunity to decline permission for their child to participate in any school-based club or organization. The policy shall be distributed to parents of each enrolled student by September first of each year. For clubs or organizations started during the school year, the school shall require written permission from a parent prior to a student's participation. No parent or student shall be penalized by reason of such exemption.
- D. No employee, contractor, service provider, or other person shall intimidate, threaten, coerce, retaliate, or discriminate against any parent for the purpose of interfering with the right to exercise parental rights under the United States Constitution, the Constitution of the state of [STATE], or federal, state, or local law.
- E. Nothing in this Section shall be construed to:
 - (1) Prohibit a school district from adopting procedures that permit school personnel to withhold such information from a parent if a reasonably prudent person would believe that disclosure would be highly and substantially more likely than not to result in abuse, abandonment, or neglect, as defined in [STATE CHILD WELFARE STATUTE];
 - (2) Authorize or allow a parent to abuse or neglect a child; or
 - (3) Prohibit a court from issuing an order that is otherwise permitted by law.

SECTION 3: ENSURING AGE AND DEVELOPMENTALLY APPROPRIATE CLASSROOM INSTRUCTION AND RESPECTING PARENTS' RIGHTS REGARDING THEIR CHILDREN'S EDUCATION AND UPBRINGING

- A. The governing body of a public school, including public charter schools, shall ensure that:
 - (1) No classroom instruction on human sexuality, gender identity, or gender-related concepts shall contain sexually explicit content in kindergarten through grade 12.
 - (2) No classroom instruction on human sexuality, sex education, gender identity, or gender-related concepts shall occur in kindergarten through grade 5, except that, where a school is required by law to provide sex education in these grades, such instruction shall only take place in a class specifically designated for that purpose. Despite any other provision of law, before the school may provide sex education instruction to a student in kindergarten through grade 5, the school shall obtain prior written or electronically signed consent from the student's parent. In no case less than seven (7) calendar days before sex education instruction, the school shall send the parents of each student in these grades a printed or electronic form that:
 - i. Lists the materials specifically to be used for such instruction or provides a link to the school's website where a list of such materials may be accessed;
 - ii. Designates a school contact responsible for addressing parents' concerns;

- iii. Expressly states that the parent must provide written or electronically signed consent before the school may provide such instruction to the student; and
 - iv. Indicates a means by which the parent may provide or decline such consent, either by returning the form or through a reasonable alternative.
 - (3) Despite any other provision of law, before a school may provide instruction on human sexuality, sex education, gender identity, or gender-related concepts to a student in grade 6 through grade 8, a school shall obtain prior written or electronically signed consent from the student's parent. In no case less than seven (7) calendar days before such instruction, the school shall send the parents of each student in these grades a printed or electronic form that:
 - i. Lists the materials specifically to be used for such instruction or provides a link to the school's website where a list of such materials may be accessed;
 - ii. Designates a school contact responsible for addressing parents' concerns;
 - iii. Expressly states that the parent must provide written or electronically signed consent before the school may provide such instruction to the student; and
 - iv. Indicates a means by which the parent may provide or decline such consent, either by returning the form or through a reasonable alternative.
 - (4) Despite any other provision of law, a parent may exempt his or her child from all or any portion of classroom instruction on human sexuality, sex education, gender identity, or gender-related concepts in grade 9 through grade 12 through written or electronic notification to the school principal. Any school that implements or maintains such instruction shall inform the parents of each enrolled student about the ability to exempt their child from all or any portion of said curriculum by September first of each year.
 - (5) No student who is exempted from any or all instruction under subsections (2)–(4) of this Section shall be penalized by reason of such exemption. For all students so exempted, a school shall provide the student with a reasonable alternative to this instruction.
- B. Nothing in this Section shall prohibit the discussion of:
 - (1) Reproduction as a characteristic of biological life, including human life;
 - (2) Topics of historical events in a historically accurate and politically neutral context, including the historical treatment of a particular group of people;
 - (3) The presence of households headed by two persons of the same sex;
 - (4) The contributions of both men and women in various roles, including professional, vocational, executive, civic, and political roles; or
 - (5) A teacher or administrator's personal experiences, provided that such discussion occurs during classroom instruction, directly relates to the subject matter of that instruction, and does not violate parental consent as provided in Section 2(A) and Section 3(A)(2)–(4).

SECTION 4: PROMOTING CURRICULUM AND TRAINING TRANSPARENCY AND DEMOCRATIC ACCOUNTABILITY

- A. The governing body of a public school, including public charter schools, shall ensure that the following information is displayed on the school website in an easily accessible location:
- (1) All instructional or training materials, or activities, used for staff and faculty training on matters of human sexuality, sexual orientation, sexual activity, gender identity, gender-related concepts, or any combination of these concepts with other concepts.
 - (2) All learning or curricular materials, or activities, used for student instruction on human sexuality, sex education, and gender identity, including, but not limited to, sexual orientation, sexual activity, gender-related concepts, or any combination of these concepts with other concepts. Such display of materials or activities shall identify, at a minimum:
 - i. The title, author, organization, and any website associated with each material and activity;
 - ii. A link to the learning material, if publicly available on the Internet; or, if not freely and publicly available, a brief description of the learning material and information on how to request review of a copy of the learning material; and
 - iii. If the learning material was created for non-public use, the identity of the teacher, staff member, school official, or outside presenter who created it; such identification may be indicated by a personal title and last initial if referring to a teacher, staff member, or school official.
 - (3) Any procedures for the documentation, review, or approval of the training, learning, or curricular materials used for staff and faculty training or student instruction at the school, including by the principal, curriculum administrators, or other teachers.
 - (4) Information about any clubs and organizations comprised of students in the school that are under the sponsorship and control of the school, including, at a minimum:
 - i. The name of each club and organization;
 - ii. A brief description of the mission or purpose of each club and organization; and
 - iii. To the extent known, a list and brief description of each planned activity of each club and organization.
 - (5) The information required by subsection (A) of this Section shall be displayed online at least seven (7) calendar days prior to such training, instruction, or activity. Such information shall remain displayed on the school website for at least two years. The date of the latest modification or update to such information shall be displayed on the same website location.
 - (6) The listing of materials, clubs, and activities required by subsection (A) of this Section shall be created and displayed in searchable or sortable electronic formats.
- B. Prior to use for student instruction or otherwise made accessible to students, the governing body of a public school shall be required to approve on an annual basis, prior to the start of the academic year, all:

- (1) Books, reading materials, videos, websites, digital content, activities, and all other content available in the school library, or made accessible to students electronically, containing graphical or text-based depictions of human sexual activity or sexually explicit content;
 - (2) Learning materials and activities, including original materials, on matters of sexuality, sexual activity, gender identity, or gender-related concepts; and
 - (3) Lesson plans, learning materials and activities, including original materials, intended for student instruction on sex education.
- C. Absent such approval, no materials described in subsection (B) of this Section shall be included in the school library, made available to students electronically, or used in classroom instruction or discussions of any kind.
- D. Such approval, as described in subsection (B) of this Section, must occur in a meeting open to the public in which the public has an opportunity to be heard, and must obtain a majority of the entire membership of the governing body.
- E. Nothing in this policy document shall be construed to require the digital reproduction or posting of copies of the learning materials themselves, where such reproduction would infringe upon copyrighted material; but in such cases, the school should offer a link to a publicly available website describing and offering access to the learning materials, if possible; and upon request, if the materials are not offered free of charge, provide the learning materials for public inspection, as required under subsections (A)–(B) of this section, at the school building where the learning materials or activities are used for student instruction, and no later than 30 days after requested. To the extent practicable, each school shall make any and all learning materials, including original materials, available for public inspection and allow the public to copy, scan, duplicate, or photograph portions of original materials within the limits of “fair use” under Section 107 of the Copyright Act.

SECTION 5: ENFORCEMENT

- A. The attorney general, state superintendent of public instruction, auditor general, or district or county attorney for the district or county in which an alleged violation of this policy document occurs may initiate a suit in the district or county court in the jurisdiction in which the school district, public school, public charter school, or other governmental entity responsible for the oversight of public secondary or elementary schools is located for the purpose of complying with this policy document.
- B. An attorney acting on behalf of a school district, public school, public charter school, or governmental entity responsible for the oversight of public secondary or elementary schools may request a legal opinion of the county or district attorney or the attorney general as to whether a school is in compliance with any provision of this policy document.
- C. No later than September first of each year, each governing body of a public school shall promulgate regulations for adjudicatory proceedings to resolve any and all disputes arising under this policy document. The approval of such regulations must obtain a majority of the entire membership of the governing body. The state superintendent of public instruction shall have the authority to review such regulations for compliance with the provisions of this policy document.
- D. A party aggrieved by an adjudication of a school board shall have the right to appeal therefrom to the [STATE] court in the district or county in which the public school is located, which shall have jurisdiction to order compliance with the requirements of this

statute. In such a case, the court shall determine the matter de novo. Courts should not entertain complaints under this subsection unless complaints have first attempted to remedy the noncompliance through the school's adjudicatory proceedings.

- E. The court may assess against the governing body of the public school reasonable attorney fees and other litigation costs reasonably incurred in any case under this Section in which the complainant has substantially prevailed. In the event of noncompliance with the order of the court, the court may punish for contempt the responsible official or employee.
- F. The provisions of this policy document are hereby declared to be severable. If any provision of this policy document or the application of such provision to any person or circumstance is declared or held to be invalid for any reason, such declaration or holding shall not affect the validity of the remaining portions of this policy document and the application of its provisions to any other persons or circumstances.

SECTION 6: DEFINITIONS

- A. As used in this policy document, the term:
 - (1) "Parent" means mother, legal mother, birth father, legal father, adoptive parent, or legal guardian, but such term shall not include a parent as to whom the parent-child relationship has been terminated by judicial decree or voluntarily surrender.
 - (2) "Student's biological sex" or "child's biological sex" means the biological sex indicated on the minor's enrollment or registration form completed by the minor's parent, or, if not available in such form, by the biological sex as indicated on the minor's original birth certificate.
 - (3) "Gender" means the psychological, behavioral, social, and cultural aspects of being male or female.
 - (4) "Gender identity" means the gender-related identity, appearance, expression, behavior, mannerism, or other gender-related characteristics of a person, regardless of whether such identity, appearance, expression, behavior, mannerism, or other gender-related characteristics differ from those commonly associated with the person's biological sex.
 - (5) "Gender transition" means any social, pharmaceutical, surgical, or legal, act or intervention for the purpose of presenting a child as the opposite sex or with an identity other than the child's biological sex, including any change that conceals a child's secondary sex characteristics for such purpose.
 - (6) "Gender-related concept" means any concept involving gender identity, gender dysphoria, gender transition, or related concepts, including, but not limited to concepts espousing that:
 - i. Gender, sex, masculinity, femininity, or physical sexual characteristics are social constructs, entirely unrelated to biology;
 - ii. Biological sex, gender identities compatible with biological sex, monogamy, or marriage are forms of social oppression;
 - iii. It is possible to change one's biological sex; or
 - iv. The use of pronouns other than ones compatible with and conforming to one's biological sex are beneficial.

- (7) “Sexual orientation” means a persistent pattern of physical, romantic, or sexual attraction to members of either sex or both sexes.
- (8) “Sexually explicit content” means any lewd or lascivious depiction, exhibition, description, or simulation of human or animated sexual activity, human genitals, or the pubic area.
- (9) “Instruction on human sexuality” means any instruction, presentation, story time, discussion, or reading assignment delivered by a school employee, contractor, or service provider, other than sex education as specifically and narrowly defined in [CODE], that is focused primarily or substantially on human sexuality, encompassing topics including sex, gender identity, sexual orientation, sexual activity, pregnancy, contraception, and sexually transmitted infections.
- (10) “Sex education” means age and developmentally appropriate education about human development and sexuality as specifically and narrowly defined in [CODE].
- (11) “Learning materials” include, but are not limited to, the following: all textbooks, reading materials, videos, surveys, questionnaires, activities, digital materials, websites, and other online applications.
- (12) “Used for student instruction” or “use for student instruction”:
 - i. Means assigned, distributed, or otherwise presented to students in any course for which students receive academic credit; or in any educational capacity in which participation of the student body is required by the school or in which a majority of students in a given grade level participate.
 - ii. Applies also to any materials from among which students are required to select one or more, if the available selection is restricted to specific titles.
- (13) “Original materials” means learning materials owned or licensed by the school district, school, faculty, or staff that are used for student instruction.
- (14) “Activities” include but are not limited to assemblies, guest lectures, or other educational events facilitated by the institution’s faculty or staff, including those conducted by outside individuals or organizations, excluding student presentations.
- (15) “Clubs and organizations” means clubs and organizations comprised of students who wish to organize and meet for common goals, objectives, or purposes, and are directly under the sponsorship, direction, and control of the school. This term shall include any activities reasonably related to such clubs and organizations.