WEST VIRGINIA CODE: §18-5-29

§18-5-29. Prohibiting instruction related to sexual orientation and gender identity and providing false information regarding student's gender identity or intention to transition; requiring certain student requests to be reported to parent.

(a) For the purposes of this section:

(1) "Biological sex" means the sex listed on a student's official birth certificate or certificate issued upon adoption if the certificate was issued at or near the time of the student's birth;

(2) "Custodian" means a person who has some allocation of physical custody of the child or who has provided to the school written permission of a parent to have access to the notices and information contemplated by this section;

(3) "Gender identity" means a category of social identity and refers to an individual's identification as male, female, or occasionally, some category other than male or female;

(4) "Guardian" means a person other than a parent or custodian who, pursuant to a court order, acts in loco parentis for the child;

(5) "Parent" means a parent who has some allocation of physical custody of the child or who has some share of joint decision-making authority for the child;

(6) "Sexual orientation" means an individual's actual or perceived orientation as heterosexual, homosexual, or bisexual; and

(7) "Transition to a gender" means the process in which a person goes from identifying with and living as a gender that corresponds to the person's biological sex to identifying with and living as a gender different from the person's biological sex and may involve social, legal, or physical changes.

(b) A public school may not provide instruction related to sexual orientation or gender identity: *Provided*, That the provisions of this subsection do not prohibit:

(1) A teacher responding to student questions during class regarding sexual orientation or gender identity as it relates to any topic of instruction;

(2) Referring to the sexual orientation or gender identity of any historic person, group, or public figure when such information provides necessary context in relation to any topic of instruction;

(3) Referring to sexual orientation and gender identity if necessary to address a disciplinary matter, such as an instance of bullying; or

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(4) Referring to sexual orientation and gender identity as part of curriculum established in a dual enrollment or advanced placement course.

(c) A public school and the county board employees assigned to the school may not knowingly give false or misleading information to the parent, custodian, or guardian of a student regarding the student's gender identity or intention to transition to a gender that is different than the student's biological sex.

(d) If a student enrolled in a public school requests from a person employed by the public school an accommodation that is intended to affirm a change in the student's gender identity that is different from a student's biological sex, including a request that the student be addressed using a name or pronoun that is different than the name or pronoun assigned to the student in the public school's registration forms or records for the purpose of affirming a change in the student's gender identity that is different than the student's biological sex, the public school employee shall report the student's request to an administrator employed by the county board and assigned to the school, and the administrator shall report the student's request to the student's parent, custodian, or guardian.

(e) A parent, custodian, or guardian who is impacted, or whose child is impacted, by a violation of this section may file a complaint pursuant to West Virginia Board of Education Policy 7211 (§126-188-1).

(f) School personnel found in violation of this section may be subject to discipline or dismissal pursuant to §18A-2-8 of this code.

(g) The West Virginia Board of Education, in consultation with the Higher Education Policy Commission, shall promulgate rules pursuant to §29A-3B-1 *et seq.* of this code to implement this section.

(h) The Attorney General may bring an action to enforce compliance with this section.

(i) If a provision of this section or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

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