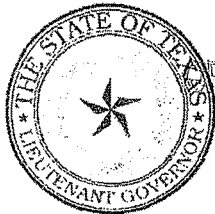


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MAY 31 2016



OPINION COMMITTEE **The Senate of
The State of Texas**

FILE # ML-48014-16
ID. # 48014

RQ-0107-KP

DAN PATRICK
LIEUTENANT GOVERNOR

CAPITOL OFFICE
State Capitol, Room 2E.13
Post Office Box 12068
Austin, Texas 78711
(512) 463-0001
Fax: (512) 463-8668

May 31, 2016

Via email to Opinion_committee@texasattorneygeneral.gov

The Honorable Ken Paxton, Attorney General
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request for an opinion regarding the legality of Fort Worth Independent School District's "Transgender Guidelines"/policy and whether Superintendent Kent Scribner had authority to unilaterally adopt said policy, without school board adoption and without public comment from parents and citizens.

Dear Attorney General Paxton:

The Fort Worth Independent School District's Superintendent, Dr. Kent Scribner, has unilaterally adopted a new mandatory policy he dubs "Fort Worth ISD Transgender Student Guidelines" (attached and hereafter referred to as "policy") without adoption by school board vote and without public comment from parents and citizens. Under the threat of *adverse employment action* for failure to comply, this policy instructs school personnel to conceal from parents certain information I believe they are entitled to receive under the law.

In light of your pending lawsuit on similar subject matter directives from the federal government, and until the Texas Legislature can address the disruption, privacy and safety concerns this policy creates in allowing boys to share bathrooms, locker rooms, showers, and changing facilities with girls, I focus this request for your opinion on:

- 1) Does Superintendent Scribner's policy violate Chapter 26 of the Texas Education Code, or any other law, in its effort to keep student information from parents, and;
- 2) Did Superintendent Scribner have the authority to unilaterally adopt this policy without adoption by school board vote and without public comment?

Under this policy:

- All school personnel are required to acknowledge and not question the gender identity a student asserts, regardless of their assigned sex at birth, and states “no medical or mental health diagnosis or treatment is required to have a student’s gender identity recognized and respected.” (see policy, page 4)
- School personnel are required to “address the student by the name and pronoun that corresponds to his/her gender identity even in the absence of a court order legally changing his/her name or parent/guardian permission.” (see policy, page 4)
- Despite being required to *publicly* address the student while at school and outside the parents’ presence by the student’s name and pronoun that corresponds to his/her asserted gender identity, school personnel must keep the “student’s actual or perceived gender identity and expression private,” including from the student’s parents, and only share this information on a “need to know basis or as the student directs.” (see policy, page 5)
- “When contacting the parent or guardian of a transgender student, school personnel must use the student’s legal name and the pronoun corresponding to the student’s gender assigned at birth unless the student, parent, or guardian has specified otherwise.” (see policy, page 5)
- For official school records, recognizing name and gender cannot be legally changed absent a court order, personnel are told, “[u]ntil a legal name or gender change occurs, school personnel may use an ‘also known as’ description with the student’s preferred name.” (see policy, pages 4 and 5)
- For unofficial records, personnel are told, “[t]o the extent the school is not legally required to use a student’s legal name or gender on school records or other documents, all personnel must use the name and gender preferred by the student.” (see policy, page 5)
- When school records are requested by parents that are required to be released, but may contain information regarding a student’s actual or perceived gender identity, personnel are instructed to contact the school district’s Office of Legal Counsel. (see policy, page 5).

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This policy's effort to conceal information from parents appears violative and in direct contravention to the spirit of Texas Education Code, Chapter 26.

Texas Education Code § 26.001 begins:

Parents are partners with educators, administrators, and school district boards of trustees in their children's education. Parents shall be encouraged to actively participate in creating and implementing educational programs for their children. Tex. Educ. Code § 26.001.

Superintendent Scribner's policy and the manner in which he unilaterally adopted it without board approval or public comment is quite inconsistent with the concept of parents partnering with administrators, educators and board trustees.

Furthermore, parents are guaranteed certain rights and are entitled access to *all* written records of a school district concerning their child, including, but not limited to, counseling records, psychological records, health and immunization information, teacher and school counselor evaluations, and reports of behavioral patterns. Tex. Educ. Code § 26.004.

Additionally, parents are entitled to full information regarding the school activities of their child and any attempt by any school district employee to encourage or coerce a child to withhold information from the child's parent is grounds for discipline. Tex. Educ. Code § 26.008.

In addition to a policy that focuses on removing parents from close involvement with their student children, I am deeply concerned that the very process for school board review, vote and adoption of new school district policy was circumvented here. If new mandatory policies that threaten adverse employment action for failure to comply can be unilaterally adopted by superintendents, why have elected school board trustees accountable to the voters?

I understand part of a superintendent's duties include preparing recommendations for policies to be adopted by the school board, and school boards and superintendents are to work together to establish district-wide policies. Tex. Educ. Code § 11.201 (7) and § 11.1512 (4). However, I find no authority vested in superintendents to also act as the school board for the purpose of district-wide policy adoption.

I expect the lawsuit you recently filed challenging similar subject matter directives from the federal government will clarify the controlling law at that level. It is my hope this opinion request will reaffirm the transparent partnership required by state law between parents, educators, administrators, and school board trustees, and will further affirm the appropriate means of consideration, review and adoption of any new district-wide policy.

The Honorable Ken Paxton

May 31, 2016

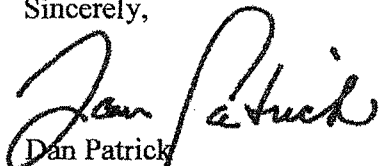
Page 4

I ask your opinion on:

- 1) Does Superintendent Scribner's policy violate Chapter 26 of the Texas Education Code, or any other law, in its effort to keep student information from parents, and;
- 2) Did Superintendent Scribner have the authority to unilaterally adopt this policy without adoption by school board vote and without public comment?

Thank you for all you do for Texas. I look forward to your response.

Sincerely,

A handwritten signature in cursive script that reads "Dan Patrick". The signature is written in black ink and is positioned above the printed name and title.

Dan Patrick
Lieutenant Governor