

Policy 713 Submission

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Dear Kelly Lamrock:

Egale Canada makes the following submission as part of your Office's stakeholder consultation regarding Policy 713 and the impact of June 2023 changes. Egale Canada is Canada's leading organization for 2SLGBTQI people and issues. Given the critical role of the education system in the health and wellbeing of children and youth, Egale has worked to make schools safer and more inclusive environments for 2SLGBTQI students. Over the past decade, we have developed inclusive education resources for teachers, administrators, parents, and districts in provinces across the country, including New Brunswick. We would be happy to participate in an interview should it be of assistance to you.

Egale makes three primary submissions:

- 2SLGBTQI students must be able to self-identify at school should they choose, including by changing their name and pronouns, without requiring parental consent.
- 2SLGBTQI youth should have access to safe and accessible washrooms and changing rooms that align with their gender identity.

- 2SLGBTQI youth should have access to extracurricular activities that align with their gender identity.

Policy 713

Policy 713, both in its original and revised form, sets out its goals and principles in section 5. These goals and principles appropriately centre the rights and best interests of students and include:

- the right to self-identification and self-expression with an expectation of dignity, privacy, and confidentiality (section 5.1);
- the right to learn and work in an atmosphere that is respectful and free from harassment and discrimination (section 5.2); and
- students' right to feel supported by school personnel (section 5.3).

In addition, section 6.1.2 requires school personnel to respect students' right to self-identify and to take appropriate measures to protect their personal information and privacy.

The principles outlined in section 5 and section 6.1.2 reflect what the evidence shows: the wellbeing of youth is fostered through affirming conditions. An affirming environment for 2SLGBTQI students is one that creates safety for self-exploration and provides the space for students to achieve their potential free from bias, hatred, or violence.

The June 2023 changes to Policy 713 fail to fulfil these goals and principles and are addressed in turn below. First, however, Egale wishes to express deep concern about the political rhetoric that has surrounded these changes, the confusion it has created, and the extent to which it has vilified gender diversity.

In announcing the review of Policy 713, Premier Higgs commented that gender dysphoria has become “trendy” and that its *acceptance* is hurting children and excluding parents. This claim is *directly contrary* to the evidence and guidance of experts. As just a few examples, Egale directs policy makers to:

- The position statement of the Canadian Paediatric Society advocating for an affirming approach for transgender, non-binary, Two Spirit or other gender diverse (together, “gender diverse”) youth:
<https://cps.ca/en/documents/position/an-affirming-approach-to-caring-for-transgender-and-gender-diverse-youth>

- The approach taken by Sick Kids, which has previously been ranked as the top paediatric hospital in the world: <https://www.sickkids.ca/en/care-services/clinics/transgender-youth-clinic/>
- The over 30 professional medical associations in the United States that have endorsed affirming approaches to gender diversity: <https://glaad.org/medical-association-statements-supporting-trans-youth-healthcare-and-against-discriminatory/>

Experts agree that affirming responses are central to ensuring that gender diverse children and youth grow into healthy adults. The implication of Premier Higgs' statements is that there is something wrong with being gender diverse. Egale fears the negative impact that such a suggestion—from the holder of the highest political office in New Brunswick—has on already vulnerable gender diverse youth in the province. Indeed, new research out of the United States shows significantly higher rates of depression among racialized youth in states that have adopted anti-2SLGBTQI policies (Jackson et al., 2023).

Further, and as you know, political leaders in New Brunswick have misrepresented the changes to Policy 713 in public statements, leading to widespread confusion. For example, Premier Higgs has stated that teachers risk disciplinary consequences if they respect the name and pronouns selected by a student under the age of 16 without parental consent, despite this not being required by the text of the policy. This misinformation means that 2SLGBTQI children and youth in New Brunswick now lack clarity on what protections exist for them in schools and school officials likely fear acting in the best interests of their 2SLGBTQI students. Given the evidence that, for inclusive policies to work, they must be known and understood, the misrepresentation of the contents of Policy 713 likely further undermines its effectiveness.



Areas of Consultation:

1. The process by which children may self-identify or explore their gender identity and/or sexual orientation and the supports and inclusive services schools should offer, consistent with their rights and best interests

Children and youth must have freedom to safely explore their gender identity and/or sexual orientation in school. 2SLGBTQI students should be able to self-identify and direct the timing and nature of their coming-out process. Schools should seek to be safe, supportive, affirming and accepting environments for 2SLGBTQI students.

As referenced above, schools should be informed by the medical community's affirming care model that emphasizes the autonomy of the child:

Inherent in the definition of affirmation is the understanding that the individual is the expert on and determines their own identity and that the parents' and clinicians' roles are to empathetically support the child's assertion of their identity. For prepubertal children, gender-affirming care often includes supporting a social transition (Spack et al., 2012). This frequently includes a child changing their name, pronouns, clothing, hairstyle, what sex-segregated facilities they use, and other outward expressions of gender. The affirming model insists that it is important that a child feel valued, seen, and believed in the present. Additionally, children should be able to play with toys and read books that interest them, regardless of sex/gender.

(wallace skelton, 2022, p. 10, emphasis added)

When a child or youth identifies that they would like to have a different name or pronouns used for them at school, the response they receive directly affects their wellbeing and future outcomes. Being denied the use of a chosen name or pronoun negatively impacts gender diverse students' feelings of belonging. In Egale's second national school climate survey, *Still in every class in every school: Final report on the second climate survey on homophobia, biphobia, and transphobia in Canadian schools* (Campbell & Taylor, 2021), trans participants who were prevented from using a chosen name or pronoun, compared to trans students who were not denied the use of a chosen name or pronoun, were more likely to agree to the following statements: "It is hard for me to feel accepted at my school" (77% versus 50%); "I wish I were in a different school" (59% versus 29%); "I don't like being at school" (80% versus 57%).

Social support at home and higher levels of parental affirmation are linked to improved mental health for gender diverse youth navigating name and pronoun changes; conversely, parental rejection for gender diverse youth is associated with a higher risk of

adverse mental health outcomes (Klein & Golub, 2016). Thus, in situations where parental support does not exist or there is a high risk of rejection—which for vulnerable children and youth could result in becoming unhoused—it may not be safe for gender diverse students to involve their parents in name and pronoun changes (Hale et al, 2021). These safety concerns were reflected by a participant in Egale's national survey who shared, "If a child is outed to an unsupportive parent it can put the child in serious danger...having to make the parent aware of a change in name and pronouns can cause a kid to lose the sense of safety they may have had at school" (Campbell & Taylor, 2021, p. 128). Another participant cautioned, "Don't out kids to their parents. I've seen it happen and it's incredibly harmful" (Campbell & Taylor, 2021, p. 58). Parental rejection is associated with increased odds of suicide attempts and misusing drugs and alcohol to cope with trans-related discrimination (Klein & Golub, 2016), increasing the importance of other supportive adults in the lives of 2SLGBTQI students.

All 2SLGBTQI students need to be able to determine and direct if and when they come out, including to their parents. Outing students to their parents can erode trust in educators. A participant in Egale's climate survey explained, "The principal outed me to my parents without warning me first, making me feel unsafe around her and not trusting her with any future problems I may have" (Campbell & Taylor, 2021, p. 58).

Turning to Policy 713, and as recognized in section 5.1 of the Policy, the right to self-identification requires privacy and confidentiality. This means that parental involvement should be guided by students, and that parental consent must not be made a condition for affirmation of students' sexual orientation and gender identity at school.

There are two central problems with the revised Policy 713 in the context of self-identification:

- *Unnecessary vagueness*: whereas the original version of the policy made clear that school officials were to honour requests of students below the age of 16 for a change in name and/or pronouns, the policy is now ambiguous about what officials must do where parental consent has not been obtained. Research shows that the lack of clear policy protections results in higher rates of harassment of 2SLGBTQI students, which in turn translates to lower attendance, academic success and mental health (Campbell & Taylor, 2021).
- *Directing students to a mental health professional may be misguided*: where students below the age of 16 do not consent to having their parents contacted about a requested change in name and/or pronouns, they are to be directed to a mental health professional. Beyond the logistical challenge that psychologists and/or social workers are not present in all schools, the automatic involvement of a mental health

professional reinforces harmful stereotypes about gender diverse people being mentally ill. Further, this approach presumes that the child is wrong in not wanting to come out to their parents. The sad reality is that many gender diverse children are correct in their belief that coming out to their families could result in rejection or even violence. The response of schools to this reality should not be to cause further pain and isolation to students, rather, schools should be what they are intended to be for all young people: a safe and supportive environment for growth, exploration and development. Access to mental health professionals is important for all students, but should not be mandated for gender diverse students engaging in exploration and/or self-identification.

2. The availability of washroom and changing facilities and other private spaces to all students in conformity with their gender identity and consistent with the rights of all students to reasonable privacy, dignity, and equality

2SLGBTQI youth must have access to safe and accessible washrooms and changing rooms. For gender diverse youth, this should include access to a private all-gender facility as well as access to the gendered facilities that align with their gender identity.

It should go without saying that access to washroom and changing facilities are vital for all students. Ensuring this access is safe and practical is a key component of addressing educational inequality (Wernick et al., 2017). The mere designation of a facility is insufficient—the facilities need to actually be accessible by students. For example, in one study, teachers noted that, while an all-gender washroom was technically available at their school, a special key was required to access the washroom, which singled students out and operated as a barrier to access (Martino et al., 2022, p. 83).

The lack of access to appropriate facilities has both mental and physical health consequences. In Egale's climate survey, one participant reported developing health issues from not using the washroom all day, as a result of being denied access to the gender-appropriate facility. Wernick et al. (2017) noted that the "anticipation of negative social sanctions in these spaces may also produce physical harm among students who are compelled to delay or forego their physical needs to accommodate the rules of the institution" (p. 927). Numerous participants in Egale's climate survey reported feeling anxiety or unsafe, or being told they are in the "wrong washroom" due to their school's washroom policies (Campbell & Taylor, 2021). 2SLGBTQ students who attend school without a designated single user or all persons' washroom were far less likely to agree that "I can be myself at school" (41%) than 2SLGBTQ participants who indicated that there was such a facility (67%). Similarly, students without access to a gender-neutral washroom were far less likely to agree that "I am treated with as much respect as other students" (63%) than 2SLGBTQ participants who had access to such a facility (78%). The 2SLGBTQ students without access to a gender-neutral washroom were

also more likely to agree that “It is hard for me to feel accepted at my school” (72% versus 48%) and “I don’t like being at school” (75% versus 57%) (Campbell & Taylor, 2021).

We also note that in Egale’s national school climate survey, washrooms and change rooms were identified as particularly unsafe places for 2SLGBTQ students, especially among trans students and cisgender LGBTQ girls (Campbell & Taylor, 2021). Study participants reported either avoiding change rooms all together or feeling unsafe while using them, with one participant referring to change rooms as a “nest of harassment” (p. 72). Wernick et al. (2017) found similar experiences: LGBTQ students reported feeling significantly less safe using school facilities compared to heterosexual students; trans students reported significant lower feelings of safety, generally, as well as lower levels of academic achievement than their cisgender peers. One educator noted that, in their school, there is a single-use facility designated for trans students but that they are “concerned that because this information is shared amongst the students that this may target this specific location as a focal point for bullying” (Martino et al., 2022, p. 78-79). This speaks to a need for greater efforts at meaningful inclusion and anti-discrimination school-wide, beyond access to appropriate facilities.

In its revised form, Policy 713 continues to mandate that students will have access to washroom facilities that align with their gender identity (section 6.4.1), in line with best practices for 2SLGBTQI inclusion in schools. The impact of the change to section 6.4.2 that specifies a universal washroom facility should be private is unclear, as it does not seem to preclude schools’ ability to implement multi-user universal washroom facilities or block access to gendered facilities for gender diverse students. The introduction of a guarantee of a private universal changing area (s. 6.4.3), as long as it is interpreted in light of students’ rights to dignity, privacy, and freedom from harassment, is also in line with Egale’s recommendations for schools. The existence of private universal facilities must not be used to deny gender diverse students the right to use the gendered facilities that align with their identity. Fundamentally, gender policing must be avoided: “While it is important to consider the specificity of trans students’ experiences with institutional policies that regulate the use of space along gendered lines, the very fact that these policies require and facilitate gender policing have a net negative impact on trans students, many of whom are in the process of developing their relationship to their gender (Wernick et al., 2017, p. 927).

3. The regulation of extracurricular and co-curricular activities in a manner which respects children’s rights of equality and participation and the legitimate public interest in fair competition and a broad range of activities

Participation in extracurricular activities can have significant benefits for children and youth: it can promote the development of cooperation skills, foster a sense of community and belonging, and increase students’ self-confidence. Team sports, in

particular, are associated with physical and mental health benefits. The US-based Trevor Project—an organization focused on suicide prevention for LGBTQ youth—found that participation in sports provided LGBTQ youth with connections and friendships, helped improve mental health, and helped release stressors (The Trevor Project, 2021). In Egale's school climate survey, 2SLGBTQ students who participated in sports and/or extra-curricular activities were more likely to agree with the statement "I feel like a real part of my school" than those who did not participate. In schools and districts where efforts are being made to foster 2SLGBTQ-inclusive extra-curricular activities and gender-affirming participation in sports, 2SLGBTQ students report lower levels of harassment, greater positive mental health and wellbeing, and a greater attachment to their schools (Campbell & Taylor, 2021).

To the extent that extracurricular activities are divided by gender, gender diverse youth must be allowed to participate with the group that aligns with their gender identity (or, if they are non-binary, with the group that is most comfortable for them). As explained by the American Civil Liberties Union (Strangio & Arkles, 2020; Adkins Declaration, 2020):

When a person does not identify with the sex they were assigned at birth, they must be able to transition socially — and that includes participating in sports consistent with their gender...

Excluding trans people from any space or activity is harmful, particularly for trans youth. A trans high school student, for example, may experience detrimental effects to their physical and emotional wellbeing when they are pushed out of affirming spaces and communities...

According to [pediatrician] Dr. [Deanna] Adkins, "When a school or athletic organization denies transgender students the ability to participate equally in athletics because they are transgender, that condones, reinforces, and affirms the transgender students' social status as outsiders or misfits who deserve the hostility they experience from peers."

In recent years, hypothetical concerns about the participation of gender diverse youth in sports have gained momentum. These concerns lack any evidentiary foundation and instead are rooted in misinformation and stereotypes. The general argument raised is that allowing trans girls to participate in girls' sports is somehow unfair because trans girls would have physical advantages. The reality, of course, is that all children and youth vary in physical abilities and characteristics and ensuring gender diverse children can participate in sports teams that reflect their gender identities is no more a barrier to fair competition than any other type of body diversity. In fact, the New Brunswick

Interscholastic Athletic Association has stated that there have been no complaints about trans girls playing on girls' sports teams (Ibrahim, 2023).

While the revised Policy 713 still requires that students be able to participate in “curricular, co-curricular, and extracurricular activities that are safe and welcoming” (section 6.1.5), the guarantee that students can participate in activities that align with their gender identity has been removed. This ambiguity risks exposing students to unnecessary harm. Forcing students to participate in activities that do not reflect their gender exposes gender diverse students to unjustifiable stigma and discrimination.

4. The quality of services and supports to 2SLGBTQI students and improvements to the inclusion and experience of 2SLGBTQI students in the broader school community

Egale submits that the rhetoric used to justify revisions to Policy 713 has had a potentially devastating effect on the inclusion and experiences of 2SLGBTQI students in New Brunswick, who are some of the most vulnerable members of school communities. 2SLGBTQI youth are at significantly higher risk of death by suicide than their heterosexual and cisgender peers. In one recent study focused on trans and sexual minority adolescents aged 15-17, 14% of the sample had expressed suicidal ideation in the last year, with trans adolescents at five times the risk of suicidal ideation and had attempted suicide at 7.6 times the rate of their cisgender and heterosexual peers (Kingsbury et al., 2022). Because of these vulnerabilities, it is important that schools, community leaders, politicians and policy makers ensure to the best of their abilities the safety and inclusion of 2SLGBTQI youth in all aspects of society, including schools and in the broader community.

In studying the school system in New Brunswick, Dr. Casey Burkholder has found:

Despite protection from discrimination in the New Brunswick Human Rights Act (2011), systematic discrimination of queer, trans, and non-binary students continues to be prevalent within the local school system (Burkholder & Thorpe, 2019).

School environments—within our context of Fredericton, New Brunswick—operate under heteronormative assumptions, wherein students' gender, gender identity, and sexuality is assumed to be cisgender and heterosexual. Such assumptions, obviously, disproportionately affect youth who are queer, trans, and non-binary (Strear, 2015, as cited by Burkholder et al., 2021, p. 92).

Burkholder's findings confirm research more generally, which has shown that transphobia, gender policing, and harassment (from students and teachers) based on gender identity and expression remain prevalent in schools. Stepping outside the



gender binary can cause negative experiences with teachers, peers, rejection by other students, transphobic language, a lower sense of belonging, poorer educational outcomes, and distress (wallace skelton, 2022).

Given this context, it is deeply troubling that the Government of New Brunswick would seek to make schools *less* safe for 2SLGBTQI students, rather than *more* safe, through the changes that have been made to Policy 713. As Martino et al. (2022) found in studying the politicization of 2SLGBTQI identities in debates around curriculum in Ontario, “It produced a context in which teachers felt under siege, and directed attention away from and effaced how gender identity and gender expression are topics that need to be addressed across the curriculum” (p. 72). Similarly, here, the focus should be on making school communities safer for all students, rather than misrepresenting the realities of 2SLGBTI youth. School officials must be allowed to act in the best interests of their students.

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We thank you for your continued advocacy on behalf of all children and youth in New Brunswick, and, in particular, on behalf of 2SLGBTQI students and are available to provide you with any assistance that might be useful. We urge the Government of New Brunswick to make evidence-based decisions to promote the wellbeing of all students and not let 2SLGBTQI students be used as a political tool. The stakes are quite literally life or death for young 2SLGBTQI people.

Sincerely,

Helen Kennedy

Executive Director
Egale Canada

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