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Memorandum

To: Ontario District School Boards
Date: November 13, 2015
Re: The Use of Harnesses on School Buses
And Re: The Use of Birth Certificates to Change A Student's Name or Sex
Designation

The purpose of this memorandum is to provide additional information to Ontario District School Boards on two items discussed at a recent KC Session, held on October 23, 2015.

Executive Summary

1. Use of Harnesses on School Buses

A question was raised at the KC Session (October 23, 2015) regarding the status of the use of harnesses on school buses. We confirm that, as of May 2010, the *Motor Vehicle Restraint Systems and Booster Seats Safety Regulations*¹ (the "Regulation") allows for the use of certified custom harnesses on school buses for students with special needs. The certified custom harnesses must be designed and purchased for a specific individual

¹ *Motor Vehicle Restraint Systems and Booster Seats Safety Regulations*, SOR/2010-90, pursuant to the *Motor Vehicle Safety Act*, SC 1993, c 16 [*Motor Vehicle Safety Regulation*].

child with a physical disability, not the generic model harness. There have not been any significant changes.

2. Use of Birth Certificates to Change a Student's Name or Sex Designation

Birth certificates can be used to change a student's name and/or sex designation in official school records, such as the OSR. The school can change a student's official records to reflect their chosen name and/or lived gender identity upon receipt of an updated birth certificate indicating that such legal name and/or sex has been changed to reflect same. The application processes for obtaining an updated birth certificate as a result of name and/or sex designation change are provided in this memorandum.

In accordance with the *Human Rights Code* (Ontario), and *OHRC Policy on preventing discrimination because of Gender Identity and Gender Expression*, boards should make best efforts to accommodate transgender or gender non-conforming students' wishes with respect to their preferred name and/or gender identity.

1. Use of Harnesses on School Buses

Transport Canada issued a notice on May 12, 2010 announcing amendments to the *Motor Vehicle Restraint Systems and Booster Seats Safety Regulations*.² As such, the *Motor Vehicle Restraint Systems and Booster Cushions Safety Regulations* has been repealed.

One of the key changes in the *Regulation* is the allowance for harnesses to be certified for usage on school buses for special needs children.

Part 5 of the *Regulation* provides that every custom restraint system for a disabled person to be used on school buses must be designed to be secured to a school bus by either or both: (a) a vehicle seat belt, together with the tether strap provided with the restraint system, without using any other means of attachment; and (b) belts that wrap around a school bus seat or seat back, without using any other means of attachment.³

It is important to note that a "disabled person" is defined by the *Regulation* to mean a person, other than an infant with special needs, who, for orthopaedic reasons or because of the person's build or other physical characteristics, is unable to use any other restraint systems, such as a child restraint system or a booster seat or a

² *Motor Vehicle Safety Act*, SC 1993 c 16.

³ *Motor Vehicle Safety Regulation*, *Supra* note 1 at s 504(2).

vehicle seat belt. This definition does not refer to a person with a behavioural disability.

The custom restraint system should bear a school bus restraint system warning label⁴ as well as, the national safety mark, which includes the authorization number assigned to the company by the Minister, and the Canada Motor Vehicle Safety Standard number for use on school buses.⁵

While Transport Canada regulates the requirements and safety standards for child seats and child restraints in Canada, the Province of Ontario is responsible for determining the requirements for the use of restraint systems on Ontario roads. The *Seatbelt Assemblies Regulation*⁶ made under the (Ontario) *Highway Traffic Act*⁷ sets out the requirements for restraint systems used in vehicles. However, currently there are no specific provisions under the *Seatbelt Assemblies Regulation* that address the use of restraint systems on school buses.

Commentary

The amendment to the Regulation provides some clarity to the issue of the use of harnesses on school buses and has been the legislative framework in place since May 2010. The amendment is specific to certified custom harnesses used on school buses for mobility impaired riders. There are still areas where the law remains silent, such as the use of harnesses with students with behavioural issues only or non-custom harness use on school buses, and thus, the risks associated with such use should be considered. Also, appropriate consents from parents or legal guardians should be in place with regard to harness use on school buses for a specific student.

2. Use of Birth Certificates

Ontario Human Rights Commission

The Ontario Human Rights Commission (the “OHRC”) has provided some guidance on changing a name and/or sex designation in its “*Policy on preventing discrimination because of gender identity and gender expression*”⁸ (the “Policy”). The Policy provides that international human rights standards and Ontario case law have

⁴ *Ibid* at s 522(1).

⁵ *Ibid* at s 101(3)(a)(b)(v).

⁶ RRO 1990, Reg 613.

⁷ RSO 1990, c H8.

⁸ Ontario Human Rights Commission, “Policy on preventing discrimination because of gender identity and gender expression” (14 April 2014), online:<<http://www.ohrc.on.ca/en/policy-preventing-discrimination-because-gender-identity-and-gender-expression/13-preventing-and-responding-discrimination>>.

confirmed that a trans person cannot be expected to go through sex reassignment surgery or any other medical procedure as a pre-condition to changing their gender designation on their identity documents.⁹ Accordingly, surgery is no longer required. A certification from a practicing physician or psychologist will suffice to verify the change in sex designation.

The OHRC Policy provides that the criteria for changing name and/or sex designation on identity documents should be respectful, non-intrusive, and need not necessarily be medically based. It further states that requirements with respect to changing a name or sex designation, such as public announcements, should not have a negative impact on trans people. In 2006, the OHRC raised concerns with public disclosures as required under the *Change of Name Act*,¹⁰ whereby the Government of Ontario amended the legislation to accommodate trans people by allowing for a non-publication option.¹¹

The Policy also recommends that school boards develop and implement policies whereby official records reflect a student's lived gender, chosen name and pronoun as much as possible.¹²

Change to Sex Designation

Service Ontario has set out the necessary requirements for children and adults to change the sex designation on their birth certificate. The application process however differs depending on the individual's age.¹³

Note that children 15 years of age or under will require the assistance of their parent/legal guardian, as the child application must be completed by a person with legal custody as the applicant, and children 16 or 17 years old can choose to apply as a child or as an adult.

As part of the child application, two consent forms must be completed: (i) by the child and (ii) by all persons with legal custody of the child. Proof of notice must also be provided to all persons with legal access to the child.

As previously noted, in both the child and adult applications, a letter signed by a practicing physician or psychologist (including a psychological associate) authorized

⁹ *Ibid* at 13.3.2.

¹⁰ RSO 1990, c C7.

¹¹ *Supra* note 9.

¹² *Ibid* at 13.8.

¹³ Service Ontario, "Changing your sex designation on your birth registration and birth certificate" (16 September 2015), online:<<http://www.ontario.ca/page/changing-your-sex-designation-your-birth-registration-and-birth-certificate>>.

to practice in Canada that includes necessary statements in support of the sex designation request, must be completed and provided with the application.

Also common to both applications is the requirement that the individual's birth had to have been registered in Ontario.

This process, however, does not address the issue of a child who does not identify with either gender and wishes to remain gender neutral or non-conforming as well as a child who wishes to be noted as identifying with both genders, such as those that identify as bigendered or genderfluid.

We contacted Service Ontario for further clarification on this issue and have been advised that only the available sex designations of "male" or "female" can be selected at this time. We are aware, however, that a number of advocacy groups have also identified this limitation and are seeking amendments to the current process as a result.¹⁴

Following completion of all necessary application requirements, the sex designation amendment will be processed and a new birth certificate will be issued.

Name Change

Similarly, a change of name also requires an application process administered through the Ministry of Government Services (the "Ministry"). There are two ways to change a child's name, subject to there being no court orders or legal agreements preventing the name change.

1. Formal Application - Child

Children under the age of 17 who are not married and have lived in Ontario for at least the past 12 months or since birth can bring a formal name change application, provided that each adult who has legal custody of the child provides their consent.

2. Short Form Application - Child

There is also a short form application, which is made by way of an election for a child under the age of 12 who is taking the name of either parent listed on the birth registration. In order to apply for a name change by way of an election, the child must have been born in Ontario and been residing in Ontario for 12 months from the time the application was completed or since birth. The election must be made by all persons if there is more than one person with lawful custody. If a parent has sole custody of a child, they must send all original or court-certified copies of court orders

¹⁴ If amendments occur as a result of such advocacy efforts, we will provide a further update regarding same.

or separation agreements that indicate the parent is the only person with legal custody.

Adult Application

There is also a change of name form that pertains specifically to adults. Note that a child 16 years of age or older, who has lived in Ontario for at least the past 12 months may complete the adult application form.

Once the legal name change has taken effect, the Ministry provides a legal name change certificate (the “certificate”). The certificate can then be used to obtain an updated birth certificate. If the individual is born outside of Ontario, the certificate can be used to notify the respective province or place of birth in order to obtain an updated birth certificate.

The new birth certificate can then be used to change a student’s name in the OSR.

A number of the school boards have indicated that the school will change a student’s official records to reflect a change in legal name or sex upon receipt of legal documentation, such as a birth certificate, that such legal name or sex has been changed.¹⁵

OSR Guideline, 2000

While the Ontario Student Record Guideline, 2000 (the “OSR Guideline”) addresses the change of surname upon written request or legal documentation (ie. birth certificate) of the new surname; unfortunately, it does not provide any guidance with respect to changes to the first name of a student.¹⁶

The surname change obtained by repute ¹⁷ can be made by a written request from a student or parent/legal guardian of a student that the student be identified by a surname other than the legal surname of the student. In accordance with the OSR Guideline, when (a) the student is known by a surname other than his/her legal surname; (b) the surname is a name obtained by repute, and (b) use of the surname is in the student’s best interest, the principal should record the requested surname in Part A of the OSR folder in addition to the legal surname of the student, and use the requested surname for all future purposes. The legal surname should be enclosed in brackets and the written request should be stored in the documentation file.

¹⁵ for example, Halton District School Board, “HDSB Guidelines for the Accommodation of Transgender and Gender Creative Students,” online:<<http://www.hdsb.ca/Programs/Documents/SAIS-Transgender%20Guidelines.pdf>>.

¹⁶ Ontario, Ministry of Education, “The Ontario Student Record (OSR) Guideline”, (16 March 2000), at para 10.

¹⁷ *Ibid* at para 10.1.

Commentary

The above-noted information is provided to outline the various applications and processes available to amend an individual's birth certificate to reflect a chosen name and/or lived gender identity. The updated birth certificate can then be used to change the student's name and/or sex designation in their Ontario Student Record.

The process of completing such applications, however, is ultimately the choice of the individual student. School boards have no legal obligation to assist with such applications or to advise a parent or legal guardian of a student's intentions to complete such changes, without obtaining the student's prior consent. Depending upon the age of the child, the process will likely require the assistance and consent of the parent or legal guardian.

While the issue of consent may be of some concern for parents with respect to name and/or sex designation changes made to the OSR upon a student's request, school boards have a duty to accommodate students' needs as provided by the Ontario *Human Rights Code*. Some transgender and gender non-conforming students are not open about their identity at home for safety or other reasons. As such, a school should not disclose a student's gender identity to the student's parent(s) or guardian(s) without the student's explicit prior consent. The student should be reminded however, that the parent/legal guardian has the legal authority to access the student's Ontario Student Record, and therefore may become aware of the change of name and/or sex designation as noted therein.

There is also no age limit for accommodation requests, although the requests may come directly from the student or the student's legal guardian(s).

General Comments

We hope that the above is of assistance. If you have any questions or a specific request of a transgender or gender non-conforming student that you would like to discuss in further detail, please feel free to contact us.

Regards.

Bob - Jennifer - Nicola - Kimberley