

Stricken language would be deleted from and underlined language would be added to present law.
Act 317 of the Regular Session

State of Arkansas *As Engrossed: H1/24/23 H1/30/23 S3/9/23*
94th General Assembly **A Bill**
Regular Session, 2023

HOUSE BILL 1156

By: Representatives Bentley, K. Brown, Crawford, D. Hodges, Ladyman, Long, Lundstrum, McAlindon,
Miller, Rose, Tosh, *Barker*

By: Senator D. Sullivan

For An Act To Be Entitled

AN ACT CONCERNING A PUBLIC SCHOOL DISTRICT OR OPEN-
ENROLLMENT PUBLIC CHARTER SCHOOL POLICY RELATING TO
THE SEX OF A PUBLIC SCHOOL STUDENT WHO ATTENDS A
PUBLIC SCHOOL SPONSORED OR SUPERVISED OVERNIGHT TRIP;
CONCERNING THE DESIGNATION OF A MULTIPLE OCCUPANCY
RESTROOM OR CHANGING AREA BASED ON AN INDIVIDUAL'S
SEX; AND FOR OTHER PURPOSES.

Subtitle

CONCERNING A PUBLIC SCHOOL DISTRICT OR
OPEN-ENROLLMENT PUBLIC CHARTER SCHOOL
POLICY RELATING TO A PUBLIC SCHOOL
STUDENT'S SEX.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 6, Chapter 10, Subchapter 1, is amended
to add an additional section to read as follows:

6-10-137. Overnight trips.

(a) Except as provided in subsection (b) of this section, a public
school district or open-enrollment public charter school that sponsors or
supervises an overnight trip involving a public school student shall ensure
that a public school student attending the overnight trip either:

(1) Shares sleeping quarters with a member or, if necessary,
multiple members, of the same sex; or



(2) Is provided single-occupancy sleeping quarters.

(b) A public school student attending an overnight trip may share sleeping quarters with a member of the opposite sex if the member of the opposite sex is a member of the public school student's immediate family.

SECTION 2. Arkansas Code Title 6, Chapter 21, Subchapter 1, is amended to add an additional section to read as follows:

6-21-120. Public school restrooms – Designation based on sex.

(a) As used in this section:

(1)(A) "Multiple occupancy restroom or changing area" means an area in a public school district or open-enrollment public charter school building that is designed or designated to be used by one (1) or more individuals at the same time and in which one (1) or more individuals may be in various stages of undress in the presence of other individuals.

(B) "Multiple occupancy restroom or changing area" includes without limitation the following:

(i) A restroom;

(ii) A locker room;

(iii) A changing room; and

(iv) A shower room; and

(2)(A) "Sex" means the physical condition of being male or female based on genetics and physiology.

(B) A public school district or open-enrollment public charter school may rely upon a public school student's sex as identified on his or her original birth certificate issued at or near the time of his or her birth.

(b) To ensure privacy and safety, each public school district and open-enrollment public charter school that serves students in prekindergarten through grade twelve (preK-12) in this state shall:

(1) Require each multiple occupancy restroom or changing area to be designated as follows:

(A) For the exclusive use by the male sex; or

(B) For the exclusive use by the female sex; and

(2)(A) Provide a reasonable accommodation to an individual who is unwilling or unable to use a multiple occupancy restroom or changing area designated for the individual's sex.

(B)(i) A reasonable accommodation under this subdivision (b)(2)(A) may include without limitation access to a single-occupancy restroom or changing area.

(ii) A reasonable accommodation shall not include access to a restroom or changing area that is designated for use by members of the opposite sex to an individual while members of the opposite sex of the individual are present or may be present in the restroom or changing area.

(c) This section does not apply to an individual who enters a multiple occupancy restroom or changing area designated for use by the opposite sex when he or she enters for at least one (1) of the following circumstances:

- (1) For custodial, maintenance, or inspection purposes;
- (2) To render emergency medical assistance; or
- (3) To address an ongoing emergency, including without limitation a physical altercation.

(d)(1) Nothing in this section shall be construed to prohibit a public school district or open-enrollment public charter school from adopting a policy that is necessary to accommodate individuals protected under the Americans with Disabilities Act of 1990, Pub. L. No. 101-336, as it existed on January 1, 2023, or young children who are in need of physical assistance when using a restroom or changing facility that is located in a public school district or open-enrollment public charter school.

(2) However, a public school district or open-enrollment public charter school that serves students in prekindergarten through grade twelve (preK-12) in this state shall not adopt a policy under subdivision (d)(1) of this section that is contrary to this section.

(e)(1) An allegation of noncompliance with this section shall be referred to the Professional Licensure Standards Board by filing a formal complaint.

(2) Upon the board finding noncompliance with this section, the following individuals, as applicable, shall be subject to a minimum fine of one thousand dollars (\$1,000), and may receive additional sanctions as determined by the board:

(A) The superintendent of a public school district where the noncompliance occurred, if the superintendent is found specifically to be noncompliant with this section;

(B) The principal of a public school where the

noncompliance occurred, if the principal is found specifically to be noncompliant with this section;

(C) The director or administrative head of an open-enrollment public charter school where the noncompliance occurred, if the director or administrative head is found specifically to be noncompliant with this section; or

(D) A teacher or supervisor of a classroom or school-sponsored activity, if the teacher or supervisor is found specifically to be noncompliant with this section.

(f) A parent, legal guardian, or person standing in loco parentis of a public school student shall have a cause of action against a public school district or an open-enrollment public charter school if:

(1) His or her public school student:

(A) Encounters a member of the opposite sex in a public school district or open-enrollment public charter school multiple occupancy restroom or changing area that is designated for the public school student's sex if the member of the opposite sex received permission from the public school district or open-enrollment public charter school superintendent or the public school or open-enrollment public charter school building principal to use the multiple occupancy restroom or changing area; or

(B) Is required by a public school district or open-enrollment public charter school superintendent or the public school or open-enrollment public charter school building principal to share sleeping quarters with a member of the opposite sex who is not a family member of the public school student; or

(2) The public school district or open-enrollment public charter school is found to be noncompliant under subsection (e) of this section.

(g) The Division of Elementary and Secondary Education shall promulgate rules to implement this section.

/s/Bentley

APPROVED: 3/21/23