

NEW POLICY

BP 5157 Gender Identity and Access

The Santa Clara County Office of Education (SCCOE) is committed to providing a safe, supportive, and inclusive learning environment for all students, including transgender students, and to ensuring that every student has equal educational opportunities and equal access to the SCCOE's educational programs and activities. California and federal law (Cal. Ed. Code § 220 and Title IX, 20 U.S.C. § 1681) requires schools to treat transgender students equally and fairly. State and federal law and SCCOE policy require that all programs, activities, and employment practices be conducted without discrimination based on, among other things, actual or perceived gender identity, gender expression, or gender. California Education Code § 201 further provides that public schools have an affirmative obligation to combat bias, and a responsibility to provide equal educational opportunities to all pupils. Additionally, SCCOE policy requires that all schools and all personnel promote mutual respect and acceptance among students and staff. Thus, the SCCOE has a legal obligation to ensure that transgender students are safe, supported, and fully included in all school activities, programs, facilities, and educational opportunities. No person shall be subjected to discrimination on the basis of actual or perceived gender identity, gender expression, gender, or sexual orientation. (Cal. Ed. Code § 220, 20 U.S.C. § 1681 (Title IX))

The County Board considers harassment, discrimination, intimidation, or bullying based on sexual orientation, gender identity, and gender expression to be a major offense. The SCCOE shall investigate all complaints of harassment, discrimination, intimidation, or bullying and take appropriate action against any student or employee who is found to have violated this policy. Harassment, discrimination, intimidation, or bullying of a student by another student in violation of this policy may constitute cause for disciplinary action. Students shall be advised that harassment, discrimination, intimidation, or bullying based on sexual orientation, gender identity, and gender expression are unacceptable conduct and will not be tolerated. Students shall be informed that they should contact the school principal or designee if they experience such harassment, discrimination, intimidation, or bullying. Harassment, discrimination, intimidation, or bullying by an employee in violation of this policy constitutes cause for disciplinary action, up to and including dismissal.

The County Superintendent shall adopt, and may periodically revise, administrative regulations necessary to implement and enforce this policy. The regulations shall provide an adequate description of this policy to parents, students and employees, provide appropriate complaint and resolution procedures, and establish due process for persons accused of harassment, discrimination, intimidation, or bullying based on sexual orientation, gender identity, and gender expression. The County Superintendent or designee shall ensure that students receive age-appropriate information and education related to sexual orientation, gender identity, and gender expression. In addition, the County Superintendent or designee shall designate qualified individuals to provide appropriate training and educational programs on the issue of harassment, discrimination, intimidation, or bullying based on sexual orientation, gender identity, and gender expression.

Each school must ensure that all students, including LGBTQ students, are provided a safe and supportive learning environment that is free of harassment, discrimination, intimidation, and bullying. Administrators, faculty and staff are required to intervene when they witness harassment, discrimination, intimidation and bullying of any student if they can do so safely.

Complaints alleging discrimination, harassment or bullying based on a student's gender identity, gender expression, or gender nonconformity, are to be handled in the same manner as other discrimination/harassment/bullying complaints. Consistent with the Uniform Complaint Procedures, complaints alleging discrimination or harassment based on a student's gender identity, gender expression, or gender nonconformity should be given immediate attention; fully and appropriately investigated in a timely manner; and resolved through appropriate corrective action. This policy is intended to supplement, and not replace, state and federal laws prohibiting sexual harassment. Complaints under those laws shall be processed through the procedures established by appropriate state and/or federal agencies.

Adopted:

Policy 5157: ^Gender Identity and Access

Status: ADOPTED

Original Adopted Date: 06/06/2024 | **Last Reviewed Date:** 06/06/2024

The Sonoma Valley School District is committed to providing a safe, supportive, welcoming and inclusive learning environment for all students, including transgender and gender expansive students, which will be referred to as LGBTQIA+, and to ensuring that every student has equal educational opportunities and equal access to the District's educational programs and activities.

California and federal law ([Cal. Ed. Code § 220](#) and Title IX, 20 U.S.C. § 1681) requires schools to treat transgender and gender expansive students fairly. State and federal law and District policy require that all programs, activities, and employment practices be conducted without discrimination based on, among other things, actual or perceived gender identity, gender expression, or sexual orientation. (Education Code §§ 210.2, 210.7; 5 CCR §4910(k).) [California Education Code § 201](#) further provides that public schools have an affirmative obligation to combat bias, and a responsibility to provide equal educational opportunities to all pupils. Thus, the District has a legal obligation to ensure that transgender or gender expansive students are safe, supported, and fully included in all school activities, programs, facilities, and educational opportunities. No person shall be subjected to discrimination on the basis of actual or perceived gender identity, gender expression, or sexual orientation. (Cal. Ed. Code § 220, 20 U.S.C. § 1681 (Title IX))

The Board considers harassment, discrimination, intimidation, or bullying based on actual or perceived gender identity, gender expression, or sexual orientation to be a major offense. Examples include but are not limited to bigoted slurs, epithets, force, threat of force, physical injury, bias or hostile behavior.

Students shall be informed by staff that they should contact the school principal or designee if they experience such harassment, discrimination, intimidation, or bullying. Any complaint of harassment, intimidation or bullying against any student or employee shall be investigated and shall be resolved in accordance with the law and SVUSD's Uniform Complaint Procedures specified in BP 1312.3 - Uniform Complaint Procedures or other applicable procedure. This policy is intended to supplement, and not replace, state and federal laws prohibiting sexual harassment. Complaints under those laws shall be processed through the procedures established by appropriate state and/or federal agencies.

The District shall investigate all complaints of harassment, discrimination, intimidation, or bullying and take appropriate action against any student or employee who is found to have violated this policy. Students shall be advised by staff that harassment, discrimination, intimidation, or bullying based on actual or perceived gender identity, gender expression, or sexual orientation are unacceptable conduct and will not be tolerated.

Students shall be informed by staff that they should contact the school principal or designee if they experience such harassment, discrimination, intimidation, or bullying.

Harassment, discrimination, intimidation, or bullying of a student by another student in violation of this policy may constitute cause for disciplinary action.

Harassment, discrimination, intimidation, or bullying by an employee and/or contracted employee in violation of this policy constitutes cause for disciplinary action, up to and including dismissal.

(cf. 1312.3-Uniform Complaint Procedures)

(cf. 4119.11- Sexual Harassment (All Personnel))

(cf. 5145.7- Sexual Harassment (Students))

The Superintendent, or designee, shall ensure that students receive age-appropriate information and education related to student support for gender identity and gender expression. In addition, the Superintendent or designee shall designate qualified individuals to provide appropriate training and educational programs on the issue of harassment, discrimination, intimidation, or bullying based on actual or perceived gender identity, gender expression, or sexual orientation to staff and students.

Each school must ensure that all students, including LGBTQIA+ students, are provided a safe and supportive, inclusive, and equitable learning environment that is free of harassment, discrimination, intimidation and bullying. Administrators, faculty and staff are to intervene personally and immediately when they witness harassment, discrimination, intimidation or bullying of any student. If they cannot do so safely, they are to summon help to intervene. School administrators and staff should respond proactively to all prejudicial behavior targeted at gender

expansive students.

Complaints alleging discrimination, harassment or bullying based on a student's actual or perceived gender identity, gender expression, or sexual orientation, are to be handled in the same manner as other discrimination/harassment/bullying complaints. Consistent with applicable SVUSD District complaint procedures, complaints alleging discrimination or harassment based on a student's actual or perceived gender identity, gender expression, or sexual orientation should be given immediate attention, fully and appropriately investigated in a timely manner, and resolved through appropriate corrective action. This policy is intended to supplement, and not replace, state and federal laws prohibiting sexual harassment. Complaints under those laws shall be processed through the procedures established by appropriate state and/or federal agencies.

The Board believes that all persons, including students, have a right to privacy, and this includes the right to keep one's transgender status private at school. Information about a student's transgender status, legal name, or sex assigned at birth constitutes confidential personally identifiable and medical information. Disclosing this information to other students or parents (if the student is 18 years of age or older) or other third parties may violate privacy laws, such as the federal Family Educational Rights and Privacy Act (FERPA), as well as constitutional privacy protections. Additionally, disclosure or misuse of this information may establish a hostile environment for a transgender, non-binary, or gender expansive students, potentially subjecting them to bullying and harassment by peers, discrimination by school, staff, or family rejection.

[BP1312.3](#) and [AR 1312.3](#) - Uniform Complaint Procedures

[BP 5145.7](#) and [AR 5145.7](#) - Sexual Harassment

[BP 5145.3](#) and [AR 5145.3](#) - Nondiscrimination/Harassment

AR 4119.12, 4219.12, 4319.12 - Title IX Sexual Harassment Complaint Procedures (Personnel) AR 5145.71 - Title IX Sexual Harassment Complaint Procedures (Students)

Regulation 5157: ^Gender Identity and Access

Status: DRAFT

Original Adopted Date: Pending

PURPOSE

The purpose of this Administrative Regulation is to advise District staff regarding issues relating to transgender and gender non-conforming students in order to create and maintain a safe learning environment for all students and to ensure that every student has equal access to the District's educational programs and activities. This regulation sets out guidelines for school and district staff to address the needs of transgender students and explains how these nondiscrimination laws should be implemented in situations where questions may arise about how to protect the legal rights or safety of students. This regulation does not anticipate every situation that might occur with respect to transgender students, and the needs of each student must be assessed on a case-by-case basis. In all cases, the goal is to ensure the safety, comfort, and healthy development of all students, including transgender students, maximizing inclusion and social integration while minimizing exclusion and stigmatization.

DEFINITIONS

These definitions are not meant to label any student, but are intended as functional descriptors. Students may or may not use these terms to describe themselves.

Gender: Socially determined characteristics, roles, behaviors, and attributes a society expects from and considers appropriate for males and females; these characteristics are often referred to as "feminine" and "masculine." Under California law, "gender" is defined to include a person's gender identity. (Cal. Ed. Code § 210.7)

Gender Fluid: Persons who do not identify as, or who do not express themselves as, solely male or female.

Gender Identity: A person's internal, deeply-rooted identification as male or female or binary. All people have a gender identity, not just transgender people.

Gender Nonconforming: Displaying gender traits that are not consistent with stereotypical characteristics associated with one's legal sex assigned at birth, or others' perceptions of that sex. This term can be used to describe people whose gender expression differs from stereotypical expectations about how boys and girls are "supposed to" look or act.

LGBTQIA+: An umbrella term that stands for "lesbian, gay, bisexual, transgender, questioning, intersex, asexual and "+" refers to any other gender or sexual identities not accurately captured by the acronym."

Sex: The biological condition or quality of being a female or male human being.

Sexual Orientation: A person's romantic or sexual attraction to people of the other and/or same gender. (Cal. Ed. Code § 212.6) Common terms used to describe sexual orientation include, but are not limited to, heterosexual, lesbian, gay, and bisexual. Sexual orientation and gender identity are different. Transgender students may identify as gay, lesbian, bisexual, or heterosexual.

Sexualized Bullying: Unwanted or demeaning conduct or comments directed at or about an individual on the basis of actual or perceived gender, gender identity and expression, sex, sexual behavior, sexual orientation, or other related personal characteristics with the intention to humiliate. Anti-gay and sexist epithets are common forms of sexualized bullying.

Transgender: A person whose sex at birth is opposite from who they know they are on the inside.

DETERMINING A STUDENT'S GENDER IDENTITY

A school should accept a student's asserted gender identity when there is evidence that it is a sincerely held part of the student's core identity. A school may not question or disregard the student's assertion of his or her gender identity. There is no threshold medical or mental health diagnosis or treatment requirement that any student must meet in order to have his or her gender identity recognized and respected by a school. The term "gender transition" describes the experience by which a transgender person goes from living and identifying as one gender to living and identifying as another. For most transgender youth, the experience of gender transition involves no medical intervention. Rather, most transgender youth will undergo gender transition through a process commonly referred to as "social transition," whereby they begin to live and identify as the gender consistent with their gender identity. Some transgender youth who are close to reaching puberty, or after commencing puberty, may complement social

transition with medical intervention, such as hormone suppressants or hormone therapy, under the care of a physician. Whether such interventions are available or appropriate will depend on the unique circumstances of each individual. Similarly, a student is not required to have obtained a court-ordered name or gender change in order to have his or her requested name and gender identity recognized and respected by a school.

PRIVACY

All persons, including students, have a right to privacy: the right to decide when, with whom, and how much highly personal information one wants to share about oneself to others. This includes the right to control dissemination of highly personal and private information such as one's transgender status or sexual orientation. District and school personnel should not disclose a student's gender status or sexual orientation to others, including, but not limited to, other students, parents, and/or other school personnel, unless they are legally required to, or the student has authorized such disclosure, or there is a specific and compelling "need to know" (safety, such as self-harm or suicidal ideations) in order to protect the transgender student's interests. In those rare circumstances where disclosure is deemed to be absolutely necessary, before making any disclosure, school officials should inform the transgender student of the need to disclose and provide them with the opportunity and resources they may need to make the disclosure themselves. District and school personnel may encounter situations where a transgender student has not disclosed their transgender status to their parents. Whenever possible, school administrators should speak with the student to confirm the manner in which the student will be referred to in conversation with the parent/guardian. Generally, when contacting the parent or guardian of a transgender student, school personnel should use the student's legal name and the gender pronoun that corresponds to their legal sex, unless the student, parent, or guardian has specified otherwise. All students, including transgender students, have the right to openly discuss and express their gender identity or transgender status and to decide when, with whom, and how much to share that private information. In sharing this information, a student does not give up the right to privacy and at no time may the school use a student's self-disclosure as grounds for sharing information about the student's gender identity or transgender status without the student's permission.

NAMES/PRONOUNS

Should a student or parent/legal guardian request to have the student addressed by a name and pronoun different from those associated with the student's sex at birth, the school will honor that request and set expectations for their consistent use. District and school officials may not require proof of a court-ordered name or gender change before honoring such a request. Districts and schools should also endeavor to proactively adapt student information systems to accommodate requested names and pronouns to prevent inadvertently revealing information that would violate the student's privacy. While inadvertent slips or honest mistakes in the use of names or pronouns may occur, staff or students intentionally and persistently refusing to respect a student's gender identity by using the wrong name and gender pronoun is discriminatory and is a violation of this policy.

SCHOOL RECORDS

The District is required to maintain an official, permanent pupil record with the legal name and gender appearing on the student's birth certificate. On all other school related records or documents, however, at the request of or with the consent of the student's parent/legal guardian (unless the student is over 18), schools should use a transgender student's requested name and gender pronoun. This would include physical records and documents, diplomas and other certificates of advancement, electronic records and documents, and school IDs. Every effort should be made to update student records with the student's requested name and gender pronoun or gender marker, and not to circulate records with the student's assigned birth name or gender marker. Schools should also identify routine areas where a transgender student's privacy could be violated by the improper usage of the legal name and gender marker. These include but are not limited to pre-printed labels, standardized tests, student IDs or library cards, lunch tickets, school photos, notices from the main office, attendance slips, grade books, posted lists of student names, lesson plans, seating charts and roll sheets used by substitute teachers, and any other places where students' names are commonly written. In order to protect the student's privacy, and to prevent accidental disclosure of a student's transgender status, the school should maintain the official, permanent pupil record in a secure location, separate from the student's other records. If the official record is maintained electronically, similar security measures should be implemented to protect student privacy. In the event that a student identifies as transgender, but is unable to obtain consent from a parent or legal guardian, a school administrator should meet with the student to discuss how the student would like to be addressed at school and implement a plan to ensure that the student's privacy is protected, including what FERPA is and their rights within FERPA. When a student or parent/legal guardian presents the school with documentation of a court-ordered legal name and/or gender change, the school must then change the official, permanent pupil record, to reflect the student's new legal name and gender, in a timely manner. Transgender students who transition after having graduated may ask their previous schools to amend school records or a diploma or transcript that include the student's birth name and gender. When requested, schools should amend

the student's record, including reissuing a high school diploma or transcript, to reflect the student's current name and gender.

RESTROOM AVAILABILITY

Schools may maintain separate restroom facilities for male and female students. However, students shall have access to the restroom that corresponds to their gender identity. Where available, a single stall, "gender neutral" restroom (such as in the health office) may be used by any student who desires increased privacy, regardless of the underlying reason. The use of such a "gender neutral" restroom shall be a matter of choice for a student and no student shall be compelled to use such a restroom. As a proactive measure, administrators should take steps to identify private gender neutral restrooms on their campus, as well as to de-stigmatize the use of such private options. Establishing clear guidelines and expectations with regards to students' physical privacy and boundaries is also important. Both can be reinforced through language in student handbooks, posted expectations, and through orientation and other processes for familiarizing students and guardians to the school and its facilities.

LOCKER ROOM ACCESSIBILITY

Schools may maintain separate locker room facilities for male and female students. However, students shall have access to the locker room facility that corresponds to their gender identity. If any student has a need or desire for increased privacy or safety, regardless of the underlying reason, they may be provided access to a reasonable alternative changing area or locker room such as:

- Use of a private area in the public area of the locker room facility (i.e., a nearby restroom stall with a door, an area separated by a curtain, or a P.E. instructor's office in the locker room).
- A separate changing schedule (either utilizing the locker room before or after other students).
- Use of a nearby private area (i.e., a nearby restroom or a health office restroom).

However, use of such an alternative changing space shall be a matter of choice for a student and no student shall be compelled to use such an alternative. School administrators should also work to de-stigmatize the use of such options, as well as to establish clear guidelines and expectations with regard to respecting privacy and boundaries in changing areas and other close quarters.

SPORTS AND PHYSICAL EDUCATION CLASSES

Transgender students shall be permitted to participate in physical education classes, intramural sports, and competitive athletic activities in a manner consistent with their gender identity. This is consistent with California and federal law as well as the policies established by the California Interscholastic Federation. (CIF Bylaws § 300(D)).

DRESS CODES/SCHOOL UNIFORM POLICIES

All students have the right to dress in accordance with their gender identity and gender expression. School dress code and uniform policies should be gender-neutral, and should not restrict students' clothing choices on the basis of gender or traditional stereotypes about what males and females "should" wear.

CURRICULUM and TRAINING

The Superintendent, or designee, shall ensure that students receive age-appropriate, annual and accurate information and education related to sexual orientation, gender identity, and gender expression. The District will integrate LGBTQ+ historical and fictional figures into the curriculum and library collection in an age-appropriate manner. In addition, the Superintendent or designee shall designate qualified individuals to provide appropriate training and educational programs on the issue of harassment, discrimination, intimidation, or bullying based on sexual orientation, gender identity, and gender expression.

CLUBS and STUDENT ORGANIZATIONS

Students should be allowed to organize as a community on campus through clubs, social events, and other student initiatives similar to other student-organized clubs.

HARASSMENT AND BULLYING

Complaints alleging discrimination, harassment or bullying based on a student's gender identity, gender expression, or gender nonconformity, are to be handled in the same manner as other discrimination/harassment/bullying complaints. Consistent with the Uniform Complaint Procedures, complaints alleging discrimination or harassment

based on a student's gender identity, gender expression, or gender nonconformity should be given immediate attention; fully and appropriately investigated in a timely manner; and resolved through appropriate corrective action.

Policy Brief

Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students

A safe, nondiscriminatory school environment—where students are not distracted by fear nor disengaged from learning because of nonacceptance by their peers or staff—is essential to student achievement. Governing boards play a critical role in ensuring that the schools in their community are free of discrimination, harassment, intimidation and bullying.

This policy brief focuses on efforts to prevent discrimination against transgender and other gender-nonconforming students, although the strategies may be applied to other types of discrimination as well. Both state and federal law protect transgender and gender-nonconforming students from discrimination. As described in the section “Legal Requirements” below, new state law (AB 1266, Ch. 85, 2013) attempts to clarify how nondiscrimination laws apply to sex-segregated programs, activities and facilities. Although the status of the new law is uncertain at the time of this writing due to a petition to place a referendum on the ballot to overturn the law, its fate does not affect the responsibility of districts and county offices of education (COEs) to ensure the safety and well-being of such students at school.

Because of societal prejudice and lack of awareness or understanding, transgender students and gender-nonconforming students may experience ongoing rejection, criticism or bullying, affecting their emotional health and academic achievement.¹ Therefore, along with ensuring compliance with nondiscrimination laws, districts/COEs are encouraged to develop strategies to minimize social stigmatization for such students and maximize opportunities for social integration so that all students have an equal opportunity to attend school, be engaged and achieve academic success.

Definitions

Education Code 210.7 defines “gender” and “gender expression” as follows:

- » “Gender” refers to a person’s sex and includes his/her gender identity and gender expression.
- » “Gender expression” means a person’s gender-related appearance and behavior, whether or not stereotypically associated with the person’s assigned sex at birth.

Although not defined in law, the following are generally accepted definitions of other related terms:^{2,3}

- » “Gender identity” refers to a person’s gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person’s physiology or assigned sex at birth.
- » “Transgender” describes people whose gender identity or gender expression is different from that traditionally associated with their assigned sex at birth.
- » “Gender nonconforming” describes a person whose gender expression differs from stereotypical expectations, such as “feminine” boys, “masculine” girls and those who are perceived as androgynous.
- » “Sexual orientation” refers to a person’s emotional and sexual attraction to other people based on the gender of the other person. Sexual orientation is not the same as gender identity. Not all transgender youth identify as gay, lesbian or bisexual, and not all gay, lesbian and bisexual youth display gender-nonconforming characteristics.

Harassment based on gender identity and nonconformity

Studies on bullying tend to reveal that the behaviors of harassers “reinforce expected cultural norms for boys and girls and punish students who don’t fit the ideals of traditional gender roles.”⁴

Insults that refer to perceptions of gender roles or sexuality are common among students. Students whose behavior is perceived to be different in some way can often be isolated and harassed. It is more frequently gender stereotyping, not sexual orientation, that is largely responsible for the frequency and severity of bullying directed at students who identify as gay or lesbian.

In a national study of students in grades 6-12, the majority reported hearing homophobic remarks frequently or often: 85 percent frequently or often heard “gay” used in a negative way, 71 percent heard other homophobic remarks and 61 percent heard negative remarks about students not acting “masculine enough” or “feminine enough.”⁵

The personal effects of harassment can be traumatic and enduring. One study found that “the damage to the victims of bullying may be physical, emotional and psychological and the resulting trauma can last a lifetime.”⁶ This study also found that students who have experienced harassment at school because of their gender are twice as likely as their peers to report having carried a gun to school or to report attempting suicide.

Furthermore, when students feel unsafe, they are more likely to be truant or to be academically disengaged. A California Safe Schools Coalition survey found that nearly 109,000 school absences at the middle and high school levels in California each year are due to harassment based on actual or perceived sexual orientation, costing California districts at least \$39.9 million each year.⁷

Other studies of lesbian, gay, bisexual and transgender (LGBT) students reveal that 31 percent report having missed at least one day of school in the previous month because they did not feel safe at school. In fact, LGBT students are four times more likely to skip school out of safety concerns.⁸

Although it is difficult to find research showing a direct causal relationship between harassment of LGBT students and negative impact on student achievement, it is reasonable to expect that lower school attendance and a negative school climate would result in lower levels of achievement. The findings of a national study suggest that students who have higher grade point av-

erages are those who feel safer in their school environment (mean GPA of 3.2 with lower victimization based on sexual orientation or gender expression compared to a mean GPA of 2.9 with higher victimization) and that students who feel safe in their schools are more likely to plan to go to college.⁹

Research shows that the extent to which LGBT students feel safe in school can be improved by the availability of resources and supports in schools. For example, in schools with comprehensive anti-harassment policies that specify sexual orientation or gender expression, students report that they hear biased remarks less frequently and experience significantly lower severities of victimization related to their sexual orientation and gender expression. They are also more likely to report any victimization to school staff and to believe that reporting to school staff was effective.¹⁰

Legal requirements

State and federal law prohibits discrimination of students based on their actual or perceived sex, gender, sexual orientation, gender identity or expression, race, color, ancestry, national origin, ethnic group identification, age, religion, marital or parental status, physical or mental disability or genetic information (Education Code 220; 42 USC 2000d-2000e-17, 2000h-2000h-6).

In addition, Education Code 234.1, as amended by AB 9 (Ch. 728, Statutes of 2011), mandates that districts adopt policy prohibiting discrimination, harassment, intimidation and bullying based on the above categories at school or in any school activity related to school attendance or under the authority of the district. Education Code 234.1 further requires districts to adopt a process requiring school personnel to immediately intervene, when it is safe to do so, whenever they witness acts of discrimination, harassment, intimidation or bullying based on the characteristics specified in Education Code 220 or 234.1 or Penal Code 422.55, including gender identity.

Education Code 221.5 specifically prohibits discrimination on the basis of sex with regards to enrollment in classes or courses, career counseling and availability of physical education activities or sports to both sexes.

In 2013, AB 1266 amended Education Code 221.5 to clarify that students must be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with their gender identity, regardless of the gender listed in their student records. As of this

writing, the status of AB 1266 is uncertain due to a referendum effort challenging its enactment. Regardless of the eventual outcome of this referendum effort, it is still prudent to follow the guidance set forth in this brief given existing state and federal nondiscrimination law. For instance, prior to the passage of AB 1266, the U.S. Department of Education's Office for Civil Rights and U.S. Department of Justice's Civil Rights Division reached a resolution agreement with the Arcadia Unified School District in which the district agreed to provide transgender and gender-nonconforming students with equal access to district facilities, programs and activities consistent with their gender identity (<http://1.usa.gov/1aQCKVe>).

Recommendations for implementing these nondiscrimination laws are discussed below in the sections "Policy Considerations" and "Other Board Actions."

Policy considerations

It is recommended that districts/COEs adopt policies and administrative regulations that prohibit harassment and discrimination against transgender and gender-nonconforming students, address appropriate accommodations, establish consequences for those who harass or discriminate against students and set a tone that allows students to feel safe to report harassment. Proactive adoption of such materials provides a consistent districtwide plan and an opportunity to develop an understanding among staff, students, parents/guardians and the community regarding legal requirements and actions being taken to ensure student privacy.

CSBA provides a sample board policy, BP 5145.3 - Nondiscrimination/Harassment, which addresses the nondiscrimination and harassment of students on the basis of sex, gender, gender identity, gender expression, sexual orientation and other prohibited categories of discrimination. In January 2014, CSBA updated BP 5145.3 and added a new sample administrative regulation AR 5145.3 to include best practices designed to ensure nondiscrimination with respect to transgender and gender-nonconforming students. At the same time, CSBA updated BP 0410 - Nondiscrimination in District Programs and Activities and AR 6145.2 - Athletic Competition to address related concepts.

Other policies and administrative regulations may also be used to support the board's priority on providing safe school environments for all students and should be aligned, such as BP/AR 0450 - Comprehensive Safety Plan, BP/AR 5131 - Conduct, BP 5131.2 - Bullying, BP 5137 - Positive School Climate, BP/AR 5145.7 - Sexual Harassment and BP 5145.9 - Hate-Motivated Behavior.

Issues that boards and superintendents should consider addressing in policy or administrative regulation include, but are not limited to:

- » **Determination of a student's gender identity.** The district/COE should accept a student's assertion of his/her gender identity and not require any particular substantiating evidence. However, if district/COE personnel have a credible basis for believing that a student's gender-related identity is being asserted for an improper purpose, this basis should be documented and a written response should be provided to the student and, if appropriate, his/her parents/guardians.
- » **Preferred names and pronouns.** State regulations (5 CCR 432) require districts/COEs to maintain a mandatory permanent student record for each student which includes the legal name of the student and the student's sex. If a student provides documentation of a legal name or gender change, then the official student record must be changed to reflect this. However, students should be allowed to be addressed by their preferred name and the pronoun that corresponds to their gender identity without being required to obtain a court-ordered name or gender change or to change their official records. A school employee's intentional and persistent refusal to respect a student's gender identity is considered discriminatory.
- » **Access to sex-segregated facilities.** Although schools may maintain separate restrooms, locker rooms or other facilities for males and females, students must be allowed to use the facility that corresponds to their gender identity upon request. Where available, a "gender-neutral" restroom or changing area may be offered to any student who desires increased privacy, regardless of the underlying reason. Other options to address privacy concerns include a bathroom stall with a door, an area in the locker room separated by a curtain or screen, access to a staff member's office, or use of the locker room before or after the other students. However, no student who is entitled to use a facility consistent with his/her gender identity can be required to use an alternative arrangement. Any alternative arrangement should be used only at the request of the student and, if applicable, in a manner that keeps the student's gender identity confidential.
- » **Physical education and interscholastic athletic activities.** Whenever the school provides sex-segregated physical education classes or athletic activities, students must be allowed to participate

in a manner consistent with their gender identity. For schools participating in interscholastic athletic competitions, bylaws of the California Interscholastic Federation (CIF) also provide that all students should have the opportunity to participate in CIF activities consistent with their gender identity.

- » **Dress.** Students should have the right to dress in accordance with their gender identity, within the constraints of district and school dress codes or school uniform policies.
- » **Privacy for transgender students.** Students must be able to decide when, with whom and how much highly personal information they want to share about themselves with others. This includes the right to control dissemination of highly personal and private information such as one's gender identity, transgender status or sexual orientation. District/COE personnel should not disclose a student's actual or perceived sexual orientation, gender identity or gender expression to others, including other students, parents/guardians or other school personnel, unless required to do so by law or unless the student has agreed in writing. However, certain requests (e.g., a name and pronoun change) cannot be kept private. Therefore, school personnel are strongly encouraged to be in regular contact with a transgender student to ensure that issues of privacy can be discussed and addressed.
- » **Privacy for nontransgender students.** There may be a student who feels that participating in sex-segregated school programs and activities or being in sex-segregated facilities (e.g., a restroom or a locker room where students undress) with another student of the opposite biological sex is a violation of his/her right to privacy or his/her religious tenets. It is recommended that all students and parents/guardians be notified of the possibility before one arises. However, sending out a notification—such as to a physical education class—that a student is transitioning from one gender to another would violate the transgender student's privacy. Therefore, in order to balance these potentially competing rights, the annual notices sent to students and parents/guardians at the beginning of each school year could include a disclosure stating that the district allows students, consistent with their gender identity, to use facilities and to participate in sex-segregated school programs and activities, including athletic teams and competitions. The disclosure should also mention that a student for whom this presents a potential violation of his/her right to privacy or religious expression should notify school personnel, who will work with the student and, if appropriate, the

parents/guardians to find an acceptable arrangement (see "Access to sex-segregated facilities" above).

It is important to make the nondiscrimination policy and related complaint procedures readily accessible to students and parents/guardians through the policy manual, student handbook, district/COE or school website, school offices and other appropriate venues. By making the policy widely known and distributing information, students who are bullied may be less likely to fear reporting discrimination or harassment.

When a student requests any accommodations consistent with his/her gender identity, it is recommended that site or district administrators meet with the transgender student and, if appropriate, the student's parents/guardians to develop a plan to accommodate the student's needs and requests. Similarly, if a nontransgender student requests any accommodations for privacy or religious reasons, it is recommended that administrators meet with the student and, if appropriate, the student's parents/guardians to develop a plan to accommodate the student's needs and requests. As needed, the district/COE should also consult with legal counsel in responding to all such requests.

Other board actions

The board, working with the superintendent, can promote a culture free from discrimination and harassment throughout its major areas of responsibility:

- » **Setting direction for the community's schools.** As the governance team establishes a long-term vision, goals and priorities, it should consider specific statements related to ensuring that all students are safe at school and that harassment is not tolerated. The board has an opportunity to foster an understanding among the governance team about the importance of establishing a safe school environment and its link to student attendance, engagement, learning and academic achievement.
- » **Establishing an effective structure for the district/COE.** As noted in the section "Policy Considerations" above, the adoption of board policies and administrative regulations is one of the primary tools of the district/COE to ensure compliance with the law. The governance team also establishes structure for the district/COE through its decisions related to the budget, facilities and curriculum, all of which can be aligned with the prioritization of student safety and promotion of a positive school climate.
- » **Providing support to district/COE staff as they carry out the board's direction.** Once the policy of nondiscrimination is adopted, it is important that

district/COE personnel appropriately and consistently implement the policy. The superintendent or designee should develop administrative regulations as appropriate to assist in policy implementation. Staff should be notified of the policy and regulations and provided with information and staff development as needed to ensure they understand the right of all students to a safe environment, the law and district/COE expectations regarding accommodations for transgender and gender-nonconforming students, the law requiring staff to immediately intervene when they observe acts of bullying and disciplinary consequences for staff and students who engage in discrimination or harassment. School staff might also consider how the use of gender to divide groups of students (e.g., dividing boys and girls into separate lines to exit or enter the classroom) can subject transgender and gender-nonconforming students to teasing and ridicule.

- » **Ensuring accountability to the public.** The governance team has a responsibility to monitor and evaluate the effectiveness of efforts to prevent and reduce harassment. The board and superintendent should agree on the data that will be collected (e.g., incidence of hate-related violence, graffiti, suspensions or expulsions; student surveys of school climate; accommodations or strategies that have been implemented to prevent harassment) and how often such data will be reported to the board. The data should be used to recommend policy revisions, if necessary.
- » **Acting as community leaders.** The governance team has a responsibility to explain to parents/guardians, students, staff and the community the obligations of the district/COE under state and federal nondiscrimination laws. The governance team should also work with parents/guardians, community partners, community agencies, law enforcement and other stakeholders in efforts that promote a culture of safe schools for all students. Such stakeholders might be involved in developing goals, policy or specific strategies related to nondiscrimination; providing counseling or other services to assist at-risk students; and/or assisting in program evaluation.

Through these actions, the board can clearly declare its opposition to any form of discrimination or harassment. By publicizing its efforts and providing clear steps for how issues will be resolved, the district/COE can encourage students to feel safe in reporting issues of harassment. Prohibition of harassment based on gender identity or gender nonconformity will be one part of a broader effort to create a safe school environment so that all students have

an equal opportunity to attend school, be engaged in the classroom and ultimately to achieve academic success.

Questions to consider

As the governance team discusses and determines how it will address issues of discrimination and harassment based on gender identity and gender nonconformity and how it will work to protect the safety of all students, it might consider the following questions:

- » What policy direction can the board provide to ensure that school climates are safe, that students have confidence that complaints will be investigated appropriately and that there will not be retaliation for reporting incidents of discrimination, harassment, intimidation and bullying?
- » Do students and staff understand how to access the complaint procedures should an alleged incident of discrimination or harassment occur?
- » How will the governance team ensure that there is consistent implementation of policies prohibiting discrimination and harassment on the basis of gender identity and gender nonconformity across all grade levels and school sites?
- » What methods can be used to communicate with students, parents/guardians and staff regarding legal requirements and board policy related to nondiscrimination?
- » How might issues of privacy be impacted by any accommodations granted to transgender students? Are there additional actions that can be taken to ensure student privacy?
- » How might policies about dress code and student appearance be impacted by the nondiscrimination policy?
- » Do school personnel understand the requirements regarding the use of student names and pronouns?
- » Is professional development needed to ensure that all staff understand the law and board expectations regarding nondiscrimination, harassment, intimidation and bullying?
- » What types of data should the district/COE gather and analyze in order to determine the effectiveness of its nondiscrimination/harassment policy and practices?

Resources

California School Boards Association provides sample board policies, policy briefs, publications and other resources on a variety of topics related to school safety, including *Interim Guidance Regarding Transgender Students, Privacy, and Facilities* (September 27, 2013). www.csba.org

American Civil Liberties Union provides information about protecting the rights of lesbian, gay, bisexual and transgender people, including *Q & A: Adding Sexual Orientation and Gender Identity to Discrimination and Harassment Policies in Schools*. www.aclu.org

California Safe Schools Coalition is a statewide partnership of organizations and individuals dedicated to eliminating discrimination and harassment on the basis of actual or perceived sexual orientation and gender identity in California schools. www.casafeschools.org

Gay, Lesbian and Straight Education Network is a national education organization focused on ensuring safe schools for all students, regardless of their sexual orientation, gender identity or gender expression. www.glsen.org

Gay-Straight Alliance Network is a national youth leadership organization connecting gay-straight alliances to each other and community resources. www.gsanetwork.org

Suicide Prevention Resource Center promotes a public health approach to suicide prevention. Resources include *Suicide Risk and Prevention for Lesbian, Gay, Bisexual and Transgender Youth*. www.sprc.org

Transgender Law Center is a civil rights organization advocating for transgender communities, connecting transgender people and their families to technically sound and culturally competent legal services. Publications include *Transgender and Gender Non-Conforming Youth—Recommendations for Schools*. www.transgenderlawcenter.org

In addition to the above organizations, the following journal articles may be useful:

Espelage, D., Aragon, S., Birkett, M., & Koenig, B. (2008, June). Homophobic teasing, psychological outcomes, and sexual orientation among high school students: What influence do parents and schools have? *School Psychology Review*, 37(2), 202-216. Available at <http://bit.ly/19TfRZn>

Fisher, E., Komosa-Hawkins, K., Saldana, E., Thomas, G., Hsiao, C., Rauld, M., & Miller, D. (2008). Promoting school success for lesbian, gay, bisexual, transgendered and questioning students: Primary, secondary, and tertiary prevention and intervention strategies. *California School Psychologist*, 13, 79-91. Available at <http://bit.ly/117C019>

Van Wormer, K., & McKinney, R. (2003, Fall). What schools can do to help gay/lesbian/bisexual youth: A harm reduction approach. *Adolescence*, 38(151), 409-420. Available at www.uni.edu/vanworme/articles/gayyouth.pdf

Endnotes

1 Clarke, T.J., & Russell, S.T. (2009). *School Safety and Academic Achievement*. (Safe Schools Research Brief No. 7). San Francisco: California Safe Schools Coalition. Available at www.casafeschools.org/getfacts.html

2 California Safe Schools Coalition. Model School District Policy Regarding Transgender and Gender Nonconforming Students. San Francisco: California Safe Schools Coalition. Available at <http://bit.ly/1hU0CzC>

3 Gay-Straight Alliance Network/Tides Center, Transgender Law Center and National Center for Lesbian Rights. (2004). *Beyond the Binary: A Tool Kit for Gender Identity Activism in Schools*. San Francisco, CA: GSA Network. Available at <http://bit.ly/LSN5ge>

4 Higdon, M.J. (2010). *To Lynch a Child: Bullying and Gender Non-Conformity in Our Nation's Schools*. University of Tennessee Legal Studies Research Paper No. 102. Available at <http://ssrn.com/abstract=1558135>

5 Kosciw, J.G., Greytak, E.A., Bartkiewicz, M.J., Boesen, M.J., & Palmer, N.A. (2012). *The 2011 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation's Schools*. New York: Gay, Lesbian and Straight Education Network. Available at <http://bit.ly/1ekZRv9>

6 Russell, S.T., McGuire, J.K., Laub, C., Manke, E., O'Shaughnessy, M., Heck, K., & Calhoun, C. (2006). *Harassment in School Based on Actual or Perceived Sexual Orientation: Prevalence and Consequences*. (Safe Schools Research Brief No. 2). San Francisco: California Safe Schools Coalition. Available at <http://bit.ly/1dVZdcC>

7 Russell, S.T., Talmage, C., Laub, C., & Manke, E. (2009). *The Economic Costs of Bullying at School*. (Safe Schools Research Brief No. 5). San Francisco, CA: California Safe Schools Coalition. Available at www.casafeschools.org/getfacts.html

8 Kosciw, J.G., & Diaz, E.M. (2008). *Involved, Invisible, Ignored: The Experiences of Lesbian, Gay, Bisexual and Transgender Parents and Their Children in Our Nation's K-12 Schools*. New York: Gay, Lesbian and Straight Education Network. Available at <http://bit.ly/KSnwLE>

9 Kosciw, J.G., et al. (2012).

10 Kosciw, J.G., et al. (2012).



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Frequently Asked Questions

School Success and Opportunity Act (Assembly Bill 1266) Frequently Asked Questions.

Consistent with our mission to provide a world-class education for all students, from early childhood to adulthood, the California Department of Education issues the following Frequently Asked Questions (FAQs) in an effort to (a) foster an educational environment that is safe and free from discrimination for all students, regardless of sex, sexual orientation, gender identity, or gender expression, and (b) assist school districts with understanding and implementing policy changes related to AB 1266 and transgender student privacy, facility use, and participation in school athletic competitions.

These FAQs are provided to promote the goals of reducing the stigmatization of and improving the educational integration of transgender and gender nonconforming students, maintaining the privacy of all students, and supporting healthy communication between educators, students, and parents to further the successful educational development and well-being of every student.

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1. [What is Assembly Bill \(AB\) 1266?](#)
2. [When did this law go into effect?](#)
3. [What specifically does AB 1266 provide?](#)
4. [How should a school district, teacher, school administrator or other employee define gender, transgender, or gender identity?](#)
5. [How can a teacher or school administrator determine whether a student is transgender or not?](#)
6. [May a student's gender identity be shared with the student's parents, other students, or members of the public?](#)
7. [What steps should a school or school district take to protect a transgender or gender nonconforming student's right to privacy?](#)
8. [What is a school or school district's obligation when a student's stated gender identity is different than the student's gender marker in the school's or district's official records?](#)
9. [How does a school or school district determine the appropriate facilities, programs, and activities for transgender students?](#)

A school may maintain separate restroom and locker room facilities for male and female students. However, students shall have access to the restroom and locker room that corresponds to their gender identity asserted at school. As an alternative, a "gender neutral" restroom or private changing area may be used by any student who desires increased privacy, regardless of the underlying reason. The use of such a "gender neutral" restroom or

private changing area shall be a matter of choice for a student and no student shall be compelled to use such restroom or changing area.

If there is a reason or request for increased privacy and safety, regardless of the underlying reason, any student may be provided access to a reasonable alternative locker room such as:

- A. Use of a private area in the public area of the locker room facility (i.e., a nearby restroom stall with a door, an area separated by a curtain, or a P.E. instructor's office in the locker room).
- B. A separate changing schedule (either utilizing the locker room before or after the other students).
- C. Use of a nearby private area (i.e., a nearby restroom or a health office restroom).

It should be emphasized that any alternative arrangement should be provided in a way that keeps the student's gender identity confidential.

Schools cannot, however, require a transgender student to use those alternatives. Requiring a transgender student to be singled out by using separate facilities is not only a denial of equal access, it also may violate the student's right to privacy by disclosing the student's transgender status or causing others to question why the student is being treated differently.

Some students (or parents) may feel uncomfortable with a transgender student using the same sex-segregated restroom or locker room. This discomfort is not a reason to deny access to the transgender student. School administrators and counseling staff should work with students and parents to address the discomfort and to foster understanding of gender identity, to create a school culture that respects and values all students.

10. How should a school or district determine the appropriate placement for transgender students related to sports and physical education classes?
11. May a school district or school enforce a gender-based dress code?
12. How should school districts and schools address harassment, bullying and abuse of transgender students?
13. Should a school district or school generally review its gender-based policies?

RECENT DEVELOPMENTS AND RESOURCES

The California School Boards Association's (CSBA) [Legal Guidance on Rights of Gender Nonconforming Students in Schools](#) 

CSBA has also developed a model board policy and administrative regulation that can be adopted by districts. The most current CSBA sample language is available through [GAMUT Policy and Policy Plus](#) .

- Board Policy 5145.3 - Nondiscrimination/Harassment
- Administrative Regulation 5145.3 - Nondiscrimination/Harassment

Office for Civil Rights Complaint and Resolution Agreement

On July 24, 2013, the U.S. Department of Education's Office for Civil Rights and the U.S. Department of Justice's Civil Rights Division entered into a Resolution Agreement with the Arcadia Unified School District to resolve a complaint alleging violations of Title IX. The case was brought on behalf of a transgender student who was denied access to the boys' restrooms and locker rooms, and required to sleep in a separate facility during an overnight field trip. The agreement requires the school district to treat the student in a manner consistent with his gender identity for all purposes. Moreover, the school district agreed to retain a consultant to revise their policies to prohibit discrimination on the basis of gender identity and implement a district-wide training program for staff and students.

The [Resolution Agreement](#)  (PDF; Posted 29-Jan-2016) between the Office for Civil Rights and Arcadia Unified School District

California Interscholastic Federation

In February 2013, the California Interscholastic Federation (CIF) issued new bylaws which provide that all students should have the opportunity to participate in CIF activities in a manner that is consistent with their gender identity. CIF Regulation 300 D, Gender Identify Participation, provides:

Participation in interscholastic athletics is a valuable part of the educational experience for all students. All students should have the opportunity to participate in CIF activities in a manner that is consistent with their gender identity, irrespective of the gender listed on a student's records. The student and/or the student's school may seek review of the student's eligibility for participation in interscholastic athletics in a gender that does not match the gender assigned to him or her at birth, should either the student or the school have questions or need guidance in making the determination, by working through the procedure set forth in the "Guidelines for Gender Identity Participation."

NOTE: The student's school may make the initial determination whether a student may participate in interscholastic athletics in a gender that does not match the gender assigned to him or her at birth.

The new [California Interscholastic Federation bylaws](#) .

Office for Civil Rights, Questions and Answers on Title IX and Sexual Violence, April 29, 2014

In April 2014, the U.S. Department of Education, Office for Civil Rights, issued guidance making clear that federal law prohibits discrimination against students on the basis of transgender status: “Title IX's sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity and OCR accepts such complaints for investigation” [↗](#) (PDF; Posted 29-Jan-2016).”

Office for Civil Rights Dear Colleague Letter, October 26, 2010

In October 2010, the U.S. Department of Education, Office for Civil Rights, issued a Dear Colleague Letter that, among other things, clarified that although Title IX does not prohibit discrimination on the basis of sexual orientation, harassment directed at a student because that student is gay, lesbian, bisexual, or transgender may constitute sexual harassment and sex discrimination prohibited by Title IX.

The U.S. Department of Education, Office for Civil Rights, Dear Colleague Letter, October 26, 2010 [↗](#) (PDF; Posted 29-Jan-2016)

Other Resources

Gay-Straight Alliance Network/Tides Center, Transgender Law Center and National Center for Lesbian Rights. (2004). Beyond the Binary: A Tool Kit for Gender Identity Activism in Schools. San Francisco, CA: GSA Network [↗](#) (PDF; Posted 29-Jan-2016)

Gerald P. Mallon, “Practice with Transgendered Children,” in *Social Services with Transgendered Youth* 49, 55-58 (Gerald P. Mallon ed., 1999)

Stephanie Brill & Rachel Pepper, *The Transgender Child*, 61-64 (2008).

Questions: School Health and Safety Office | shso@cde.ca.gov | 916-319-0914

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