

ENSURING EQUITY AND NONDISCRIMINATION FOR TRANSGENDER AND GENDER NON CONFORMING STUDENTS

*A Reference Guide for District Staff**

PURPOSE:

California Education Code (Ed Code) Section 220 and Board policy 0410 and BP 5145.3 require that all programs, activities, and employment practices should be conducted without discrimination based on actual or perceived sex, sexual orientation, or gender identity and expression. Ed Code Section 220 further provides that public schools have an affirmative obligation to combat sexism and other forms of bias, and a responsibility to provide equal educational opportunity to all pupils. In addition AB 1266, passed in 2013, amended California 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 the student records.

The Santa Cruz City Schools is committed to providing a safe learning environment for all students, including transgender and gender non conforming students, and to ensuring that every student has equal access to the District's educational programs and activities. Additionally, the District policy requires that all schools and all personnel promote mutual respect, tolerance, and acceptance among students and staff.

The purpose of this Reference Guide 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 an equal access to the District's educational programs and activities. The guidelines provided in this Reference Guide do not anticipate every situation that might occur with respect to transgender or gender non conforming students, and the needs of each transgender or gender non conforming student must be addressed on a case-by-case basis.

With thanks to:

The Massachusetts Transgender Political Coalition Policy Committee, November 2012: Best Practices for Serving Transgender and Gender Non-Conforming Students in Schools

DEFINITIONS

The following definitions are not meant to label a student, but are intended as functional descriptors:

Assigned sex: a student's legally assigned sex at birth.

Gender Identity: how a student identifies one's own gender, or inner sense of being a boy or a girl, or somewhere in between these identities, regardless of the student's assigned sex at birth. This includes a student's gender-related identity, appearance, expression, or behavior.

Gender Expression: how a student expresses gender identity or the characteristics and behaviors that people use to identify another person's gender. This can include appearance, dress, mannerisms, speech patterns, and social interactions that are perceived as masculine, feminine or androgynous.

Gender Non-Conforming: having gender-related characteristics and/or behaviors that do not conform to stereotypical or traditional expectations; this can include appearance, dress, mannerisms, speech patterns, and social interactions that are perceived to be androgynous and/or a variation of masculine and feminine expressions.

Gender Non Binary Nonbinary refers to any gender that is not exclusively male or female. Some students do not identify as male or female.

Preferred Name: the name with which a student identifies and prefers others to use. A student may choose to legally change one's name to correspond to the gender identity and/or expression. This is not unlike the common practice of legal name change by which people change their names for various reasons. A student may also not legally change a name due to the law's requirement for parental consent and/or not having reached the age of 18, but prefer to use a name that is different than the legal name, not unlike the common practice of using a nickname where the expectation is that others refer to the student by the nickname, rather than the legal name.

Transgender: an umbrella term used to describe students whose gender expression and/or gender identity is different from their assigned sex at birth, regardless of any gender-related medical or surgical treatment they may or may not have received. This can include transsexual students, transgender students, cross-dressing students, androgynous students, and other students whose appearance or characteristics are perceived to be gender-atypical.

Transgender Boy (Female-to-Male/FTM): a student who was assigned the female sex at birth, but identifies and lives as a boy and uses masculine pronouns.

Transgender Girl (Male-to-Female/MTF): a student who was assigned the male sex at birth, but identifies, and lives as a girl and uses feminine pronouns.

Transition: the personal process transgender/transsexual students undergo to begin to live as their self-identified gender. This may include some or all of the following cultural, legal, and medical adjustments: telling one's family, friends, and/or classmates; changing one's style of dress; changing one's name and/or sex on legal documents; hormone therapy; and possibly (though not always) some form of surgical procedure.

DISTRICT PRACTICE AND PROCEDURES

STUDENT RECORDS

A. NAMES AND PRONOUNS

Transgender and gender non-conforming students should be addressed and referred to by their preferred names, and by pronouns corresponding to their gender identity that are exclusively and consistently asserted at school. Students are not required to obtain a court-ordered name and/or gender change, change their official records, or have a diagnosis from a psychologist or therapist as a prerequisite to being addressed by their preferred name and pronoun. While inadvertent slips or honest mistakes may occur, intentional or persistent refusal to respect a student's gender identity should not be tolerated. A reasonable effort should be made to include the preferred name in the student information system, instead of or in addition to the student's legal name, in order to inform teachers and administrators of the correct name and pronouns to use when addressing and referring to the student. Students should be referred to with their preferred pronouns, such as he/his, she/her, or gender neutral pronouns (for example ze/hir or they/them) if they so request.

B. OFFICIAL RECORDS

Upon receipt of documentation that a transgender student has changed their legal name and/or gender marker the student's school is obligated to make the necessary corrections in the student's official records. Upon receipt of documentation that a former student has changed their legal name, a high school must provide an updated copy of the student's high school diploma with the student's new name at the student's request. While amending an official record can be a lengthy process, principals should take all necessary steps to expedite the process of altering a transgender student's record to make the name and gender in the record consistent with the student's gender identity. Upon providing a student's and/or parent's request in writing and other required documentation, the principal will make the decision in favor of the student or parent(s) or legal guardian(s) and will alter the record accordingly in a manner which protects the student's privacy.

C. CONFIDENTIALITY

School personnel should not discuss a student's transgender status with anyone other than the student and the student's parent(s) or legal guardian(s) including other school personnel, unless the information is necessary in order to accommodate the student or ensure the student's safety or the student has given written informed consent.

Issues of Privacy

1. All persons, including students, have a right to privacy. This includes keeping a student's actual or perceived sexual orientation, gender identity, and gender expression private.
2. School personnel should not disclose a student's actual or perceived sexual orientation, gender identity, or gender expression to others, including, but not limited to, other students, parents and/or other school personnel, unless there is a specific "need to know."

3. School personnel must be mindful of the confidentiality and privacy rights of students when contacting parents/legal guardians so as not to reveal, imply, or refer to a student's actual or perceived sexual orientation, gender identity, or gender expression.

4. To ensure confidentiality, whenever discussing a particular issue such as conduct, discipline, grades, attendance, health, or any other school related matter, school personnel should focus on the conduct or particular issue, and not on any assumptions regarding the student's actual or perceived sexual orientation, gender identity, or gender expression.

5. All students, including transgender and gender non conforming students, have the right to openly discuss and express their sexual orientation, gender identity, and gender expression and to decide when, with whom, and how much to share private information.

FACILITIES

A. RESTROOM ACCESSIBILITY

Where schools maintain separate restroom facilities for male and female students, transgender students will have access to the restroom that corresponds to their gender identity exclusively and consistently asserted at school. Where available, a single stall restroom should be available to any student, transgender or not, who desires increased privacy, regardless of the underlying reason. The use of such a single stall restroom should be a matter of choice for a student, and no student shall be compelled to use such restroom.

B. LOCKER ROOM ACCESSIBILITY

Where schools maintain separate locker room facilities for male and female students, transgender students will be allowed to use the locker room that corresponds with their gender identity and not their assigned sex at birth. In locker rooms that involve undressing in front of others, transgender students who want to use the locker room corresponding to the gender identity they exclusively and consistently assert at school will be provided with the available accommodation that best meets the needs and privacy concerns of all students involved. Based on availability and appropriateness to address privacy concerns, such accommodations could include, but are not limited to:

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

If transgender and/or gender non-conforming students are uncomfortable with all options above, it is recommended that all reasonable alternatives suggested by student or parents/legal guardian should be considered.

BULLYING AND HARRASSMENT

This section is aimed at addressing acts and threats which show a pattern of harassment designed to coerce, intimidate, or humiliate a student victim based on actual or perceived gender identity or expression. Protection of students from gender identity/expression-based bullying and harassment can be accomplished without infringing on constitutionally protected speech or activity.

California has updated bullying, harassment and anti-discrimination legislation to include Seth's Law. Seth's Law requires public schools in California to update their anti-bullying policies and programs, and it focuses on protecting students who are bullied based on their actual or perceived sexual orientation and gender identity/gender expression, as well as race, ethnicity, nationality, gender, disability, and religion. (Board Policy 5145.3)

A. DEFINITIONS

(1)"Bullying" means any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act, and including one or more acts committed by a pupil or group of pupils as defined in Section 48900.2, 48900.3, or 48900.4, directed toward one or more pupils that have or can be reasonably predicted to have the effect of one or more of the following:

(A) Placing a reasonable pupil or pupils in fear of harm to that pupil's or those pupils' person or property.

(B) Causing a reasonable pupil to experience a substantially detrimental effect on his or her physical or mental health.

(C) Causing a reasonable pupil to experience substantial interference with his or her academic performance.

(D) Causing a reasonable pupil to experience substantial interference with his or her ability to participate in or benefit from the services, activities, or privileges provided by a school.

(2) (A) "Electronic act" means the transmission, by means of an electronic device, including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager, of a communication, including, but not limited to, any of the following:

(i) A message, text, sound, or image.

(ii) A post on a social network Internet Web site, including, but not limited to:

(l) Posting to or creating a burn page. "Burn page" means an Internet Web site created for the purpose of having one or more of the effects listed in paragraph (1).

(II) Creating a credible impersonation of another actual pupil for the purpose of having one or more of the effects listed in paragraph (1). "Credible impersonation" means to knowingly and without consent impersonate a pupil for the purpose of bullying the pupil and such that another pupil would reasonably believe, or has reasonably believed, that the pupil was or is the pupil who was impersonated.

(III) Creating a false profile for the purpose of having one or more of the effects listed in paragraph (1). "False profile" means a profile of a fictitious pupil or a profile using the likeness or attributes of an actual pupil other than the pupil who created the false profile.

B. CONDUCT OF SCHOOL FACULTY/ADMINISTRATORS/SUPERINTENDENTS

Pursuant to updated California Education Code all school faculty, administrators, and superintendents must take incidents and/or allegations of bullying and harassment of any student with the utmost seriousness and address such situations promptly. This includes ensuring that any incident of discrimination, harassment, bullying, hazing, or violence that threatens students is given immediate attention by taking the following actions which include, but are not limited to, the following:

- Intervening immediately to stop the discrimination, harassment, bullying, and/or violent behavior.
- Investigating the incident.
- Determining and enforcing corrective actions, as appropriate, sufficient enough to stop the discrimination, harassment, bullying and/or violent behavior.
- Monitoring to ensure that the behavior does not persist.

Bullying is prohibited on school grounds, property immediately adjacent to school grounds, at school-sponsored or school-related activities, functions or programs, to and from school.

C. TRAINING

District leadership is required to receive training annually on bullying, anti harassment and anti discrimination policies and school climate and safe schools protocols. Information on the needs of transgender and non conforming students are included in this training. The staff at each school are also provided training in this area annually.

ATHLETICS

A. PHILOSOPHY

All students, regardless of gender identity or expression, deserve the opportunity to participate in school athletics. The purpose of the following athletic policy best practice recommendations is to designate a set of criteria in which student-athletes are able to compete on a level playing field in a safe, competitive, and friendly environment, free of discrimination. Fundamental fairness, as well as most local, state, and federal rules and regulations, requires schools to provide transgender and gender non-conforming student-athletes with equal opportunities to participate in athletics. These athletic policy best practices conceptualize a framework in which this participation may occur in a safe and healthy manner that is fair to all competitors.

It is required by California Education Code, California law, Board Policy and California Interscholastic Federation (CIF) policy that all transgender and gender non-conforming student-athletes be allowed to play on sports teams based on the self-identified gender, be called by the preferred name, be referred to by the preferred pronouns, and be permitted to wear clothing and uniforms that correspond with the gender identity/expression. Furthermore, all transgender and gender non-conforming student-athletes should have equal instruction, training and coaching in addition to access to available facilities, equipment, and opportunities to practice and compete.

B. PROCEDURE

When a transgender student makes known and requests to participate in a sex-segregated activity consistent with the student's gender identity, school administrators and athletic directors should follow the procedure outlined below.

All discussion and documentation should be kept confidential, and the proceedings should be sealed unless the student and family make a specific request to the contrary.

1. Notice to the School: The student and/or the parent(s) or legal guardian(s) should contact the school administrator or athletic director indicating that the student has a consistent gender identity different than the gender listed on the student's school registration records (if applicable) or state birth record, and that the student desires to participate in activities in a manner consistent with his or her gender identity.
2. When the school administration and athletic department have prior knowledge of the student's transgender status, they rule in favor of the student.
3. Once the athletic director grants the student eligibility to participate in the sport consistent with the gender identity, the eligibility should be granted for the duration of the student's participation and should not need to be renewed every sports' season or school year.
4. If any questions arise about whether a student's request to participate in a sports activity consistent with his or her gender identity is bona fide, a student should be

able to seek review of his or her eligibility for participation through the procedure set forth by the CIF *Guidelines for Gender Identity*.

C. **HARASSMENT** It is required that coaches and school administrators not engage in or tolerate gender identity or expression-based harassment of transgender student-athletes (e.g., the practice of deriding an athlete's performance by intentionally calling them by the wrong pronoun or referring to them with another name with which they do not use). Coaches should take immediate action to stop and prevent gender-based harassment by other athletes. Harassment is any unwelcome verbal, written or physical conduct directed at the characteristics of a person's real or perceived gender identity or expression.

D. **LOCKER ROOM ACCESSIBILITY** As Santa Cruz City Schools maintain separate locker room facilities for male and female students, it is required that schools provide transgender students access to a locker room facility that corresponds with the gender identity/expression that they consistently assert at school. If there is a reason or desire for increased privacy and safety, regardless of the underlying reason, students should be provided access to a reasonable alternative locker room such as:

- Use of a private area in the locker room (i.e., a bathroom stall with a door, an area separated by a curtain, a physical education instructor's office in the locker room);
- A separate changing schedule (either utilizing the locker room before or after the other students)
- Use of a nearby private area (i.e., a nearby restroom, a nurse's office); If transgender and/or gender non-conforming student athletes are uncomfortable with all options above, it is strongly recommended that all reasonable alternatives suggested by them or their parents/legal guardian be considered

E. **HOTEL ACCOMMODATIONS** It is highly recommended that coaches, when making a determination as to which teammates share a room or stay in a single room, make every effort not to isolate a transgender or gender non-conforming student-athlete while considering his or her comfort level and privacy. It is recommended that in all circumstances, coaches make arrangements with the student's consent.