

From BP 5145.3

*(Please see Gamut online for Board Policy complete with dates and cross-references.)*

## Transgender and Gender-Nonconforming Students

California law and district policy require that all programs, activities, and employment practices be free from discrimination based on sex, sexual orientation, or gender identity. This policy is designed in keeping with these mandates to create a safe and non-stigmatizing learning environment for all students and to ensure that every student has equal access to all school programs, facilities, and activities.

This policy sets out guidelines for schools and district staff to address the needs of transgender and gender nonconforming students and clarifies how state law should be implemented when attempting to balance the legal rights or safety of the student with the legitimate, non-discriminatory interests of the district. This policy does not anticipate every situation that might occur with respect to transgender or gender nonconforming students and the needs of each transgender or gender nonconforming 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 the transgender or gender nonconforming student while maximizing the student's social integration and minimizing stigmatization of the student.

### **Key Points**

1. State law requires that all students shall be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with their gender identity, irrespective of the gender listed on the student's records. (Education Code [221.5](#) (f))
2. For purposes of this policy, "facilities" include restrooms, locker rooms, sleeping facilities for school activities (field trips), etc.
3. Some transgender and gender nonconforming students are not open about their gender identity in all areas of their life for reasons such as safety concerns or lack of acceptance. Therefore, school staff shall not disclose information that may reveal a student's transgender or gender nonconforming status to others (including students, parents and other school staff), unless legally required to do so, or unless the student has authorized such disclosure.
4. Although highly beneficial, parental consent is not required in order to accommodate the student's gender identity. For this reason, school personnel should discuss with student how the school should refer to the student (e.g., appropriate pronoun use and name) in written communication to the student's parent or guardian.

## **Definitions**

The definitions provided here are not intended to label students but rather to assist in understanding this policy and the legal obligations of district staff. Students might or might not use these terms to describe themselves.

Gender identity is a person's deeply held sense of psychological knowledge of their own gender. One's gender identity can be the same or different than the gender assigned at birth. Most people have a gender identity that matches their assigned gender at birth. For some, however, their gender identity is different from their assigned gender. All people have gender identity, not just transgender people.

Gender expression means the manner in which a person represents or expresses gender to others, often through behavior, clothing, hairstyles, activities, voice or mannerisms. (See eg: Education Code [210.7](#))

Gender transition refers to the process in which a student changes from living and identifying as the sex assigned to the student at birth to living and identifying as the sex that corresponds to the student's gender identity.

Transgender is an adjective describing a person whose gender identity or expression is different from that traditionally associated with an assigned sex at birth. Other terms that can have similar meanings are transsexual and trans.

Gender nonconforming is a term for people whose gender expression differs from stereotypical expectations, such as "feminine" boys, "masculine" girls, and those who are perceived as androgynous. This includes people who identify outside traditional gender categories or identify as both genders or neither gender (agender). Other terms that can have similar meanings include gender diverse or gender expansive.

Transition is the process in which a person changes their gender expression to better reflect their gender identity. In order to feel comfortable and to express their gender identity to other people, transgender people may take a variety of steps: using a nickname or legally changing their name; choosing clothes and hairstyles that reflect their gender identity; and generally living and presenting themselves to others consistently with their gender identity. Some, but not all, transgender people take hormones or undergo surgical procedures to change their bodies to better reflect their gender identity.

## **Bullying, Discrimination/Harassment Prevention, Non-accommodation**

Acts of verbal, nonverbal, or physical aggression, intimidation, or hostility that are based on sex, gender identity, or gender expression, regardless of whether they are sexual in nature, where the act has the purpose or effect of having a negative impact on a student's academic performance or of creating an intimidating, hostile, or offensive educational environment are prohibited under state and federal law. Examples of types of conduct which are prohibited in the district and which may constitute gender-based harassment include, but are not limited to:

1. Refusing to address a student by a name and the pronouns consistent with his/her gender identity
2. Disciplining or disparaging a transgender student because his/her mannerisms, hairstyle, or style of dress correspond to his/her gender identity, or a non-transgender student because his/her mannerisms, hairstyle, or style of dress do not conform to stereotypes for his/her gender or are perceived as indicative of the other sex
3. Blocking a student's entry to the bathroom that corresponds to his/her gender identity because the student is transgender or gender-nonconforming
4. Taunting a student because he/she participates in an athletic activity more typically favored by a student of the other sex
5. Revealing a student's transgender status to individuals who do not have a legitimate need for the information
6. Use of gender-specific slurs
7. Physical assault of a student motivated by hostility toward him/her because of his/her gender, gender identity, or gender expression

The district's uniform complaint procedures (AR 1312.3) shall be used to report and resolve complaints alleging discrimination against transgender and gender-nonconforming students. Examples of bases for complaints include, but are not limited to, the above list as well as improper rejection by the district of a student's asserted gender identity, denial of access to facilities that correspond with a student's gender identity, improper disclosure of a student's transgender status, discriminatory enforcement of a dress code, and other instances of gender-based harassment.

In addition, the principal or designee shall ensure that the student and his/her parent/guardian are informed of the procedures for reporting and subsequent problems. The principal or designee shall make follow-up inquiries to see if there have been any new incidents of bullying, discrimination/harassment, denial of accommodation, or retaliation and shall investigate and keep a record of this information.

School site administration shall coordinate with the district's Student Support Services Department whenever a student requests or the administration identifies a reasonable need to accommodate a student's gender identity and/or gender expression. District administrators are advised that in some cases notifying parents carries risks for the student. Prior to notification of any parent or guardian, school staff should work closely with the student to assess the degree to which, if any, the parent or guardian will be involved in the process.

A school administrator and the appropriate support staff should engage the student in an interactive process in order to identify and address potential issues and to develop an accommodation plan for the student and the school. The accommodation plan attempts to balance the legal rights of the student with the legitimate, non-discriminatory interests of the district. The school administrator will oversee the implementation of the plan and respond to any concerns in consultation with the Director of Student Support Services.

## **Accommodations**

To ensure that transgender and gender-nonconforming students are afforded the same rights, benefits, and protections provided to all students by law and Board Policy, the district shall address each situation on a case-by-case basis, in accordance with the following guidelines:

1. **Right to privacy:** A student's transgender or gender-nonconforming status is his/her private information and the district will only disclose the information to others with the student's prior written consent, except when the disclosure is otherwise required by law or when the district has compelling evidence that disclosure is necessary to preserve the student's physical or mental well-being. In the latter instance, the district shall limit disclosure to individuals reasonably believed to be able to protect the student's well-being. Any district employee to whom a student discloses his/her transgender or gender-nonconforming status shall seek the student's permission to notify the site administrator. If the student refuses to give permission, the employee shall keep the student's information pursuant to this procedure, and shall inform the student that honoring the student's request may limit the district's ability to meet the student's needs related to his/her status as a transgender or gender-nonconforming student. If the student permits the employee to notify the site administrator, the employee shall do so within three school days. As appropriate give the physical, emotional, and other significant risks to the student, the administrator may consider discussing with the student any need to disclose the student's transgender or gender-nonconformity status to his/her parents/guardians and/or others, including other students, teacher(s), or other adults on campus. When contacting the parent/guardian of a transgender student, school staff should use the student's legal name and the pronoun corresponding to the student's legal name and gender unless the student, or parent/guardian has specified otherwise. The district shall offer support services, such as counseling, to students who wish to inform their parents/guardians of their status and desire assistance to do so.

2. **Determining a Student's Gender Identity:** The administrator shall accept the student's assertion unless district personnel present a credible basis for believing that the student's assertion is for an improper purpose. In such a case, the compliance officer shall document the improper purpose and, within seven school days of receiving notification of the student's assertion, shall provide a written response to the student and, if appropriate, to his/her parent/guardians.

3. **Addressing a Student's Transition Needs:** The administrator shall arrange a meeting with the student and, if appropriate, his/her parents/guardians to identify potential issues, including transition-related issues, and to develop strategies for addressing them. The meeting shall discuss the transgender or gender-nonconforming student's rights and how those rights may affect and be affected by the rights of other students and shall address specific subjects related to the student's access to facilities and to academic or educational support programs, services, or activities, including, but not limited to, sports and other competitive endeavors. In addition, the administrator shall identify specific school site employee(s) to whom the student may report any problem related to his/her status as a transgender or gender-nonconforming individual, so that prompt action could be taken to address it. Alternatively, if appropriate and desired by the student, the school may form a support team for the student that will meet periodically to assess whether the student's arrangements are meeting his/her educational needs and providing equal

access to programs and activities, educate appropriate staff about the student's transitions, and serve as a resource to the student to better protect the student from gender-based discrimination.

4. **Accessibility to Sex-Segregated Facilities, Programs, and Activities:** The district may maintain sex-segregated facilities, such as restrooms and locker room, and sex-segregated facilities, such as restrooms and locker rooms, and sex-segregated programs and activities, such as physical education classes, intermural sports, and interscholastic athletic programs. A student shall be entitled to access facilities and participate in programs and activities consistent with his/her gender identity. If available and requested by any student, regardless of the underlying reason, the district shall offer options to address privacy concerns in sex-segregated facilities, such as a gender-neutral or single-use restroom or changing areas, 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, the district shall not require a student to utilize these options because he/she is transgender or gender-nonconforming. In addition, a student shall be permitted to participate in accordance with his/her gender identity in other circumstances where students are separated by gender, such as for class discussions, yearbook pictures, and field trips. A student's right to participate in a sex-segregated activity in accordance with his/her gender identity shall not render invalid or inapplicable any other eligibility rule established for participation in the activity.

5. **Student Records:** A student's legal name or gender as entered on the mandatory student record required pursuant to 5 CCR [432](#) shall only be changed pursuant to a court order. However, at the written request of a student or, if appropriate, his/her parents/guardians, the district shall use the student's preferred name and pronouns consistent with his/her gender identity on all other district-related documents. In situations where school staff or administrators are required by law to use or to report a transgender student's legal name or gender, such as for purposes of standardized testing, school staff and administrators shall adopt practices to avoid the inadvertent disclosure of such confidential information.

6. **Names/Pronouns:** If a student so chooses, district personnel shall be required to address the student by a name and the pronouns consistent with his/her gender identity without the necessity of a court order or a change to his/her official district record. However, inadvertent slips or honest mistakes by district personnel in the use of the student's name and/or consistent pronouns shall not constitute a violation of this administrative regulation or the accompanying district policy.

7. **Uniforms/Dress Code:** A student has the right to dress in a manner consistent with his/her gender identity, subject to any dress code adopted on a school site.

8. **Sleeping Facility Accessibility:** Students shall have access to sleeping facilities (e.g., hotel rooms, outdoor camp facilities, etc.) for such school related activities (e.g., field trips, band performances/competitions, outdoor camp activities, etc.) that correspond to their gender identity that is consistently asserted at school. School administration may also provide access to a gender-neutral sleeping facility at the student's option, but no student shall be compelled to use such a sleeping facility. Additional sleeping facility options for school activities requiring overnight travel may be considered that best meet the needs and privacy concerns of all students involved and may include use of separate sleeping facilities, etc., provided that no student shall be compelled to use such options.

9. **Sports and Physical Education Class:** All students shall be permitted to participate in sports and P.E. classes that correspond to their gender identity that is consistently asserted at school. The district shall also comply with California Interscholastic Federation rules, policies, and procedures regarding gender identity participation in interscholastic athletics.

10. Transferring a Student to Another School (Opportunity Transfers): In general, schools should strive to keep transgender and gender nonconforming students enrolled at the original school site. Opportunity transfers should not be a school's first response to harassment or bullying and should be considered only when necessary for the protection or personal welfare of the transferred student, or when requested by the student or the student's parent. The student or the student's parent or guardian must consent to any such transfer.

11. Gender Segregation in Other Areas: Schools should evaluate all gender-based policies, rules, and practices and maintain only those that have a clear and sound pedagogical purpose. Gender-based policies, rules, and practices can have the effect of marginalizing, stigmatizing, and excluding students, whether they are gender nonconforming or not. Whenever students are separated by gender in school activities or are subject to an otherwise lawful gender-specific rule, policy, or practice, students must be included in the group that corresponds to their gender identity.

### **Education and Training**

In order to further a safe and supportive school environment for all students, schools should incorporate education and training about transgender and gender nonconforming students into their anti-bullying curriculum, student leadership trainings, and staff professional development.

As with other efforts to promote a positive school culture, it is important that student leaders and school personnel, particularly school administrators, become familiar with the gender identity law, regulations, guidance, and related resources, and that they communicate and model respect for the gender identity of all students.

### **Conclusion**

These guidelines cannot anticipate every situation in which questions may come up in the implementation of accommodations for transgender and gender nonconforming students. The Department of Student Support Services will continue to provide assistance, support, and resources to district schools in order to create a safe and supportive school environment for all students.

Regulation DAVIS JOINT UNIFIED SCHOOL DISTRICT

approved: April 7, 2014 Davis, California

revised: February 19, 2015

revised: January 19, 2017