

LGBTQ+

District and School Policy Guide



INTRODUCTION and ACKNOWLEDGEMENTS

Welcome to the LGBTQ+ School and District Policy Guide developed by the Santa Clara County Office of Education (SCCOE). This guide is a testament to the dedication to fostering safe, inclusive, and affirming learning environments for all students, staff, and community members.

The Santa Clara County Board of Education and County Superintendent of Schools recently affirmed a commitment to LGBTQ+ support, inclusion and education through the adoption of Board Resolution 2306-5.

https://www.sccoe.org/countyboard/Resolutions/092122%20Resolution__Acknowledging%20October%20as%20LGBTQ%20Month.pdf

The mission is to create a school and district culture that celebrates diversity, equity, and respect for everyone, regardless of their sexual orientation, gender identity, or gender expression. Through comprehensive workshops and specialized professional development, we equip educators with the necessary tools to effectively implement content frameworks and align with the Fair, Accurate, Inclusive, and Respectful (FAIR) Act.

Understanding the pivotal role educators play in shaping the lives of young individuals, and the SCCOE is committed to providing ongoing coaching and technical assistance to those implementing LGBTQ+ projects and initiatives in their schools and districts. By fostering an inclusive curriculum and environment, SCCOE strives to empower students to embrace their identities without fear of discrimination or prejudice.

Furthermore, SCCOE's support extends beyond the classroom with workshops and technical assistance for climate education and district climate action plans. Addressing climate issues from an LGBTQ+ perspective is crucial to fostering understanding and empathy, paving the way for a more harmonious and compassionate society.

By working together, schools and districts can become beacons of inclusivity and acceptance, promoting a sense of belonging and self-worth for all LGBTQ+ students and staff. This guide is a testament to SCCOE's unwavering commitment to promoting LGBTQ+ support, inclusion, and education, and we are excited to embark on this journey of creating a more inclusive and equitable educational landscape for everyone.

Mary Ann Dewan, Ph.D.
*Santa Clara County
Superintendent of Schools*

Jessica Bondouris, Ed.D.
*Associate Superintendent,
Professional Learning
and Support Division*

Aries Yumul
*Coordinator - LGBTQ+ District
Resources and Supports*

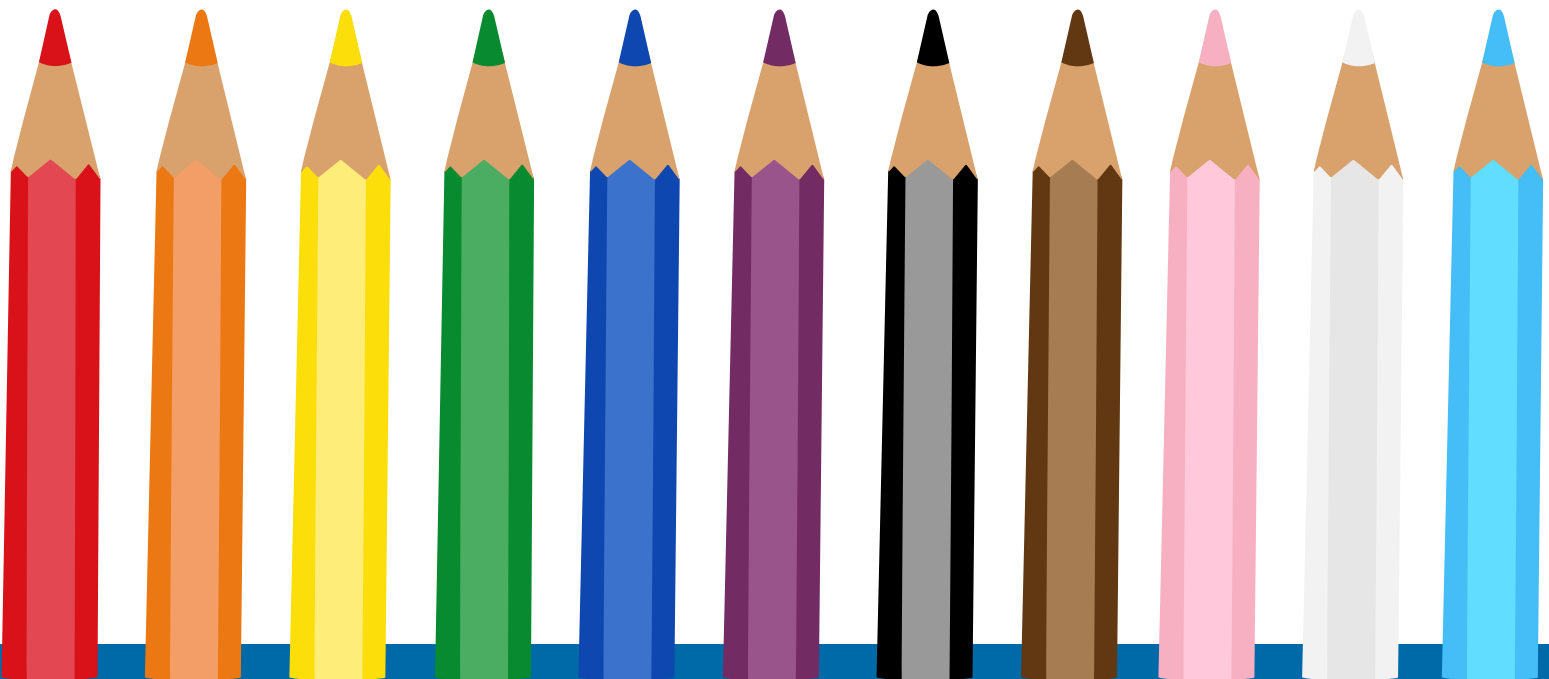


TABLE of CONTENTS

Our Commitment	4
Laws and Education Code	5-12
Content Area Frameworks	13
Frequently Asked Questions	14-19
Parental Opt-Out & LGBTQ+ Inclusivity	20



OUR COMMITMENT

The Santa Clara County Office of Education (SCCOE) takes great pride in promoting LGBTQ+ support, inclusion, and education. As part of our commitment to creating safe and inclusive learning environments, surveys have been conducted among educators and students in the 2022-2023 academic year to assess their experiences and knowledge of LGBTQ+ inclusivity in schools.



The survey results shed light on crucial areas that require attention and improvement. Educators expressed a lack of familiarity with the FAIR Act, which mandates the inclusion of LGBTQ+ individuals and people with disabilities in the history and social science curriculum. This knowledge gap has the potential to hinder inclusivity in classrooms, leading to feelings of marginalization and exclusion among LGBTQ+ students. Furthermore, educators indicated a need for more resources to better support their LGBTQ+ students, as many lacked baseline knowledge about LGBTQ+ issues.

On the student front, the data collected in Santa Clara County (SCC) closely aligns with national data, reflecting the challenges faced by LGBTQ+ youth. Approximately 10.2% of SCC students reported a sexual identity other than straight, and 30% of students revealed discomfort with expressing their sexual orientation at school. A significant percentage of students reported experiencing or witnessing discrimination and harassment, underscoring the urgency to prioritize inclusivity and safety for all students regardless of sexual orientation or gender identity.

The national data from the Center for Disease Control (CDC) Youth Risk Behavior Surveillance System (YRBSS) further highlights the challenges LGBTQ+ students face. These challenges include

higher rates of missing school due to safety concerns, higher incidence of sexual violence, increased feelings of sadness or hopelessness, and higher rates of considering suicide. The statistics underscore the vital importance of increased support and resources for LGBTQ+ students to improve their well-being and safety.

SCCOE recognizes the need for educators to be better informed about LGBTQ+ issues and equipped with the necessary tools to create an inclusive and accepting environment. Our commitment to addressing these issues extends beyond surveys; SCCOE aims to implement targeted strategies to ensure that LGBTQ+ students feel supported, valued, and safe in school. By fostering a culture of inclusivity and acceptance, SCCOE strives to promote academic success and overall well-being for all students.



LAWS and EDUCATION CODE

“Equality means more than passing laws. The struggle is really won in the hearts and minds of the community, where it really counts.” - Barbara Gittings, LGBTQ+ rights activist

The Laws

The California Student Safety and Violence Prevention Act – AB 537 (2000)

Changed California’s Education Code by adding actual or perceived sexual orientation and gender identity to the existing nondiscrimination policy. The nondiscrimination policy also prohibits harassment and discrimination on the basis of sex, ethnic group identification, race, ancestry, national origin, religion, color, or mental or physical disability.

Title IX (1972, Amended 2020)

Bans sex discrimination in schools and has been interpreted by courts and the US Justice and Education Departments to prohibit discrimination based on sexual orientation and against transgender and gender non-conforming students, including but not limited to: being treated according to the gender you identify with, being called by the name and pronouns consistent with your gender identity, and dress and present yourself in a way consistent with your gender identity.

The School Success & Opportunity Act - AB 1266 (2013)

Clarified existing state law to ensure that students can access 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 pupil’s records. Includes but not limited to: bathrooms, locker rooms, sports teams, and classes.

The Impact

The Impact of AB537

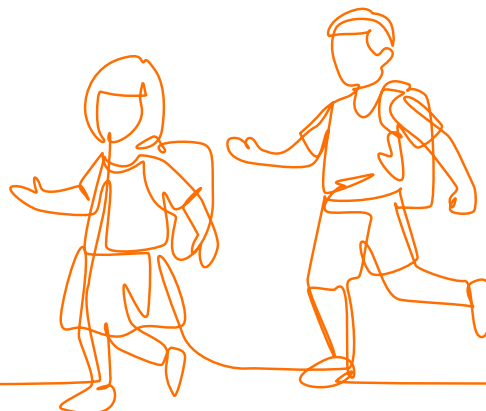
- AB537 ensures that all students are protected from discrimination and harassment in schools, regardless of their sexual orientation or gender identity.
- It promotes a safe and inclusive learning environment for all students.

The Impact of Title IX

- Title IX ensures that students are treated according to the gender they identify with.
- Allows students to be called by the name and pronouns consistent with their gender identity.
- Allows students to dress and present themselves in a way consistent with their gender identity.
- Promotes a safe and inclusive learning environment for all students.

The Impact of AB 1266

- Creates a safe and inclusive environment for transgender and gender-nonconforming students.
- Helps to prevent discrimination based on gender identity in schools.
- Promotes equal access to educational opportunities for all students, regardless of gender identity.



LAWS and EDUCATION CODE

The Laws

Seth's Law - AB 9 (2012)

Strengthened existing state anti-bullying laws to help protect all California public school students. Seth's Law requires public schools in California to update their anti-bullying policies and programs, and 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. Requires school districts to:

- adopt a strong anti-bullying policy that specifically spells out prohibited bases for bullying, including sexual orientation and gender identity/gender expression;
- adopt a specific process for receiving and investigating complaints of bullying, including a requirement that school personnel intervene if they witness bullying;
- publicize the anti-bullying policy and complaint process, including posting the policy in all schools and offices;
- post on the district website materials to support victims of bullying. Seth's Law specifically contains the following requirement: "If school personnel witness an act of discrimination, harassment, intimidation, or bullying, he or she shall take immediate steps to intervene when safe to do so." (Education Code Section 234.1(b)(1))

Privacy: Lawrence v. Texas, 539 U.S. 558 (2003)

Extended constitutional right to privacy/autonomy, including being "outed". Students have a right to privacy, which includes the right to keep information about their sexual orientation and/or gender identity private from other school staff/faculty, parents, and students.

The Impact

The Impact of Seth's Law

- Schools must implement a robust policy against bullying that explicitly outlines the prohibited grounds for bullying, such as sexual orientation, gender, gender identity, and gender expression.
- Establish a clear procedure for receiving and investigating bullying complaints, including a mandatory requirement for school staff to intervene if they witness any instances of bullying.
- Promote awareness of the anti-bullying policy and complaint process by disseminating this information, including displaying the policy in all schools and administrative offices.
- Provide supportive resources for individuals who have encountered bullying by sharing materials on the district website that offer assistance and guidance.

The Impact of Privacy: Lawrence v. Texas

- Helps ensure that students have the right to privacy and autonomy over their personal lives and identities
- Protects students from being "outed" or having their private information shared without their consent
- Can lead to improved mental health outcomes for students who might otherwise have faced discrimination or harassment based on their sexual orientation or gender identity

LAWS and EDUCATION CODE

The Laws

CA Assembly Bill 493 – AB 493 (2019)

Requires each school operated by a school district or county office of education and each charter school to use resources developed by the State Department of Education to provide training at least once every two years to teachers and other certificated employees at that school that serve pupils in grades 7-12, inclusive, and to other certificated employees at that school, on school site and community resources for the support of lesbian, gay, bisexual, transgender, queer, and questioning (LGBTQ+) pupils, and strategies to increase support for LGBTQ+ pupils and thereby improve overall school climate, as specified.

Confidential Medical Release: Educ. Code § 48205; 87 Ops. Cal. Atty. Gen. 168, 172 (2004)

Education Code section 48205 requires school officials to excuse students from school to attend confidential medical appointments. Students 12 years and older have the right to leave school without parental consent to access confidential medical services including, but not limited to: HIV or STD testing, mental health or counseling services, drug or alcohol treatment/counseling, abortion care, or obtaining birth control. Schools must excuse these absences without notifying parents/guardians and allow students to make up missed assignments.

AB 5 – Safe and Supportive Schools (2023)

Requires schools serving K-12 in California to provide staff training to support LGBTQ+ pupils. It would require LGBTQ+ cultural competency training for teachers and other certificated employees, as specified. The bill would require each local educational agency to maintain records documenting the training, as provided. The bill would require the department to monitor compliance with the training requirement as part of the department's annual compliance monitoring of state and federal programs.

The Impact

The Impact of AB 493

By July 2021, schools “are to use resources developed by the State Department of Education to provide training at least once every two years to teachers and other certificated employees at that school that serves pupils in grades 7-12, inclusive, and to other certificated employees at that school, on school site and community resources for the support of LGBTQ pupils, and strategies to increase support for LGBTQ pupils and thereby improve overall school climate, as specified.”

The Impact of Confidential Medical Release

- Confidential Medical Release promotes the health and well-being of students by allowing them to access necessary medical services without fear of judgement or reprisal.
- It also promotes a safe and inclusive learning environment for all students.
- By upholding Confidential Medical Release in schools, educators can support the physical and mental health of their students and promote a culture of trust and respect.

The Impact of AB 5

It mandates LGBTQ+ cultural competency training for K-12 teachers and staff, promoting an inclusive curriculum and providing better support for LGBTQ+ students. Schools must document training and face compliance monitoring, ensuring a safer and more inclusive environment. This law fosters diversity and tolerance while upholding the importance of equitable education for all.

LAWS and EDUCATION CODE

The Laws

The California Healthy Youth Act - AB 329 (2016)

The California Healthy Youth Act, which took effect in January 2016, requires school districts to provide students with integrated, comprehensive, accurate, and unbiased comprehensive sexual health and HIV prevention education at least once in middle school and once in high school. The California Healthy Youth Act includes new language about adolescent relationship abuse and sex trafficking and reinforces a focus on healthy attitudes, healthy behaviors, and healthy relationships. It also strengthened previous requirements that instruction and materials be appropriate for students of all sexual orientations and genders and ensures that sexual health education does not promote outdated gender norms. The law also updated the existing HIV prevention education mandate to reflect the developments made in our understanding of and ability to treat and prevent HIV over the last 20 years.

FAIR Education Act (2011) 51204.5

The FAIR Act is a legislation that mandates the inclusion of diverse historical perspectives in social sciences education in California. The Act requires that instruction in social sciences include the early history of California and a study of the role and contributions of various marginalized groups. Specifically adding lesbian, gay, bisexual, and transgender (LGBTQ+) community. The aim is to highlight the economic, political, and social contributions of these groups to the development of California and the United States of America throughout history. It prohibit teachers from instructing, or a school district from sponsoring, any activity that promotes discriminatory bias on the basis of race or ethnicity, gender, religion, disability, nationality, or sexual orientation.

The Impact

The Impact of the California Healthy Youth Act - AB 329 (2016)

- It emphasizes inclusivity for all sexual orientations and genders, promoting healthy attitudes, behaviors and relationships.
- The Act also updates HIV education to reflect current knowledge and prevention methods.

The Impact of the FAIR Act

- **Inclusive Education:** Promotes inclusivity and representation for diverse groups, including LGBTQ+ students.
- **Increased Awareness:** Broadens students' understanding of different cultures, ethnicities, and identities.
- **Countering Stereotypes:** Challenges and counters stereotypes and biases by providing accurate and diverse historical narratives.
- **Empowerment and Representation:** Validates the identities and experiences of underrepresented groups, fostering empowerment and a sense of belonging.
- **Cultivating Respect:** Develops respect, allyship, and social responsibility among students.
- **Preparation for a Diverse Society:** Equips students with knowledge and skills to thrive in a multicultural society.
- **Promoting Critical Thinking:** Encourages critical thinking and a nuanced understanding of history.
- **Fostering a Tolerant Society:** Promotes empathy, respect, and acceptance, contributing to a more tolerant and accepting society.
- **Protects curriculum from being banned.**

LAWS and EDUCATION CODE

The Laws

Senate Bill (SB) 760 –All Gender Restrooms (2023)

Requires all K-12 schools in California to provide appropriate and equitable access to all-gender restrooms for students to use during school hours.

SB 857 –LGBTQ+ Advisory Task Force (2023)

Establishes an advisory task force to identify the needs of LGBTQ+ pupils and to make recommendations to assist in implementing supportive policies and initiatives to address LGBTQ+ pupil education and well-being.

AB 1078 Diverse Instructional Materials and Curriculum (2023)

Allows a fine to be assessed on any district that has insufficient instructional materials, especially in an attempt to discriminate against students of color or LGBTQ+ students.



The Impact

The Impact of SB 760

Will have a notable impact on California classrooms. It mandates that all K-12 schools provide accessible and equitable access to all-gender restrooms during school hours. This law promotes inclusivity and respect for gender diversity, creating a more welcoming environment for transgender and non-binary students. It can help reduce stigma and discomfort related to restroom use, improving overall well-being and academic performance.

The Impact of SB 857

It establishes an advisory task force dedicated to understanding and addressing the unique needs of LGBTQ+ pupils. This initiative will help create a more inclusive and supportive educational environment. The task force's recommendations can lead to the implementation of policies and initiatives that promote the well-being and academic success of LGBTQ+ students. Ultimately, this law aims to ensure that all students, regardless of their sexual orientation or gender identity, have equal access to a safe and nurturing learning environment.

The Impact of AB 1078

Will positively impact California classrooms. It empowers the state to impose fines on districts lacking sufficient instructional materials, especially if such deficiencies are linked to discrimination against students of color or LGBTQ+ students. This law encourages schools to provide diverse and inclusive educational resources, fostering a more equitable and enriching learning experience for all students. It underscores California's commitment to promoting diversity and inclusion, ensuring that educational materials and curricula reflect the state's diverse student population, promoting understanding, and nurturing a welcoming atmosphere in classrooms.

LAWS and EDUCATION CODE

The Education Code

Ed Code 200:

Prohibits discrimination on the basis of gender, gender identity, gender expression, and sexual orientation in educational programs and activities.

Ed Code 220:

Defines discrimination as including, but not limited to, harassment and bullying based on actual or perceived characteristics, including gender identity and sexual orientation.

Ed Code 234:

Requires schools to include the contributions of people with disabilities and LGBTQ+ individuals in history and social science curriculum.

Ed Code 260:

Encourages schools to provide comprehensive sexual health education that is inclusive of diverse sexual orientations, gender identities, and relationships.

Ed Code 2107:

Ensures that instruction and materials in schools do not discriminate against LGBTQ+ students and that they accurately portray the contributions of LGBTQ+ individuals in history.

Explanation

Ed Code 200:

Ensures that LGBTQ+ students are protected from discrimination and have equal access to educational opportunities without being subjected to bias based on their gender, gender identity, gender expression, or sexual orientation.

Ed Code 220:

Explicitly includes harassment and bullying based on gender identity and sexual orientation as forms of discrimination, emphasizing the importance of creating a safe and inclusive learning environment for LGBTQ+ students.

Ed Code 234:

Mandates the inclusion of LGBTQ+ individuals' contributions in the curriculum, ensuring that LGBTQ+ students are represented and their history and accomplishments are recognized and celebrated.

Ed Code 260:

Promotes inclusive sexual health education that addresses the needs and experiences of LGBTQ+ students, ensuring they receive accurate information and support regarding sexual orientation, gender identity, and diverse relationships.

Ed Code 2107:

Prohibits discriminatory instruction or materials and emphasizes the accurate portrayal of LGBTQ+ individuals in educational content, fostering an inclusive environment and promoting understanding and respect for LGBTQ+ students.



LAWS and EDUCATION CODE

The Education Code

Ed Code 2203:

Requires schools to address issues of bias, discrimination, and harassment, including those based on sexual orientation and gender identity, in their anti-bullying policies and prevention programs.

Ed Code 221.5:

Provides protections for transgender and gender-nonconforming students, allowing them to use facilities and participate in activities consistent with their gender identity.

Ed Code 51500:

Requires schools to provide a safe and supportive learning environment that respects and values the rights and dignity of all students, including LGBTQ+ students.

Ed Code 2202:

Requires schools to provide age-appropriate instruction on the importance of treating all people with respect and not tolerating harassment, discrimination, or bullying based on sexual orientation or gender identity.

Ed Code 201:

Prohibits schools from discriminating against students based on their gender identity or gender expression and ensures their access to facilities and activities consistent with their gender identity.

Explanation

Ed Code 2203:

Mandates that schools actively address bias, discrimination, and harassment, including those targeting LGBTQ+ students, by incorporating policies and prevention programs into their efforts to combat bullying and create a safe learning environment.

Ed Code 221.5:

Safeguards the rights of transgender and gender-nonconforming students by ensuring they can access facilities and engage in activities that align with their gender identity, fostering inclusivity and affirming their identities.

Ed Code 51500:

Emphasizes the responsibility of schools to create a safe and supportive environment for all students, including LGBTQ+ students, where their rights, dignity, and well-being are respected and valued.

Ed Code 2202:

Mandates that schools educate students about respecting all individuals, regardless of sexual orientation or gender identity, and not tolerating any form of harassment, discrimination, or bullying.

Ed Code 201:

Protects the rights of transgender and gender-nonconforming students by prohibiting discrimination and ensuring their equal access to facilities and activities that align with their gender identity.

LAWS and EDUCATION CODE

The Education Code

Ed Code 51933:

Requires schools to provide comprehensive sexual health education that is inclusive of diverse sexual orientations, gender identities, and relationships.

Ed Code 51204.5:

Requires social science curriculum to include the role and contributions of LGBTQ+ individuals in California and U.S. history.

Ed Code 32228.1:

Authorizes schools to establish programs that support LGBTQ+ students, including clubs, support groups, and counseling services.

Ed Code 66250:

Protects the rights of LGBTQ+ students in higher education by prohibiting discrimination based on sexual orientation or gender identity in admission, enrollment, and access to educational programs and activities.

Ed Code 201.5:

Requires schools to allow students to wear clothing that is consistent with their gender identity, regardless of the student's assigned sex at birth.

Ed Code 2204:

Requires schools to provide professional development and training to staff on the prevention of bias, discrimination, and harassment, including training specific to LGBTQ+ issues.

Explanation

Ed Code 51933:

Emphasizes the importance of inclusive sexual health education that addresses the needs and experiences of LGBTQ+ students, providing accurate information and support regarding sexual orientation, gender identity, and diverse relationships.

Ed Code 51204.5:

Ensures that LGBTQ+ individuals' contributions are integrated into the social science curriculum, promoting a more inclusive understanding of history and recognizing the impact of LGBTQ+ individuals in society.

Ed Code 32228.1:

Allows schools to create safe spaces and support systems for LGBTQ+ students by establishing clubs, support groups, and counseling services tailored to their specific needs.

Ed Code 66250:

Ensures that LGBTQ+ students are protected from discrimination and have equal opportunities in higher education, including admission, enrollment, and participation in educational programs and activities.

Ed Code 201.5:

Guarantees the rights of transgender and gender-nonconforming students to express their gender identity through clothing choices, regardless of their assigned sex at birth.

Ed Code 2204:

Mandates that schools offer professional development and training to staff that addresses the prevention of bias, discrimination, and harassment, including specific training on LGBTQ+ issues, fostering a more inclusive and supportive school environment.

CONTENT AREA FRAMEWORKS

State History Framework (2016) Chapter 20: “Access and Equity”

p. 532:

- Both teachers and students should understand the terminology used to refer to individuals who are LGBT, and be able to understand the negative effects of slang terms or discriminatory language.
- California students who are not themselves in this population may have parents or guardians who are LGBT. All students and their families need to feel safe, respected, and welcomed in school.

<https://www.cde.ca.gov/ci/hs/cf/hssframework.asp>

State Health Framework (2016) Chapter 7: “Access and Equity”



p. 351:

Instruction and materials on sexual health content must acknowledge diverse sexual orientations and include examples of same-sex relationships and couples. Comprehensive sexual health instruction must also include gender, gender expression, gender identity, and the harmful outcomes that may occur from negative gender

P. 455:

Because California law protects students against discrimination on the basis of gender or sexual orientation, schools may not facilitate the selective opt-out of LGBTQ+-related content in the context of comprehensive sexual health and HIV prevention education. General instruction or programming relating to LGBTQ+ people and issues is not subject to parental opt-out (EC 51932[b]).

<https://www.cde.ca.gov/ci/he/cf/documents/healthframework2019.pdf>

FREQUENTLY ASKED QUESTIONS

Guidance from the CDE: <https://www.cde.ca.gov/re/di/eo/faqs.asp>

1. May a school district or school enforce a gender-based dress code?

Nondiscriminatory gender segregated dress codes may be enforced by a school or school district pursuant to district policy. Students shall have the right to dress in accordance with their gender identity, within the constraints of the dress codes adopted by the school. School staff shall not enforce a school's dress code more strictly against transgender and gender nonconforming students than other students.

2. How should school districts and schools address harassment, bullying and abuse of transgender students?

California law requires that schools provide all students with a safe, supportive and inclusive learning environment, free from discrimination, harassment, and bullying. Examples of harassment and abuse commonly experienced by transgender students include, but are not limited to, being teased for failing to conform to sex stereotypes, being deliberately referred to by the name and/or pronouns associated with the student's assigned sex at birth, being deliberately excluded from peer activities, and having personal items stolen or damaged. School district efforts to prevent and address harassment must include strong local policies and procedures for handling complaints of harassment, consistent and effective implementation of those policies, and encouraging members of the school community to report incidents of harassment. Beyond investigating incidents, schools should implement appropriate corrective action to end the harassment and monitor the effectiveness of those actions.



3. Should a school district or school generally review its gender-based policies?

As a general matter, schools should evaluate all gender-based policies, rules, and practices and maintain only those that have a clear and sound pedagogical purpose. Examples of policies and practices that should be reconsidered include: gender-based dress code for graduation or senior portraits and asking students to line up according to gender. Gender-based policies, rules, and practices can have the effect of marginalizing, stigmatizing, and excluding students, whether they are gender nonconforming or not. In some circumstances, these policies, rules, and practices may violate federal and state law. For these reasons, schools should consider alternatives to them.

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 permitted to participate in such activities or conform to such rule, policy, or practice consistent with their gender identity.

4. How should a school or district determine the appropriate placement for transgender students related to sports and physical education classes?

Transgender students are entitled to and must be provided the same opportunities as all other students to participate in physical education and sports consistent with their gender identity. Participation in competitive athletic activities and contact sports are to be addressed on a case-by-case basis. For additional guidance, the California Interscholastic Federation issued new bylaws in 2013, which provide a detailed process for gender identity participation in interscholastic sports.

FREQUENTLY ASKED QUESTIONS

Guidance from the CDE: <https://www.cde.ca.gov/re/di/eo/faqs.asp>

5. How should a school district, teacher, school administrator or other employee define gender, transgender, or gender identity?

There are a number of developing terms used to describe transgender characteristics and experiences, which may differ based on region, age, culture, or other factors. Many of these terms are not currently defined by law. However, several common definitions have been used by the courts, the U.S. Department of Education, and a number of groups with educational equity expertise, including the Gay, Lesbian, Straight Education Network (GLSEN), and the California School Boards Association. Definitions provided in these materials are provided to facilitate the process of providing safe and nondiscriminatory learning environments and are not provided for the purpose of labeling any students.

“Gender” means sex, and includes a person’s 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. (Education Code Section 210.7.)

“Gender identity” refers to a person’s gender-related identity, appearance or behavior whether or not different from that traditionally associated with the person’s physiology or assigned sex at birth.

“Gender expression” refers to external cues that one uses to represent or communicate one’s gender to others, such as behavior, clothing, hairstyles, activities, voice, mannerisms, or body characteristics.

“Transgender” describes people whose gender identity is different from that traditionally associated with their assigned sex at birth. “Transgender boy” and “transgender male” refer to an individual assigned the female sex at birth who has a male gender identity. “Transgender girl” and “transgender female” refer to an individual assigned the male sex at birth who has a female gender identity. An individual can express or assert a transgender gender identity in a variety of ways, which may but do not always include specific medical treatments or procedures. Medical treatments or procedures are not considered a prerequisite for one’s recognition as transgender.

“Gender nonconformity” refers to one’s gender expression, gender characteristics, or gender identity that does not conform to gender stereotypes “typically” associated with one’s legal sex assigned at birth, such as “feminine” boys, “masculine” girls and those who are perceived as androgynous. 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.



FREQUENTLY ASKED QUESTIONS

Guidance from the CDE: <https://www.cde.ca.gov/re/di/eo/faqs.asp>

6. How can a teacher or school administrator determine whether a student is transgender or not?

The first and best option is always to engage in an open dialogue with the student and the student's parent or parents if applicable (see FAQ 5 and 7). Gender identity is a deeply rooted element of a person's identity. Therefore, school districts should accept and respect a student's assertion of their gender identity where the student expresses that identity at school or where there is other evidence that this is a sincerely held part of the student's core identity. Some examples of evidence that the student's asserted gender identity is sincerely held could include letters from family members or healthcare providers, photographs of the student at public events or family gatherings, or letters from community members such as clergy.

If a student meets one or more of those requirements, a school may not question the student's assertion of their gender identity except in the rare circumstance where school personnel have a credible basis for believing that the student is making that assertion for some improper purpose. The fact that a student may express or present their gender identity in different ways in different contexts does not, by itself, undermine a student's assertion of their gender identity.

A school cannot require a student to provide any particular type of diagnosis, proof of medical treatment, or meet an age requirement as a condition to receiving the protections afforded under California's antidiscrimination statutes. Similarly, there is no threshold step for social transition that any student must meet in order to have his or her gender identity recognized and respected by a school.



7. What steps should a school or school district take to protect a transgender or gender nonconforming student's right to privacy?

To prevent accidental disclosure of a student's transgender status, it is strongly recommended that schools keep records that reflect a transgender student's birth name and assigned sex (e.g., copy of the birth certificate) apart from the student's school records. Schools should consider placing physical documents in a locked file cabinet in the principal's or nurse's office. Alternatively, schools could indicate in the student's records that the necessary identity documents have been reviewed and accepted without retaining the documents themselves. Furthermore, schools should implement similar safeguards to protect against disclosure of information contained in electronic records.

Pursuant to the above protections, schools must consult with a transgender student to determine who can or will be informed of the student's transgender status, if anyone, including the student's family. With rare exceptions, schools are required to respect the limitations that a student places on the disclosure of their transgender status, including not sharing that information with the student's parents.

In those very rare circumstances where a school believes there is a specific and compelling "need to know," the school should inform the student that the school intends to disclose the student's transgender status, giving the student the opportunity to make that disclosure her or himself. Additionally, schools must take measures to ensure that any disclosure is made in a way that reduces or eliminates the risk of re-disclosure and protects the transgender student from harassment and discrimination. Those measures could include providing counseling to the student and the student's family to facilitate the family's acceptance and support of the student's transgender status. Schools are not permitted to disclose private student information to other students or the parents of those students.

A transgender student's right to privacy does not restrict a student's right to openly discuss and express their gender identity or to decide when or with whom to share private information. A student does not waive his or her right to privacy by selectively sharing this information with others.

FREQUENTLY ASKED QUESTIONS

Guidance from the CDE: <https://www.cde.ca.gov/re/di/eo/faqs.asp>

8. May a student's gender identity be shared with the student's parents, other students, or members of the public?

A transgender or gender nonconforming student may not express their gender identity openly in all contexts, including at home. Revealing a student's gender identity or expression to others may compromise the student's safety. Thus, preserving a student's privacy is of the utmost importance. The right of transgender students to keep their transgender status private is grounded in California's antidiscrimination laws as well as federal and state laws. Disclosing that a student is transgender without the student's permission may violate California's antidiscrimination law by increasing the student's vulnerability to harassment and may violate the student's right to privacy.

A. Public Records Act requests - The Education Code requires that schools keep student records private. Private information such as transgender status or gender identity falls within this code requirement and should not be released. (Education Code Section 49060.) Under the Public Records Act, student information is redacted.

B. Family Educational and Privacy Rights (FERPA) - FERPA is federal law that protects the privacy of students' education records. FERPA provides that schools may only disclose information in school records with written permission from a student's parents or from the student after the student reaches the age of 18. (20 U.S.C. Section 1232g.) This includes any "information that . . . would allow a reasonable person in the school community . . . to identify the student with reasonable certainty." (34 C.F.R. Section 99.3.)

C. California Constitution - Minors have a right to privacy under Article I, Section I of the California Constitution that is enforceable against private parties and government officials. The right to privacy encompasses the right to non-disclosure (autonomy privacy) as well as in the collection and dissemination of personal information such as medical records and gender identity (informational privacy).

Even when information is part of a student's records and therefore covered by FERPA, the law provides several exceptions that permit appropriate communications under circumstances in which the student or others may be at risk of harm. Transgender or gender nonconforming students are often subject to stressors which can place them at risk of self-harm. FERPA expressly permits the disclosure of information from a student's records "...to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of

the student or other individuals." (34 C.F.R. Section 99.36(a).) "If the educational agency or institution determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals." (Id. Section 99.36(c).)

Moreover, although FERPA restricts disclosures of information obtained from a student's records, it was never intended to act as a complete prohibition on all communications. One threshold point that is often overlooked is that FERPA limits only the disclosure of records and information from records about a student. It does not limit disclosure or discussion of personal observations.

In other words, if a school employee develops a concern about a student based on the employee's observations of or personal interactions with the student, the employee may disclose that concern to anyone without violating, or even implicating, FERPA. Of course, in most cases, the initial disclosure should be made to professionals trained to evaluate and handle such concerns, such as school student health or welfare personnel, who can then determine whether further and broader disclosures are appropriate.



FREQUENTLY ASKED QUESTIONS

Guidance from the CDE: <https://www.cde.ca.gov/re/di/eo/faqs.asp>

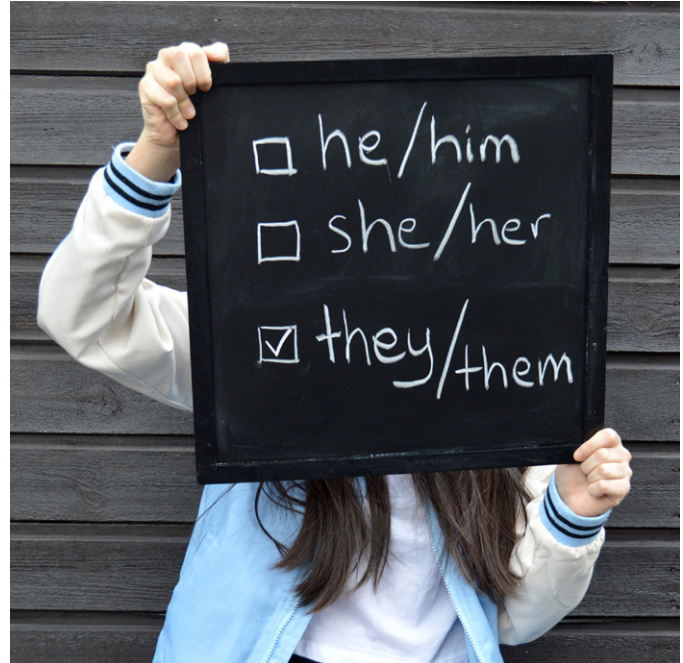
9. What is a school or school district's obligation when a student's stated gender identity is different than the student's gender marker in the school's or district's official records?

A school district is required to maintain a mandatory permanent student record which includes the legal name of the student and the student's gender. If and when a school district receives documentation that such legal name or gender has been changed, the district must update the student's official record accordingly.

If the school district has not received documentation supporting a legal name or gender change, the school should nonetheless update all unofficial school records (e.g. attendance sheets, school IDs, report cards) to reflect the student's name and gender marker that is consistent with the student's gender identity. This is critical in order to avoid unintentionally revealing the student's transgender status to others in violation of the student's privacy rights, as discussed in FAQ 7.

If a student so chooses, district personnel shall be required to address the student by a name and the pronouns consistent with the student's gender identity, without the necessity of legal documentation or a change to the student's official district record. The student's age is not a factor. For example, children as early as age two are expressing a different gender identity. It is strongly suggested that teachers privately ask transgender or gender nonconforming students at the beginning of the school year how they want to be addressed in class, in correspondence to the home, or at conferences with the student's parents.

In addition to preserving a transgender student's privacy, referring to a transgender student by the student's chosen name and pronouns fosters a safe, supportive and inclusive learning environment. To ensure that transgender students have equal access to the programs and activities provided by the school, all members of the school community must use a transgender student's chosen name and pronouns. Schools should also implement safeguards to reduce the possibility of inadvertent slips or mistakes, particularly among temporary personnel such as substitute teachers.



If a member of the school community intentionally uses a student's incorrect name and pronoun, or persistently refuses to respect a student's chosen name and pronouns, that conduct should be treated as harassment. That type of harassment can create a hostile learning environment, violate the transgender student's privacy rights, and increase that student's risk for harassment by other members of the school community. Examples of this type of harassment include a teacher consistently using the student's incorrect name when displaying the student's work in the classroom, or a transgender student's peers referring to the student by the student's birth name during class, but would not include unintentional or sporadic occurrences. Depending on the circumstances, the school's failure to address known incidents of that type of harassment may violate California's antidiscrimination laws.

FREQUENTLY ASKED QUESTIONS

Guidance from the CDE: <https://www.cde.ca.gov/re/di/eo/faqs.asp>

10. 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 (e.g., 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 (e.g., 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.



PARENTAL OPT-OUT & LGBTQ+ INCLUSIVITY

Schools may not facilitate selective opt-out of the LGBTQ+-related content

Schools may not facilitate the selective opt-out of lessons that are focused on LGBTQ+ content by parents/guardians. Doing so would violate the non-discrimination provisions of the Education Code previously discussed and would open districts up to significant liability for discrimination.

LGBTQ+ content is not considered comprehensive sexual health education, nor HIV prevention education, and thus may not be opted out of as a stand-alone topic. Because California law protects students against discrimination on the basis of gender or sexual orientation, schools may not facilitate the selective opt-out of LGBTQ+-related content in the context of comprehensive sexual health and HIV prevention education. General instruction or programming relating to LGBTQ+ people and issues is not subject to parental opt-out (EC 51932[b]). Page 455 of the Health Education Framework found here: <https://www.cde.ca.gov/ci/he/cf/documents/healthframework2019.pdf>



Therefore, when topics such as gender, gender identity, gender expression, and sexual orientation are included in a curriculum that discusses reproductive organs and their functions, that curriculum in its entirety is sexual health education and is thus subject to the parental notification and consent provisions of the California Healthy Youth Act. When the topics referenced in section 51932 are

addressed in instruction or programming that does not discuss reproductive organs—for example, mandated instruction about the contributions of LGBTQ+ people in history and social science or assemblies on bullying and harassment—that instruction or programming is not comprehensive sexual health and HIV prevention education and is thus not subject to the parental notification and consent provisions of the California Healthy Youth Act.

1 EC § 51933(d)(5).

Instruction must affirmatively recognize that people have different sexual orientations and, when discussing or providing examples of relationships and couples, must be inclusive of same-sex relationships.

2 EC § 51933(d)(6).

It must also teach students about gender, gender expression, gender identity, and explore the harm of negative gender stereotypes.

3 EC § 51930.

The California Healthy Youth Act requires that sexual health education be appropriate for use with students of all genders and sexual orientations and clearly states that part of the intent of the law is “to encourage a pupil to develop healthy attitudes concerning adolescent growth and development, body image, gender, sexual orientation, relationships, marriage, and family.”

4 See, e.g., EC § 220; Civil Code § 51; Title IX of the Civil Rights Act of 1964, 20 U.S.C. §§ 1681 et seq.

Strong state and federal law prohibits discrimination on the basis of gender or sexual orientation in schools.

5 EC §§ 201, 220.

California schools have an affirmative duty to protect LGBTQ students from discrimination and harassment, to ensure inclusivity for students of all genders and sexual orientations

6 EC § 234.1.

to take steps to prevent all forms of discrimination and harassment

7 EC §§ 51500, 51501.

California law further prohibits bias in any school instruction or activity on the basis of sexual orientation or gender identity.

8 EC § 51934.

in addition to mandating that comprehensive sexual health and HIV prevention education lessons be inclusive of LGBTQ individuals and families

9 EC § 51204.5.

California law also affirmatively requires schools to include instruction on LGBTQ people in history and social sciences lessons.

10 EC § 51938(a).

The California Healthy Youth Act permits parents/guardians to opt out of “all or part” of comprehensive sexual health and HIV prevention instruction.



Graphic design by Mike Bromberg, SCCOE