



ADMINISTRATIVE PROCEDURE

CATEGORY: School District Procedures

SUBJECT: Nondiscrimination of Transgender Students

A. PURPOSE AND SCOPE

1. This procedure advises school site staff and administration regarding the continuum of transgender student concerns in order to create a safe learning environment for all students, and to ensure that every student has equal access to all components of the educational program.
2. **Related Procedures:**
 - Nondiscrimination on the Basis of Sex and Gender in District Programs and Activities .. 0112
 - Uniform Complaint Procedure 1700
 - Administration of Athletics 4170
 - Student-to-Student Bullying, Harassment or Intimidation 6381

B. LEGAL AND POLICY BASIS

1. **Reference:** Board policies A-3000, A-3550, H-2200, I-5500, and K-4010; Education Code §200 *et seq.*, 35291, 48985 and 49013; Penal Code §422.55; 5 CCR §432(b)(1)(A) and (D), 4600, 4622, 4631, 4632, 4633, 4650, 4900(a), 4910(k), and 4964; Assembly Bill 1266, School Success and Opportunity Act of 2013

C. GENERAL

1. **Originating Office.** Suggestions or questions concerning this procedure should be directed to the ADA/504/Title IX Coordinator, Student Services Division.
2. **Definitions.**
 - a. **Gender:** Refers to a person’s sex, and includes a person’s gender identity and gender expression. (Education Code §210.7; 5 CCR §4910[k])
 - b. **Gender Expression:** Refers to a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth. (Education Code §210.7)
 - c. **Gender Identity:** Refers to how a person identifies his/her own gender regardless of the person’s assigned sex at birth.
 - d. **Sex:** The biological condition of being a female or male.
 - e. **Transgender:** Refers to a person whose gender identify is different from the sex assigned at birth, and whose gender expression is different from the way males or females are stereotypically expected to look or behave. The transgender continuum may include people whose gender expression differs from stereotypical expectations. It may also include gender nonconforming characteristics such as feminine boys, masculine girls and androgynous characteristics.

D. IMPLEMENTATION

-
1. **Requests.** Student or parent/guardian, on behalf of a student, requesting protections and/or access under this procedure should consult with the site principal or designee. The principal or designee shall work collaboratively with the student and parent/guardian when responding to requests for access or protections under this procedure. The principal or designee may request support, staff training, parent resource materials and/or assistance from the Office of Student Services.
 2. **Issues or Privacy.** All persons, including students, have a right to privacy; this includes keeping a student's actual or perceived gender identity and gender expression private.
 - a. School personnel should not disclose a student's actual or perceived gender identity or gender expression to others, including, but not limited to, other students, parents/guardians, and/or other school personnel, unless there is a specific "need to know" in order to implement accommodations or protections under this procedure.
 - b. School personnel must be mindful of the confidentiality and privacy rights of students when contacting parents/guardians so as to not reveal, imply, or refer to a student's actual or perceived gender identity or gender expression.
 - c. 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 gender identity or gender expression.
 - d. All students (including transgender) have the right to openly discuss their gender identity and gender expression and to decide when, with whom, and how much to share private information.
 3. **Names/Pronouns.** Students have the right to be addressed by a name and pronoun corresponding to their gender identity that is consistently asserted at school.
 - a. Students are not required to obtain a court ordered name and/or gender change or to change their official records as a prerequisite to being addressed by the name and pronoun that corresponds to their gender identity. Inadvertent misuse of pronouns may occur, however intentional and persistent misuse of pronouns consistent with a student's gender identity is prohibited under this procedure.
 - b. The requested name ("Preferred Name" in PowerSchool) shall be included in the district's electronic database in addition to the student's legal name, in order to inform teachers.
 4. **Official Records.** The district is required to maintain a mandatory permanent student record that includes the legal name of the student, as well as the student's gender. (5 CCR §432[b][1][A], [D]) The district shall change a student's official records to reflect a change in legal name or gender upon receipt of documentation that such legal name and/or gender have been changed pursuant to California legal requirements.
 5. **Restroom Accessibility.** Students shall have access to the restroom that corresponds to their gender identity exclusively and consistently asserted at school.

- a. Where available, a single stall restroom may be used by any student who desires increased privacy, regardless of the underlying reason.
 - b. Use of such a single stall restroom shall be a matter of choice for a student, and no student shall be compelled to use such a restroom.
6. **Locker Rooms or Other Facilities.** Transgender students shall have access to use facilities consistent with their gender identity exclusively and consistently asserted at school, irrespective of the gender listed on the student's records, including but not limited to locker rooms. Where available, accommodations may be used by any student who desires increased privacy, regardless of the underlying reason. The use of such accommodations shall be a matter of choice for a student, and no student shall be compelled to use such accommodations. Based on availability and appropriateness to address privacy concerns, such accommodations could include, but are not limited to:
- a. Use of a private area in the public area (i.e., a restroom with a door, an area separated by a curtain);
 - b. Use of a nearby private area (i.e., a nearby restroom, a nurse's office).
7. **Sports and Physical Education Classes.**
- a. Transgender students shall not be denied the opportunity to participate in physical education, nor shall they be forced to have physical education outside of the assigned class time.
 - b. Transgender students shall be permitted to participate in gender-segregated recreational physical education class activities and athletic teams and competitions in accordance with the student's gender identity that is exclusively and consistently asserted at school.
 - c. The district's Physical Education, Health and Athletics Department should be contacted with questions regarding California Interscholastic Federation (CIF) eligibility.
8. **Dress Codes.** School sites can enforce dress codes that are adopted pursuant to Education Code §35291. Students shall have the right to dress in accordance with their gender identity that is consistently asserted at school, within the constraints of the dress codes adopted at the school site.
9. **Gender Segregation in Other Areas.** As a general rule, in any other circumstances where students are separated by gender in school activities or programs (i.e., class discussions, field trips), students shall be permitted to participate in accordance with their gender identity consistently asserted at school. Activities that may involve the need for accommodations to address student privacy concerns will be addressed on a case-by-case basis.

E. FORMS AND AUXILIARY REFERENCES

1. California Interscholastic Federation (CIF) "Guidelines for Gender Equity Participation"

F. REPORTS AND COMPLAINTS

1. Schools must ensure that transgender students are provided with a safe school environment that is free of discrimination, harassment, and bullying. Any student, parent/guardian, third party or other individual or organization who believes that he/she or another student or group has been subjected to unlawful discrimination, or who has witnessed such conduct, may report the conduct orally to any school employee or administrator, and/or file a formal written complaint under Administrative Procedure 1700.
 - a. **Oral reports to any school employee or administrator.**
 - (1) A staff member who receives a report of discrimination, including discriminatory harassment, intimidation and/or bullying, shall promptly notify the site principal/designee. In addition, any school employee who observes any incident of unlawful discrimination involving a student shall, within one school day, report this observation to the principal/designee, whether or not the victim makes a report.
 - (a) Where an oral report is made of unlawful discrimination, including discriminatory harassment, intimidation and/or bullying involving the principal/designee to whom the report would ordinarily be communicated, the employee who receives the report or who observes the incident shall instead make the report to the district's ADA/504/Title IX Coordinator.
 - (2) The principal/designee shall, within one day of receiving an oral report of unlawful discrimination, including discriminatory harassment, intimidation and/or bullying, inform the individual making the report of the resolution options under these procedures, including the right to file a written complaint. If a complainant is unable to make a written complaint due to conditions such as a disability or illiteracy, district staff shall assist him/her in the filing of the complaint. (5 CCR § 4600)
 - b. **File a formal written complaint** under these procedures with the district's ADA/504/Title IX Coordinator. If a written complaint is submitted to a school site administrator, the administrator shall, within two school days of receiving it, send the complaint to the district's ADA/504/Title IX Coordinator.
2. **Interim Measures.** After a report or complaint is made, the responsible administrator (principal/designee and/or the district's ADA/504/Title IX Coordinator) shall determine whether interim measures are necessary to stop, prevent, or address the effects of discrimination, including discriminatory intimidation or retaliation, harassment or bullying during and pending any informal resolution and/or investigation, such as placing students in separate classes or transferring a student to a class taught by a different teacher. Interim measures will be implemented in a manner that minimizes the burden on the individual who was the target of the discrimination.
3. **Optional Informal Resolution at the Site Level.** When a written complaint alleging unlawful discrimination against an individual is submitted under these procedures, with the consent of the individual who is the subject of the complaint and, when appropriate, his/her parent/guardian, the site principal/designee may engage in informal efforts to resolve the complaint. The principal/designee will notify the district's ADA/504/Title IX Coordinator that

informal resolution has been requested. The informal resolution process must be completed within 10 days of receipt of the complaint.

- a. The principal/designee will notify the individual who is the subject of the complaint and, when appropriate, his or her parent/guardian of the right to terminate informal resolution at any time and request that the district's ADA/504/Title IX Coordinator proceed with investigation of the complaint.
- b. The individual who is the subject of the complaint or his/her parent/guardian may not be asked or required to meet directly with the accused individual as part of the informal resolution process. The subject of the complaint or parent/guardian filing the complaint, or their representative, must be advised that he or she may file a formal complaint at any time during or after the informal process.
- c. *Optional Mediation:* In cases of student-on-student unlawful discrimination including discriminatory harassment, intimidation, and/or bullying, when both the student who complained and, when appropriate, his/her parent/guardian, and the accused student so agree, the principal/designee may arrange for them to resolve the complaint informally with the help of a counselor, teacher, administrator, or trained mediator.
- d. At the conclusion of 10 school days, the principal/designee will document whether informal resolution has been successful in resolving the complaint to the satisfaction of subject individual, and if appropriate, his/her parent/guardian, and will notify the district's ADA/504/Title IX Coordinator in writing of the outcome.

4. **Formal Complaint.**

- a. **Initiation of Investigation.** The district's ADA/504/Title IX Coordinator shall initiate an impartial investigation of an allegation of unlawful discrimination, including discriminatory harassment, intimidation and/or bullying, within five school days of receiving a formal complaint under this procedure. The time may be extended if informal resolution is undertaken pursuant to Section F.3. above. However, in all cases investigation must begin within 10 days of receipt of the complaint unless the district's ADA/504/Title IX Coordinator has confirmed that the complaint has been resolved informally to the satisfaction of the subject individual, and when appropriate, his/her parent/guardian.
 - (1) If the district's ADA/504/Title IX Coordinator receives an anonymous complaint or media report about alleged unlawful discrimination including discriminatory harassment, intimidation and/or bullying, he/she shall determine whether it is appropriate to pursue an investigation considering the specificity and reliability of the information, the seriousness of the alleged incident, and whether any individuals can be identified who were subjected to the alleged harassment.
 - (2) A complainant's refusal to provide the district's investigator with documents or other evidence related to the allegations in the complaint, failure or refusal to cooperate in the investigation, or engagement in any other obstruction of the investigation may result in the dismissal of the complaint because of a lack of evidence to support the allegation. (5 CCR §4631)

- b. **Initial Interview with the Subject of the Complaint.** At the beginning of an investigation, the district's ADA/504/Title IX Coordinator shall describe the district's complaint procedure to the subject of the complaint and, when appropriate, his/her parent/guardian, and discuss what actions are being sought in response to the complaint. The subject of the complaint shall have an opportunity to describe the incident, identify witnesses who may have relevant information and provide other evidence or information leading to evidence of the alleged conduct.
- (1) If the subject of the complaint and/or his or her parent/guardian requests confidentiality, he/she shall be informed that such a request may limit the district's ability to investigate or take other action. If the subject individual insists that his or her name not be revealed, the district's ADA/504/Title IX Coordinator should nevertheless take all reasonable steps to investigate and respond to the complaint consistent with the request.
- c. **Investigation Process.** The district's ADA/504/Title IX Coordinator shall keep the complaint and allegation confidential, except as necessary to carry out the investigation or take other subsequent necessary action. (5 CCR §4964)
- (1) The district's ADA/504/Title IX Coordinator shall interview individuals who have information relevant to the investigation, including, but not limited to, the subject of the complaint and, when appropriate, his or her parents/guardians, the person accused of unlawful discrimination, anyone who witnessed the reported conduct, and anyone mentioned as having relevant information. The district's ADA/504/Title IX Coordinator will also review any records, notes, or statements related to the complaint and may take other steps such as visiting the location where the conduct is alleged to have taken place.
- (2) When necessary to carry out his/her investigation or to protect student safety, and consistent with federal and state privacy laws, the district's ADA/504/Title IX Coordinator also may discuss the complaint with the Superintendent or designee, the parent/guardian of the accused individual if the accused individual is a student, a teacher or staff member whose knowledge of the students involved may help in determining the facts, law enforcement and/or child protective services, the district's Legal Counsel or the district's Risk Manager.
- (3) Interviews of the alleged victim, alleged perpetrator, and all relevant witnesses are conducted privately, separately, and are confidential. At no time will the alleged perpetrator and victim be interviewed together.
- (4) Interviews and other information gathered will be documented. Documentation of complaints and their resolution will be maintained for a minimum of two years.
- d. **Factors in Reaching a Determination.**
- (1) In reaching a decision about the complaint, the district's ADA/504/Title IX Coordinator may consider:
- (a) Statements made by the subject of the complaint, the individual accused, and other persons with knowledge relevant to the allegations.

- (b) The details and consistency of each person's account.
 - (c) Evidence of how the subject of the complaint reacted to the incident.
 - (d) Evidence of any past instances of unlawful discrimination, including discriminatory harassment, intimidation and/or bullying or other misconduct by the accused individual.
- (2) To judge the severity of the unlawful discrimination, including discriminatory harassment, intimidation and/or bullying, the district's ADA/504/Title IX Coordinator may take into consideration:
- (a) How the misconduct affected the subject of the complaint.
 - (b) The type, frequency, and duration of the misconduct.
 - (c) The age, race, gender/gender identity and/or disability of the subject of the complaint and the individual accused of the conduct, and the relationship between them.
 - (d) The number of persons engaged in the alleged conduct.
 - (e) The size of the school, location of the incidents, and context in which they occurred.
 - (f) Other incidents of discrimination at the school.

5. Written Report on Findings and Follow-Up.

- a. Within 60 calendar days of receiving the complaint, the district's ADA/504/Title IX Coordinator shall conclude the investigation and prepare a written report of his/her findings, as described below. This timeline may be extended for good cause. If an extension is needed, the district's ADA/504/Title IX Coordinator shall notify the complainant and explain the reason(s) for the extension.
- b. The district's decision shall be made in writing and sent to the complainant. (5 CCR §4631)
- c. The district's decision shall be written in English and, when required by Education Code §48985, in the complainant's primary language. Additionally, when otherwise necessary to provide access to information for limited English proficient students and parents/guardians, as required by federal law, the decision shall be translated into the student's or parent's/guardian's primary language.
- d. For all complaints, the decision shall include: (5 CCR §4631)
 - (1) The findings of fact based on the evidence gathered.
 - (2) As to each allegation, the district's conclusion(s) as to whether unlawful discrimination has occurred.

-
- (3) Rationale for such conclusion(s).
 - (4) Corrective actions, if they are warranted, which may include consequences imposed on the individual found to have engaged in the discriminatory conduct that relate directly to the subject of the complaint, as required by law, individual remedies offered or provided to the subject of the complaint, such as counseling, academic remedies or other measures, and systemic measures taken to eliminate any hostile environment and prevent the discrimination from recurring.¹
- e. Notice that the individual who was the subject of the complaint and, when appropriate, his/her parent/guardian should immediately report any recurrence of the conduct or retaliation to the district's ADA/504/Title IX Coordinator or principal/designee.
 - f. Notice of the complainant's right to appeal the district's decision within 15 *calendar* days to the California Department of Education (CDE) and procedures to be followed for initiating such an appeal.
 - g. Any decision concerning a complaint of discrimination, including discriminatory harassment, intimidation, or bullying shall include a notice that the complainant must wait until 60 calendar days have elapsed from the filing of an appeal with the CDE before pursuing state/civil law remedies. (Education Code §262.3)
6. **Remedial Action.**
- a. Remedial action will be designed to end the discriminatory conduct, prevent its recurrence and address its effects on the targeted student. Examples of appropriate action include:
 - (1) Interventions for the individual who engaged in the discrimination, such as parent/guardian or supervisor notification, discipline (see Section F.7.), counseling or training.
 - (2) Interventions for the targeted individual, such as counseling, academic support and information on how to report further incidents of discrimination.
 - (3) Separating the targeted individual and the individual who engaged in the discrimination, provided the separation does not penalize the targeted student.
 - (4) Follow-up inquiries with the targeted individual and witnesses to ensure that the discriminatory conduct has stopped and that he or she has not experienced any retaliation.
 - (5) Training or other interventions for the larger school community to ensure that students, staff and parents/guardians understand the types of behavior that constitute discrimination, that the district does not tolerate, and how to report it.

¹ Sanctions that relate to the complainant include, but are not limited to, requiring that the individual found to have engaged in the discrimination stay away from the complainant, prohibiting the individual from attending school for a period of time, or transferring the individual to other classes or another school. Steps the school has taken to eliminate a hostile environment and prevent recurrence may include counseling and academic support services for other affected students, training for faculty and staff, revisions to the school's policies, and campus climate surveys.

- b. The district's ADA/504/Title IX Coordinator shall ensure that the individual who was the target of discrimination and, when appropriate, his/her parent/guardian, are informed of the procedures for reporting any subsequent problems. The district's ADA/504/Title IX Coordinator shall make follow-up inquiries to determine if any new incidents or retaliation has occurred and shall keep a record of this information.

7. Disciplinary Action.

- a. Students who are found to have engaged in discriminatory conduct may be subject to disciplinary action up to and including expulsion. Disciplinary action may include oral warnings, written warnings, mandatory training, counseling, suspension, transfer, or expulsion for students. Such disciplinary action shall be in accordance with Board policy and state law. Suspension and recommendations for expulsion must follow applicable law.
- b. Staff members who are found to have engaged in discriminatory conduct toward students shall be subject to discipline up to and including dismissal. Disciplinary action may include oral warnings, written warnings, mandatory training, counseling, suspension, transfer, demotion, or termination. Such disciplinary action shall be determined by site and district administration in accordance with applicable policies, laws, and/or collective bargaining agreements.
- c. In identifying appropriate disciplinary action, repeated incidents and/or multiple victims will result in more severe penalties.

8. Appeals Procedures.

a. Appeals to the California Department of Education (CDE).

- (1) If dissatisfied with the district's decision under this procedure, the complainant may appeal in writing to the CDE. (Education Code §49013; 5 CCR §4632)
- (2) The complainant shall file his/her appeal within 15 calendar days of receiving the district's decision and the appeal shall specify the basis for the appeal of the decision and whether the facts are incorrect and/or the law has been misapplied. A copy of the locally filed complaint and a copy of the district's decision shall accompany the appeal. (5 CCR §4632)
- (3) Upon notification by the CDE that the complainant has appealed the district's decision, the Superintendent or designee shall forward the following documents to the CDE: (5 CCR §4633)
 - (a) A copy of the original complaint
 - (b) A copy of the decision
 - (c) A summary of the nature and extent of the investigation conducted by the district, if not covered by the decision
 - (d) A copy of the investigation file, including but not limited to all notes, interviews, and documents submitted by the parties and gathered by the investigator
 - (e) A report of any action taken to resolve the complaint

-
- (f) A copy of the district's Uniform Complaint Procedure
 - (g) Other relevant information requested by the CDE
- (4) The CDE may directly intervene in the complaint without waiting for action by the district when one of the conditions listed in 5 CCR §4650 exists, including cases in which the district has not taken action within 60 calendar days of the date the complaint was filed with the district.

b. Civil Law Remedies.

- (1) A complainant may pursue available civil law remedies outside of the district's complaint procedures. Complainants may seek assistance from mediation centers or public/private interest attorneys. Civil law remedies that may be imposed by a court include, but are not limited to, injunctions and restraining orders.
- (2) For complaints alleging discrimination, including discriminatory harassment, intimidation, bullying or sexual harassment based on state law, a complainant shall wait until 60 calendars days have elapsed from the filing of an appeal with the CDE before pursuing civil law remedies, provided the district has appropriately and in a timely manner apprised the complainant of his/her right to file a complaint in accordance with 5 CCR §4622. The moratorium does not apply to injunctive relief and to discrimination complaints based on federal law.
- (3) Complaints alleging discrimination based on race, color, national origin, sex/gender, disability or age may also be filed with the US Department of Education, Office for Civil Rights (www.ed.gov/ocr). Such complaints must generally be filed within 180 days of the alleged discrimination.

G. APPROVED BY



General Counsel, Legal Services
As to form and legality

H. ISSUED BY



Chief of Staff