

Regulation 5145.7: Sexual Sex Discrimination and Sex-Based Harassment

Status: ADOPTED

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CSBA NOTE: Education Code 231.5 and Title IX of the Education Amendments of 1972 (20 USC 1681-1688; 34 CFR 106.1-106.82) prohibit discrimination based on sex, including ~~sexual~~sex-based harassment, and **mandate** that the district adopt and publish complaint procedures. Also For more information regarding Title IX complaint procedures, see AR 5145.71 - Title IX ~~Sexual~~Sex Discrimination and Sex-Based Harassment Complaint Procedures.

The district does not discriminate on the basis of sex in any of its programs or activities and complies with Title IX of the Education Amendments of 1972 and its implementing regulations. Sex discrimination, including sex-based harassment, is prohibited in district education programs and activities.

Definitions

CSBA NOTE: Education Code 212.5 defines sexual harassment as any unwelcome sexual advance, request for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone in the educational setting. For purposes of suspension and expulsion, Education Code 48900.2 defines sexual harassment as conduct, when considered from the perspective of a reasonable person of the same gender as the victim, that is sufficiently severe or pervasive as to have a negative impact upon the victim's academic performance or to create an intimidating, hostile, or offensive educational environment for the victim; see AR 5144.1 - Suspension and Expulsion/Due Process. Conduct that meets the federal definition of sexual harassment in 34 CFR 106.30 (i.e., (1) a district employee conditioning the provision of a district aid, benefit, or service on an individual's participation in unwelcome sexual conduct; (2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity; or (3) sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 and 34 USC 12291) requires investigation and resolution through Title IX regulations; see AR 5145.71 - Title IX Sexual Harassment Complaint Procedures. CSBA NOTE: 34 CFR 106.2 and 106.10, as amended by 89 Fed. Reg. 33474, clarify that sex discrimination includes discrimination on the basis of sex stereotypes; sex characteristics; sexual orientation; gender identity; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions or recovery; and parental, marital, and family status. Those provisions further clarify that sex-based harassment includes harassment on the basis of a sex stereotype, sex characteristic, any of the other specified bases, and when sex-based harassment may create a hostile environment.

Sex discrimination includes treating a student differently with respect to the provision of opportunities to participate in school programs or activities or the provision or receipt of educational benefits or services based on the student's sex, sex stereotypes; sex characteristics; sexual orientation; gender; gender identity; gender expression; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions and recovery; parental, family, or

marital status; or the student's association with a person or group with one or more of these actual or perceived characteristics.

Sex discrimination, including sex-based harassment, intimidation, or bullying, may result from physical, verbal, nonverbal, or written conduct and occurs when prohibited conduct is so severe, persistent, or pervasive that it affects a student's ability to participate in or benefit from an educational program or activity; creates an intimidating, threatening, hostile, or offensive educational environment; has the effect of substantially or unreasonably interfering with a student's academic performance; or otherwise adversely affects a student's educational opportunities.

CSBA NOTE: Education Code 212.5 defines sexual harassment as any unwelcome sexual advance, request for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone in the educational setting. For purposes of suspension and expulsion, Education Code 48900.2 defines sexual harassment as conduct, when considered from the perspective of a reasonable person of the same gender as the victim, that is sufficiently severe or pervasive as to have a negative impact upon the victim's academic performance or to create an intimidating, hostile, or offensive educational environment for the victim; see AR 5144.1 - Suspension and Expulsion/Due Process.

Pursuant to 34 CFR 106.2, as amended by 89 Fed. Reg. 33474, sex-based harassment includes (1) a district employee, agent, or other individual authorized by the district to provide an aid, benefit, or service under the district's education program or activity explicitly or impliedly conditioning the provision of a district aid, benefit, or service on an individual's participation in unwelcome sexual conduct, (2) "hostile environment harassment," defined as unwelcome sex-based conduct that, based on the totality of the circumstance, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the district's education program or activity, or (3) sexual assault, dating violence, domestic violence, or stalking, as defined in 34 CFR 106.2.

Sex-based harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, sex stereotypes, sex characteristics, or other bases specified above. Conduct will constitute sex-based harassment when it takes the form of: (34 CFR 106.2, 106.11)

1. Quid pro quo harassment: A district employee, agent, or other individual authorized by the district to provide an aid, benefit, or service in the district's education program or activity conditioning the provision of district aid, benefit, or service on a student's participation in unwelcome sexual conduct

CSBA NOTE: Pursuant to 34 CFR 106.11, as amended by 89 Fed. Reg. 33474, Title IX grievance procedures are required for Title IX sex discrimination complaints, including sex-based harassment complaints, for conduct which occurs on or after August 1, 2024 under the district's education program or activity, which includes conduct alleged to be contributing to a hostile environment that occurred outside the district's education program or activity or outside the United States. Item #2 below reflects "hostile environment harassment" as defined by 34 CFR 106.2, as amended by 89 Fed. Reg. 33474.

2. Hostile environment harassment: Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the district's education program or activity

Any prohibited conduct that occurs off campus or outside of school-related or school-sponsored programs or activities will be regarded as sex-based harassment in violation of district policy if it has a continuing effect on a student's ability to participate in or benefit from district educational programs or activities.

3. Sexual assault, dating violence, domestic violence, or stalking as defined in 34 CFR 106.2

Sexual harassment includes, but is not limited to, unwelcome sexual advances, unwanted requests for sexual favors, or other unwanted verbal, visual, or physical conduct of a sexual nature made against another person of the same or opposite sex in the educational setting, under any of the following conditions: (Education Code 212.5; 5 CCR 4916)

1. Submission to the conduct is explicitly or implicitly made a term or condition of a student's academic status or progress.
2. Submission to or rejection of the conduct by a student is used as the basis for academic decisions affecting the student.
3. The conduct has the purpose or effect of having a negative impact on the student's academic performance or of creating an intimidating, hostile, or offensive educational environment.
4. Submission to or rejection of the conduct by the student is used as the basis for any decision affecting the student regarding benefits and services, honors, programs, or activities available at or through any district program or activity.

~~Any prohibited conduct that occurs off campus or outside of school-related or school-sponsored programs or activities will be regarded as sexual harassment in violation of district policy if it has a continuing effect on or creates a hostile school environment for the complainant or victim of the conduct.~~

~~For purposes of applying the complaint procedures specified in Title IX of the Education Amendments of 1972, sexual harassment is defined as any of the following forms of conduct that occurs in an education program or activity in which a district school exercises substantial control over the context and respondent: (34 CFR 106.30, 106.44)~~

- ~~1. A district employee conditioning the provision of a district aid, benefit, or service on the student's participation in unwelcome sexual conduct~~
- ~~2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a student equal access to the district's education program or activity~~
- ~~3. Sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 or 34 USC 12291~~

Examples of Sexual Sex Discrimination and Sex-Based Harassment

CSBA NOTE: The following list contains common examples of sexual harassment from the U.S. Department of Education's Office for Civil Rights (OCR) January 2001 Revised Sexual Harassment

Guidance, which has been rescinded, and definitions specified in 5 CCR 4916. Some items on this list have been modified to make them applicable to sex-based harassment in general, not just sexual harassment.

Examples of types of conduct which are prohibited in the district and which may constitute ~~sexual~~ sex-based harassment, under state and/or federal law, in accordance with the definitions above, include, but are not limited to:

1. Unwelcome leering, sexual flirtations, or propositions
2. Unwelcome ~~sexual~~ sex-based slurs, epithets, threats, verbal abuse, derogatory comments, or sexually degrading descriptions
3. Graphic verbal comments about an individual's body or overly personal conversation
4. ~~Sexual~~ Sex-based jokes, derogatory posters, notes, stories, cartoons, drawings, pictures, obscene gestures, or computer-generated images of a sexual nature
5. Spreading ~~sexual~~ sex-based rumors
6. Teasing or sexual remarks about students enrolled in a predominantly single-sex class
7. Massaging, grabbing, fondling, stroking, or brushing the body
8. Touching an individual's body or clothes in a sexual way
9. Impeding or blocking movements or any physical interference with school activities when directed at an individual on the basis of sex
10. Displaying sexually suggestive objects
11. Sexual assault, sexual battery, or sexual coercion
12. Electronic communications containing comments, words, or images described above

Title IX Coordinator/Compliance Officer

CSBA NOTE: Pursuant to 34 CFR 106.8, districts that receive federal financial assistance are mandated to designate an employee to ensure district compliance with Title IX and its implementing regulations. If the district has more than one Title IX Coordinator, it must designate one of its Title IX Coordinators to retain ultimate oversight over those responsibilities. The following paragraph specifies that the Title IX Coordinator will be the same person(s) designated to serve as the ~~compliance officer~~ Compliance Officer(s) for the district's uniform complaint procedures (UCP)

pursuant to AR 1312.3 - Uniform Complaint Procedures. Districts may modify this regulation to designate separate district employees to serve these functions.

The district designates the following individual(s) as the responsible employee(s) to coordinate its efforts to comply with Title IX of . The individual(s) shall also serve as the Education Amendments of 1972 Compliance Officer(s) specified in accordance with AR 5145.71 - Title IX Sexual Harassment Complaint Procedures, as well as to oversee investigate, and/or resolve sexual harassment complaints processed under AR Administrative Regulation 1312.3 - Uniform Complaint Procedures: and Administrative Regulation 5145.3 - Nondiscrimination/Harassment as the responsible employee(s) to handle student complaints alleging unlawful discrimination, as permitted by law. The Title IX Coordinator(s) may be contacted at:

(title or position)

(address)

(telephone number)

(email)

Notifications

The Superintendent or designee shall notify students and parents/guardians that the district does not discriminate on the basis of sex as required by Title IX and that inquiries about the application of Title IX to the district may be referred to the district's Title IX Coordinator and/or to the Assistant Secretary for Civil Rights, U.S. Department of Education. (34 CFR 106.8)

The district shall notify students and parents/guardians of the name or title, office address, email address, and telephone number of the district's Title IX Coordinator. (34 CFR 106.8)

A copy of the district's sexual harassment policy and regulation shall:

1. Be included in the notifications that are sent to parents/guardians at the beginning of each school year (Education Code 48980; 5 CCR 4917)

CSBA NOTE: As part of its responsibility to monitor district compliance with legal requirements concerning discrimination pursuant to Education Code 234.1, as amended by SB 153 (Ch. 38, Statutes of 2024), the California Department of Education (CDE) is required to ensure that the district prominently and conspicuously displays its nondiscrimination policies in all areas that are accessible to, and commonly frequented by, school site employees, students, and members of the public at each school site and district office, including, but not limited to, in school office lobbies, staff lounges, student government meeting rooms, and on the district's website. Additionally, Title IX, and its implementing regulations, 34 CFR 106.1-106.82, as amended by 89 Fed. Reg. 33474, require the district to provide notifications and take specified actions to prevent sex discrimination, including sex-based harassment. For more information regarding measures to prevent discrimination, see AR 5145.3 - Nondiscrimination/Harassment.

To prevent unlawful sex discrimination and sex-based harassment in district programs and activities, the Superintendent or designee shall provide notifications and implement measures to prevent

discrimination and harassment as specified in Administrative Regulation 5145.3 – Nondiscrimination/Harassment.

In addition to the measures to prevent discrimination specified in Administrative Regulation 5145.3 – Nondiscrimination/Harassment, the Superintendent or designee shall ensure that a copy of the district's sex discrimination and sex-based harassment policy and regulation:

2. 1. Be is displayed in a prominent location in the main administrative building or other area where notices of district rules, regulations, procedures, and standards of conduct are posted (Education Code 231.5)

CSBA NOTE: Education Code 231.6, as added by AB 543 (Ch. 428, Statutes of 2019), requires districts serving students in grades 9-12 to create a poster that notifies students of the district's sexual harassment policy, and to display it, as specified below. The district may partner with local, state, or federal agencies, or nonprofit organizations, for the purposes of the design and content of the poster.

3. 2. Be is summarized on a poster, which shall be prominently and conspicuously displayed in each bathroom and locker room at each school:

 The poster may be displayed in public areas that are accessible to and frequented by students, including, but not limited to, classrooms, hallways, gymnasiums, auditoriums, and cafeterias. The poster shall display the rules and procedures for reporting a charge of sexual harassment; the name, phone number, and email address of an appropriate school employee to contact to report a charge of sexual harassment; the rights of the reporting student, the complainant, and the respondent; and the responsibilities of the school. (Education Code 231.6)

CSBA NOTE: Education Code 234.6, as added by AB 34 (Ch. 282, Statutes of 2019), requires districts, beginning in the 2020-21 school year, to post on the district's web site the district's written policy on sexual harassment as well as other state and federal law requirements, in the manner specified below. 34 CFR 106.8 also requires districts that have web sites to prominently display the contact information for the Title IX Coordinator and the district's nondiscrimination policy on its web site:

3. Be posted, along with the name or title and contact information of the Title IX Coordinator, in a prominent location on the district's web site in a manner that is easily accessible to parents/guardians and students. (Education Code 234.6; 34 CFR 106.8)

CSBA NOTE: Education Code 231.5, as amended by AB 543, requires the district to provide a copy of the district's sexual harassment policy as part of any orientation program conducted for new and continuing students:

4. Be 3. Is provided as part of any orientation program conducted for new and continuing students at the time the student is enrolled or at the beginning of each quarter, semester, or summer session (Education Code 231.5)
5. Appear 4. Appears in any school or district publication that sets forth the school's or district's comprehensive rules, regulations, procedures, and standards of conduct (Education Code 231.5)

- 6.—Be included, along with the name or title and contact information of the Title IX Coordinator, in any handbook provided to students or parents/guardians (34 CFR 106.8)

CSBA NOTE: Education Code 234.6, as added by AB 34, requires a district, starting in the 2020-21 school year, to post the definitions specified below. Also see AR 5145.3 - Nondiscrimination/Harassment for language reflecting this requirement and other notifications related to sex discrimination.

Reporting Complaints Reports and Complaints

CSBA NOTE: The Superintendent or designee shall also post the definition following paragraph relates to student and employee reporting of sex discrimination and harassment as described in Education Code 230, including the rights set forth in Education Code 221.8, in a prominent location on the district's web site in a manner that is easily accessible to parents/guardians and students. (Education Code 234.6) sex-based harassment, and should be revised to reflect the district's timeline.

A student or a student's parent/(s)/guardian(s) who believes that the student has been subjected to sexual sex discrimination, including sex-based harassment by another student, an employee, or a third party, in a district program or activity or who has witnessed sexual sex discrimination, including sex-based harassment, is strongly encouraged to report the incident to the district's Title IX Coordinator, a teacher, the principal, the district's Title IX Coordinator, or any other available school employee. Within one school day workday of receiving such a report, the principal or other school employee shall forward the report to the district's Title IX Coordinator. Any school employee who observes an incident of sexual sex discrimination or sex-based harassment involving a student shall, within one school day workday, report the observation to the principal or Title IX Coordinator. as specified in the accompanying board policy. The report shall be made regardless of whether the alleged victim files a formal complaint or requests confidentiality.

When a report or complaint of sexual sex discrimination or sex-based harassment involves off-campus conduct, the Title IX Coordinator shall assess whether the conduct may create or contribute to the creation of a hostile school environment. If the Title IX Coordinator determines that a hostile environment may be created, the complaint shall be investigated and resolved in the same manner as if the prohibited conduct occurred at school.

When a verbal or informal report of sexual harassment is submitted, the Title IX Coordinator shall inform the student or parent/guardian of the right to file a formal written complaint in accordance with applicable district complaint procedures.

Complaint Procedures

All complaints and allegations of sexual harassment by and against students shall be investigated and resolved in accordance with law and district procedures. The Title IX Coordinator shall review the allegations to determine the applicable procedure for responding to the complaint. All complaints that meet the definition of sexual harassment under Title IX shall be investigated and resolved in accordance with AR 5145.71 - Title IX Sexual Harassment Complaint Procedures. Other sexual harassment complaints shall be investigated and resolved pursuant to BP/AR 1312.3 - Uniform Complaint Procedures.

If sexual harassment is found following an investigation, the Title IX Coordinator, or designee in consultation with the Coordinator, shall take prompt action to stop the sexual harassment, prevent recurrence, implement remedies, and address any continuing effects.

Complaint Procedures

CSBA NOTE: Pursuant to 34 CFR 106.11 and 106.44, as amended by 89 Fed. Reg. 33474, a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, is required to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct. As such a complaint may also fall within the scope of the UCP as specified in BP/AR 1312.3 – Uniform Complaint Procedures, it is unclear whether districts would additionally be required to follow the process specified in BP/AR 1312.3 – Uniform Complaint Procedures. Due to this uncertainty, it is recommended that districts consult CSBA's District and County Office of Education Legal Services or district legal counsel prior to utilizing the UCP for this purpose. For more information regarding the Title IX grievance procedures, see AR 5145.71 – Sex Discrimination and Sex-Based Harassment Complaint Procedures.

All complaints and allegations of sex discrimination and sex-based harassment shall be investigated and resolved in accordance with 34 CFR 106.44 and 106.45 and Administrative Regulation 5145.71 – Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

Issues Unique to Intersex, Nonbinary, Transgender and Gender-Nonconforming Students

CSBA NOTE: The terms and definitions used below are consistent with California law, case law, and generally accepted terms within academia and in publications issued by state and federal agencies such as CDE and OCR, including provisions in the California Gender Recognition Act that recognize three gender options, female, male, and nonbinary, and define "nonbinary" and other related terms such as "intersex" and "transgender". In addition to consistency with the above, the definition of "gender identity" below is consistent with the Resolution Agreement between the Arcadia Unified School District, OCR, and the U.S. Department of Justice, Civil Rights Division, which defines "gender identity" as "one's internal sense of gender, which may be different from one's assigned sex, and which is consistently and uniformly asserted, or for which there is other evidence that the gender identity is sincerely held as part of the student's core identity."

The following section is also consistent with OCR's fact sheet "Supporting Intersex Students: A Resource for Students, Families, and Educators," issued in October 2021 and CDE's "Update FLASH #158, Guidance for Changing a Student's Gender in CALPADS," which provides guidance on changing a student's gender and/or legal name on the student's mandatory permanent record.

Gender identity of a student means the student's gender-related identity, appearance, or behavior as determined from the student's internal sense, regardless of whether that gender-related identity, appearance, or behavior is different from that traditionally associated with the student's physiology or assigned sex at birth.

Gender expression means a student's gender-related appearance and behavior, whether stereotypically associated with the student's assigned sex at birth. (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.

Gender-nonconforming student means a student whose gender expression differs from stereotypical expectations.

Intersex student means a student with natural bodily variations in anatomy, hormones,

chromosomes, and other traits that differ from expectations generally associated with female and male bodies.

Nonbinary student means a student whose gender identity falls outside of the traditional conception of strictly either female or male, regardless of whether the student identifies as transgender, was born with intersex traits, uses gender-neutral pronouns, or uses agender, genderqueer, pangender, gender nonconforming, gender variant, or such other more specific term to describe their gender.

Transgender student means a student whose gender identity is different from the gender assigned at birth.

CSBA NOTE: 34 CFR 106.2 and 106.10, as amended by 89 Fed. Reg. 33474, clarify that discrimination on the basis of sex for the purpose of Title IX includes discrimination on the basis of sex stereotypes; sex characteristics; sexual orientation; gender identity; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions or recovery; and parental, marital, and family status.

Starting in the 2025-26 school year through the 2029-2030 school year, Education Code 218.3, as added by AB 5 (Ch. 220, Statutes of 2023), requires a district serving students in any of grades 7-12 to provide at least one hour of training annually to all teachers and certificated employees serving students in grades 7-12 which incorporates CDE's online training curriculum to support lesbian, gay bisexual, transgender, queer, and questioning (LGBTQ+) cultural competency. The district is required to maintain records documenting the date that each employee completed the training and the name of the entity that provided the training; see AR 5145.3 – Nondiscrimination/Harassment.

Pursuant to Education Code 219, as added by SB 857 (Ch. 228, Statutes of 2023), the State Superintendent of Public Instruction has established the LGBTQ+ Statewide Advisory Task Force (LGBTQ+SAT) to identify the needs of LGBTQ+ students and to make recommendations to assist in implementing supportive policies and initiatives including: (1) mental health and feelings of safety and support, (2) inclusive and safe access to school facilities, (3) inclusive instructional material and school curriculum, (4) prevention of, response to, and oversight of, bullying and harassment to determine the effectiveness of policies and programs, and (5) inclusive participation in school activities. For more information on the LGBTQ+SAT, see CDE's website.

Districts with questions about the rights of transgender and gender-nonconforming students should consult CSBA's District and County Office of Education Legal Services or district legal counsel. For more information on the rights of transgender students, see CSBA's, "Legal Guidance on Rights of Transgender and Gender Nonconforming Students in Schools."

The district prohibits acts of verbal, nonverbal, or physical aggression, intimidation, or hostility that are based on sex, sex stereotypes, sex characteristics, sexual orientation, gender identity, or gender expression, or that have the purpose or effect of producing a negative impact on the student's academic performance or of creating an intimidating, hostile, or offensive educational environment, regardless of whether the acts are sexual in nature. Examples of the types of conduct that are prohibited in the district and which may constitute sex-based hostile environment harassment include, but are not limited to:

1. Refusing to address a student by a name and the pronouns consistent with the student's gender identity

2. Disciplining or disparaging a student or excluding the student from participating in activities, for behavior or appearance that is consistent with the student's gender identity or that does not conform to stereotypical notions of masculinity or femininity, as applicable
3. Blocking a student's entry to the restroom that corresponds to the student's gender identity
4. Taunting a student because the student participates in an athletic activity more typically favored by a student of the other sex
5. Revealing a student's gender identity to individuals who do not have a legitimate need for the information, without the student's consent
6. Using gender-specific slurs
7. Assaulting a student because of the student's gender, sex characteristic, sexual orientation, gender identity, or gender expression

To ensure that intersex, nonbinary, 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:

CSBA NOTE: Timelines included in Items #1-2 below may be modified to reflect district practice.

Pursuant to state and federal law, a district has the responsibility to ensure a safe, nondiscriminatory school environment for all students and equal access to the educational program for intersex, nonbinary, transgender, or gender non-conforming students. As part of its obligation, the district must keep a student's private information, including a student's gender, gender identity, or gender expression, confidential. CDE's "School Success and Opportunity Act (Assembly Bill 1266) Frequently Asked Questions," available on its website, references a transgender student's informational privacy right under Article I, Section I of the California Constitution as protecting the student's gender identity from disclosure. However, CDE specifies that, pursuant to 34 CFR 99.36, disclosure of such information to appropriate parties is permitted in connection with an emergency, as necessary to protect the health or safety of the student or other individuals.

Education Code 220.3 and 220.5, as added by AB 1955 (Ch. 95, Statutes of 2024), clarify that under existing law a district, including a Governing Board member, may not require an employee or contractor to disclose any information related to a student's sexual orientation, gender identity, or gender expression to any other person, or enact or enforce any policy, rule, or administrative regulation that would require the same, without the student's consent unless otherwise required by state or federal law.

Therefore, a district is required to take measures such as those specified in the following paragraph, to prevent unintentional release of students' private information and should contact CSBA's District and County Office of Education Legal Services or district legal counsel before disclosing a student's gender identity without the student's consent.

1. Right to privacy: A student's intersex, nonbinary, transgender, or gender-nonconforming status is the student's private information

The district shall develop strategies to prevent unauthorized disclosure of students' private information. Such strategies may include, but are not limited to, collecting or maintaining information about student gender only when relevant to the educational program or activity, protecting or revealing a student's gender identity as necessary to protect the health or safety of the student, and keeping a student's unofficial record separate from the official record.

The district shall 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. (Education Code 220.3, 220.5; 34 CFR 99.31, 99.36)

The district shall only allow disclosure of a student's personally identifiable information to employees in accordance with law. Any district employee to whom a student's intersex, nonbinary, transgender, or gender-nonconforming status is disclosed shall keep the student's information confidential. When disclosure of a student's gender identity is made to a district employee by a student, the employee shall seek the student's permission to notify the Compliance Officer. If the student refuses to give permission, the employee shall keep the student's information confidential, unless the employee is required to disclose or report the student's information pursuant to this administrative regulation, 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 the student's status as an intersex, nonbinary, transgender, or gender-nonconforming student. If the student permits the employee to notify the Compliance Officer, the employee shall do so within three school days.

As appropriate given the student's need for support, the Compliance Officer may discuss with the student any need to disclose the student's intersex, nonbinary, transgender, or gender-nonconformity status or gender identity or gender expression to the student's parents/guardians and/or others, including other students, teacher(s), or other adults on campus. The district shall offer support services, such as counseling, to students who wish to inform their parents/guardians of their status and request assistance in doing so.

2. Determining a Student's Gender Identity: The Compliance Officer shall accept the student's assertion of gender identity and begin to treat the student consistent with that gender identity unless district personnel present a credible and supportable basis for believing that the student's assertion is for an improper purpose
3. Addressing a Student's Transition Needs: The Compliance Officer shall arrange a meeting with the student and, if appropriate, the student's parents/guardians to identify and develop strategies for ensuring that the student's access to educational programs and activities is maintained

The meeting shall discuss the intersex, nonbinary, 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 Compliance Officer shall identify specific school site employee(s) to whom the student may report any problem related to the student's status as an intersex, nonbinary, transgender, or gender-nonconforming individual, so that prompt action can 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 arrangements for the student are meeting the student's educational needs and providing equal access to programs and activities, educate appropriate staff about the student's transition, and serve as a resource to the student to better protect the student from gender-based discrimination.

CSBA NOTE: Pursuant to Education Code 221.5, a district is required to permit a student to use facilities and participate in sex-segregated school programs and activities consistent with the student's gender identity, regardless of the gender listed on the student's educational records. Additionally, 34 CFR 106.31, as amended by 89 Fed. Reg. 33474, provides that a district (1) may not exclude a student from participation in, deny a student the benefits of, or otherwise subject a student to discrimination on the basis of sex in any education program or activity, (2) that in the limited circumstances in which different treatment or separation on the basis of sex is permitted, a district may not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a student to more than de minimis harm, and (3) that preventing a student from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex. In commentary accompanying the Final Rule, the U.S. Department of Education (USDOE) clarifies that Title IX protects students from sex discrimination, including sex-based harassment, when they access sex-separate facilities. This protection applies with equal force to all students, including transgender and nonbinary students, requiring districts to provide access to sex-separate facilities, including bathrooms, in a manner that does not cause more than de minimis harm. USDOE intends to issue a separate final rule to address Title IX's application to sex-separate athletic teams which is governed by 34 CFR 106.41, rather than 34 CFR 106.31 as described above.

Beginning July 1, 2026, Education Code 35292.5, as amended by SB 760 (Ch. 227, Statutes of 2023), requires each school maintaining any of grades 1-12 with more than one female student restroom and more than one male student restroom to provide and maintain at least one all-gender restroom for student use that meets the requirements of law.

For more information on the rights of transgender students, see CSBA's updated, "Legal Guidance on Rights of Transgender and Gender Nonconforming Students in Schools."

4. Accessibility to Sex-Segregated Facilities, Programs, and Activities: When the district maintains sex-segregated facilities, such as restrooms and locker rooms, or offers sex-segregated programs and activities, such as physical education classes, intermural sports, and interscholastic athletic programs, students shall be permitted to access facilities and participate in programs and activities consistent with their gender identity

To address any student's privacy concerns in using sex-segregated facilities, the district shall offer available options such as a gender-neutral or single-use restroom or changing area, a bathroom stall with a door, an area in the locker room separated by a curtain or screen, 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 the student is intersex, nonbinary, transgender, or gender-nonconforming. In addition, a student shall be permitted to participate in accordance with the student's 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 the student's gender identity shall not render invalid or inapplicable any other eligibility rule established for participation in the activity.

Beginning July 1, 2026, each school shall provide and maintain at least one all-gender restroom for student use that meets the requirements of Education Code 35292.5.

CSBA NOTE: Education Code 49062.5 and 49070 require districts to update a former student's records to change the student's name and/or gender as specified below. See AR 5125 - Student

Records. Pursuant to 5 CCR 432, a district is required to maintain for each student a mandatory permanent student record that includes the student's legal name, sex, and other specified details. While 5 CCR 4910 refers to "sex" as the "biological condition or quality of being a female or male human being," it also defines "gender" to mean "sex," which includes "a person's gender identity and gender related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth." When responding to a request to change the gender or legal name of intersex, nonbinary, transgender, or gender non-conforming students, districts should be mindful of laws prohibiting gender-based discrimination. In "Update FLASH #158, Guidance for Changing a Student's Gender in CALPADS," CDE distinguishes the process for updating a student's legal name from the process for updating a student's gender. According to CDE, a district must receive formal documentation that a student's name has been legally changed before the student's recorded legal name may be changed in the student's mandatory permanent student record (official record). When documentation is not provided, CDE states the district should nonetheless update all other school records (unofficial records such as attendance sheets, report cards, and school identification) to reflect the name change. On the other hand, to change a student's gender in the student's official records, CDE states that there is no specific requirement regarding formal documentation or process that a district should review or require in determining the gender to be recorded in the official records. Pursuant to Education Code 49061, only a parent/guardian may authorize a change to a student's gender in the student's official record. The district should consult CSBA's District and County Office of Education Legal Services or district legal counsel in developing a policy in this regard.

5. Student Records: Upon each student's enrollment, the district is required to maintain a mandatory permanent student record (official record) that includes the student's gender and legal name

A student's legal name as entered on the mandatory student record required pursuant to 5 CCR 432 shall only be changed with proper documentation. A student's gender as entered on the student's official record required pursuant to 5 CCR 432 shall only be changed with written authorization of a parent/guardian having legal custody of the student. (Education Code 49061)

However, when proper documentation or authorization, as applicable, is not submitted with a request to change a student's legal name or gender, any change to the student's record shall be limited to the student's unofficial records such as attendance sheets, report cards, and school identification.

6. Names and Pronouns: If a student so chooses, district personnel shall be required to address the student by a name and the pronoun(s) consistent with the student's gender identity, without the necessity of a court order or a change to the student's official district record

However, inadvertent slips or honest mistakes by district personnel in the use of the student's name and/or consistent pronouns will, in general, not constitute a violation of this administrative regulation or the accompanying board policy.

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

Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State	Description
5 CCR 432	Student records
5 CCR 4600-4670	Uniform complaint procedures
5 CCR 4900-4965	Nondiscrimination in elementary and secondary educational programs receiving state or federal financial assistance
Civ. Code 1714.1	Liability of parent or guardian for act of willful misconduct by a minor
Civ. Code 51.9	Liability for sexual harassment; business, service and professional relationships
Ed. Code 200-262.4	Prohibition of discrimination
Ed. Code 220.1	Prohibition of retaliation related to educational equity
Ed. Code 220.3	Prohibition of disclosure of information related to student's sexual orientation, gender identity, or gender expression
Ed. Code 220.5	Prohibition of policies requiring disclosure of information related to student's sexual orientation, gender identity, or gender expression
Ed. Code 35292.5	School restrooms; all-gender restrooms
Ed. Code 48900	Grounds for suspension or expulsion
Ed. Code 48900.2	Additional grounds for suspension or expulsion; sexual harassment
Ed. Code 48904	Liability of parent/guardian for willful student misconduct
Ed. Code 48980	Parent/Guardian notifications
Ed. Code 48985	Notices to parents in language other than English
Ed. Code 49060-49079	Student records
Gov. Code 12950.1	Sexual harassment training
Federal	Description
20 USC 1092	Definition of sexual assault
20 USC 1221	Application of laws
20 USC 1232g	Family Educational Rights and Privacy Act (FERPA) of 1974
20 USC 1681-1688	Title IX of the Education Amendments of 1972; discrimination based on sex
34 CFR 106.1-106.82	Nondiscrimination on the basis of sex in education programs
34 CFR 99.1-99.67	Family Educational Rights and Privacy
34 USC 12291	Definition of dating violence, domestic violence, and stalking

42 USC 1983	Civil action for deprivation of rights
42 USC 2000d-2000d-7	Title VI, Civil Rights Act of 1964
42 USC 2000e-2000e-17	Title VII, Civil Rights Act of 1964, as amended
Management Resources	Description
Court Decision	Gebser v. Lago Vista Independent School District (1998) 524 U.S. 274
Court Decision	Oona by Kate S. v. McCaffrey (1998, 9th Cir.) 143 F.3d 473
Court Decision	Reese v. Jefferson School District (2001, 9th Cir.) 208 F.3d 736
Court Decision	Davis v. Monroe County Board of Education (1999) 526 U.S. 629
Court Decision	Doe v. Petaluma City School District (1995, 9th Cir.) 54 F.3d 1447
Court Decision	Donovan v. Poway Unified School District (2008) 167 Cal.App.4th 567
Court Decision	Flores v. Morgan Hill Unified School District (2003, 9th Cir.) 324 F.3d 1130
<u>Federal Register</u>	<u>Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, April 29, 2024, Vol. 89, No. 83, pages 33474-33896</u> <u>https://www.federalregister.gov/documents/2024/04/29/2024-07915/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal</u>
<u>CSBA Publication</u>	<u>Legal Guidance on Rights of Transgender and Gender Nonconforming Students in Schools, October 2022</u>
CSBA Publication	Safe Schools: Strategies for Governing Boards to Ensure Student Success, 2011
CSBA Publication	Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students, Policy Brief, February 2014
U.S. DOE, Office for Civil Rights <u>California Department of Education</u> Publication	Q&A on Campus Sexual Misconduct, September 2017 <u>California Longitudinal Pupil Achievement Data System (CALPADS) Update FLASH #158: Guidance for Changing a Student's Gender in CALPADS, July 2019</u>
U.S. DOE, Office for Civil Rights Publication	Sexual Harassment: It's Not Academic, September 2008
U.S. DOE, Office for Civil Rights Publication	Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, January 2001
U.S. DOE, Office for Civil Rights Publication	Examples of Policies and Emerging Practices for Supporting Transgender Students, May 2016
U.S. DOE, Office for Civil Rights Publication	Dear Colleague Letter: Title IX Coordinators, April 2015
Website	CSBA District and County Office of Education Legal Services

Website	California Department of Education
Website	CSBA
Website	U.S. Department of Education, Office for Civil Rights

Cross References

Code	Description
0410	Nondiscrimination In District Programs And Activities
0450	Comprehensive Safety Plan
0450	Comprehensive Safety Plan
1114	District-Sponsored Social Media
1114	District-Sponsored Social Media
1312.1	Complaints Concerning District Employees
1312.1	Complaints Concerning District Employees
1312.3	Uniform Complaint Procedures
1312.3	Uniform Complaint Procedures
1312.3-E(1)	Uniform Complaint Procedures
1312.3-E(2)	Uniform Complaint Procedures
1313	Civility
3515.4	Recovery For Property Loss Or Damage
3515.4	Recovery For Property Loss Or Damage
3530	Risk Management/Insurance
3530	Risk Management/Insurance
3580	District Records
3580	District Records
4117.7	Employment Status Reports
4118	Dismissal/Suspension/Disciplinary Action
4118	Dismissal/Suspension/Disciplinary Action
4119.11	Sex Discrimination and SexualSex-Based Harassment
4119.11	Sex Discrimination and SexualSex-Based Harassment
4119.12	Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures
4131	Staff Development

4218	Dismissal/Suspension/Disciplinary Action
4218	Dismissal/Suspension/Disciplinary Action
4219.11	<u>Sex Discrimination and SexualSex-Based</u> Harassment
4219.11	<u>Sex Discrimination and SexualSex</u> Harassment
<u>4219.12</u>	<u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4219.21	Professional Standards
4219.21-E(1)	Professional Standards
4231	Staff Development
4317.7	Employment Status Reports
4319.11	<u>Sex Discrimination and SexualSex-Based</u> Harassment
4319.11	<u>Sex Discrimination and SexualSex-Based</u> Harassment
<u>4319.12</u>	<u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4319.21	Professional Standards
4319.21-E(1)	Professional Standards
5125	Student Records
5125	Student Records
5131	Conduct
5131.2	Bullying
5131.2	Bullying
5131.5	Vandalism And Graffiti
5132	Dress And Grooming
5132	Dress And Grooming
5137	Positive School Climate
5138	Conflict Resolution/Peer Mediation
5141.4	Child Abuse Prevention And Reporting
5141.4	Child Abuse Prevention And Reporting
5141.52	Suicide Prevention
5141.52	Suicide Prevention
5144	Discipline
5144	Discipline

5144.1	Suspension And Expulsion/Due Process
5144.1	Suspension And Expulsion/Due Process
5144.2	Suspension And Expulsion/Due Process (Students With Disabilities)
5145.2	Freedom Of Speech/Expression
5145.2	Freedom Of Speech/Expression
5145.3	Nondiscrimination/Harassment
5145.3	Nondiscrimination/Harassment
5145.6	Parent/Guardian Notifications
5145.6-E(1)	Parent/Guardian Notifications
5145.71	Title IX Sexual <u>Sex Discrimination and Sex-Based</u> Harassment Complaint Procedures
5145.71-E(1)	Title IX Sexual <u>Sex Discrimination and Sex-Based</u> Harassment Complaint Procedures
5145.9	Hate-Motivated Behavior
6142.1	Sexual Health And HIV/AIDS Prevention Instruction
6142.1	Sexual Health And HIV/AIDS Prevention Instruction
6142.8	Comprehensive Health Education
6142.8	Comprehensive Health Education
6145	Extracurricular And Cocurricular Activities
6145	Extracurricular And Cocurricular Activities
6145.2	Athletic Competition
6145.2	Athletic Competition
6163.4	Student Use Of Technology
6163.4-E(1)	Student Use Of Technology