

## CSBA Sample | BP 5145.3 Students

### **Nondiscrimination/Harassment**

Note: The following mandated policy reflects various provisions of state and federal law which prohibit discrimination against students in educational programs and activities based on certain actual or perceived characteristics of an individual, including Education Code 220, which prohibits discrimination based on race, nationality, ethnicity, gender, gender identity, gender expression, sex, sexual orientation, religion, or any other characteristic contained in the definition of hate crimes in Penal Code 422.55; Title VI (42 USC 2000d-2000e-17), which prohibits discrimination based on race, color, or national origin; and Title IX (20 USC 1681-1688), which prohibits discrimination based on sex. Education Code 260 gives the Governing Board primary responsibility for ensuring that district programs and activities are free from discrimination based on age or any of these characteristics. See also BP 0410 - Nondiscrimination in District Programs and Activities.

Note: Moreover, the right of a transgender student to participate in sex-segregated educational programs and use facilities consistent with his/her gender identity is specified in Education Code 221.5, as amended by AB 1266 (Ch. 85, Statutes of 2013). It should be noted that an attempt is currently in progress to qualify a referendum on AB 1266 for the November 2014 ballot. However, even as the eventual outcome is unknown as of this writing, the guidelines included in this Board policy and the accompanying administrative regulation to accommodate the needs of transgender students reflect best practices based on existing state and federal law. Districts with questions about the rights of transgender and gender-nonconforming students should consult legal counsel as appropriate. For more information on the rights of transgender students, see CSBA's policy brief Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students and its Interim Guidance Regarding Transgender Students, Privacy, and Facilities.

Note: Education Code 234.1 mandates that districts adopt policy prohibiting, at school or in any school activity related to school attendance or under the authority of the district, discrimination, harassment, intimidation, and bullying based on the foregoing characteristics. The California Department of Education, through its Federal Program Monitoring process, reviews districts' uniform complaint procedures and other policies and practices to ensure compliance with these requirements.

The Governing Board desires to provide a safe school environment that allows all students equal access and opportunities in the district's academic and other educational support programs, services, and activities. The Board prohibits, at any district school or school activity, unlawful discrimination, harassment, intimidation, and bullying of any student based on the student's actual race, color, ancestry, national origin, ethnic group identification, age, religion, marital or parental status, physical or mental disability, sex, sexual orientation, gender, gender identity, or gender expression; the perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics.

This policy shall apply to all acts related to school activity or to school attendance occurring within a district school. (Education Code 234.1)

(cf. 0410 - Nondiscrimination in District Programs and Activities)

(cf. 5131 - Conduct)

(cf. 5131.2 - Bullying)

(cf. 5137 - Positive School Climate)

(cf. 5145.9 - Hate-Motivated Behavior)

(cf. 5146 - Married/Pregnant/Parenting Students)

(cf. 6164.6 - Identification and Education Under Section 504)

Prohibited discrimination, harassment, intimidation, or bullying includes physical, verbal, nonverbal, or written conduct based on one of the categories listed above that is so severe 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.

The Board also prohibits any form of retaliation against any student who files a complaint or report regarding an incident of discrimination, harassment, intimidation, or bullying.

Note: The following paragraph is optional and may be modified to reflect district practice. Pursuant to Education Code 234.1, a district is required to publicize its nondiscrimination policies to the school community.

Note: In addition, in its October 2010 Dear Colleague Letter: Harassment and Bullying, the U.S. Department of Education's Office for Civil Rights identifies training of the school community as one of the key measures for minimizing discriminatory and harassing behavior in school. See the accompanying administrative regulation for specific measures to prevent discrimination and facilitate students' access to the educational program.

The Superintendent or designee shall facilitate students' access to the educational program by publicizing the district's nondiscrimination policy and related complaint procedures to students, parents/guardians, and employees. He/she shall provide training and information on the scope and use of the policy and complaint procedures and take other measures designed to increase the school community's understanding of the requirements of law related to discrimination. The Superintendent or designee shall regularly review the implementation of the district's nondiscrimination policies and practices and, as necessary, shall take action to remove any identified barrier to student access to or participation in the educational program. He/she shall report his/her findings and recommendations to the Board after each review.

(cf. 1312.3 - Uniform Complaint Procedures)

(cf. 1330 - Use of Facilities)

(cf. 4131 - Staff Development)

(cf. 4231 - Staff Development)

(cf. 4331 - Staff Development)

(cf. 6145 - Extracurricular and Cocurricular Activities)

(cf. 6145.2 - Athletic Competition)

(cf. 6164.2 - Guidance/Counseling Services)

Note: Policies related to discrimination or harassment must be consistent with the First Amendment right to free speech. Education Code 48950 prohibits a district from subjecting a high school student to disciplinary sanctions solely on the basis of speech or other communication that would be constitutionally protected if engaged in outside of campus. However, Education Code 48950 also specifies that the law does not prohibit discipline for harassment, threats, or intimidation unless constitutionally protected. Whether such speech might be entitled to constitutional protection would be determined on a case-by-case basis, with consideration for the specific words used and the circumstances involved. The district should consult legal counsel as necessary.

Students who engage in discrimination, harassment, intimidation, bullying, or retaliation in violation of law, Board policy, or administrative regulation shall be subject to appropriate consequence or discipline. Any employee who permits or engages in prohibited discrimination, harassment, intimidation, bullying, or retaliation shall be subject to disciplinary action, up to and including dismissal.

(cf. 4118 - Suspension/Disciplinary Action)

(cf. 4119.21/4219.21/4319.21 - Professional Standards)

(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

(cf. 5144 - Discipline)

(cf. 5144.1 - Suspension and Expulsion/Due Process)

(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))

(cf. 5145.2 - Freedom of Speech/Expression)

Legal Reference:

#### EDUCATION CODE

200-262.4 Prohibition of discrimination

48900.3 Suspension or expulsion for act of hate violence

48900.4 Suspension or expulsion for threats or harassment

48904 Liability of parent/guardian for willful student misconduct

48907 Student exercise of free expression

48950 Freedom of speech

48985 Translation of notices

49020-49023 Athletic programs

51500 Prohibited instruction or activity

51501 Prohibited means of instruction

60044 Prohibited instructional materials

#### CIVIL CODE

1714.1 Liability of parents/guardians for willful misconduct of minor

#### PENAL CODE

422.55 Definition of hate crime

422.6 Crimes, harassment

CODE OF REGULATIONS, TITLE 5

432 Student record

4600-4687 Uniform complaint procedures

4900-4965 Nondiscrimination in elementary and secondary education programs

UNITED STATES CODE, TITLE 20

1681-1688 Title IX of the Education Amendments of 1972

UNITED STATES CODE, TITLE 42

2000d-2000e-17 Title VI and Title VII Civil Rights Act of 1964, as amended

2000h-2-2000h-6 Title IX of the Civil Rights Act of 1964

CODE OF FEDERAL REGULATIONS, TITLE 34

100.3 Prohibition of discrimination on basis of race, color or national origin

104.7 Designation of responsible employee for Section 504

106.8 Designation of responsible employee for Title IX

106.9 Notification of nondiscrimination on basis of sex

COURT DECISIONS

Donovan v. Poway Unified School District, (2008) 167 Cal.App.4th 567

Flores v. Morgan Hill Unified School District, (2003) 324 F.3d 1130

Management Resources:

## CSBA PUBLICATIONS

Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students, Policy Brief, February 2014

Interim Guidance Regarding Transgender Students, Privacy, and Facilities, September 27, 2013

Safe Schools: Strategies for Governing Boards to Ensure Student Success, 2011

## FIRST AMENDMENT CENTER PUBLICATIONS

Public Schools and Sexual Orientation: A First Amendment Framework for Finding Common Ground, 2006

## NATIONAL SCHOOL BOARDS ASSOCIATION PUBLICATIONS

Dealing with Legal Matters Surrounding Students' Sexual Orientation and Gender Identity, 2004

## U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS

Dear Colleague Letter: Harassment and Bullying, October 2010

Notice of Non-Discrimination, January 1999

## WEB SITES

CSBA: <http://www.csba.org>

California Department of Education: <http://www.cde.ca.gov>

California Safe Schools Coalition: <http://www.casafeschools.org>

First Amendment Center: <http://www.firstamendmentcenter.org>

National School Boards Association: <http://www.nsba.org>

U.S. Department of Education, Office for Civil Rights: <http://www.ed.gov/about/offices/list/ocr>

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## CSBA Sample | AR 5145.3 Students

**Nondiscrimination/Harassment**

Note: The following mandated administrative regulation provides measures that may be implemented by a district to comply with state and federal law and regulations prohibiting, at school or in any school activity related to school attendance or under the authority of the district, discrimination, harassment, intimidation, and bullying against students based on actual or perceived characteristics, as specified in the accompanying Board policy.

Note: 5 CCR 4621 mandates the district to identify in its policies and procedures the person(s), position(s), or unit(s) responsible for ensuring compliance with applicable state and federal laws and regulations governing educational programs, including receiving and investigating complaints alleging noncompliance or discrimination, harassment, intimidation, or bullying. During the Federal Program Monitoring process, California Department of Education (CDE) staff will check to ensure that the district's procedures list the specific title(s) of the employee(s) responsible for investigating complaints. This individual may be the same person designated in the district's uniform complaint procedures to ensure compliance with specified programs and to receive complaints; see AR 1312.3 - Uniform Complaint Procedures. In addition, districts may designate more than one person to receive complaints (e.g., one person at each school).

The following position is designated Coordinator for Nondiscrimination to handle complaints regarding discrimination, harassment, intimidation, or bullying and to answer inquiries regarding the district's nondiscrimination policies: (Education Code 234.1; 5 CCR 4621)

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(position title)

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(address)

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(telephone number)

(cf. 1312.1 - Complaints Concerning District Employees)

(cf. 1312.3 - Uniform Complaint Procedures)

To prevent discrimination, harassment, intimidation, and bullying of students at district schools or in school activities and to ensure equal access of all students to the educational program, the Superintendent or designee shall implement the following measures:

Note: In its October 2010 Dear Colleague Letter: Harassment and Bullying, the U.S. Department of Education's Office for Civil Rights identifies training of the school community as one of the key measures for minimizing discriminatory and harassing behavior in school.

Item #1 below is optional and may be modified to reflect district practice.

1. Provide to employees, volunteers, and parents/guardians training and information regarding the district's nondiscrimination policy; what constitutes prohibited discrimination, harassment, intimidation, or bullying; how and to whom a report of an incident should be made; and how to guard against segregating or stereotyping students when providing instruction, guidance, supervision, or other services to them. Such training and information shall include guidelines for addressing issues related to transgender and gender-nonconforming students.

(cf. 1240 - Volunteer Assistance)

(cf. 4131 - Staff Development)

(cf. 4231 - Staff Development)

(cf. 4331 - Staff Development)

2. Provide to students a handbook that contains age-appropriate information that clearly describes the district's nondiscrimination policy, procedures for filing a complaint, and resources available to students who feel that they have been the victim of any such behavior. (Education Code 234.1)

3. Annually notify all students and parents/guardians of the district's nondiscrimination policy and of the opportunity to inform the Coordinator whenever a student's participation in a sex-segregated school program or activity together with another student of the opposite biological sex would be against the student's religious beliefs and/or practices or a violation of his/her right to privacy. In such a case, the Coordinator shall meet with the student and/or parent/guardian to determine how best to accommodate the student.

(cf. 5145.6 - Parental Notifications)

Note: As part of its responsibility to monitor district compliance with legal requirements concerning discrimination pursuant to Education Code 234.1, the CDE is required to ensure that the district posts its nondiscrimination policies in all schools, offices, staff lounges, and student government meeting rooms. The following paragraph may be revised to specify the means by which the district posts its nondiscrimination policies.

4. Publicize the district's nondiscrimination policy and related complaint procedures to students, parents/guardians, employees, volunteers, and the



general public and post them on the district's web site and other locations that are easily accessible to students. (Education Code 234.1)

(cf. 1113 - District and School Web Sites)

(cf. 1114 - District-Sponsored Social Media)

5. When 15 percent or more of a school's students speak a single primary language other than English, translate the nondiscrimination policy, related complaint procedures, and all forms for use in the complaint process into that other language. (Education Code 234.1, 48985)

6. At the beginning of each school year, inform school employees that any employee who witnesses any act of discrimination, harassment, intimidation, or bullying against a student is required to intervene if it is safe to do so. (Education Code 234.1)

Note: Item #7 below is optional and should be revised to reflect district practice. In some situations, the district may need to provide individualized accommodation to a student to protect him/her from harassment or bullying. Each situation will need to be analyzed to determine the most appropriate course of action to meet the needs of the student, based on the circumstances involved.

7. At the beginning of each school year, inform each principal or designee of the district's responsibility to provide appropriate accommodation(s) to protect students' privacy rights and ensure their safety from threatened or potentially harassing, intimidating, or discriminatory behavior.

#### Process for Initiating and Responding to Complaints

Note: Education Code 234.1 requires that districts adopt a process for receiving and investigating complaints of discrimination, harassment, intimidation, and bullying based on specified actual or perceived characteristics. Such a process, which is required to be consistent with the uniform complaint procedures specified in 5 CCR 4600-4687, must include (1) a requirement that school personnel who witness an act take immediate steps to intervene when safe to do so, (2) a timeline for investigating and resolving complaints, (3) an appeal process, and (4) translation of forms when required by Education Code 48985.

Any student who feels that he/she has been subjected to discrimination, harassment, intimidation, or bullying should immediately contact the Coordinator, the principal, or any other staff member. In addition, any student who observes any such incident should report the incident to the Coordinator or principal, whether or not the victim files a complaint.

Any school employee who observes an incident of discrimination, harassment, intimidation, or bullying or to whom such an incident is reported shall immediately report the incident to the Coordinator or principal, whether or not the victim files a complaint.

Upon receiving a complaint of discrimination, harassment, intimidation, or bullying, the Coordinator shall immediately investigate the complaint in accordance with the district's uniform complaint procedures specified in AR 1312.3 - Uniform Complaint Procedures.

## Transgender and Gender-Nonconforming Students

Note: The following section may be modified to reflect district practice. Pursuant to Education Code 221.5, as amended by AB 1266 (Ch. 85, Statutes of 2013), 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 his/her educational records. However, an attempt is currently in progress to qualify a referendum on AB 1266 for the November 2014 ballot. Even as the eventual outcome is unknown as of this writing, the following guidelines are designed to implement other existing state and federal laws that prohibit discrimination, harassment, intimidation, and bullying against students based on their real or perceived gender identity and/or gender expression regardless of whether or not the referendum attempt is successful. The guidelines address certain issues and circumstances that may arise in relation to the needs of transgender and gender-nonconforming students and are by no means exhaustive. Consequently, each instance or situation should be addressed on a case-by-case basis to ensure that the safety, privacy, and other concerns of all students involved are appropriately addressed. For more information on the rights of transgender students, see CSBA's policy brief *Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students* and its Interim Guidance Regarding Transgender Students, Privacy, and Facilities. Districts should consult legal counsel about applicable standards for determining a student's gender identity.

Gender identity means a person's gender-related identity, appearance, or behavior, whether or not that gender-related identity, appearance, or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth.

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 210.7)

Transgender student means a student whose gender identity or gender expression is different from that traditionally associated with the assigned sex at birth.

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

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

Note: Timelines included in items #1-2 below may be modified to reflect district practice.

1. Right to privacy: A student's transgender or gender-nonconforming status is his/her private information and the district will only disclose the information to others with the student's prior consent, except when the disclosure is otherwise required by law or is necessary to preserve the student's physical or mental well-being. Any district employee to whom a student discloses his/her transgender or gender-nonconforming status shall seek the student's permission to notify the Coordinator for Nondiscrimination. If the student refuses to give permission, the employee shall keep the student's

information confidential, unless he/she is required to disclose or report the student's information pursuant to law or district policy, and shall inform the student that it may be impossible to accommodate the student's needs related to his/her status as a transgender or gender-nonconforming student. If the student permits the employee to notify the Coordinator, the employee shall do so within three school days.

As appropriate, the Coordinator shall discuss with the student any need to disclose the student's transgender or gender-nonconformity status to his/her parents/guardians and/or others, including other students, teacher(s), or other adults on campus. Any decision to disclose the student's status to others shall be based on the student's best interest.

(cf. 1340 - Access to District Records)

(cf. 3580 - District Records)

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

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

4. Accessibility to Sex-segregated Facilities, Programs, and Activities: The district may maintain sex-segregated facilities, such as restrooms and locker rooms, and sex-segregated programs and activities, such as physical education classes, intermural sports, and interscholastic athletic programs. A student shall be entitled to access facilities and participate in programs and activities consistent with his/her gender identity. In addition, a student shall be permitted to participate in accordance with his/her gender identity in other circumstances where students are separated by gender, such as for class discussions, yearbook pictures, and field trips. However, a student's right to participate in a sex-segregated activity in accordance with his/her gender identity shall not render invalid or inapplicable any other eligibility rule established for participation in the activity.

(cf. 6145 - Extracurricular and Cocurricular Activities)

(cf. 6145.2 - Athletic Competition)

(cf. 6153 - School-Sponsored Trips)

(cf. 7110 - Facilities Master Plan)

5. Student Records: A student's legal name or gender as entered on the mandatory student record required pursuant to 5 CCR 432 shall only be changed pursuant to a court order. However, at the written request of a student or, if appropriate, his/her parents/guardians, the district shall use the student's preferred name and pronouns consistent with his/her gender identity on all other district-related documents.

(cf. 5125 - Student Records)

(cf. 5125.1 - Release of Directory Information)

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

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

(cf. 5132 - Dress Code)

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