

# California Safe Schools Coalition

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## **Transgender and Gender Non-Conforming Student Safety Directive**

### **California Law Prohibits Gender-Based Discrimination in Public Schools**

The California Student Safety and Violence Prevention Act of 2000 (the “Act”) prohibits gender-based discrimination in all California schools receiving state funding. The Act became effective on January 1, 2000. Cal. Educ. Code §§ 200 et seq.

### **Who is Protected?**

The Act changed California law by adding actual and perceived sexual orientation and gender identity to California’s education nondiscrimination statute.

The Act defines gender as “a person’s actual sex or perceived sex, and includes a person’s perceived identity, appearance, or behavior, whether or not that identity, appearance or behavior is different from that traditionally associated with a person’s sex at birth.” Title 5, California Code of Regulations, § 4910(k).

This definition includes transgender and gender non-conforming students. It also includes students who do not conform to gender stereotypes or whom others perceive as such, regardless of whether the student self-identifies as transgender or gender non-conforming.

### **Gender-Based Harassment is Prohibited**

School District employees have a duty to create a learning environment that respects diversity, including the duty to protect transgender and gender non-conforming students from discrimination and harassment and to appropriately respond to such harassment when it occurs.

### **Other Types of Gender-Based Discrimination Are Also Prohibited**

#### *Names/Pronouns*

Students have the right to be addressed by a name and pronoun corresponding to their gender identity, even if the name and pronoun does not match the student’s school records. This is true regardless of whether the student has changed their name and/or gender in the school’s official records or obtained a court ordered name and/or gender change. Intentionally addressing a student by the incorrect name or pronoun is a form of

discrimination. The directive does not prohibit inadvertent slips or honest mistakes, but it does apply to an intentional and persistent refusal to respect a student's gender identity.

### *Official Records*

Transgender students have a limited right to have their school records reflect their gender identity. At the request of a minor student's parents or guardian, the student's name and/or gender in official records will be changed. In the event that the student is over 18 years of age or is an emancipated minor, this name change can be made without the consent of the student's parents or guardian. (*see* California Code of Civil Procedure, section 1276)

No student, parent, or guardian will be required to provide the school with a court order recognizing a student's change of name. California continues to recognize a person's right to change their name via common law. (*see* California Code of Civil Procedure, section 1279.5 and affirmed in *In re Ritchie* 206 Cal.Rptr. 239 (Cal.App. 1 Dist.,1984) and *Lee v. Superior Court* 11 Cal.Rptr.2d 763 (Cal.App. 2 Dist.,1992).

At most, district personnel may request a letter from a student and/or the student's parent/guardian detailing the request and listing the previous and current name. The only exception to this rule is if the student is someone who is required under state law to obtain court recognition of the student's name change (such as a person currently incarcerated or under the direction of the Director of the Department of Corrections, a person who is on parole or probation, or a person who is required to register as a sex offender).

No student, parent, or guardian will be required to provide the school with a court order or medical documentation in order to change the gender in a student's official records. At most, district personnel may request a letter from a student and/or a student's parent or guardian detailing the request, listing the student's birth identified gender, and correct gender.

No student who is not a U.S. citizen will be prevented from changing the student's name and/or gender in the student's official records. However, district personnel should inform such student and/or the student's parent or guardian that any such change should be well documented in case the student later wants to apply for permanent resident status or citizenship. Also, with respect to a non-U.S. citizen who is enrolled in a district school as a foreign exchange student, district personnel are required to inform the student and/or the student's parent or guardian that, due to the necessity to authorize the student's Visa during the school year, such students are strongly urged not to change their name and/or gender in their official school records.

### *Restroom accessibility*

All students have a right to safe and appropriate restroom facilities. This includes the right to use a restroom that corresponds to the student's gender identity, regardless of the

student's sex assigned at birth. In addition, where possible, the district will provide an easily accessible unisex single stall bathroom for use by any student who desires increased privacy, regardless of the underlying reason.

However, use of a unisex single stall restroom should always be a matter of choice for a student. No student should be compelled to use one either as a matter of policy or due to continuing harassment in a gender appropriate facility.

### *Locker room accessibility*

In locker rooms that involve undressing in front of others, transgender students who want to use the locker room corresponding to their gender identity must be provided an accommodation that best meets the student's needs.

Such accommodations can include, but are not limited to:

- Use of a private area within the public area (a bathroom stall with a door, an area separated by a curtain, a PE instructor's office in the locker room),
- A separate changing schedule in the private area (either utilizing the locker room before or after the other students), or
- Use of a nearby private area (a nearby restroom, a nurse's office).

It is not an acceptable accommodation to deny a student's opportunity for physical education either through *not allowing* the student to have PE or by *forcing* the student to have PE outside of the assigned class time. Requiring a transgender student to use the locker room corresponding to the student's sex assigned at birth is likewise prohibited.

### *Sports and gym class*

Generally, students should be permitted to participate in gender-segregated sports and gym class activities in accordance with the student's gender identity. Legitimate questions about fairness in athletic competitions will need to be resolved on a case-by-case basis. This exception will not, however, apply to participation in gym class where the activity is recreational instead of competitive.

### *Dress codes*

The district can enforce reasonable student dress codes for the purposes of maintaining a safe and orderly school environment, and ensuring that the school can fulfill its educational mission. However, all district employees must respect the right of a student to dress in accordance with the student's gender identity.

### *Gender segregation in other areas*

This directive outlines the main areas where students may find themselves segregated by gender. It does not, however, purport to identify and address all such circumstances. As a general rule, any other time students are segregated by gender (i.e. classroom discussion, field trips, or support/counseling groups) students must be permitted to participate in accordance with their gender identity.

### **Resources and Information**

California Safe Schools Coalition  
415-626-1680  
[info@casafeschoolscoalition.org](mailto:info@casafeschoolscoalition.org)  
160 14<sup>th</sup> Street  
San Francisco, CA 94103

Gay-Straight Alliance Network  
415-552-4229  
[info@gsanetwork.org](mailto:info@gsanetwork.org)  
160 14<sup>th</sup> Street  
San Francisco, CA 94103

Legal Services for Children  
415-863-3762  
[info@lsc-sf.org](mailto:info@lsc-sf.org)  
1254 Market Street, 3<sup>rd</sup> Floor  
San Francisco, CA 94102

National Center for Lesbian Rights  
415-392-6257  
[info@nclrights.org](mailto:info@nclrights.org)  
870 Market Street, Suite 570  
San Francisco, CA 94102

Transgender Law Center  
415-865-0176  
[info@transgenderlawcenter.org](mailto:info@transgenderlawcenter.org)  
1800 Market Street, Suite 408  
San Francisco, CA 9410