Information Sheet – 9/11/18 - Board of Trustees Meeting

TO: Board of Trustees Item: 8.4

FR: Celli Coeville

DATE: September 6, 2018

RE: Revised Board Policy and Administrative Regulation, BP/AR 5145.3, Nondiscrimination/Harassment, Consider Adoption as Presented

Nondiscrimination/Harassment, Revised BP/AR 5145.3:

(BP/AR revised) Minor revisions made in policy and regulation to reflect NEW LAW (AB 699) which prohibits discrimination based on immigration status.

I have attached the CSBA sample board policy and administrative regulation followed by the current District board policy and administrative regulation.

Recommended Action: Approve the revised Board Policy and Administrative Regulation.

CSBA Sample
Board Policy
Nondiscrimination/Harassment

BP 5145.3
Students

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, as amended by AB 699 (Ch. 493, Statutes of 2017),which prohibits discrimination based on race, nationality, immigration status, 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; Government Code 11135, which prohibits discrimination based on all the foregoing characteristics and on age, disability, and an individual's genetic information; Title VI (42 USC 2000d-2000e-17), which prohibits discrimination based on race, color, or national origin; Title IX (20 USC 1681-1688), which prohibits discrimination based on sex, gender, gender identity, pregnancy, and parental status; the Age Discrimination Act of 1975 (42 USC 6101-6107), which prohibits discrimination based on age; and Title II (20 USC 12101-12213) and Section 504 (29 USC 794), which prohibit discrimination based on disability. 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, this sample Board policy and the accompanying administrative regulation reflect the statutory right of a transgender student to participate in sex-segregated educational programs and use facilities consistent with his/her gender identity as specified in Education Code 221.5, and 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 Final Guidance Regarding Transgender Students, Privacy, and Facilities.

Note: Education Code 234.1 mandates that districts adopt policy prohibiting discrimination at school or in any school activity related to school attendance or under the authority of the district, including discriminatory harassment, intimidation, and bullying, based on the foregoing characteristics. The California Department of Education (CDE), through its Federal Program Monitoring process, reviews districts' uniform complaint procedures (UCP) and other anti-discrimination policies and practices to ensure compliance with these requirements. In addition, the U.S. Department of Education's Office for Civil Rights (OCR) is responsible for the administrative enforcement of federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, sex, disability, and age in programs and activities that receive federal financial assistance from the department, and requires the adoption of nondiscrimination policies and complaint procedures.

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

(cf. 0410 - Nondiscrimination in District Programs and Activities)
(cf. 5131 - Conduct)
(cf. 5131.2 - Bullying)
(cf. 5137 - Positive School Climate)
(cf. 5145.7 - Sexual Harassment)
(cf. 5145.9 - Hate-Motivated Behavior)
(cf. 5146 - Married/Pregnant/Parenting Students)
(cf. 6164.6 - Identification and Education Under Section 504)

Note: Education Code 234.1 prohibits unlawful discrimination in all acts related to school activity or school attendance. OCR has clarified in several publications that conduct that occurs off campus may have an adverse effect on a student at school (i.e., create a "hostile environment" for the student). When that happens, the district has an obligation to investigate and to take steps to protect the student.

This policy shall apply to all acts related to school activity or to school attendance occurring within a district school, and to acts which occur off campus or outside of school-related or school-sponsored activities but which may have an impact or create a hostile environment at school.

Unlawful discrimination, including discriminatory harassment, intimidation, or bullying, may result from physical, verbal, nonverbal, or written conduct based on any of the categories listed above. Unlawful discrimination also includes the creation of a hostile environment through prohibited conduct that 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.

Note: In addition to the types of prohibited student conduct described above, prohibited conduct includes different treatment of students with respect to the provision of opportunities to participate in school programs or activities or the provision or receipt of educational benefits or services. See BP 0410 - Nondiscrimination in District Programs and Activities.

Unlawful discrimination also includes disparate treatment of students based on one of the categories above with respect to the provision of opportunities to participate in school programs

or activities or the provision or receipt of educational benefits or services.

The Board also prohibits any form of retaliation against any individual who reports or participates in the reporting of unlawful discrimination, files or participates in the filing of a complaint, or investigates or participates in the investigation of a complaint or report alleging unlawful discrimination. Retaliation complaints shall be investigated and resolved in the same manner as a discrimination complaint.

Note: Pursuant to Education Code 234.1 and 34 CFR 106.8, a district is required to adopt and publicize its nondiscrimination policies to the school community. The following paragraph may be modified to reflect district practice.

Note: In addition, in its October 2010 Dear Colleague Letter: Harassment and Bullying, OCR 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 district's 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)

Regardless of whether a complainant complies with the writing, timeline, and/or other formal filing requirements, all complaints alleging unlawful discrimination, including discriminatory harassment, intimidation, or bullying, shall be investigated and prompt action taken to stop the discrimination, prevent recurrence, and address any continuing effect on students.

***Note: Policies related to discrimination 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 unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, in violation of law, Board policy, or administrative regulation shall be subject to appropriate consequence or discipline, which may include suspension or expulsion when the behavior is severe or pervasive as defined in Education Code 48900.4. Any employee who permits or engages in prohibited discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, shall be subject to disciplinary action, up to and including dismissal.

(cf. 4118 - Dismissal/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)

Record-Keeping

The Superintendent or designee shall maintain a record of all reported cases of unlawful discrimination, including discriminatory harassment, intimidation, or bullying, to enable the district to monitor, address, and prevent repetitive prohibited behavior in district schools.

(cf. 3580 - District Records)

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
GOVERNMENT CODE
11135 Nondiscrimination in programs or activities funded by state
PENAL CODE
422.55 Definition of hate crime
422.6 Crimes, harassment
CODE OF REGULATIONS, TITLE 5
432 Student record
4600-4670 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
12101-12213 Title II equal opportunity for individuals with disabilities
UNITED STATES CODE, TITLE 29
794 Section 504 of Rehabilitation Act of 1973
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
6101-6107 Age Discrimination Act of 1975
CODE OF FEDERAL REGULATIONS, TITLE 28
35.107 Nondiscrimination on basis of disability; complaints
CODE OF FEDERAL REGULATIONS, TITLE 34
99.31 Disclosure of personally identifiable information
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
110.25 Prohibition of discrimination based on age
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
Updated Legal Guidance: Protecting Transgender and Gender Nonconforming Students Against Sex Discrimination, July 2016
CALIFORNIA OFFICE OF THE ATTORNEY GENERAL PUBLICATIONS
Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues, April 2018
FIRST AMENDMENT CENTER PUBLICATIONS
Public Schools and Sexual Orientation: A First Amendment Framework for Finding Common Ground, 2006
U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS
Examples of Policies and Emerging Practices for Supporting Transgender Students, May 2016
Dear Colleague Letter: Title IX Coordinators, April 2015
Dear Colleague Letter: Harassment and Bullying, October 2010

Notice of Non-Discrimination, Fact Sheet, August 2010
WEB SITES
CSBA: http://www.csba.org
California Department of Education: http://www.cde.ca.gov
California Safe Schools Coalition: http://www.casafeschools.org
California Office of the Attorney General: http://oag.ca.gov
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
Administrative Regulation
Nondiscrimination/Harassment

AR 5145.3
Students

Note: The following mandated administrative regulation provides measures that may be implemented by a district to comply with state and federal laws and regulations prohibiting unlawful discrimination at school or in school-sponsored or school-related activities, including discriminatory harassment, intimidation, and bullying, of any student based on his/her actual or perceived race, color, ancestry, nationality, national origin, immigration status, ethnic group identification, ethnicity, age, religion, marital status, pregnancy, parental status, physical or mental disability, sex, sexual orientation, gender, gender identity, gender expression, genetic information, or any other legally protected category or association with a person or group with one or more of these actual or perceived characteristics. Federal and state law also prohibit retaliation against those who engage in activity to protect civil rights.

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 the receiving and investigating of complaints alleging unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying. In addition, 34 CFR 106.8 and other federal regulations mandate districts that receive federal financial assistance to adopt procedures for the "prompt and equitable" resolution of student and employee discrimination complaints, including the designation of one or more responsible employees to ensure district compliance with federal laws and regulations governing the district's educational programs.

Note: 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. The U.S. Department of Education's (USDOE) Office for Civil Rights (OCR) is the agency responsible for the administrative enforcement of federal antidiscrimination laws and regulations in programs and activities that receive federal financial assistance from the department. In reviewing a district's discrimination policies and procedures, OCR will examine whether the district has identified the employee(s) responsible for coordinating compliance with federal civil rights laws, including the investigation of complaints.

Note: The following paragraphs identify the employee(s) designated to coordinate the district's efforts to comply with state and federal civil rights laws (e.g. Title IX and Section 504 coordinators), including the investigation and resolution of discrimination complaints under AR 1312.3 - Uniform Complaint Procedures. Note also that a district may designate more than one employee to coordinate compliance and/or receive and investigate complaints, although each employee designated as a coordinator/compliance officer must be properly trained.

The district designates the individual(s) identified below as the employee(s) responsible for coordinating the district's efforts to comply with applicable state and federal civil rights laws, including Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, and the Age Discrimination Act of 1975, and to answer inquiries regarding the district's nondiscrimination policies. The individual(s) shall also serve as the compliance officer(s) specified in AR 1312.3 - Uniform Complaint Procedures as the responsible employee to handle complaints alleging unlawful discrimination targeting a student, including discriminatory harassment, intimidation, or bullying, based on the student's actual or perceived race, color, ancestry, nationality, national origin, immigration status, ethnic group identification, ethnicity, age, religion, marital status, pregnancy, parental status, physical or mental disability, sex, sexual orientation, gender, gender identity, gender expression, genetic information, or any other legally protected status or association with a person or group with one or more of these actual or perceived characteristics. The coordinator/compliance officer(s) may be contacted at: (Education Code 234.1; 5 CCR 4621)

_____
(title or position)

_____
(address)

_____
(telephone number)

_____
(email)

(cf. 1312.1 - Complaints Concerning District Employees)
(cf. 1312.3 - Uniform Complaint Procedures)

Measures to Prevent Discrimination

To prevent unlawful discrimination, including discriminatory harassment, intimidation, retaliation, 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: As part of its responsibility to monitor district compliance with legal requirements concerning discrimination pursuant to Education Code 234.1, CDE is required to ensure that the district posts its nondiscrimination policies in all schools, offices, staff lounges, and student government meeting rooms. In addition, federal regulations enforced by OCR require the district to notify students, parents/guardians, and employees of its policies prohibiting discrimination on the basis of sex (34 CFR 106.8), disability (34 CFR 104.7 and 28 CFR 35.107), and age (34 CFR 110.25) and of related complaint procedures.

Note: Item #1 below may be revised to specify the means by which the district publicizes its nondiscrimination policies and complaint procedures.

1. Publicize the district's nondiscrimination policy and related complaint procedures, including the coordinator/compliance officer's contact information, to students, parents/guardians, employees, volunteers, and the general public by posting them on the district's web site and other prominent locations and providing easy access to them through district-supported social media, when available.

Note: Education Code 221.6 requires districts and public schools to post on their web sites information related to Title IX (20 USC 1681-1688). A comprehensive list of rights based on the federal regulations implementing Title IX can be found in Education Code 221.8. A district that does not maintain a web site may comply by posting the information below on the web site of its county office of education. A school without a web site may comply by posting the information on the web site of the district or county office of education.

2. Post in a prominent and conspicuous location on the district and school web sites information regarding Title IX prohibitions against discrimination based on a student's sex, gender, gender identity, pregnancy, and parental status, including the following: (Education Code 221.61)

a. The name and contact information of the district's Title IX coordinator, including the phone number and email address

b. The rights of students and the public and the responsibilities of the district under Title IX, including a list of rights as specified in Education Code 221.8 and web links to information about those rights and responsibilities located on the web sites of the Office for Equal Opportunity and the U.S. Department of Education's Office for Civil Rights (OCR)

c. A description of how to file a complaint of noncompliance with Title IX in accordance with AR 1312.3 - Uniform Complaint Procedures, which shall include:

(1) An explanation of the statute of limitations within which a complaint must be filed after an alleged incident of discrimination has occurred and how a complaint may be filed beyond the statute of limitations

(2) An explanation of how the complaint will be investigated and how the complainant may further pursue the complaint, including web links to this information on the OCR's web site

(3) A web link to the OCR complaints form and the contact information for the office, including the phone number and email address for the office

(cf. 1113 - District and School Web Sites)
(cf. 1114 - District-Sponsored Social Media)

3. 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)

Note: In its October 2010 Dear Colleague Letter: Harassment and Bullying, OCR identifies training of the school community as one of the key measures for minimizing discriminatory and harassing behavior in school. Item #4 below may be modified to reflect district practice.

4. Annually notify all students and parents/guardians of the district's nondiscrimination policy, including its responsibility to provide a safe, nondiscriminatory school environment for all students, including transgender and gender-nonconforming students. The notice shall inform students and parents/guardians that they may request to meet with the compliance officer to determine how best to accommodate or resolve concerns that may arise from the district's implementation of its nondiscrimination policies. The notice shall also inform all students and parents/guardians that, to the extent possible, the district will address any individual student's interests and concerns in private.

(cf. 5145.6 - Parental Notifications)

Note: Both federal and state laws contain requirements for translation of certain information and documents. Title VI of the Civil Rights Act of 1964 requires school districts to ensure meaningful access to their programs and activities by persons with limited English proficiency. OCR has interpreted this to require that, whenever information is provided to parents/guardians, districts must notify limited-English-proficient (LEP) parents/guardians in a language other than English in order to be adequate. OCR enforces this requirement consistent with the Department of Justice's 2002 Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. Under the Guidance, a recipient of federal funds has an obligation to provide language assistance to LEP individuals based on balancing four factors: (1) the number or proportion of LEP individuals likely to encounter the program, (2) the frequency with which LEP individuals come in contact with the program, (3) the nature and importance of the services provided by the program, and (4) the resources available to the recipient. State law is more specific than federal law: Education Code 48985 requires translation of certain information and documents if 15 percent or more of students enrolled in the school speak a single primary language other than English.

5. The Superintendent or designee shall ensure that students and parents/guardians, including those with limited English proficiency, are notified of how to access the relevant information provided in the district's nondiscrimination policy and related complaint procedures, notices, and forms in a language they can understand.

If 15 percent or more of students enrolled in a particular district school speak a single primary language other than English, the district's policy, regulation, forms, and notices concerning nondiscrimination shall be translated into that language in accordance with Education Code 234.1 and 48985. In all other instances, the district shall ensure meaningful access to all relevant information for parents/guardians with limited English proficiency.

6. Provide to students, employees, volunteers, and parents/guardians age-appropriate

training and information regarding the district's nondiscrimination policy; what constitutes prohibited discrimination, including discriminatory harassment, intimidation, retaliation, 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 details of guidelines the district may use to provide a discrimination-free environment for all district students, including transgender and gender-nonconforming students.

(cf. 1240 - Volunteer Assistance)
(cf. 4131 - Staff Development)
(cf. 4231 - Staff Development)
(cf. 4331 - Staff Development)

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

Note: Item #8 below may be revised to reflect district practice. In some situations, the district may need to provide assistance 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.

8. At the beginning of each school year, inform each principal or designee of the district's responsibility to provide appropriate assistance or resources to protect students from threatened or potentially discriminatory behavior and ensure their privacy rights.

Enforcement of District Policy

The Superintendent or designee shall take appropriate actions to reinforce BP 5145.3 - Nondiscrimination/Harassment. As needed, these actions may include any of the following:

1. Removing vulgar or offending graffiti

(cf. 5131.5 - Vandalism and Graffiti)

2. Providing training to students, staff, and parents/guardians about how to recognize unlawful discrimination, how to report it or file a complaint, and how to respond

3. Disseminating and/or summarizing the district's policy and regulation regarding unlawful discrimination

4. Consistent with laws regarding the confidentiality of student and personnel records, communicating to students, parents/guardians, and the community the school's response plan to unlawful discrimination or harassment

(cf. 4112.6/4212.6/4312.6 - Personnel Files)
(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)
(cf. 5125 - Student Records)

5. Taking appropriate disciplinary action against students, employees, and anyone determined to have engaged in wrongdoing in violation of district policy, including any student who is found to have filed a complaint of discrimination that he/she knew was not true

(cf. 4118 - Dismissal/Suspension/Disciplinary Action)
(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. 6159.4 - Behavioral Interventions for Special Education Students)

Process for Initiating and Responding to Complaints

Note: Education Code 234.1 requires that districts adopt a process for receiving and investigating complaints of unlawful discrimination, including discriminatory harassment, intimidation, retaliation, and bullying. Such a process, which is required to be consistent with the uniform complaint procedures specified in 5 CCR 4600-4670, 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. In addition, federal regulations require districts to adopt procedures providing for the prompt and equitable resolution of complaints of discrimination on the basis of sex (34 CFR 106.8), disability (34 CFR 104.7 and 28 CFR 35.107), and age (34 CFR 110.25). OCR guidance on federal civil rights requirements notes that districts may have a responsibility to respond to notice of discrimination whether or not a formal complaint is filed. In addition, districts may have an obligation to respond to notice of sexual harassment of students which occurs off school grounds or outside school-sponsored or school-related programs or activities, since the sexual harassment may still create a hostile environment at school. This principle would also apply to harassment on other bases, such as race, gender, or disability.

Any student who feels that he/she has been subjected to unlawful discrimination described above or in district policy is strongly encouraged to immediately contact the compliance officer, principal, or any other staff member. In addition, any student who observes any such incident is strongly encouraged to report the incident to the compliance officer or principal, whether or not the alleged victim files a complaint.

Any school employee who observes an incident of unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, or to whom such an incident is reported shall report the incident to the compliance officer or principal within a school day, whether or not the alleged victim files a complaint.

Any school employee who witnesses an incident of unlawful discrimination, including

discriminatory harassment, intimidation, retaliation, or bullying, shall immediately intervene to stop the incident when it is safe to do so. (Education Code 234.1)

Note: Though a formal complaint must be in writing pursuant to 5 CCR 4600, the district's obligation to provide a safe school environment for its students overrides the need to comply with formalities. Thus, once the district receives notice of an incident, whether verbally or in writing, it is good practice to begin the investigation of the report and to take steps to stop any prohibited conduct and address any effect on students. The following paragraph reflects such practice and is consistent with OCR recommendation.

When a verbal report of unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, is made to or received by the principal or compliance officer, he/she shall make a note of the report and encourage the student or parent/guardian to file the complaint in writing, pursuant to the provisions in AR 1312.3 - Uniform Complaint Procedures. Once notified verbally or in writing, the principal or compliance officer shall begin the investigation and shall implement immediate measures necessary to stop the discrimination and ensure that all students have access to the educational program and a safe school environment. Any interim measures adopted to address unlawful discrimination shall, to the extent possible, not disadvantage the complainant or a student who is the victim of the alleged unlawful discrimination.

Any report or complaint alleging unlawful discrimination by the principal, compliance officer, or any other person to whom a report would ordinarily be made or complaint filed shall instead be made to or filed with the Superintendent or designee who shall determine how the complaint will be investigated.

(cf. 5141.4 - Child Abuse Prevention and Reporting)

Transgender and Gender-Nonconforming Students

Note: The following section may be modified to reflect district practice. 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 his/her educational records. Because Education Code 221.5 affords transgender students these rights, districts in California are not impacted by the February 22, 2017 action of the USDOE and U.S. Department of Justice to rescind earlier federal guidance which had indicated that, under Title IX, students must be allowed to use sex-segregated facilities in accordance with their gender identity. In implementing state law, districts may review recommended practices in the USDOE's Office of Elementary and Secondary Education's Examples of Policies and Emerging Practices for Supporting Transgender Students. For more information on the rights of transgender students, see CSBA's Updated Legal Guidance: Protecting Transgender and Gender Nonconforming Students Against Discrimination.

Gender identity of a student means the student's gender-related identity, appearance, or behavior as determined from the student's internal sense of his/her gender, whether or not 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.

Transgender student means a student whose gender identity is different from the gender he/she was assigned at birth.

Regardless of whether they are sexual in nature, acts of verbal, nonverbal, or physical aggression, intimidation, or hostility that are based on sex, 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 are prohibited. Examples of the types of conduct which are prohibited in the district and which may constitute gender-based harassment include, but are not limited to:

1. Refusing to address a student by a name and the pronouns consistent with his/her gender identity

2. Disciplining or disparaging a student or excluding him/her from participating in activities for behavior or appearance that is consistent with his/her 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 his/her gender identity

4. Taunting a student because he/she participates in an athletic activity more typically favored by a student of the other sex

5. Revealing a student's transgender status to individuals who do not have a legitimate need for the information, without the student's consent

6. Use of gender-specific slurs

7. Physical assault of a student motivated by hostility toward him/her because of his/her gender, gender identity, or gender expression

The district's uniform complaint procedures (AR 1312.3) shall be used to report and resolve complaints alleging discrimination against transgender and gender-nonconforming students.

Examples of bases for complaints include, but are not limited to, the above list, as well as

improper rejection by the district of a student's asserted gender identity, denial of access to facilities that correspond with a student's gender identity, improper disclosure of a student's transgender status, discriminatory enforcement of a dress code, and other instances of gender-based harassment.

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 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. In any case, the district shall only allow disclosure of a student's personally identifiable information to employees with a legitimate educational interest as determined by the district pursuant to 34 CFR 99.31. Any district employee to whom a student's 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 he/she 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 his/her status as a 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 transgender or gender-nonconformity status or gender identity or gender expression to his/her 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 desire assistance in doing so.

(cf. 1340 - Access to District Records)
(cf. 3580 - District Records)

2. Determining a Student's Gender Identity: The compliance officer shall accept the student's assertion of his/her gender identity and begin to treat the student consistent with his/her 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, his/her parents/guardians to identify and develop

strategies for ensuring that the student's access to education programs and activities is maintained. 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 compliance officer 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 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 his/her 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.

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, access to a staff member's office, 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 he/she is transgender or gender-nonconforming. 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. 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)

Note: 5 CCR 432 requires the legal name, sex, date of birth, etc., of a student to be maintained as part of the student's "mandatory permanent student records" but does not prohibit keeping of other records, such as a student's preferred name, as part of the student's "permitted student records."

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 with proper documentation. 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. Such preferred name may be added to the student's record and official documents as permitted by law.

(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 will, in general, 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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NONDISCRIMINATION/HARASSMENT

The Board of Trustees 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, including discriminatory harassment, intimidation, and bullying of any student based on the student's actual or perceived race, color, ancestry, national origin, nationality, ethnicity, ethnic group identification, age, religion, marital or parental status, physical or mental disability, sex, sexual orientation, gender, gender identity, or gender expression 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)

Unlawful discrimination, including discriminatory harassment, intimidation, or bullying, includes physical, verbal, nonverbal, or written conduct based on any of the categories listed above. Unlawful discrimination also shall include the creation of a hostile environment when the 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.

Unlawful discrimination also includes disparate treatment of students based on one of the categories above with respect to the provision of opportunities to participate in school programs or activities or the provision or receipt of educational benefits or services.

The Board also prohibits any form of retaliation against any individual who files or otherwise participates in the filing or investigation of a complaint or report regarding an incident of discrimination. Retaliation complaints shall be investigated and resolved in the same manner as a discrimination complaint.

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.

NONDISCRIMINATION/HARASSMENT (continued)

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)

The principal or designee shall develop a plan to provide students with appropriate accommodations when necessary for their protection from threatened or potentially harassing or discriminatory behavior.

Students who engage in unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, in violation of law, Board policy, or administrative regulation shall be subject to appropriate consequence or discipline, which may include suspension or expulsion for behavior that is severe or pervasive as defined in Education Code 48900.4. Any employee who permits or engages in prohibited discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, 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

NONDISCRIMINATION/HARASSMENT (continued)

Legal Reference:continued

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
12101-12213 Title II equal opportunity for individuals with disabilities
UNITED STATES CODE, TITLE 29
794 Section 504 of Rehabilitation Act of 1973
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
6101-6107 Age Discrimination Act of 1975
CODE OF FEDERAL REGULATIONS, TITLE 28
35.107 Nondiscrimination on basis of disability; complaints
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
Final Guidance Regarding Transgender Students, Privacy, and Facilities, March 2014
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

NONDISCRIMINATION/HARASSMENT

The district designates the individual(s) identified below as the employee(s) responsible for coordinating the district's efforts to comply with applicable state and federal civil rights laws, including Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, and the Age Discrimination Act of 1975, and to answer inquiries regarding the district's nondiscrimination policies. The individual(s) shall also serve as the compliance officer(s) specified in AR 1312.3 - Uniform Complaint Procedures as the responsible employee to handle complaints alleging unlawful discrimination targeting a student, including discriminatory harassment, intimidation, or bullying, based on the student's actual or perceived race, color, ancestry, national origin, nationality, ethnicity, ethnic group identification, age, religion, marital or parental status, pregnancy, physical or mental disability, sex, sexual orientation, gender, gender identity, gender expression, or any other legally protected status or association with a person or group with one or more of these actual or perceived characteristics. The coordinator/compliance officer(s) may be contacted at: (Education Code 234.1; 5 CCR 4621)

Director of Human Resources
1219 Whispering Wind Dr.
Tracy, CA 95377

or

Director of Special Education
1219 Whispering Wind Dr.
Tracy, CA 95377

(cf. 1312.1 - Complaints Concerning District Employees)
(cf. 1312.3 - Uniform Complaint Procedures)

Measures to Prevent Discrimination

To prevent unlawful discrimination, including discriminatory harassment, intimidation, retaliation, 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:

1. Publicize the district's nondiscrimination policy and related complaint procedures, including the coordinator/compliance officer's contact information, to students, parents/guardians, employees, volunteers, and the general public by posting them on the district's web site and other prominent locations and providing easy access to them through district-supported social media, when available.

2. Post in a prominent and conspicuous location on the district and school web sites information regarding Title IX prohibitions against discrimination based on a student's sex, gender, gender identity, pregnancy, and parental status, including the following: (Education Code 221.61)

NONDISCRIMINATION/HARASSMENT (continued)

a. The name and contact information of the district's Title IX coordinator, including the phone number and email address

b. The rights of students and the public and the responsibilities of the district under Title IX, including a list of rights as specified in Education Code 221.8 and web links to information about those rights and responsibilities located on the web sites of the Office for Equal Opportunity and the U.S. Department of Education's Office for Civil Rights (OCR)

c. A description of how to file a complaint of noncompliance with Title IX in accordance with AR 1312.3 - Uniform Complaint Procedures, which shall include:

(1) An explanation of the statute of limitations within which a complaint must be filed after an alleged incident of discrimination has occurred and how a complaint may be filed beyond the statute of limitations

(2) An explanation of how the complaint will be investigated and how the complainant may further pursue the complaint, including web links to this information on the OCR's web site

(3) A web link to the OCR complaints form and the contact information for the office, including the phone number and email address for the office

(cf. 1113 - District and School Web Sites)
(cf. 1114 - District-Sponsored Social Media)

3. 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)

4. Annually notify all students and parents/guardians of the district's nondiscrimination policy, including its responsibility to provide a safe, nondiscriminatory school environment for all students, including transgender and gender-nonconforming students. The notice shall inform students and parents/guardians that they may request to meet with the compliance officer to determine how best to accommodate or resolve concerns that may arise from the district's implementation of its nondiscrimination policies. The notice shall also inform all students and parents/guardians that, to the extent possible, the district will address any individual student's interests and concerns in private.

(cf. 5145.6 - Parental Notifications)

5. The Superintendent or designee shall ensure that students and parents/guardians, including those with limited English proficiency, are notified of how to access the relevant information provided in the district's nondiscrimination policy and related complaint procedures, notices, and forms in a language they can understand. If 15 percent or more of students enrolled in a particular district school speak a single primary language other than English, the district's

NONDISCRIMINATION/HARASSMENT (continued)

policy, regulation, forms, and notices concerning nondiscrimination shall be translated into that language in accordance with Education Code 234.1 and 48985. In all other instances, the district shall ensure meaningful access to all relevant information for parents/guardians with limited English proficiency.

6. Provide to students, employees, volunteers, and parents/guardians age-appropriate training and information regarding the district's nondiscrimination policy; what constitutes prohibited discrimination, including discriminatory harassment, intimidation, retaliation, 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 details of guidelines the district may use to provide a discrimination-free environment for all district students-including transgender and gender-nonconforming students.

(cf. 1240 - Volunteer Assistance)
(cf. 4131 - Staff Development)
(cf. 4231 - Staff Development)
(cf. 4331 - Staff Development)

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

8. At the beginning of each school year, inform each principal or designee of the district's responsibility to provide appropriate assistance or resources to protect students' privacy rights and ensure their safety from threatened or potentially discriminatory behavior.

Enforcement of District Policy

The Superintendent or designee shall take appropriate actions to reinforce BP 5145.3 - Nondiscrimination/Harassment. As needed, these actions may include any of the following:

1. Removing vulgar or offending graffiti

(cf. 5131.5 - Vandalism and Graffiti)

2. Providing training to students, staff, and parents/guardians about how to recognize unlawful discrimination, how to report it or file a complaint, and how to respond

3. Disseminating and/or summarizing the district's policy and regulation regarding unlawful discrimination

4. Consistent with the laws regarding the confidentiality of student and personnel records, communicating the school's response to students, parents/guardians, and the community

NONDISCRIMINATION/HARASSMENT (continued)

(cf. 4112.6/4212.6/4312.6 - Personnel Files)
(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)
(cf. 5125 - Student Records)

5. Taking appropriate disciplinary action against students, employees, and anyone determined to have engaged in wrongdoing in violation of district policy, including any student who is found to have filed a complaint of discrimination that he/she knew was not true

(cf. 4118 - Suspension/Disciplinary Action)
(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. 6159.4 - Behavioral Interventions for Special Education Students)

Process for Initiating and Responding to Complaints

Any student who feels that he/she has been subjected to unlawful discrimination described above or in district policy is strongly encouraged to immediately contact the compliance officer, principal, or any other staff member. In addition, any student who observes any such incident is strongly encouraged to report the incident to the compliance officer or principal, whether or not the alleged victim files a complaint.

Any school employee who observes an incident of unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, or to whom such an incident is reported shall report the incident to the compliance officer or principal within a school day, whether or not the alleged victim files a complaint.

Any school employee who witnesses an incident of unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, shall immediately intervene to stop the incident when it is safe to do so. (Education Code 234.1)

When a verbal report of unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, is made to or received by the principal or compliance officer, he/she shall make a note of the report and encourage the student or parent/guardian to file the complaint in writing, pursuant to the provisions in AR 1312.3 - Uniform Complaint Procedures. Once notified verbally or in writing, the principal or compliance officer shall begin the investigation and shall implement immediate measures necessary to stop the discrimination and ensure that all students have access to the educational program and a safe school environment. Any interim measures adopted to address unlawful discrimination shall, to the extent possible, not disadvantage the complainant or a student who is the victim of the alleged unlawful discrimination.

Any report or complaint alleging unlawful discrimination by the principal, compliance officer, or any other person to whom a report would ordinarily be made or complaint filed shall instead be made to or filed with the Superintendent or designee who shall determine how the complaint will be investigated.

NONDISCRIMINATION/HARASSMENT (continued)

(cf. 5141.4 - Child Abuse Prevention and Reporting)

Transgender and Gender-Nonconforming Students

Gender identity of a student means the student's gender-related identity, appearance, or behavior as determined from the student's internal sense of his/her gender, whether or not 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.

Transgender student means a student whose gender identity is different from the gender he/she was assigned at birth.

Regardless of whether they are sexual in nature, acts of verbal, nonverbal, or physical aggression, intimidation, or hostility that are based on sex, 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 are prohibited. Examples of the types of conduct which are prohibited in the district and which may constitute gender-based harassment include, but are not limited to:

1. Refusing to address a student by a name and the pronouns consistent with his/her gender identity

2. Disciplining or disparaging a student or excluding him/her from participating in activities for behavior or appearance that is consistent with his/her gender identity or that does not conform to stereotypical notions of masculinity or femininity, as applicable

3. Blocking a student's entry to the bathroom that corresponds to his/her gender identity

4. Taunting a student because he/she participates in an athletic activity more typically favored by a student of the other sex

5. Revealing a student's transgender status to individuals who do not have a legitimate need for the information, without the student's consent

6. Use of gender-specific slurs

NONDISCRIMINATION/HARASSMENT (continued)

7. Physical assault of a student motivated by hostility toward him/her because of his/her gender, gender identity, or gender expression

The district's uniform complaint procedures (AR 1312.3) shall be used to report and resolve complaints alleging discrimination against transgender and gender-nonconforming students.

Examples of bases for complaints include, but are not limited to, the above list as well as improper rejection by the district of a student's asserted gender identity, denial of access to facilities that correspond with a student's gender identity, improper disclosure of a student's transgender status, discriminatory enforcement of a dress code, and other instances of gender-based harassment.

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:

1. Right to privacy: A student's transgender or gender-nonconforming status is his/her private information and 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. In any case, the district shall only allow disclosure of a student's personally identifiable information to employees with a legitimate educational interest as determined by the district pursuant to 34 CFR 99.31. Any district employee to whom a student's 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 he/she 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 his/her status as a 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 transgender or gender-nonconformity status or gender identity or gender expression to his/her 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 desire assistance in doing so.

(cf. 1340 - Access to District Records)
(cf. 3580 - District Records)

2. Determining a Student's Gender Identity: The compliance officer shall accept the student's assertion of his/her gender identity and begin to treat the student consistent with his/her gender identity unless district personnel present a credible and supportable basis for believing

NONDISCRIMINATION/HARASSMENT (continued)

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, his/her parents/guardians to identify and develop strategies for ensuring that the student's access to education programs and activities is maintained. 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 compliance officer 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. 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 his/her 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.

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, access to a staff member's office, 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 he/she is transgender or gender-nonconforming. 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. 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. Such preferred name may be added to the student's record and official documents as permitted by law.

NONDISCRIMINATION/HARASSMENT (continued)

(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 will, in general, 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)