



**East San Gabriel Valley
Regional Occupational Program
and
Technical Center**

TRANSGENDER STUDENTS

REFERENCE GUIDE

Introduction

The East San Gabriel Valley ROP/TC is committed to providing a safe learning environment for all students, including transgender students, and to ensuring that every student has equal access to the School District's educational programs and activities.

A fundamental role of the ROP includes the responsibility to set the direction of the School District as it relates to creating a welcoming and non-discriminatory environment for all students.

Additionally, the School District's policy requires that all staff promote mutual respect, tolerance, and acceptance among students.

Purpose

The purpose of this Reference Guide is to advise School District staff regarding issues relating to transgender students in order to create and maintain a safe learning environment for all students and to ensure that every student has equal access to the School District's educational programs and activities. The guidelines do not anticipate every situation that might occur with respect to transgender students; the needs of each transgender student must be assessed on a case-by-case basis.

Background

On July 24, 2013, the U.S. Department of Education's Office for Civil Rights and the U.S. Department of Justice's Civil Rights Division, resolved a Federal civil rights complaint against the Arcadia Unified School District, regarding a transgender student's ability to use facilities and to participate in activities consistent with the student's gender identity. (See www.justice.gov/crt/about/edu/documents/arcadiaagree.pdf).

Arcadia USD agreed to allow the transgender student to use facilities and to participate in activities consistent with the student's gender identity; Arcadia USD also agreed to adopt corresponding policies and administrative regulations. The agreement addressed, but did not resolve, the issue of privacy for transgender and non-transgender students. The Agreement is based on Federal law, and sets a precedent for filing civil rights complaints against other School Districts.

Helpful Definitions

Gender – *“A person’s actual or perceived sex and includes a person’s gender identity and gender-related appearance and behavior, and behavior whether or not stereotypically associated with the person’s assigned sex at birth.”* (5 CA Code of Regulations, Section 4910 {k}).

Gender Expression – *“External cues that one uses to represent or communicate one’s gender to others, such as behavior, clothing, hairstyles, activities, voice, mannerisms, or body characteristics.”*

Gender Fluid – *“Persons who do not identify as, or who do not express themselves as, solely male or female.”*

Gender Identity - *“One’s internal sense of gender, which may be different from one’s assigned sex, and which is consistently and uniformly asserted, or for which there is other evidence that the gender identity is sincerely held as part of the student’s core identity.”*

Gender Variant – *“Persons that have a gender expression or gender identity that varies from stereotypical expectations and norms. An example may be the boy who wears clothing that some might perceive as feminine, or vice versa.”*

LGBTQ – *“An umbrella term that stands for “lesbian, gay, bisexual, transgender, and questioning.” The category “questioning” is included to incorporate those that are not yet certain of their sexual orientation and/or gender identity.”*

Sex – *“The biological condition or quality of being a female or male human being.”*

Sexual Orientation – *“A person’s emotional and sexual attraction to another person based on the gender of the other person. Common terms used to describe sexual orientation include, but are not limited to, heterosexual, lesbian, gay, and bisexual. Sexual orientation and gender identity are different. Transgender persons may identify as gay, lesbian, or bisexual.”*

Sexualized Bullying – *“ Unwanted or demeaning conduct or comments directed at or about an individual on the basis of actual or perceived gender, gender identity and expression, sex, sexual behavior, sexual orientation, or other related person characteristics with the intention to humiliate. Anti-gay and sexist epithets are common forms of sexualized bullying.”*

Transgender - *“An individual whose gender identity is different from the individual’s assigned sex...An individual can express or assert a transgender gender identity in a variety of ways, which may but do not always include specific medical treatments or procedures. Medical treatments or procedures are not considered a prerequisite for one’s recognition as transgender. A “transgender student” is a student who consistently and uniformly asserts a gender identity different from the student’s assigned sex, or for which there is documented legal or medical evidence that the gender identity is sincerely held as part of the student’s core identity.”* (The definitions are from the Arcadia USD Resolution Agreement & LAUSD)

Legal Findings

- **State Law and Education Code**

State law prohibits discrimination of students based on gender, gender identity, and gender expression (Education Code, Section 220). State law specifically prohibits discrimination on the basis of gender in enrollment, counseling, and the availability of physical education, athletic activities, and sports (Education Code, Section 221.5).

Districts must adopt policies prohibiting discrimination, harassment, and bullying based on gender, gender identity, and gender expression, and must intervene whenever they witness such an act (Education Code, Section 234.1).

- **Federal Law**

Federal law, specifically Title IX of the Education Amendments of 1972 and Title IV of the Civil Rights Act of 1964, also prohibits discrimination on the basis of gender. Federal law imposes these obligations independent of and in addition to State law.

- **The Unruh Civil Rights Act**

“The Unruh Civil Rights Act (CA Civ. Code 51-51.3) prohibits a business, including educational agencies, from discriminating against people because of sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, or sexual orientation, or because the person is perceived to have or is associated with, such characteristics. The Unruh Civil Rights Act also prohibits gender-based conduct of a hostile or sexual nature, including verbal, visual, or physical conduct.”

- **AB 1266 Gender Identity Bill**

Governor Brown signed into law Assembly Bill (AB) 1266 - effective January 1, 2014. AB 1266 amends existing Education Code nondiscrimination provisions to require school districts to allow students to participate in sex-segregated school programs and use facilities consistent with the students’ gender identity regardless of their biological sex. California Education Code section 221.5 was amended to add subparagraph (f) which states:

“A pupil shall be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil’s records.”

AB 1266 is currently the law; before AB 1266, California law already prohibited discrimination based upon gender identity (Education Code, section 220); both Federal law as well as California Interscholastic Federation bylaws also apply to gender identity issues in schools.

AB 1266 Major Impacts

Restrooms & Locker Rooms

- School districts cannot provide a unisex bathroom as an alternative for transgender students.
- Rather, school districts must allow access to sex-segregated facilities based on gender identity.
- Failure to do so could violate the newly passed law and the Unruh Civil Rights Act which prohibits facility access discrimination based on gender identity. (Civ. Code, § 51.)

Transgender Discrimination/Harassment

Privacy Issues

- Students have the responsibility to inform school district authorities of their gender identity (unless the student is too young).
- School districts need to balance the privacy and safety of other students with a student's right to self-identify his or her gender and to take steps to ensure the student's assertion of gender identity is legitimate.
- School districts should accept a student's assertion of contrasting gender identity when there is corroborating evidence the student's gender identification is sincere. This may include:
 - consistent assertions of gender by the student
 - documentation and testimony of gender identifiable behavior
 - a letter confirming gender identity from a parent, social worker, psychologist, or health care provider
 - a legal change of gender
- All students have a right to keep their gender identity and assigned sex at birth private from others.
- If school districts grant access to sex-segregated facilities and activities, they must be careful not to disclose information about a student's gender identity, assigned sex at birth, legal name, and legal gender because this information may constitute confidential medical information.
- The school district should not disclose any of this information unless the student has authorized such disclosure or if the school district is compelled by law.
- Many transgender students hide their gender identity from their parents. When contacting a parent of a transgender student, school district personnel should use the student's legal name and the pronoun corresponding to the student's legal gender unless the student or parent has indicated otherwise.

Accommodating Transgender Students

The Office of Civil Rights and the Department of Justice have advised public school districts to observe the requirements now codified by AB 1266 in light of existing California and Federal laws against sex discrimination. [*E.g., Arcadia Unified School District.*]

When a student requests the school district to implement measures to reasonably accommodate the student's consistently asserted gender identity, it is recommended that the

school district engage the student and his/her parents (when applicable), in an 'Interactive Process' in order to identify and address potential issues.

Utilizing the Interactive Process

- The Interactive Process requires time, in order to gather information from the student and to develop a plan to help implement a smooth accommodation.
- The participants in a meeting ideally include the student, the parents (when applicable), a school district student services administrator and a school district administrator who will oversee the implementation of the plan and respond to any concerns. Review "Gender" and "Gender expression" [Educ. Code § 210.7.]
- School District's Goal: The goal of the Interactive Process is to agree on an accommodation plan for the student and the school district.

Interactive Meeting

- Agenda for Interactive Meeting:
 - a. Ask student preference in name and pronoun to be used at meeting.
 - b. Explain purpose of meeting to understand his/her needs and create a type of transition plan.
 - c. Explain school district's role to balance rights and interests.
 - d. Explain Interactive Process, which often requires more than one meeting to discuss day-to-day logistics, notification of teachers, name changes, schedule changes, complaint protocols, identification of safe adults and friends, etc.
 - e. Ask student about goals and hopes for his/her change in gender identity/expression from male to female/female to male (mostly just listen and take notes).
 - f. Discuss precautions the school district should be prepared to provide the transgender student.
 - g. Ask student about requests of the school district (mostly just listen and take notes).

Accommodation Plan

- The transgender student's rights are:
 - a. To be protected against discrimination, harassment, bullying and intimidation on the basis of gender identity and gender expression (Educ. Code §§ 200, 220 and 234-234.5).
 - b. A right to privacy.
 - c. A right to freedom of expression to be open about sexual orientation and gender identity.
- Ask about the student's level of commitment to this transition – For example, has he/she already experimented with presenting as a male/female? If so, were there any issues that would help the school district with the transition? If not, ask him/her if he/she feels the school district environment is the best place to experiment? (Some

students and adults experiment in general society first, such as on a vacation or visiting a relative, to determine how it feels, what to expect, etc.)

- These questions are not asked to be judgmental or invasive, but to gather information and determine the level of commitment to the transition.
- Close the meeting by asking if the student has any questions; explain that the school district will do some research to determine how to balance rights and how to implement the ideas discussed.
- Suggest times for the next meeting, and explain that the transition may take place later, not because the school district is saying he/she can't transition, but because the transition involves a lot of details.

- The School District's legitimate, non-discriminatory interests are:
 - a. To protect the transgender student from discrimination, harassment, bullying or intimidation.
 - b. To minimize substantial disruption to the instructional program;
 - c. To protect other students' reasonable expectations of privacy.
 - d. To receive prompt notification from the transgender student of any problems.

Accommodation Plan Notification Process

- The school district will notify teachers of the accommodation so they can properly address the student, supervise, and intervene if there are problems.
- Additional adults with a legitimate need to know will be notified: registrar, counselor and any other individual with a legitimate reason.
- Notification of others is a personal decision, *not* a school district-related responsibility.
- Level of privacy and confidentiality desired by student.
- Ideas for notification of classmates.
- Identify safe friends and/or adults to share news.
- Identify potentially unsafe students and/or adults and develop plan.
- Confirm application of dress code, if any.
- Change name and gender on school district records (informal vs. legal name change).
- Establish reporting protocols for student if the student encounters problems from students or adults. Discuss school district's prior training of students and staff regarding harassment and bullying, as well as ideas to refresh that training.
- Discuss student's preferred timing for accommodation; *e.g.*, next week as opposed to later in the year or at the beginning of next year.
- Discuss use of public boys'/girls' restrooms (confirm private stalls in bathrooms).
 - Recommended: ANY student should be permitted to use single-stall bathrooms for increased privacy, where available.
 - Transgender male (female/male) will use a private stall in male restroom.
 - Transgender females (male/female) will use a private stall in female restroom.
 - Change class schedule regarding boys/girls P.E.
 - Discuss use of boys'/girls' locker room (confirm private changing stalls, private bathroom stalls, and private showers).

- Provide transgender students with an accommodation that best meets the needs and privacy concerns of all students involved.

Topics Not To Discuss

The School District does not have legal authority to ask for:

- Medical documentation of transgender status. It may be deemed a violation of the student’s privacy rights to inquire about whether they will engage in certain medical treatments. (However, if the student offers medical information, you can ask questions as it relates to the school district– *i.e.*, taking medication on campus, etc.)
 - Caution: Parents/guardians may NOT be supportive of the student’s gender identity decision.
- District probably cannot disclose transgender identity or require parental consent.
 - Educ. Code § 49602: Confidentiality of pupil counseling information by pupil 12 year or older.
 - Family Code §§ 6920-6929, 7050, *et seq.*

Final Considerations

Athletic Team Participation:

- The CIF recently passed a policy [“300(d) Gender Identity Participation”] regarding a transgender student’s opportunity to participate in CIF activities.
- This policy states:

All students should have the opportunity to participate in CIF activities in a manner that is consistent with their gender identity, irrespective of the gender listed on a student’s records.

- The policy further states:

Should any questions arise whether a student’s request to participate in sex-segregated activity consistent with his or her gender identity is bona fide, a student may seek review of his her eligibility for participation by working through the procedures set forth in the “Guidelines for Gender Identity Participation.”

- A school district will be acting lawfully and will avoid unlawful discrimination by allowing male/female transgender students to try out for athletic team participation that corresponds to the student’s consistently asserted gender identity.
- If a transgender student makes a team and there is any challenge to that student’s eligibility, the recommendation is to follow the CIF procedures noted above.
- If the school district does not allow transgender pupils to try out for athletic teams that correspond to the students’ gender identity, the school district risks a claim of unlawful discrimination on the basis of gender identity.

DEL NORTE STAFF

RECOMMENDED GUIDANCE

When a request is received from a transgender student that concerns privacy issues or restroom use, it should be considered. The ROP will handle each request on a case-by-case basis so that the unique needs of each student can be met. When a request is made, the counseling staff should first attempt to meet with the student and, if appropriate, the student's family. This will allow the student and counseling staff to address the issue of privacy, as well as other student needs.

Issues of Privacy

- All students, have a right to privacy; this includes keeping a student's actual or perceived sexual orientation, gender identity, and gender expression, private.
- Staff should not disclose a student's actual or perceived sexual orientation, gender identity, or gender expression to others, including, but limited to, other students, parents, and/or other school district personnel, unless there is a specific "need to know."
- Staff must be mindful of the confidentiality and privacy rights of students when contacting parents/legal guardians so as to not reveal, imply, or refer to a student's actual or perceived sexual orientation, gender identity, or gender expression.
- To ensure confidentiality, whenever discussing a particular issue, such as: conduct, discipline, grades, attendance, health, or any other school-related matter, staff should focus on the conduct or particular issue, and not on any assumptions regarding the student's actual or perceived sexual orientation, gender identity, or gender expression.
- All students, including transgender students, have the right to openly discuss and express their sexual orientation, gender identity, and gender expression, and to decide when, with whom, and how much to share private information.

Restroom Accessibility

- All students should be allowed to use the gender-specific restroom that is consistent with their gender identity.
- All students who need or desire privacy, should be allowed to use an alternative restroom besides the regular restroom used by other students. The school district should inquire into the underlying reason for the request only to the extent it helps determine how best to accommodate the student.
- When available, a "gender neutral" restroom may be used by any student who desires increased privacy, regardless of the underlying reason. The use of such a "gender neutral" restroom shall be a matter of choice for a student and no student shall be compelled to use such restroom.
- Gender neutral restrooms at the ROP include the two restrooms located in the Personnel Office or the one restroom located in the High School Division.

Official Records

- The school district is required to maintain a mandatory permanent student record which includes the legal name of the student and the student's sex.
- The school district will change a student's official record to reflect a change in legal name or gender, upon receipt of documentation that the student's legal name or gender has been changed, pursuant to a court order.

Names/Pronouns

- Staff should address and refer to a transgender student by the student's preferred name and pronoun.
- Students may request to be addressed by their preferred name and preferred pronoun that corresponds to their gender identity, without obtaining a court order or without changing their official records.
- While inadvertent slips or honest mistakes in the use of the preferred names or preferred pronouns may occur, the intentional and persistent refusal to respect a student's gender identity is discriminatory and is not to occur.

Dress Code

- A transgender student has the right to dress in accordance with the gender identity that the student asserts at school, within the constraints of the school district's dress code/policy, as it relates to health and safety issues (e.g. prohibitions on wearing gang symbols, regalia/apparel, drugs, etc.).

Discrimination, Harassment, and Bullying of Transgender Students

- The ROP must ensure that transgender students are provided with a safe school environment that is free of discrimination, harassment, and bullying.
- Immediate action must be taken, when any incident of discrimination, harassment, bullying, hazing, or violence threaten a transgender student. Immediate steps, include, but are not limited to, the following:
 1. Administration, counseling and/or staff are to intervene immediately to stop the behavior.
 2. Call Security, and when appropriate, Police.
 3. Investigate the incident.
 4. Determine and enforce corrective actions.
 5. Monitor to ensure that the behavior does not persist.
- Students are not to be suspended because of their actual or perceived sexual orientation, gender identity, or gender expression.
- Administrators and staff should take reasonable steps to ensure the safety and access for transgender students.

- Complaints alleging discrimination or harassment based on a student's gender identity or gender expression are to be handled in the same manner as other discrimination/harassment complaints.
- Refer to the school district's Staff Manual for further information regarding the filing of discrimination/harassment complaints.

(The Reference Guide was modeled after CSBA (California School Board Association); Lozano Smith-attorneys at law; Atkinson, Andelson, Loya, Ruud & Romo, and LAUSD)