

BOARD OF EDUCATION ADMINISTRATIVE REGULATION

R5163

ARTICLE 5: STUDENTS

SECTION: Non-Discrimination for Students and Employees

This regulation is meant to advise school site staff and administration regarding transgender and gender non-conforming student concerns in order to create a safe learning environment for all students, and to ensure that every student has equal access to all components of their educational program.

California Law Prohibits Gender-Based Discrimination in Public Schools

The California Education Code states that “all pupils have the right to participate fully in the educational process, free from discrimination and harassment.” Cal. Ed. Code Section 201(a). Section 220 of the Education Code provides that no person shall be subject to discrimination on the basis of gender in any program or activity conducted by an educational institution that receives or benefits from state financial assistance. The Code further provides that public schools have an affirmative obligation to combat sexism and other forms of bias, and a responsibility to provide equal educational opportunity to all pupils. Cal. Ed. Code Section 201(b).

The California Code of Regulations similarly provides that “No person shall be excluded from participation in or denied the benefits of any local agency's program or activity on the basis of sex, sexual orientation, gender, ethnic group identification, race, ancestry, national origin, religion, color, or mental or physical disability in any program or activity conducted by an ‘educational institution’ or any other ‘local agency’ . . . that receives or benefits from any state financial assistance.” 5 CCR Section 4900(a).

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

SFUSD Board Policy Prohibits Gender-Based Harassment

SFUSD Board Policy 5163 requires that “All educational programs, activities and employment practices shall be conducted without discrimination based on . . . sex, sexual orientation, [or] gender identity . . .” Board Policy 5162 requires that “students should treat all persons equally and respectfully and refrain from the willful or negligent use of slurs against any person” based on sex or sexual orientation.

Therefore, transgender and gender non-conforming students must be protected from discrimination and harassment in the public school system. Staff must respond appropriately to ensure that schools are free from any such discrimination or harassment.

Names/Pronouns

Students shall have the right to be addressed by a name and pronoun corresponding to their gender identity that is exclusively and consistently asserted at school. Students are not required to obtain a court ordered name and/or gender change or to change their official records as a prerequisite to being addressed by the name and pronoun that corresponds to their gender identity. This directive does not prohibit inadvertent slips or honest mistakes, but it does apply to an intentional and persistent refusal to respect a student's gender identity. The requested name shall be included in the SIS system in addition to the student's legal name, in order to inform teachers of the name and pronoun to use when addressing the student.

Official Records

The District is required to maintain a mandatory permanent pupil record which includes the legal name of the pupil, as well as the pupil's gender. 5 Cal. Code Reg. 432(b)(1)(A), (D). The District shall change a student's official records to reflect a change in legal name or gender upon receipt of documentation that such legal name and/or gender have been changed pursuant to California legal requirements.

Restroom Accessibility

Students shall have access to the restroom that corresponds to their gender identity exclusively and consistently asserted at school. Where available, a single stall bathroom may be used by any student who desires increased privacy, regardless of the underlying reason. The use of such a single stall bathroom shall be a matter of choice for a student, and no student shall be compelled to use such bathroom.

Locker Room Accessibility

Transgender students shall not be forced to use the locker room corresponding to their gender assigned at birth. In locker rooms that involve undressing in front of others, transgender students who want to use the locker room corresponding to their gender identity exclusively and consistently asserted at school will be provided with the available accommodation that best meets the needs and privacy concerns of all students involved. Based on availability and appropriateness to address privacy concerns, such accommodations could include, but are not limited to:

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

Sports and Gym Class

Transgender students shall not be denied the opportunity to participate in physical education, nor shall they be forced to have physical education outside of the assigned class time. Generally, students should be permitted to participate in gender-segregated recreational gym class activities and sports in accordance with the student's gender identity that is exclusively and consistently asserted at school. Participation in competitive athletic activities and contact sports will be resolved on a case by case basis.

Dress Codes

School sites can enforce dress codes that are adopted pursuant to Education Code 35291. Students shall have the right to dress in accordance with their gender identity that is exclusively and consistently asserted at school, within the constraints of the dress codes adopted at their school site. This regulation does not limit a student's right to dress in accordance with the Dress/Appearance standards articulated in the Student and Parent/Guardian Handbook, page 23.

Gender Segregation in Other Areas

As a general rule, in any other circumstances where students are separated by gender in school activities (i.e., class discussions, field trips), students shall be permitted to participate in accordance with their gender identity exclusively and consistently asserted at school. Activities that may involve the need for accommodations to address student privacy concerns will be addressed on a case by case basis. In such circumstances, staff shall make a reasonable effort to provide an available accommodation that can address any such concerns.