

Berkeley Unified School District

Administrative Regulation

Gender Identity & Access

AR 5157

Students

Purpose

The purpose of this Administrative Regulation is to advise District staff regarding issues relating to transgender and gender non-conforming 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 District's educational programs and activities.

This regulation sets out guidelines for school and District staff to address the needs of transgender students and explains how these nondiscrimination laws should be implemented in situations where questions may arise about how to protect the legal rights or safety of students. This regulation does not anticipate every situation that might occur with respect to transgender students, and the needs of each student must be assessed on a case-by-case basis. In all cases, the goal is to ensure the safety, comfort, and healthy development of all students, including transgender students, maximizing inclusion and social integration while minimizing exclusion and stigmatization.

Definitions

These definitions are not meant to label any student but are intended as functional descriptors. Students may or may not use these terms to describe themselves.

Gender: Socially determined characteristics, roles, behaviors, and attributes a society expects from and considers appropriate for males and females; these characteristics are often referred to as "feminine" and "masculine." Under California law, "gender" is defined to include a person's gender identity. (Cal. Ed. Code Â§ 210.7)

Gender Fluid: Â Persons who do not identify as, or who do not express themselves as, solely male or female.

Gender Identity: A person's internal, deeply-rooted identification as male or female. Â All people have a gender identity, not just transgender people.

Gender Nonconforming: Displaying gender traits that are not consistent with stereotypical characteristics associated with one's legal sex assigned at birth, or others' perceptions of that sex. Â This term can be used to describe people whose gender expression differs from stereotypical expectations about how boys and girls are "supposed to" look or act.

LGBTQ: An umbrella term that stands for "lesbian, gay, bisexual, transgender, and questioning."

Sex: The biological condition or quality of being a female or male human being.

Sexual Orientation: A person's romantic or sexual attraction to people of the other and/or same gender. (Education Code 212.6) 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 students may identify as gay, lesbian, bisexual, or heterosexual.

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 personal characteristics with the intention to humiliate. Anti-gay and sexist epithets are common forms of sexualized bullying.

Transgender: A person whose sex at birth is opposite from who they know they are on the inside.

Determining a Student's Gender Identity:

The responsibility for determining a student's gender identity rests with the student or, in the case of young students not yet able to advocate for themselves, with the parent or guardian.

A school should accept a student's asserted gender identity when there is evidence that it is a sincerely held part of the student's core identity. A school may not question or disregard the student's assertion of his or her gender identity unless school personnel have a credible basis for believing that the student is asserting a particular gender identity for some improper purpose.

There is no threshold medical or mental health diagnosis or treatment requirement that any student must meet in order to have his or her gender identity recognized and respected by a school. The term "gender transition" describes the experience by which a transgender person goes from living and identifying as one gender to living and identifying as another. For most transgender youth, the experience of gender transition involves no medical intervention. Rather, most transgender youth will undergo gender transition through a process commonly referred to as "social transition," whereby they begin to live and identify as the gender consistent with their gender identity. Some transgender youth who are close to reaching puberty, or after commencing puberty, may complement social transition with medical intervention, such as hormone suppressants or hormone therapy, under the care of a physician. Whether such interventions are available or appropriate will depend on the unique circumstances of each individual.

Similarly, a student is not required to have obtained a court-ordered name or gender change in order to have his or her requested name and gender identity recognized and respected by a school.

Privacy:

All persons, including students, have a right to privacy: the right to decide when, with whom, and how much highly personal information one wants to share about oneself to others. This includes the right to control dissemination of highly personal and private information such as one's transgender status or sexual orientation.

District and school personnel should not disclose a student's transgender status to others, including, but not limited to, other students, parents, and/or other school personnel, unless they are legally required to, or the student has authorized such disclosure, or there is a specific and compelling "need to know" in order to protect the transgender student's interests. In those rare circumstances where disclosure is deemed to be absolutely necessary, before making any disclosure, school officials should inform the transgender student of the need to disclose and provide them with the opportunity and resources they may need to make the disclosure themselves.

District and school personnel may encounter situations where a transgender student has not disclosed their transgender status to their parents. Whenever possible, school administrators should speak with the student to confirm the manner in which the student will be referred to in conversation with the parent/guardian. Generally, when contacting the parent or guardian of a transgender student, school personnel should use the student's legal name and the gender pronoun that corresponds to their legal sex, unless the student, parent, or guardian has specified otherwise.

All students, including transgender students, have the right to openly discuss and express their gender identity or transgender status and to decide when, with whom, and how much to share that private information. In sharing this information, a student does not give up the right to privacy and at no time may the school use a student's self-disclosure as grounds for sharing information about the student's gender identity or transgender status without the student's permission.

Names/Pronouns:

Should a student or parent/legal guardian request to have the student addressed by a name and pronoun different from those associated with the student's sex at birth, the school will honor that request and set expectations for their consistent use. District and school officials may not require proof of a court-ordered name or gender change before honoring such a request. Districts and schools should also endeavor to proactively adapt student information systems to accommodate requested names and pronouns to prevent inadvertently revealing information that would violate the student's privacy.

While inadvertent slips or honest mistakes in the use of names or pronouns may occur, staff or students intentionally and persistently refusing to respect a student's gender identity by using the wrong name and gender pronoun is discriminatory and is a violation of this policy.

School Records:

The District is required to maintain an official, permanent pupil record with the legal name and gender appearing on the student's birth certificate. On all other school-related records or documents, however, at the request of or with the consent of the student's parent/legal guardian (unless the student is over 18), schools should use a transgender student's requested name and gender pronoun. This would include physical records and documents, diplomas and other certificates of advancement, electronic records and documents, and school IDs. Every effort should be made to update student records with the student's requested name and gender pronoun,

or gender marker, and not to circulate records with the student's assigned birth name or gender marker. Schools should also identify routine areas where a transgender student's privacy could be violated by the improper usage of the legal name and gender marker. These include but are not limited to pre-printed labels, standardized tests, student IDs or library cards, lunch tickets, school photos, notices from the main office, attendance slips, grade books, posted lists of student names, lesson plans, seating charts and roll sheets used by substitute teachers, and any other places where students' names are commonly written.

In order to protect the student's privacy, and to prevent accidental disclosure of a student's transgender status, the school should maintain the official, permanent pupil record in a secure location, separate from the student's other records. If the official record is maintained electronically, similar security measures should be implemented to protect student privacy.

In the event that a student identifies as transgender but is unable to obtain consent from a parent or legal guardian, a school administrator should meet with the student to discuss how the student would like to be addressed at school and implement a plan to ensure that the student's privacy is protected.

When a student or parent/legal guardian presents the school with documentation of a court-ordered legal name and/or gender change, the school must then change the official, permanent pupil record, to reflect the student's new legal name and gender, in a timely manner.

Transgender students who transition after having graduated may ask their previous schools to amend school records or a diploma or transcript that include the student's birth name and gender. When requested, schools should amend the student's record, including reissuing a high school diploma or transcript, to reflect the student's current name and gender.

Restroom Availability:

Schools may maintain separate restroom facilities for male and female students. However, students shall have access to the restroom that corresponds to their gender identity.

Where available, a single stall, "gender neutral" restroom (such as in the health office) 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 a restroom.

As a proactive measure, administrators should take steps to identify private gender-neutral restrooms on their campus, as well as to de-stigmatize the use of such private options. Establishing clear guidelines and expectations with regards to students' physical privacy and boundaries is also important. Both can be reinforced through language in student handbooks, posted expectations, and through orientation and other processes for familiarizing students and guardians to the school and its facilities.

Locker Room Accessibility:

Schools may maintain separate locker room facilities for male and female students. However, students shall have access to the locker room facility that corresponds to their gender identity.

If any student has a need or desire for increased privacy or safety, regardless of the underlying reason, they may be provided access to a reasonable alternative changing area or locker room such as:

1. Use of a private area in the public area of the locker room facility (i.e., a nearby restroom stall with a door, an area separated by a curtain, or a P.E. instructor's office in the locker room).
2. A separate changing schedule (either utilizing the locker room before or after other students).
3. Use of a nearby private area (i.e., a nearby restroom or a health office restroom).

However, use of such an alternative changing space shall be a matter of choice for a student and no student shall be compelled to use such an alternative. School administrators should also work to de-stigmatize the use of such options, as well as to establish clear guidelines and expectations with regard to respecting privacy and boundaries in changing areas and other close quarters.

Sports and Physical Education Classes:

Transgender students shall be permitted to participate in physical education classes, intramural sports, and competitive athletic activities in a manner consistent with their gender identity. This is consistent with California and federal law as well as the policies established by the California Interscholastic Federation. (CIF Bylaws § 300(D)).

Dress Codes/School Uniform Policies:

All students have the right to dress in accordance with their gender identity and gender expression. School dress code and uniform policies should be gender-neutral, and should not restrict students' clothing choices on the basis of gender or traditional stereotypes about what males and females "should" wear.

Harassment and Bullying:

Complaints alleging discrimination, harassment or bullying based on a student's gender identity, gender expression, or gender nonconformity, are to be handled in the same manner as other discrimination/harassment/bullying complaints. Consistent with the Uniform Complaint Procedures, complaints alleging discrimination or harassment based on a student's gender identity, gender expression, or gender nonconformity should be given immediate attention; fully and appropriately investigated in a timely manner; and resolved through appropriate corrective action.

Regulation: BERKELEY UNIFIED SCHOOL DISTRICT

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