

## **Resolution 25-011 Reaffirming Support for Transgender and Gender Expansive Children and Youth**

WHEREAS, Title IX of the Education Amendments of 1972 prohibits exclusion or discrimination on the basis of sex under any education program; and,

WHEREAS, Executive Order 13988 issued on January 20, 2021 affirms that discrimination against transgender individuals is discrimination on the basis of sex and that, "Children should be able to learn without worrying about whether they will be denied access to the restroom, the locker room, or school sports;" and,

WHEREAS, the U.S. Supreme Court in its June 15, 2020 decision in *Bostock v. Clayton County* held that discrimination on the basis of an individual's status as gay or transgender constitutes sex discrimination within the meaning of Title VII of the Civil Rights Act of 1964; and,

WHEREAS, the U.S. Department of Education and the U.S. Department of Justice have recognized that the Supreme Court's reasoning in the *Bostock* decision applies to Title IX of the Education Amendments of 1972 (Title IX), and that Title IX prohibits discrimination against and harassment of students and school employees based on their gender identity and sexual orientation; and,

WHEREAS, California Education Code § 201(b) obliges California public schools to combat racism, sexism, and other forms of bias, and a responsibility to provide equal educational opportunity; and,

WHEREAS, California Education Code § 220 prescribes that no person shall be subjected to discrimination on the basis of gender, gender identity, gender expression, and/or sexual orientation in any program or activity conducted by Berkeley Unified School District as an educational institution that receives, or benefits from, state financial assistance; and,

WHEREAS, California Education Code § 221.5(f) requires that students be permitted to participate in sex-segregated school programs, activities, and use facilities consistent with their gender identity, without respect to the gender listed in a students' records; and,

WHEREAS, California Fair, Accurate, Inclusive and Respectful (FAIR) Education Act as outlined in California Education Code § 51204.5 requires inclusion of the contributions of LGBTQ+ Americans to the economic, political, and social development of California and the United States of America, with particular emphasis on portraying the role of these groups in contemporary society; and,

WHEREAS, California Healthy Youth Act, as outlined in California Education Code § 51933, describes that comprehensive sexual health education instruction and materials shall teach pupils about gender, gender expression, gender identity, and explore the harm of negative gender stereotypes; and,

WHEREAS, California Education Code § 35292.5 requires that each California public school district provide and maintain at least one all-gender restroom for student use at each school site; and,

WHEREAS, California Interscholastic Federation (CIF) Bylaws 300 Series (D) recognizes that "Participation in interscholastic athletics is a valuable part of the educational experience for all students" and prescribes that 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; and,

WHEREAS, the Berkeley Unified School District recognizes that LGBTQ+ students may experience high rates of bullying, victimization, and harassment at school on the basis of their actual or perceived sexual orientation or gender identity; and,

WHEREAS, bullying, victimization, and harassment can lead to negative educational outcomes for LGBTQ+ students, including higher rates of dropping out, higher rates of absenteeism, and lower postsecondary school aspirations; and,

WHEREAS, LGBTQ+ students also report higher rates of anxiety and depression; and,

WHEREAS, the Berkeley Unified School District recognizes an alarming attack on trans people across America including blocking participation in sports and targeting gender-affirming healthcare; and,

WHEREAS, the Berkeley Unified School District is heartbroken by the tragic death of Nex Benedict, a 16-year-old non-binary American high school student, on February 8, 2024; and,

WHEREAS, the Berkeley Unified School Board Policy 5157 on Gender Identity and Access reaffirms the district's commitment to providing a safe, supportive, and inclusive learning environment for all students, including transgender students, and to ensuring that every student has equal educational opportunities and equal access to the District's educational programs and activities; and,

WHEREAS, Berkeley Unified School Board Policy 5157 on Gender Identity and Access recognized the district's legal obligation to ensure that transgender students are safe, supported, and fully included in all school activities, programs, facilities, and educational opportunities; and,

WHEREAS, Berkeley Unified School Board Administrative Regulation 5157 on Gender Identity and Access prescribes student's rights, including but not limited to:

- Right to gender-identity self-determination;
- Right to privacy, including right to decide when and with whom they share their transgender status and/or sexual orientation;
- Right to not be outed 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;
- Right to be addressed by a name and pronoun different from those associated with the student's sex at birth;
- Right to have school-related records or documents inclusive of student's requested name and gender pronouns;
- Right to restroom and locker room availability;
- Right to participate in sport and physical education classes activities in a manner consistent with their gender identity;
- Right to dress in accordance with their gender identity and gender expression and not be restricted to on the basis of gender or traditional stereotypes;
- Right to enjoy an educational environment free from discrimination, harassment or bullying based on a student's gender identity, gender expression, or gender nonconformity.

WHEREAS, Berkeley Unified School District recognizes the importance of affirming the gender identity and expression of all students, including transgender and gender expansive students, in accordance with their rights under federal and state law and district policies and regulations;

THEREFORE BE IT RESOLVED that Berkeley Unified School District affirms, supports, and values the gender identities and gender expressions of all our students and will continue to further efforts in our schools to create a welcoming, safe, and inclusive learning environment for our transgender, nonbinary, and all LGBTQ+ students; and,

BE IT FURTHER RESOLVED that Berkeley Unified School District reaffirms its commitment to supporting transgender and gender expansive children and youth by:

1. Ensuring that all students, regardless of their gender identity or expression, have access to safe, equitable and appropriate facilities, including restrooms and locker rooms, that align with their gender identity;
2. Providing training for staff on issues related to gender identity and expression, including best practices for creating inclusive classrooms and addressing bullying and harassment;
3. Implementing policies, procedures and practices that respect and affirm the gender identity and expression of transgender and gender expansive students, including but not limited to the use of preferred names and pronouns;

4. Offering resources and support services, such as counseling and support groups, to assist transgender and gender expansive students in navigating their identity and accessing necessary resources;
5. Ensuring the physical and emotional safety of transgender and gender expansive students by addressing instances of discrimination, harassment, and violence in a prompt and effective manner;
6. Committing to implement gender-neutral language in all district governing documents to promote inclusivity and respect for all gender identities;
7. Continuing to evaluate and update policies and practices to ensure that they are inclusive of transgender and gender expansive students and comply with all applicable laws and regulations;
8. Collaborating with students, families, community organizations, and other stakeholders to create a culture of acceptance and support for transgender and gender expansive children and youth within the Berkeley Unified School District; and,

BET IT FURTHER RESOLVED, that Berkeley Unified School District commits to ensuring that all-gender facilities are priorities in the design and construction of all future facilities projects; and,

BE IT FURTHER RESOLVED, that Berkeley Unified School District will build upon Berkeley Unified School District Resolution 21-041 Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ+) Pride Month by designating October as LGBTQ+ history month and recognizing March 31 as International Transgender Day of Visibility; and,

BE IT FURTHER RESOLVED, that Berkeley Unified School District approves students' participation in the Day of Silence, a demonstration against bullying and harassment of LGBTQ students in schools held on a Friday in April every year; and,

IT IS FINALLY RESOLVED that Berkeley Unified School District rejects any legislation or action that dehumanizes, marginalizes, or violates the rights of transgender, nonbinary, and all LGBTQ+ students in our community and beyond.

APPROVED AND ADOPTED by the Governing Board of the Berkeley Unified School District this 30th Day of October 2024 by the following vote:

AYES: 5

NOES: 0

ABSENT: 0

ABSTAIN: 0

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