

CLASSIFICATION: Students

ADOPTED: 3/21/16

REVISED:

REVIEWED: 3/7/17

**SUBJECT: Discrimination, Harassment,
Intimidation, and Bullying**

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The County Superintendent of Schools acknowledges his/her responsibility for providing a safe school environment that ensures all students equal access to the educational program and is free from unlawful discrimination, harassment, intimidation, and bullying.

The County Superintendent of Schools prohibits all acts related to a school activity or attendance at a school under his/her jurisdiction that constitute unlawful discrimination, harassment, intimidation, or bullying of any student on the basis of the student's actual or perceived sex, sexual orientation, gender, gender identity, gender expression, genetic information, marital or parental status, ethnic group identification, race or ethnicity, ancestry, nationality, national origin, religion, color, mental or physical disability, age or any other characteristic identified in Education Code sections 200 and 220, Penal Code section 422.55, or Government Code section 11135, or a student's association with a person or group with one or more of these actual or perceived characteristics.

Unlawful discrimination, harassment, intimidation, or bullying, includes physical, verbal, nonverbal, and written conduct based on any of the protected categories listed above. Prohibited conduct shall also include the creation of a hostile environment in which 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 includes disparate treatment of students based on any of the protected categories specified 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.

This administrative regulation applies to all individuals who have contact with students at school or during a school activity, including but not limited to other students,

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employees of the County Superintendent of Schools, volunteers, contractors, and representatives of agencies that partner with the San Diego County Office of Education.

In accordance with State and federal law and Board policy, this administrative regulation prohibits all incidences of unlawful discrimination, harassment, intimidation, or bullying, including the forms of discrimination described below.

BULLYING

Bullying means any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act, directed toward one or more students that has or can reasonably be predicted to have the effect of one or more of the following:

1. Placing a reasonable student in fear of harm to his/her person or property
2. Causing a reasonable student to experience a substantially detrimental effect on the student's physical or mental health
3. Causing a reasonable student to experience substantial interference with his/her academic performance
4. Causing a reasonable student to experience substantial interference with his/her ability to participate in or benefit from the services, activities, or privileges provided to him/her

Reasonable student means a student, including but not limited to, an exceptional needs student, who exercises average care, skill, and judgment in conduct for a person of his or her age, or for a person of his or her age with his or her exceptional needs.

Bullying by means of an electronic act, known as cyberbullying, is addressed in Administrative Regulation 6163, Student Use of Technological Resources.

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HARASSMENT, THREATS, OR INTIMIDATION

Harassment refers to intentional conduct directed at any employee or student that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, or invading the rights of either school personnel or pupils by creating an intimidating or hostile environment. Harassment, threats or intimidation that involve protected classes constitute unlawful discrimination as well.

SEX DISCRIMINATION

State and federal law, including Title IX of the Education Amendments of 1972 (Title IX), prohibit discrimination on the basis of sex. No student shall be excluded, separated, denied benefits, or otherwise treated differently on the basis of sex.

Sexual Harassment

Sexual harassment, which includes acts of sexual violence, is a form of sex discrimination and is prohibited. This prohibition applies to acts of sexual harassment of or by a student at any school or in any school program or activity under the jurisdiction of the County Superintendent of Schools.

Sexual harassment includes, but is not limited to, any unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature whether it occurs between individuals of the same sex or opposite sex. Sexual violence includes physical sexual acts, perpetrated against an individual's will or under circumstances in which an individual is incapable of giving consent due to the victim's use of drugs or alcohol, due to an intellectual or other disability, or as otherwise provided by law.

For disciplinary purposes, sexual harassment is conduct that, when considered by a reasonable person of the same gender as the victim, is sufficiently severe or pervasive

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as to have a negative impact upon the individual's academic performance or to create an intimidating, hostile, or offensive educational environment.

Transgender/Gender-Nonconforming Students

Transgender and gender-nonconforming students shall be afforded the same rights, benefits, and protections provided to all students in a manner that is consistent with the student's gender identity. Equal educational opportunities shall be provided through access to the facilities, programs, and activities that correspond with a student's gender identity.

The following definitions shall apply for the purposes of this administrative regulation:

1. Transgender student means a student whose gender identity is different from that traditionally associated with the assigned sex at birth.
2. Gender-nonconforming student means a student whose gender expression differs from stereotypical expectations.
3. Gender identity means a student's gender-related identity, appearance, or behavior, whether or not it is different from that traditionally associated with the student's physiology or assigned sex at birth.
4. Gender expression means a student's gender-related appearance and behavior, whether or not stereotypically associated with the student's assigned sex at birth.
5. Transition, in this context, refers to the process in which a student changes his or her gender expression to reflect his or her gender identity.

Acts of verbal, nonverbal, or physical aggression, intimidation, or hostility that are based on actual or perceived sex, gender, gender identity, or gender expression, regardless of whether they are sexual in nature, in which the act has the purpose or effect of having a negative impact on the student's academic performance or of creating an intimidating, hostile, or offensive educational environment are prohibited.

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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, each situation will be addressed on a case-by-case basis.

In all cases, the executive director/senior director responsible for the student's instructional program may arrange a meeting with the student and, if appropriate, his/her parents/guardians, to identify potential issues involving gender identity and expression related the student's needs at school, and develop a plan to address them. The meeting shall include a description of the transgender or gender-nonconforming student's rights and 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 executive director/senior director shall identify specific school site employee(s) to whom any student may discuss or report any matter related to transgender or gender-nonconforming students, so that prompt action can be taken. The school site employee, in consultation with parents/guardians and/or the student, will determine whether additional and periodic meetings at the school site would be appropriate to ensure that the student's educational program continues to be appropriate and to serve as a resource to the student to address any concerns of discrimination, harassment, intimidation, or bullying based on the student's gender.

COMPLAINTS

The filing, investigation, and resolution of complaints alleging discrimination, harassment, intimidation, or bullying shall be conducted in accordance with the Uniform Complaint Procedures presented in Administrative Regulation 1312.3. Each complaint shall be promptly investigated in a manner that protects confidentiality and respects the privacy of all parties concerned. If a complaint is found to have merit, prompt and equitable action shall be taken to resolve the complaint and prevent a recurrence.

Any student who feels that he/she has been subjected to any form of discrimination, harassment, intimidation, or bullying should immediately contact a school staff member

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or the administrator or executive director/senior director responsible for his/her school program. A student who observes any such incident should report the incident within one school day, whether or not the alleged victim files a complaint.

Any employee of the County Superintendent of Schools who witnesses an act of discrimination, harassment, intimidation, or bullying is required to take immediate steps to intervene when safe to do so. Any incident that an employee witnesses or that has been reported to the employee must be reported to the school principal or a designated compliance officer within one school day, whether or not the alleged victim files a complaint.

Any form of retaliation against an individual who files or otherwise participates in the filing or investigation of a complaint or report regarding an incident of alleged discrimination, harassment, intimidation, or bullying is prohibited. Retaliation complaints shall be investigated and resolved in accordance with the Uniform Complaint Procedures presented in Administrative Regulation 1312.3.

Title IX Complaints

The County Superintendent of Schools is required to designate a Title IX coordinator(s) with responsibility for coordinating the efforts of the San Diego County Office of Education to ensure that all students have equal access to educational opportunities, regardless of sex. The County Superintendent of Schools designates the executive director/senior director responsible for each school program under his/her jurisdiction as a Title IX coordinator.

The school principal shall inform the appropriate Title IX coordinator of all reports and complaints raising Title IX issues, even if the complaint was initially filed with another individual or office or the investigation will be conducted by another individual or office. A Title IX coordinator is responsible for coordinating responses to all complaints involving possible sex discrimination, which includes complaints of harassment or discrimination against transgender and gender-nonconforming students.

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Title IX coordinators shall give consideration to the following guidelines when investigating and resolving complaints alleging discrimination against students on the basis of sex or gender:

1. **Right to Privacy:** A student's transgender or gender-nonconforming status is private information and shall not be disclosed to others, including a student's teacher or parent/guardian, without the student's prior written consent, except when the disclosure is otherwise required by law or in the presence of compelling evidence that disclosure is necessary to preserve the student's physical or mental well-being.
2. **Determining a Student's Gender Identity:** A Title IX coordinator shall accept a student's assertion as to his/her gender identity. If there exists a credible basis for believing that the student's assertion of gender identity is for an improper purpose, the designated compliance officer shall convene a meeting with the student and, if appropriate, his/her parents/guardians within seven school days of receiving notification of the student's assertion, to discuss the matter. In addition, within fourteen school days of receiving notification of the student's assertion and after the aforementioned meeting is convened, if possible under the circumstances, the Title IX coordinator will provide a written response to the student and, if appropriate, to his/her parents/guardians.
3. **Accessibility to Sex-Segregated Facilities, Programs, and Activities:** A student shall be entitled to access facilities and participate in programs and activities consistent with his/her expressed gender identity, irrespective of the sex or gender otherwise listed on the student's previous records. Access to any alternative facilities, programs, or activities should be provided only upon student request in order to address concerns expressed by the student regarding access to facilities, programs, and activities consistent with the student's gender identity. A student may not be required to use alternative facilities, or participate in alternative programs or activities because he/she is transgender or gender-nonconforming or on the basis of other students. A student's right to participate in a sex-segregated activity in accordance with his/her gender identity does not change any other eligibility rule(s) established for participation in the activity for which the student is otherwise eligible.

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4. Student Records: At the written request of a student or, if appropriate, his/her parents/guardians, the student's name and sex or gender, consistent with his/her gender identity shall be changed in the student information system and for all future school records and system-generated documents, with the limited exceptions of prior records, records not generated by the school program, or mandatory permanent student records, as discussed herein.

Records generated prior to any written request as described above will not be changed pursuant to this policy; however, the processes for challenging the content student records provided in Administrative Regulation 5125, Records, remain available as specified therein. Records not generated by a school program under the jurisdiction of the County Superintendent of Schools cannot be altered by the school program in any case.

A student's legal name or sex on his/her mandatory permanent student record required by California Code of Regulations, Title 5, section 432, may be changed upon receipt of appropriate documentation reflecting the requested legal name or sex, such as a state-issued identification card or driver's license, United States Passport, court order, or birth certificate. A copy of that documentation will be maintained in the student's educational records.

In any case, if the legal name or sex on any prior records, records not generated by the school program, or the student's mandatory permanent student record is inconsistent with the student's other school-related documents, those records shall be kept in a separate, private file accessible only to the school administrator unless otherwise required by law.

5. Names and Pronouns: School staff are required to address a transgender or gender non-conforming student by the student's preferred name and the pronoun that is consistent with his/her gender identity, without the necessity of a court order or any change to the student's records.

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6. Dress Code: A student has the right to dress in a manner consistent with his/her gender identity. In any case, all students must comply with any generally applicable dress code policies.

DISCIPLINE

Any student who engages in discrimination, harassment, intimidation, or bullying shall be subject to discipline or other appropriate response directed towards correction of the behavior, such as participation in a restorative justice program or other alternative to suspension and expulsion.

Any employee who permits or engages in discrimination, harassment, intimidation, or bullying shall be subject to disciplinary action in accordance with applicable policies, laws and/or collective bargaining agreements. Other adults who have contact with students at school or during a school activity and who are determined to have permitted or engaged in such acts shall be subject to serious consequences up to and including a prohibition against future contact and/or legal action.

NOTIFICATIONS

The prohibition against discrimination, harassment, intimidation, and bullying shall be publicized to students, parents/guardians, employees, volunteers, and the general public and posted on the website of the San Diego County Office of Education and other locations that are easily accessible to students.

In addition, at the beginning of each school year, the County Superintendent of Schools or designee shall inform school employees that any employee who witnesses an act of unlawful discrimination, harassment, intimidation, or bullying against a student is required to intervene when it is safe to do so.

The process for filing a complaint alleging unlawful discrimination, harassment, intimidation, or bullying shall be included in the County Superintendent of Schools'

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annual Notice of Uniform Complaint Procedures, which shall be posted and distributed in accordance with Administrative Regulation 1312.3, Uniform Complaint Procedures.

Board Policy: 1312, 3560, 5131.1

Administrative Regulation: 1312.4, 3560, 5146, 6163

Derivation: Adopted 3/21/16. Technical Revision 3/7/17.

Legal Reference: Education Code
200 – 262.4, 48900, 48900.2, 48900.3, 48900.4, 48985, 49020 – 49023
Government Code
11135
Penal Code
422.55, 422.6
California Code of Regulations, Title 5
432, 4600 – 4633, 4900 – 4965
United States Code, Title 20
1681-1688, 12101-12213
United States Code, Title 29
794
United States Code, Title 42
2000d – 2000d-7, 6101 – 6107
Code of Federal Regulations, Title 28
35.107
Code of Federal Regulations, Title 34
100.3, 104.4, 104.7, 106.8, 106.9, 106.31, 110.25, 300.17

Management Resources:

U.S. Department of Education, Office for Civil Rights: Dear Colleague Letter, Harassment and Bullying, October 2010, Dear Colleague letter, Sexual Harassment, April 2011; Dear Colleague Letter, Bullying of Students with Disabilities, August 2013 and October 2014; Dear Colleague Letter, Title IX Coordinator, April 2015