Policy Brief

Providing a Safe, Nondiscriminatory School Environment for All Students

State and federal law prohibits discrimination of students based on their actual or perceived sex, gender, ethnic group identification, race, national origin, religion, color, physical or mental disability, age or sexual orientation (Education Code 220, 260; 42 USC 2000d-2000e-17, 42 USC 2000h-2-2000h-6). Thus, governing boards have a responsibility to ensure a safe school environment that is free of intimidation and harassment and to establish consequences for students and/or staff who engage in discrimination.

This policy brief focuses on efforts to prevent discrimination against transgender and gender-nonconforming students, although the strategies may be applied to other types of discrimination as well. Districts and county offices of education (COEs) are faced with the question of how to protect students when they are legitimately expressing themselves in ways that not everyone may understand. Because of societal prejudice and lack of awareness or understanding, children who do not exhibit the interests or behaviors typical of their gender may experience ongoing rejection, criticism or bullying affecting their emotional health and academic achievement.[1] These children, like all others, share in the need for a safe school environment. Districts/COEs are encouraged to develop strategies to minimize social stigmatization for such students and maximize opportunities for social integration so that all children have an equal opportunity to attend school, be engaged and achieve academic success.

> Numerous instances of harassment and abuse have been reported throughout California's schools – with implications ranging from poor student attendance and lower student achievement to physical violence perpetrated against students, including death.

Definitions

Education Code 210.7 defines "gender" as a person's gender identity and gender-related appearance and behavior, whether or not these are the same as those typically associated with the person's sex at birth. The following definitions, as provided by the California Safe Schools Coalition, may be helpful in putting this policy issue into context.[2]

- "Gender identity" refers to individuals' own knowledge of their gender, regardless of their sex at birth.

- "Transgender" describes people whose gender identity is different from their sex at birth.

- "Gender expression" refers to the way a person expresses gender, such as behaviors, interests, clothing and hairstyles.

Individuals who are "gender-nonconforming" demonstrate behaviors and interests that are typically associated with the norms of the other sex, such as exhibiting clothing and hairstyles typical of the other sex. For example, while girls may be typically thought to enjoy playing with dolls and boys to enjoy rougher physical play, gender-nonconforming students may not display these typical gender interests. Sometimes these children also want to look and act like the other sex.[3]

"Harassment" includes physical, verbal, nonverbal or written conduct that is so severe and 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 purpose or effect of substantially or unreasonably interfering with a student's academic performance; or

- otherwise adversely affects a student's educational opportunities. [4]

Harassment: Incidence, impact and link to learning

Studies on bullying tend to reveal that the behavior of harassers "reinforce expected cultural norms for boys and girls and punish students who don't fit the ideals of traditional gender roles." [5]

Insults that refer to perceptions of gender roles or sexuality are common among students. Students whose behavior is perceived to be different in some way can often be isolated and harassed. In fact, it is more frequently gender stereotyping and not sexual orientation that is largely responsible for the frequency and severity of bullying directed at students who identify as gay or lesbian. A study of middle school students in the United States reported that two-thirds had been subjected to one or more homophobic epithets in the last week. [6]

The personal effects of harassment can be traumatic and enduring. One study found that "the damage to the victims of bullying may be physical, emotional, and psychological and the resulting trauma can last a lifetime." Students who have experienced harassment at school because of their gender are twice as likely as their peers to report having carried a gun to school or to have reported attempting suicide. [7,8]
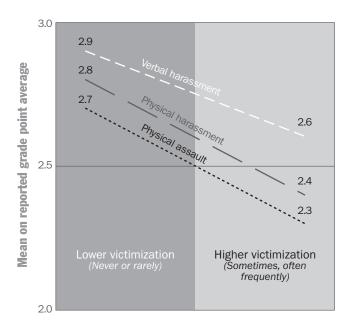
Furthermore, when students feel unsafe, they are more likely to be truant or to be academically disengaged. A California Safe Schools Coalition survey found that nearly 109,000 school absences at the middle and high school levels in California each year are due to harassment based on actual or perceived sexual orientation, costing California school districts at least $39.9 million each year. [9]

Other studies of lesbian, gay, bisexual and transgender (LGBT) children reveal that 31 percent report having missed at least one day of school in the previous month because they did not feel safe at school. In fact, studies reveal that LGBT children are four times more likely to skip school out of safety concerns. [10]

However, in districts with anti-harassment policies that specify sexual orientation or gender expression, students were far less likely to report having skipped classes or whole days of school. Having such a policy in place also can create a significant impact on perceptions of the climate of a school and the feelings of safety by all students. For example, in schools with anti-harassment policies that specify sexual orientation or gender expression, students are more likely to feel very safe at school (54 vs. 36 percent). They are also less likely to report a serious harassment problem at their school and less likely to believe that other students are often harassed in their school because of their sexual orientation (32 vs. 43 percent) or their gender expression (26 vs. 37 percent). [11] Therefore, as part of the policy adoption process, the board should also ensure that a plan for training and staff development are a part of the implementation of the policy.

Although it is difficult to find research showing a direct causal relationship between nondiscrimination policies and student achievement, it is reasonable to expect that the resulting increased school attendance and positive school climate would result in more positive student outcomes. Research does indicate that students who have higher GPAs are those who feel safer in their school environments (see Figure 1). When students feel safe in their schools, they are also more likely to plan to go to college. [12]

Figure 1. Relationship between victimization related to sexual orientation and academic achievement among LGBT middle school students

Source: *Gay, Lesbian and Straight Education Network. The Experiences of Lesbian, Gay, Bisexual, and Transgender Middle School Students: Findings from the 2007 National School Climate Survey.*

Role of the governing board

Districts/COEs have a responsibility to protect all students from discrimination and harassment. The governing board, working closely with the superintendent, can promote a culture free from discrimination through each of its major responsibilities:

1. Setting direction for the community's schools

As the board establishes a long-term vision, goals and priorities, it should consider specific statements related to ensuring that all students are safe at school and that harassment is not tolerated. The board has an opportunity to foster an understanding among the district/COE governance team about the importance of establishing a safe school environment and its link to student attendance, engagement, learning and academic achievement.

2. Establishing an effective structure for the district/COE through policy and other decisions

It is recommended that the board adopt policy that defines harassment, establishes consequences for those who do harass students and sets a tone that allows students to feel safe to report harassment. CSBA provides a sample board policy, BP 5145.3 - Nondiscrimination/Harassment, which addresses the nondiscrimination and harassment of students on the basis of sex, sexual orientation and gender. Other policies and administrative regulations address related concepts and should be aligned, such as BP 0410 - Nondiscrimination in District Programs and Activities, BP/AR 0450 - Comprehensive Safety Plan, BP/AR 5131 - Conduct, BP 5137 - Positive School Climate, BP/AR 5145.7 - Sexual Harassment and BP 5145.9 - Hate-Motivated Behavior.

When adopting policy or developing administrative regulations related to nondiscrimination, the governance team should consider specific strategies that might be necessary to protect student safety when a concern arises. It is useful to develop a district-wide plan in advance that staff can enact in order to provide students with appropriate accommodations. While each situation will require case-by-case decision-making, proactive planning to protect students from threatening or potentially harassing or discriminatory behavior can help students to feel less isolated and make them more likely to report acts of harassment. Examples of the types of actions that may be taken include allowing a student to dress in accordance with the gender identity the student consistently uses at school, directing staff and students to address the student by a preferred name or pronoun, or providing a student with

adequate access to appropriate facilities, such as single-stall restrooms and locker rooms as necessary. The use of gender to divide groups of students (e.g., dividing boys and girls into separate lines to exit or enter the classroom) should be discouraged if it forces gender-nonconforming students to identify in a way that may subject them to teasing.

3. Providing support to the superintendent and staff as they carry out the board's direction

Once the policy of nondiscrimination is adopted, it is important that district/COE personnel appropriately and consistently implement the policy. Staff should be notified of the policy and provided staff development as needed to ensure they understand the right of all students to a safe environment, the expectations of the district/COE regarding accommodations that might be implemented to ensure the safety of transgender and gender-nonconforming students, and disciplinary consequences for staff and students who engage in discrimination or harassment.

It is also important to make the nondiscrimination policy and related complaint procedures readily accessible to students and parents through the policy manual, student handbook, Web site, school offices and other appropriate venues. By making the policy widely known and distributing information, students who fear being chronically bullied may be less likely to fear reporting this discrimination or harassment.

4. Ensuring accountability to the public

The board has a responsibility to monitor and evaluate the effectiveness of efforts to prevent and reduce harassment. The board and superintendent should agree on the data that will be collected (e.g., incidence of hate-related violence, graffiti, suspensions or expulsions; student surveys of school climate; accommodations or strategies that have been implemented to prevent harassment) and how often such data will be reported to the board. The data should be used to recommend policy revisions, if necessary.

5. Acting as community leaders

The governance team should work with parents, community agencies, law enforcement and other stakeholders in efforts that promote a culture of safe schools for all students. Such stakeholders might be involved in developing goals, policy or specific strategies related to nondiscrimination; providing counseling or other services to assist at-risk students; or assisting in program evaluation.

Through these actions, the board can clearly declare that the district/COE opposes any form of harassment or discrimination on the basis of gender and gender-nonconformity. By publicizing its efforts and providing clear steps for how issues will be resolved, the district can encourage students to feel safe in reporting issues of harassment. Prohibition of harassment based on gender will be one part of a broader effort to create a safe school environment so that all students have an equal opportunity to attend school, be engaged in the classroom, and ultimately to achieve academic success.

Questions to consider

As the governance team discusses and determines how it will address issues of discrimination and harassment based on gender and gender-nonconformity and how it will work to protect the safety of all students, it might consider the following questions:

- Are there policy directives that the board can take to ensure that school climates are safe, that students have confidence that complaints will be investigated appropriately and that there will not be retaliation for reporting incidents of harassment?

- How will the superintendent ensure that there is consistent implementation of policies prohibiting discrimination and harassment on the basis of gender and gender-nonconformity across all grade levels and school sites?

- Do students and staff understand how to access the complaint procedures should an incident of discrimination and harassment based on gender and gender-nonconformity occur?

- Does the facilities master plan take issues of transgender students into account regarding the placement and availability of single-stall restrooms and locker rooms?

- How might issues of privacy and official student records be impacted by this policy? For example, does school personnel understand that intentionally addressing a student by the incorrect name or pronoun may be a form of discrimination?

- How might the nondiscrimination policy impact gender-segregated activities like health education classes and physical education classes?

- How might policies about dress code, clothing and student appearance be impacted by the nondiscrimination policy?

Resources

California School Boards Association provides sample board policies, policy briefs, publications and other resources on a variety of topics related to school safety. **www.csba.org**

California Safe Schools Coalition is a statewide partnership of organizations and individuals dedicated to eliminating discrimination and harassment on the basis of actual or perceived sexual orientation and gender identity in California schools. **www.casafeschools.org**

Transgender Law Center is a civil rights organization advocating for transgender communities, connecting transgender people and their families to technically sound and culturally competent legal services. **www.transgenderlawcenter.org**

Endnotes

1   California Safe Schools Coalition. Safe Schools Research Brief. *School Safety and Academic Achievement.*

2   California Safe Schools Coalition. *Model School District Policy Regarding Transgender and Gender Nonconforming Students.*

3   Children's National Medical Center. *Outreach Program for Children with Gender-Variant Behaviors and Their Families.* www.childrensnational.org/GENDERVARIANCE

4   California School Boards Association. Sample board policy, BP 5145.3 – Nondiscrimination/Harassment

5   Higdon, M.J. *To Lynch a Child: Bullying and Gender Non-Conformity in Our Nation's Schools.* University of Tennessee College of Law.

6   Gay, Lesbian and Straight Education Network. *The Experiences of Lesbian, Gay, Bisexual, and Transgender Middle School Students: Findings from the 2007 National School Climate Survey.* www.glsen.org/binary-data/GLSEN_ATTACHMENTS/ file/000/001/1475-1.pdf

7   California Safe Schools Coalition. *Anti-Gay Bullying: What's the Big Deal?*

8   California Safe Schools Coalition. Safe Schools Research Brief. *Harassment Based on Sexual Orientation and its Consequences.*

9   California Safe Schools Coalition. Safe Schools Research Brief. *The Economic Costs of Bullying at School.*

10 Kosciw, J.G., & Diaz, E.M. *Involved, Invisible, Ignored: The Experiences of Lesbian, Gay, Bisexual and Transgender Parents and Their Children in Our Nation's K–12 Schools.* Gay, Lesbian and Straight Education Network in Partnership with COLAGE and the Family Equality Council.

11 Gay, Lesbian and Straight Education Network. *The Experiences of Lesbian, Gay, Bisexual, and Transgender Middle School Students: Findings from the 2007 National School Climate Survey.* www.glsen.org/binary-data/GLSEN_ATTACHMENTS/ file/000/001/1475-1.pdf

12 Kosciw, J.G., & Diaz, E.M. *Involved, Invisible, Ignored: The Experiences of Lesbian, Gay, Bisexual and Transgender Parents and Their Children in Our Nation's K–12 Schools.* Gay, Lesbian and Straight Education Network in Partnership with COLAGE and the Family Equality Council.

Additional resources

Transgender Law Center. *Transgender and Gender Non-Conforming Youth - Recommendations for Schools.*

Suicide Prevention Resource Center. *Suicide Risk and Prevention for Lesbian, Gay,Bisexual, and Transgender Youth.*

Van Wormer, K., & McKinney, R. What schools can do to help gay/ lesbian/bisexual youth: a harm reduction approach. *Adolescence.* Fall 2003.

Setoodeh, R. Young, gay, and murdered. *Newsweek.* July 28, 2008. www.newsweek.com/id/147790

Espelage, D., Aragon, S., Birkett, M., & Koenig, B. Homophobic teasing, psychological outcomes, and sexual orientation among high school students: What influence do parents and schools have? *School Psychology Review.* June 2008. www.nasponline.org/ membership/..\publications/spr/pdf/spr372espelage.pdf

Fisher, E., Komosa-Hawkins, K., Saldana, E., Thomas, G., Hsiao, C., Rauld, M., & Miller, D. Promoting school success for lesbian, gay, bisexual, transgendered, and questioning students: Primary, secondary, and tertiary prevention and intervention strategies. *California School Psychologist.* 2008. http://findarticles.com/p/ articles/mi_7479/is_200801/ai_n32281795

American Civil Liberties Union. *Q&A: Adding Sexual Orientation & Gender Identity to Discrimination & Harassment Policies in Schools.*

Gay Straight Alliance Network and Transgender Law Center. *Transgender and Gender Non-Conforming Students' Rights in California Schools.* October 2006. http://transgenderlawcenter.org/pdf/ Safe%20Schools%20--%20English%20fact%20sheet.pdf.