



SACRAMENTO CITY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION

Agenda Item# 10.3

Meeting Date: December 19, 2013

Subject: Approve Transgender and Gender Variant Policy

- Information Item Only
- Approval on Consent Agenda
- Conference (for discussion only)
- Conference/First Reading (Action Anticipated: _____)
- Conference/Action
- Action
- Public Hearing

Department: Integrated Support Services

Recommendation: Approve Transgender and Gender Variant Policy

Background/Rationale: The LGBTQ Support Services program has provided services to more than 250 students and families since 2011. Of these, a large percentage have been transgender and gender variant students facing issues that the district does not have clear policies to address. As a result, the district's LGBTQ Task Force determined that a Board policy was needed to address the unique issues facing transgender and gender variant students. In 2012, the Task Force created a draft policy for the district that has since been vetted through district committees and has been reviewed by Cabinet and legal. In 2013, Governor Brown signed AB1266 into law granting transgender students many of the same legal protections covered in the proposed policy.

Financial Considerations: None

Documents Attached:

1. Executive Summary
2. Draft Policy of Transgender and Gender Variant Students

<p>Estimated Time of Presentation: 10 minutes</p> <p>Submitted by: Teresa Cummings, Ph.D., Chief Accountability Officer Barbara Kronick, Director Integrated Support Services</p> <p>Approved by: Sara Noguchi, Ed.D, Superintendent</p>



I. Overview/History of Department or Program

This year marks our district's 10th year of providing leadership in addressing the needs of LGBTQ (lesbian, gay, bisexual, transgender and questioning) youth. SCUSD—with the support of the Sacramento community—has had many accomplishments in the past decade in supporting LGBTQ students including:

- 2003 – Community members lobby the district to focus on the needs of LGBTQ students
- 2004 – Board Resolution 2355 passed to support school safety for LGBTQ students
- 2005 – First district in the region to start a task force to support LGBTQ students
- 2006 – Board resolution 2451 passes acknowledging the Day of Silence
- 2007 – LGBTQ awareness training developed for principals to train staff
- 2008 – District launches LGBTQ Resource Line with Mental Health America (MHA)
- 2009 – SCUSD and MHA provide six LGBTQ awareness trainings throughout district
- 2010 – District launches LGBTQ Support Services program
- 2011 – District and GSA Network co-host first Sacramento GSA Leadership Summit
- 2011 – First SCUSD middle school GSAs launched at Rosa Parks and Will C. Wood
- 2012 – District hosts first annual LGBTQ youth conference
- 2012 – District hosts first annual No Time to Lose professional conference
- 2012 – LGBT Task Force drafts policy to support transgender students
- 2012 – District hires first LGBTQ Youth and Family Advocate

Since 2010, the LGBTQ Support Services program has provided services to more than 250 students and families. Many of these students have been transgender and gender variant students facing issues that the district does not have clear policies to address. Policies regarding use of restroom facilities, locker rooms, as well as participation in physical education and sports programs are currently ambiguous for transgender and gender variant students in our district. As a result, the district's LGBTQ Task Force determined that a Board policy was needed to address the unique issues facing these students. In 2012, the Task Force created a draft policy for the district that has since been vetted through district committees and has been reviewed by Cabinet and legal. In 2013, Governor Brown signed AB1266 into law granting transgender students many of the same legal protections covered in the proposed policy.

Work related to supporting LGBTQ students is at first glance about addressing the needs of a small number of students. However, on a deeper level it is about transforming the organization to be sensitive and responsive to all students. Data consistently demonstrates that LGBTQ students are among the most marginalized, at-risk groups of students. Creating a culture where LGBTQ students are respected and included helps children learn core social-emotional learning competencies such as self-awareness, responsible decision-making and self-management.

Board of Education Executive Summary

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II. Driving Governance:

Pillar I: Career and College Ready

Pillar II: Family and Community Engagement

Pillar III: Organizational Transformation

In 2013, Governor Brown signed AB1266 into law granting transgender students many of the same legal protections covered in the proposed policy. The policy has been updated to ensure alignment with the requirements of AB1266.

III. Budget:

For the 2013/14 school year, the LGBTQ Support Services budget is \$56,000. This is funded through a grant from The California Endowment, LEA-MediCal and through donations from the No Time to Lose Conference.

IV. Goals, Objectives and Measures:

The LGBTQ Support Services program has provided services to more than 250 students and families since 2011. Of these, a large percentage have been transgender and gender variant students facing issues that the district does not have clear policies to address. As a result, the district's LGBTQ Task Force determined that a Board policy was needed to address the unique issues facing transgender and gender variant students. In 2012, the Task Force created a draft policy for the district that has since been vetted through district committees and has been reviewed by Cabinet and legal. In 2013, Governor Brown signed AB1266 into law granting transgender students many of the same legal protections covered in the proposed policy.

V. Major Initiatives:

The major initiatives of the proposed Transgender and Gender Variant policy are:

1. To ensure that transgender and gender variant students are given the same rights and privileges of all students.
2. To ensure that school and district policies do not discriminate against transgender and gender variant students.

VI. Results:

Since 2010, the LGBTQ Support Services program has worked with 15 transgender students to ensure their success. In nearly all of these cases, we were able to successfully work with school administrators to accommodate these students without disruption to the learning environment.

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VII. Lessons Learned/Next Steps:

Although the district has a positive track record of supporting LGBTQ students, a policy specific to the needs of transgender students is necessary to ensure that these students are treated consistently and fairly throughout the district.

Sacramento City USD

Board Policy

Transgender and Gender Variant Students

BP _____
Students

The Governing Board is committed to addressing the safety needs of all students, including those needs related to a student's actual or perceived sexual orientation or gender identity. The Board recognizes that a safe and civil environment is necessary for students to have equal access to all school programs and activities and is integral to student success. The Board acknowledges its role in providing students with an understanding, appreciation of and respect for the differences of others.

This policy sets out guidelines for schools to follow in order to address the needs of transgender and gender variant students. This policy sets forth how schools should respond to the needs of these students where questions may arise regarding how to protect the legal rights or safety of such students. This policy does not anticipate every situation that might occur and, therefore, 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 the transgender or gender variant student while maximizing the student's social integration into the school setting and minimizing stigmatization of the student.

(cf. 0200 – Goals for the School District)
 (cf. 1312.3 – Uniform Complaint Procedures)
 (cf. 5137 – Positive School Climate)
 (cf. 5142 – Safety)
 (cf. 5145.3 – Nondiscrimination/Harassment/Intimidation/Bullying)
 (cf. 5145.7 – Sexual Harassment)

The following definitions are not intended to label students, but rather to assist in the general understanding of this policy, the legal rights of students and the legal obligations of school/District staff. Although students may or may not use these terms to describe themselves, these definitions can be used as functional descriptors.

Transgender: **An umbrella term used to describe an individual whose gender identity is different from their assigned sex at birth.**~~An umbrella term used to describe an individual whose gender identity is different from sex at birth, and whose gender expression may be different from the stereotypical way in which males or females are expected to act, dress or present themselves.~~

Gender Variant: An individual who is, or is perceived to have, characteristics or behaviors that do not conform to societal expectations of gender expression. Gender variant individuals may or may not identify as lesbian, gay, bisexual, transgender or questioning.

Gender Identity: An individual's understanding, outlook, feelings and sense of being masculine, feminine, both or neither, regardless of one's biological sex.

Sexual Orientation: The emotional and sexual attraction to other people based on the gender of the other person. Individuals may identify their sexual orientation as heterosexual, lesbian, gay, bisexual, questioning, or in other terms. Not all transgender youth identify as gay, lesbian, bisexual or questioning, and not all gay, lesbian, bisexual and questioning youth display gender variant characteristics.

Gender Expression: How individuals express themselves, including characteristics and behaviors such as appearance, dress, grooming, mannerisms, movement, speech patterns, and social interactions that are perceived as masculine or feminine.

Title VI of the Civil Rights Act of 1964 requires that all educational programs and activities be conducted without discrimination based on race, color, and national origin. Title IX of the Education Amendments of 1972 requires that all educational programs and activities be conducted without discrimination based on sex or gender. Additional state and/or federal laws and regulations require that all educational programs and activities be conducted without discrimination based on the above factors as well as additional factors, including but not limited to religion, ancestry, sexual orientation, gender identity and expression, marital status, parental status, or because of an association with a person who has or is perceived to have one or more of these characteristics. (Education Code 220; Government Code 11135, 11138; Penal Code 422.55, 422.6) State law also directs that students shall be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the student's records. (Education Code 221.5(f), effective Jan. 1, 2014)

Transgender and gender variant students shall be assured that they need not endure, for any reason, any bullying or harassment which impairs the educational environment or the student's emotional wellbeing in school. Harassment involves unwelcome comments (written or spoken), or conduct which creates an intimidating, hostile or offensive environment, or which violates an individual's rights.

- (cf. 1312.3 – Uniform Complaint Procedures)
- (cf. 5145.3 – Nondiscrimination and harassment)
- (cf. 5145.4 – Anti-bullying)
- (cf. 5145.7 – Sexual Harassment)

The District will work with transgender and gender variant students to provide protections in the following areas:

Right to Privacy: Transgender and gender variant students have a right to privacy, including keeping private their sexual orientation, gender identity, transgender status or gender variant presentation at school. School personnel should not disclose information that may disclose a student's transgender or gender variant status to others, including parents/legal guardians and other school personnel, unless legally required to do so or unless the student has authorized such disclosure. Transgender and gender variant students have the right to discuss and express their gender identity and expression openly and to decide when, with whom, and how much to share their private information.

Names/Pronouns: Students have the right to be addressed by the names and pronouns that correspond to their gender identity. Using the student's preferred name and pronoun promotes the safety and wellbeing of the student on campus. A student is not required to change his/her official school record or obtain a court-ordered name or gender change in order for a student to be addressed at school by the name and pronoun which corresponds to their gender identity. Such a request may be made by the student or by the student's parent or guardian. **If a student initiates such a request, the student's and the student's parent or guardian will be consulted.** If a student obtains a court order changing his/her name or recognized gender, the student or student's parent/guardian should notify the school of the court order, and the student's official school records will be modified as appropriate~~ly~~ in accordance with the court order. (83 Ops.Cal.Atty.Gen. 136 (2000)).

The intentional or persistent refusal to respect a student's gender identity such as by referring to the student by a name or pronoun that does not correspond to the student's gender identity is a violation of this policy.

Restroom Access: Schools may maintain separate restroom facilities for male and female students. (Education Code 231) Transgender and gender variant students, however, shall not be forced to use the restroom corresponding to their sex at birth. Ensuring access to restroom facilities that match a student's gender identity allows transgender and gender variant students to maintain their right to privacy. If a transgender or gender variant student or the student's parent/guardian provides notice to school officials of a request for the student to use the restroom that matches the student's gender identity, school officials shall permit the student to use said restroom **following consultation with the student and the student's parent or guardian**. (Education Code 221.5(f), effective Jan. 1, 2014) If a transgender or gender variant student or the student's parent/guardian provides notice to school officials of a reason or desire for increased privacy and/or safety with regard to restroom use, regardless of the underlying reasons, the school shall take reasonable steps to provide a reasonable accommodation for the student, including but not limited to, providing the student access to gender neutral unisex restroom facilities or a single stall restroom.

Locker Room Access: Schools may maintain separate locker room facilities for male and female students. (Education Code 231) Transgender and gender variant students, however, shall not be forced to use the locker room corresponding to their sex at birth. If a transgender or gender variant student or the student's parent **or** /guardian provides notice to school officials of a request for the student to use the locker room that matches the student's gender identity, school officials shall permit the student to use said locker room **following consultation with the student and the student's parent or guardian**. (Education Code 221.5(f), effective Jan. 1, 2014) -If a transgender or gender variant student or the student's parent **or** /guardian provides notice to school officials a reason or desire for increased privacy and/or safety with regard to locker room use, regardless of the underlying reason, the student shall be provided access to a reasonable alternative locker room, including but not limited to:

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

Physical Education Class & Athletics: Transgender and gender variant students shall be permitted to participate in physical education classes and intramural sports, in a manner that is consistent with their gender identity, pursuant to Title IX and the Code of Federal Regulations implementing Title IX and state law. (34 CFR 106.34(c); Education Code 221.5(f), effective Jan. 1, 2014)

Interscholastic Competitive Sports Teams: Transgender and gender variant students' participation in interscholastic athletics in a manner consistent with their gender identity will be addressed on a case-by-case basis, consistent with the rules and bylaws governing the interscholastic sports competition, Title IX, and any other applicable laws, rules or bylaws. (Education Code 221.5(f), effective Jan. 1, 2014)

Dress Code: Transgender and/or gender variant students have the right to dress in accordance with the gender identity or gender expression that they consistently assert at school within the requirements of the school's dress code.

(cf. 5132 – Dress and Grooming)

Senior Yearbook Photos: In order to accommodate the needs of transgender and gender variant students, it is required that schools offer one of two alternatives: (1) Allow students the option to select their preferred ~~senior~~ picture uniform, regardless of their biological sex and which is consistent with the student's asserted gender identity; or (2) Adopt a standardized, gender neutral ~~senior~~ picture uniform such as a cap and gown.

Transferring a Student to Another School: In general, schools should strive to keep transgender and gender variant students enrolled in their assigned school site. School sites must ensure that transgender or gender variant students are being provided a safe school environment which allows them equal access to all components of their educational program. The opportunity to transfer to another school site should not be a school's first response to harassment or bullying of a transgender or gender variant student, and such a transfer should be considered only when necessary for the protection, personal welfare or safety of the transferring student.

There are two reasons where such transfers should be considered and/or granted: (1) when a parent/guardian requests such a transfer because it is in the student's best interest to be in a different social environment; or (2) when a parent/guardian requests such a transfer because a transfer is necessary for the protection, personal welfare or safety of the transferring student. Schools should not offer or propose a transfer to another school on the assumption that a transgender or gender variant student should expect to be harassed or bullied as a result of being open about their gender identity or gender expression.

Gender Segregation in Other Activities: As a general rule, in any other circumstances where students are separated by gender in school activities (e.g., class discussions, field trips, etc.), students shall be permitted to participate in accordance with their gender identity that is asserted at school. (Education Code 221.5(f), effective Jan. 1, 2014) Activities that may involve the need for accommodation 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 and reasonable accommodation for the student that can address any such concerns.

(cf. 4119.23/4219.23/4319.23 – Unauthorized Release of Confidential/Privileged Information)

(cf. 5145.1 – Privacy)

(cf. 5145.4 – Anti-bullying)

Complaints: A complaint of bullying based upon a student's transgender or gender variant status, or a student's sex, gender, sexual orientation or gender identity, may be submitted under the District's Anti-bullying Board Policy 5145.4 and the procedures set forth therein. A student or a student's parent/guardian may also submit a formal written complaint of discrimination, harassment, intimidation or bullying through the District's Uniform Complaint Procedures, which permit complaints for discrimination, harassment, intimidation or bullying when based upon a student's actual or perceived characteristics as set forth in Penal Code section 422.55 and Education Code sections 220 and 234.1, which includes disability; gender; gender identity; gender expression; nationality; race or ethnicity; religion; sexual orientation; or association with a person or group with one or more of these actual or perceived characteristics. (5 CCR 4600-4671)

(cf. 1312.3 – Uniform Complaint Procedures)

(cf. 5145.3 – Nondiscrimination and harassment)

(cf. 5145.4 – Anti-bullying)

(cf. 5145.7 – Sexual Harassment)

Legal Reference:

CALIFORNIA CODE OF REGULATIONS, TITLE 5

4600-4687 Uniform complaint procedures

4900-4965 Nondiscrimination in elementary and secondary education programs

CODE OF CIVIL PROCEDURE

1276 Change of name_

CODE OF FEDERAL REGULATIONS, TITLE 34

106.34 Access to classes and schools

EDUCATION CODE

200-262.4 Prohibition of discrimination on the basis of sex, especially:

212.5 Sexual harassment

212.6 Sexual harassment policy

221.5 Prohibited sex discrimination

221.7 School sponsored athletic programs; prohibited sex discrimination

230 Particular practices prohibited

231 Toilet, locker room, or living facilities

35160 Authority of governing boards

35160.1 Broad authority of school districts

48900 Grounds for suspension or expulsion; bullying

48907 Student exercise of free expression

49602 Confidentiality of pupil information

GOVERNMENT CODE

11135 Nondiscrimination in programs or activities funded by state

11138 Rules and regulations

HEALTH AND SAFETY CODE

103425 Petition for change of gender

PENAL CODE

243.5 Assault or battery on school property

403-420 Crimes against the public peace, especially:

415 Fighting; noise; offensive words

422.55 Definition of hate crime

422.56 Definitions, hate crimes

422.6 Interference with constitutional right or privilege

UNITED STATES CODE, TITLE 20

1681-1688 Title IX, 1972 Education Act Amendments

UNITED STATES CODE, TITLE 42

2000d-2000d-7 Title VI Civil Rights Act of 1964 as amended

ATTORNEY GENERAL OPINIONS

83 Ops.Cal.Atty.Gen. 136 (2000)

Policy SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

Sacramento, California

Adopted: , 2013