

SCHOOL SAFETY & VIOLENCE PREVENTION FOR LESBIAN, GAY, BISEXUAL & TRANSGENDER STUDENTS:

**A Question & Answer Guide for
California School Officials & Administrators**



A publication of the California Safe Schools Coalition

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1 What are school districts' legal responsibilities under state and federal anti-discrimination laws?

Under state law, public schools and non-religious private schools that receive state funding, have a legal duty to protect students from discrimination and harassment on the basis of actual and perceived sexual orientation or gender identity, or on the basis of association with a person with one or more of these actual or perceived characteristics. Student Safety and Violence Prevention Act of 2000 (AB 537); California Education Code §§ 200-220. The Department of Education regulations implementing this law state that:

[N]o person...shall be subjected to discrimination, or any form of illegal bias, including harassment. No person shall be excluded from participation in or denied the benefits of any [school] program or activity on the basis of sex, sexual orientation, gender, ethnic group identification, race, ancestry, national origin, religion, color, or mental or physical disability. Title 5, California Code of Regulations, § 4900(a).

The law defines “gender” very broadly:

“Gender” means sex, and includes a person’s gender identity and gender related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth. Cal. Penal Code § 422.56(c); see also Cal. Educ. Code §§ 200, 220 (cross referencing Cal. Penal Code § 422.56).

For more information about AB 537, see <http://www.cde.ca.gov/re/lr/sv/index.asp>.

All students also have constitutional rights to equal protection under the law, and are protected under Title IX of the federal Education Amendment Acts of 1972 from sex discrimination in educational programs that receive federal funds. Schools must protect lesbian, gay, bisexual, and transgender (LGBT) students and those perceived to be LGBT from harassment, just as they must protect students from harassment on the basis of race, religion, sex, and other characteristics. Schools cannot ignore harassment on the basis that LGBT students should expect to be harassed, or have brought the harassment upon themselves by being open about their sexual orientation or gender identity.

Also, students have constitutional rights to freedom of expression, including the right to be open about their sexual orientation and gender identity.

2 What are some examples of discrimination and harassment based on sexual orientation or gender identity?

Examples of unlawful discrimination include: refusing to allow a same-sex couple to attend the school prom; treating displays of affection by same-sex couples differently than displays of affection by different-sex couples; and refusing to allow a student to wear clothing that is consistent with the student’s gender identity.

Examples of harassment include name-calling, threats or violence based on a student’s actual or perceived sexual orientation or gender identity.

3 Why are these laws necessary?

These laws are necessary because research has shown that hostile learning climates undermine students' ability to focus on their education. Studies consistently demonstrate that LGBT students uniformly encounter a pervasive atmosphere of hostility at school. The 2004 Safe Place to Learn Report, which examines school-based harassment based on actual or perceived sexual orientation and gender in California schools, found:

- 91% of students reported hearing students make negative comments based on sexual orientation.
- 46% of students said their schools were not safe for LGBT students.
- 24% of students who had been harassed based on actual or perceived sexual orientation had low grades (Cs or below), compared to 17% of their peers.
- 27% of students who had been harassed based on actual or perceived sexual orientation had missed school in the past month because they felt unsafe in school, compared to 7% of their peers.

Even more troubling than skipping school, LGBT students are dropping out of school at alarming rates. For those who do remain, data from the National Longitudinal Study of Adolescent Health suggests they fall below their peers in standard measures of academic performance. For more information about the Safe Place to Learn Report, see <http://www.casafeschools.org/getfacts.html#research>.

4 How do we make sure we comply with these laws?

The law requires schools to ensure that no student is discriminated against or harassed on the basis of actual or perceived sexual orientation or gender identity.

The California Department of Education created an AB 537 Advisory Task Force to recommend steps schools should take to ensure compliance. These recommendations include: adopting and enforcing clear written policies; informing and training all school personnel on the law's requirements; providing guidance for students about their rights and responsibilities, and supporting student participation in preventing harassment, violence and discrimination; and developing anti-bias education programs for students. For more information about the Task Force's report and recommendations, refer to the "Task Force Reports" page of the Department of Education web site, <http://www.cde.ca.gov/ls/ss/se/documents/ab537report.pdf>.

While the law does not mandate specific steps that the school must take in order to be in compliance, failure to take appropriate, pro-active steps can place a school at risk of liability. For detailed information about lawsuits brought against districts for failing to prevent and properly respond to harassment and discrimination on the basis of sexual orientation, many of which resulted in monetary settlements and consent decrees that requires teacher training, student training, improved policies, and other reforms, see <http://www.nclrights.org/publications/pubs/15reasons.pdf>, and www.gsanetwork.org/press.

5 What steps does a school district need to take to ensure it has an effective anti-harassment policy?

Schools should adopt and implement an anti-harassment policy that includes a clear enumeration of the prohibited forms of conduct, including harassment on the basis of actual or perceived sexual orientation and gender identity. The form for filing a complaint under the policy should be easy to understand and readily available for students. The policy should include explicit procedures for responding to complaints made under this policy. The school should also provide training for all teachers and staff on how best to prevent and respond to harassment.

All of these elements help ensure that the policy is consistently enforced and that all staff and students know what is prohibited, how to report incidents of harassment, and what actions staff should take upon the filing of a complaint.

State law also requires that school districts follow the Uniform Complaint Procedures, for receiving and investigating complaints of harassment and discrimination. Title 5, California Code of Regulations §§ 4600-4671. Specifically, students, parents, and staff must be notified annually regarding the district's complaint procedures, including the opportunity to appeal, and the person(s) designated to receive complaints. School districts are responsible for preventing retaliation and for keeping complaints confidential.

6 Is it necessary to include enumerated categories in the anti-harassment policy?

Yes. A specific, detailed list of the prohibited forms of conduct is essential to guarantee that all staff and students have a consistent understanding of what is prohibited by the policy. This is particularly important with respect to harassment on the bases of sexual orientation and gender identity because students and staff are less familiar with these forms of harassment.

7 How can we prevent discrimination and harassment without taking resources away from other responsibilities, such as improving test scores?

A safe, fair, and respectful school environment helps all students learn. Preventing harassment and discrimination is not a new, separate responsibility. It is part of activities that schools already engage in, such as developing and implementing School Safety Plans; ensuring compliance with Educational Equity requirements, and providing an effective complaint process; informing students and parents about rules of conduct, and enforcing these rules; providing staff development programs for teachers to learn skills needed to maintain a safe and fair classroom; and preparing students for adult life in a diverse society. Moreover, making schools safe for all students is consistent with the goal of improving test scores, as students cannot focus on tests when they are worried about their safety.

8 Some of our students want to form a Gay-Straight Alliance (GSA) club. How should we handle this?

If a public secondary school allows any voluntary, non-curricular, student-initiated and student-led group to meet, it must allow all such groups to meet. Equal Access Act, 20 U.S.C. §§ 4071-4074. Moreover, all such groups must be treated equally, meaning that they must all get equal meeting facilities and privileges. This is true regardless of the religious, political, philosophical, or other content of the speech at such meetings; schools cannot pick and choose which student groups can meet. In California, secondary schools include high schools, middle schools, and junior high schools. California Education Code § 52001(i), (j).

Refusal to allow a GSA to meet may also constitute discrimination on the basis of sexual orientation, in violation of the anti-discrimination laws as well as free speech protections.

In addition to these legal requirements, having a GSA on-campus is an important way to combat anti-LGBT harassment and may help a school fulfill its legal obligation to ensure a safe environment for all students.

9 How do we comply with anti-discrimination laws and still respect the religious and cultural diversity of our students and their families?

Schools may have to address claims that efforts to prevent discrimination and harassment on the basis of sexual orientation or gender identity violate students' and parents' religious views about homosexuality and gender roles. Teaching students that violence, name-calling and other harassment are wrong, and ensuring that all students are treated equally, does not violate any student's religious beliefs or disrespect any student's cultural background. Students are free to hold any beliefs they choose regarding homosexuality and gender, so long as they do not harass or threaten other students.

10 Can parents "opt out" of their children's participation in school programs that discuss sexual orientation and gender identity?

State law explicitly provides that "instruction or materials that discuss gender, sexual orientation, or family law and do not discuss human reproductive organs or their functions" is *not* subject to the parental notice and opt out laws. Thus, where issues of sexual orientation or gender identity are raised in school programs other than HIV/AIDS or sexual health education, such as programs designed to encourage respect and tolerance for diversity, parents are not entitled to have notice of or the opportunity to opt their children out of such programs. California law does not support a broad parental veto regarding the contents of public school instruction.

With regard to surveys and tests, state law requires written parental consent for student participation in any surveys or tests that contain questions about students' or their families' beliefs or practices concerning sex, family life, morality, or religion. However, only notice and the opportunity to opt out is required for voluntary, anonymous, and confidential surveys concerning students' health behaviors and risks, including attitudes and practices relating to sex.

11 What if our anti-bias education programs, or the formation of a GSA club, cause controversy in the community?

Because anti-bias education programs (including curricula, presentations by outside groups, and activities) are fairly new, there may be misunderstandings about the purpose and content of such programs. Although these misunderstandings can lead to controversy, school districts are still required by law to protect students from harassment and discrimination.

Involving and informing parents and community organizations, such as the PTA, at the outset may help stem any controversy before it arises. School officials should be prepared to discuss with parents the school's obligations under the law, the need for such laws and programs, and the content of the programs. In addition, it is important to communicate to parents that these programs provide accurate, age-appropriate, objective, and up-to-date information that is relevant to subject matter in schools and in accordance with state standards and local school district policies and that the purpose of anti-bias programs is not to "promote sexuality" or "advocate the homosexual lifestyle" but to promote tolerance and the safety and well-being of all students.

For More Information

If you have questions about the content of this publication, or would like more information, resources, assistance or training, please contact:

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