

TULARE COUNTY OFFICE OF EDUCATION

Administrative Regulation

Students
AR 5145.3
Nondiscrimination/Harassment

Nondiscrimination/Harassment

The County Superintendent of Schools designates the individual(s) identified below as the employee(s) responsible for coordinating the efforts of the Tulare County Office of Education (TCOE) to comply with applicable state and federal civil rights laws and to answer inquiries regarding the county office's nondiscrimination policies. The individual(s) shall also serve as the compliance officer(s) specified in AR 1312.3 – Uniform Complaint Procedures as the responsible employee to handle complaints alleging unlawful discrimination targeting a student, including discriminatory harassment, intimidation, or bullying, based on the student's actual or perceived race, color, ancestry, national origin, nationality, immigration status, ethnicity, ethnic group identification, age, religion, marital or parental status, pregnancy, physical or mental disability, medical condition, sex, sexual orientation, gender, gender identity, gender expression, genetic information, or any other legally protected status or association with a person or group with one or more of these actual or perceived characteristics. The coordinator/compliance officer(s) may be contacted at:
(Education Code 234.1; 5 CCR 4621)

<u>Assistant Superintendent, Instructional Services</u> (title or position) <u>7000 W. Doe Ave., Visalia CA 93291</u> (physical address) <u>P.O. Box 5091, Visalia CA 93278-5091</u> (mailing address) <u>(559) 733-6328</u> (telephone number) <u>jberk@cc.tcoe.org</u> (email)	<u>Assistant Superintendent, Human Resources</u> (title or position) <u>6200 S. Mooney Blvd., Visalia CA 93277</u> (physical address) <u>P.O. Box 5091, Visalia CA 93278-5091</u> (mailing address) <u>(559) 733-6306</u> (telephone number) <u>dedi.somavia@tcoe.org</u> (email)
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Measures to Prevent Discrimination

To prevent unlawful discrimination, including discriminatory harassment, intimidation, retaliation, and bullying, of students at TCOE programs, schools or in school activities and to ensure equal access of all students to the educational program, the County Superintendent or designee shall implement the following measures:

1. Publicize TCOE's nondiscrimination policy and related complaint procedures, including the coordinator/compliance officer's contact information, to students, parents/guardians, employees,

volunteers, and the general public by posting them in prominent locations and providing easy access to them through TCOE-supported communications.

2. Post TCOE's policies and procedures prohibiting discrimination, harassment, student sexual harassment, intimidation, bullying, and cyberbullying in a prominent location on TCOE's web site in a manner that is easily accessible to parents/guardians and students. (Education Code 234.6)
3. Post a section on social media bullying that includes references to possible forums for social media bullying, including Internet websites with free registration and ease of registration and Internet websites offering peer-to-peer instant messaging, comment forums or sections, and image or video posting platforms, in a prominent location on TCOE's web site in a manner that is easily accessible to parents/guardians and students.
4. Post the definition of discrimination and harassment based on sex as described in Education Code 230, including the rights set forth in Education Code 221.8, in a prominent location on TCOE's web site in a manner that is easily accessible to parents/guardians and students. (Education Code 234.6)
5. Post in a prominent location on TCOE's web site in a manner that is easily accessible to parents/guardians and students information regarding Title IX prohibitions against discrimination based on a student's sex, gender, gender identity, pregnancy, and parental status, including the following:
 - a. The name and contact information of TCOE's Title IX Coordinator, including the phone number and email address.
 - b. The rights of students and the public and the responsibilities of TCOE under Title IX, including a list of rights as specified in Education Code 221.8 and web links to information about those rights and responsibilities located on the web sites of the Office for Equal Opportunity and the U.S. Department of Education's Office for Civil Rights (OCR)
 - c. A description of how to file a complaint of noncompliance under Title IX, which shall include:
 - i. An explanation of the statute of limitations within which a complaint must be filed after an alleged incident of discrimination has occurred and how a complaint may be filed beyond the statute of limitations.
 - ii. An explanation of how the complaint will be investigated and how the complainant may further pursue the complaint, including web links to this information on the OCR's web site.
 - iii. A web link to the OCR complaints form and the contact information for the office, including the phone number and email address for the office.
 - d. A link to the Title IX information included on the California Department of Education's (CDE) web site. (Education Code 221.6, 221.61, 234.6)
6. Post a link to statewide CDE-compiled resources, including community-based organizations, that

provide support to youth who have been subjected to school-based discrimination, harassment, intimidation, or bullying and to their families. Such resources shall be posted in a prominent location on the COE's web site in a manner that is easily accessible to parents/guardians and students. (Education Code 234.5, 234.6)

7. Provide to students a handbook that contains age-appropriate information that clearly describes TCOE's nondiscrimination policy, procedures for filing a complaint, and resources available to students who feel that they have been the victim of any such behavior.
8. Annually notify all students and parents/guardians of TCOE's nondiscrimination policy, including its responsibility to provide a safe, nondiscriminatory school environment for all students. The notice shall inform students and parents/guardians that they may request to meet with the compliance officer to determine how best to accommodate or resolve concerns that may arise from TCOE's implementation of its nondiscrimination policies. The notice shall also inform all students and parents/guardians that, to the extent possible, TCOE will address any individual student's interests and concerns in private.
9. Ensure that all students and parents/guardians, including those with limited English proficiency, are notified of how to access the relevant information provided in TCOE's nondiscrimination policy and related complaint procedures, notices, and forms in a language they can understand.

If 15 percent or more of students enrolled in a particular TCOE program or school speak a single primary language other than English, the county office policy, regulation, forms, and notices concerning nondiscrimination shall be translated into that language in accordance with Education Code 234.1 and 48985. In all other instances, the county office shall ensure meaningful access to all relevant information for parents/guardians with limited English proficiency.

10. Provide to students, employees, volunteers, and parents/guardians age-appropriate training and/or information regarding TCOE's nondiscrimination policy; what constitutes prohibited discrimination, including discriminatory harassment, intimidation, retaliation, or bullying; how and to whom a report of an incident should be made; and how to guard against segregating or stereotyping students when providing instruction, guidance, supervision, or other services to them. Such training and information shall include details of guidelines TCOE may use to provide a discrimination-free environment for all students.
11. At the beginning of each school year, inform county office employees that any employee who witnesses any act of unlawful discrimination, including discriminatory harassment, intimidation, or bullying, against a student is required to intervene if it is safe to do so. (Education Code 234.1)
12. At the beginning of each school year, inform each principal or designee of TCOE's responsibility to provide appropriate assistance or resources to protect students' from threatened or potentially discriminatory behavior and ensure their privacy rights.

Enforcement of TCOE Policy

The County Superintendent or designee shall take appropriate actions to reinforce BP 5145.3 – Nondiscrimination/Harassment. As needed, these actions may include, but are not limited to the

following:

1. Removing vulgar or offending graffiti
2. Providing training to students, staff, and parents/guardians about how to recognize unlawful discrimination, how to report it or file a complaint, and how to respond
3. Disseminating and/or summarizing TCOE's policy and regulation regarding unlawful discrimination
4. Consistent with the laws regarding the confidentiality of student and personnel records, communicating to students, parents/guardians, and the community the school's response plan to unlawful discrimination or harassment
5. Taking appropriate disciplinary action against students, employees, and anyone determined to have engaged in wrongdoing in violation of TCOE policy, including any student who is found to have filed a complaint of discrimination that the student knew was not true

Process for Initiating and Responding to Complaints

Any student who feels that they have been subjected to unlawful discrimination described above or in county office policy is strongly encouraged to immediately contact the compliance officer, principal, or any other staff member. In addition, any student who observes any such incident is strongly encouraged to report the incident to the compliance officer or principal, whether or not the alleged victim files a complaint.

Any county office employee who observes an incident of unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, or to whom such an incident is reported shall report the incident to the compliance officer or principal within a school day, whether or not the alleged victim files a complaint.

Any county office employee who witnesses an incident of unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, shall immediately intervene to stop the incident when it is safe to do so. (Education Code 234.1)

When a report of unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, is submitted to or received by the principal or compliance officer, he/she shall notify the student or parent/guardian of the right to file a formal complaint in accordance with the provisions of AR 1312.3 – Uniform Complaint Procedures or, for complaints of sexual harassment that meet the federal Title IX definition, the Title IX Sexual Harassment Complaint Procedures. Once notified verbally or in writing, the compliance officer shall begin the investigation and shall implement immediate measures necessary to stop the discrimination and ensure that all students have access to the educational program and a safe school environment. Any interim measures adopted to address unlawful discrimination shall, to the extent possible, not disadvantage the complainant or a student who is the victim of the alleged unlawful discrimination.

Any report or complaint alleging unlawful discrimination involving the principal, compliance officer, or any other person to whom the complaint would ordinarily be reported or filed shall instead be submitted to the County Superintendent or designee who shall determine how the complaint will be investigated. Even if the student chooses not to file a formal complaint, the principal or compliance officer shall implement immediate measures necessary to stop the discrimination and to ensure all students have access to the educational program and a safe school environment.

Issues Unique to Intersex, Nonbinary, Transgender and Gender-Nonconforming Students

Gender identity of a student means a student's gender-related identity, appearance, or behavior as determined from the student's internal sense, whether or not that gender-related identity, appearance, or behavior is different from that traditionally associated with the student's physiology or assigned sex at birth.

Gender expression means a student's gender-related appearance and behavior, whether stereotypically associated with the student's assigned sex at birth. (Education Code 210.7)

Gender transition refers to the process in which a student changes from living and identifying as the sex assigned to the student at birth to living and identifying as the sex that corresponds to the student's gender identity.

Gender-nonconforming student means a student whose gender expression differs from stereotypical expectations.

Intersex student means a student with natural bodily variations in anatomy, hormones, chromosomes, and other traits that differ from expectations generally associated with female and male bodies.

Nonbinary student means a student whose gender identity falls outside of the traditional conceptions of strictly either female or male, regardless of whether the student identifies as transgender, was born with intersex traits, uses gender-neutral pronouns, or uses agender, genderqueer, pangender, gender nonconforming, gender variant, or such other more specific term to describe their gender.

Transgender student means a student whose gender identity is different from the gender assigned sex at birth.

TCOE prohibits acts of verbal, nonverbal, or physical aggression, intimidation, or hostility that are based on sex, gender identity, or gender expression, or that have the purpose or effect of producing a negative impact on the student's academic performance or of creating an intimidating, hostile, or offensive educational environment regardless of whether they are sexual in nature. Examples of types of conduct which are prohibited and which may constitute gender-based harassment include, but are not limited to:

1. Refusing to address a student by a name and the pronouns consistent with the student's gender identity;
2. Disciplining or disparaging a student or excluding the student from participating in activities, for behavior or appearance that is consistent with the student's gender identity or that does not conform to stereotypical notions of masculinity or femininity, as applicable;
3. Blocking a student's entry to the restroom that corresponds to the student's gender identity;
4. Taunting a student because the student participates in an athletic activity more typically favored by a student of the other sex;
5. Revealing a student's gender identity to individuals who do not have a legitimate need for the information, without the student's consent;

6. Use of gender-specific slurs; and
7. Physically assaulting a student motivated by hostility toward the student because of the student's gender, gender identity, or gender expression.

The county office's uniform complaint procedures (AR 1312.3) or Title IX sexual harassment procedures, as applicable, shall be used to report and resolve complaints alleging discrimination against intersex, nonbinary, transgender and gender-nonconforming students. Examples of bases for complaints include, but are not limited to, the above list as well as improper rejection by the county office of a student's asserted gender identity, denial of access to facilities that correspond with a student's gender identity, improper disclosure of a student's gender identity, discriminatory enforcement of a dress code, and other instances of gender-based harassment.

To ensure that intersex, nonbinary, transgender and gender-nonconforming students are afforded the same rights, benefits, and protections provided to all students by law and Board policy, the county office shall address each situation on a case-by-case basis, in accordance with the following guidelines:

1. Right to privacy: A student's intersex, nonbinary, transgender or gender-nonconforming status is the student's—private information. TCOE shall develop strategies to prevent unauthorized disclosure of students' private information. Such strategies may include, but are not limited to, collecting or maintaining information about student gender only when relevant to the educational program or activity, protecting or revealing a student's gender identity as necessary to protect the health or safety of the student, and keeping a student's unofficial record separate from the official record.

TCOE shall only disclose a student's private information to others with the student's prior written consent, except when the disclosure is otherwise required by law or when the county office has compelling evidence that disclosure is necessary to preserve the student's physical or mental well-being. In any case, the county office may allow disclosure of a student's personally identifiable information to employees with a legitimate educational interest as determined by the COE pursuant to 34 CFR 99.31. Any county office employee to whom a student's intersex, nonbinary, transgender or gender-nonconforming status is disclosed shall keep the student's information confidential. When disclosure of a student's gender identity is made to a TCOE employee by the student, the employee shall seek the student's permission to notify the compliance officer. If the student refuses to give permission, the employee shall keep the student's information confidential, unless the employee is required to disclose or report the student's information pursuant to TCOE policy. The employee shall inform the student that honoring the student's request may limit the county office's ability to meet the student's needs related to the student's status as an intersex, nonbinary, transgender or gender-nonconforming student. If the student permits the employee to notify the compliance officer, the employee shall do so within three school days.

As appropriate given the student's need for support, the compliance officer may consider discussing with the student any need to disclose the student's transgender or gender-nonconformity status to his/her parents/guardians and/or others, including other students, teacher(s), or other adults on campus. The county office shall offer support services, such as counseling, to students who wish to inform their parents/guardians of their status and desire assistance in doing so.

2. **Determining a Student's Gender Identity:** The compliance officer shall accept the student's assertion of gender identity and begin to treat the student consistent with that gender identity unless county office personnel present a credible and supportable basis for believing that the student's assertion is for an improper purpose.
3. **Addressing a Student's Transition Needs:** The compliance officer shall arrange a meeting with the student and, if appropriate, the student's parents/guardians to identify and develop strategies for ensuring that the student's access to educational programs and activities is maintained. The meeting shall discuss the intersex, nonbinary, transgender or gender-nonconforming student's rights and how those rights may affect and be affected by the rights of other students and shall address specific subjects related to 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 compliance officer shall identify specific school site or program employee(s) to whom the student may report any problem related to the student's status as an intersex, nonbinary, transgender or gender-nonconforming individual, so that prompt action can be taken to address it. Alternatively, if appropriate and desired by the student, the school may form a support team for the student that will meet periodically to assess whether the arrangements for the student are meeting the student's educational needs and providing equal access to programs and activities, educate appropriate staff about the student's transition, and serve as a resource to the student to better protect the student from gender-based discrimination.
4. **Accessibility to Sex-Segregated Facilities, Programs, and Activities:** When TCOE maintains sex-segregated facilities, such as restrooms and locker rooms, or offers sex-segregated programs and activities, such as physical education classes, intermural sports, and interscholastic athletic programs, students shall be permitted to access facilities and participate in programs and activities consistent with their gender identity. The county office shall offer available options to address any student's privacy concerns in using sex-segregated facilities, such as gender-neutral or single-use restrooms or changing area, a bathroom stall with a door, an area in the locker room separated by a curtain or screen, or use of the locker room before or after the other students. However, the county office shall not require a student to utilize these options because the student is intersex, nonbinary, transgender or gender-nonconforming. In addition, a student shall be permitted to participate in accordance with the student's gender identity in other circumstances where students are separated by gender, such as for class discussions, yearbook pictures, and field trips. A student's right to participate in a sex-segregated activity in accordance with the student's gender identity shall not render invalid or inapplicable any other eligibility rule established for participation in the activity.
5. **Student Records:** Upon each student's enrollment, TCOE is required to maintain a mandatory permanent student record (official record) that includes the student's gender and legal name.

A student's legal name as entered on the mandatory student record required pursuant to

5 CCR 432 shall only be changed with proper documentation. A student's gender as entered on the student's official record required pursuant to 5 CCR 432 shall only be changed with written authorization of a parent/guardian having legal custody of the student. (Education Code 49061)

However, when proper documentation or authorization, as applicable, is not submitted with a request to change a student's legal name or gender, any change to the student's record shall be

limited to the student's unofficial records such as attendance sheets, report cards, and school identification.

6. Names and Pronouns: If a student so chooses, county office personnel shall be required to address the student by a name and the pronouns consistent with the student's gender identity, without the necessity of a court order or a change to the student's official record. However, inadvertent slips or honest mistakes by county office personnel in the use of the student's name and/or consistent pronouns will, in general, not constitute a violation of this administrative regulation or the accompanying County Board policy.
7. Uniforms/Dress Code: A student has the right to dress in a manner consistent with the student's gender identity, subject to any dress code adopted on a school site.

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Tulare County Superintendent of Schools
Visalia, California