

ORANGE COUNTY DEPARTMENT OF EDUCATION
Costa Mesa, California

SUPERINTENDENT'S POLICY PROCEDURE

100-8

Nondiscrimination/Harassment

The Orange County Department of Education designates the individual(s) identified below as the employee(s) responsible for coordinating the Orange County Department of Education's efforts to comply with applicable state and federal civil rights laws, including Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, and the Age Discrimination Act of 1975, and to answer inquiries regarding the Orange County Department of Education's nondiscrimination policies. The individual(s) shall also serve as the compliance officer(s) specified in 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, ethnicity, ethnic group identification, age, religion, marital or parental status, pregnancy, physical or mental disability, sex, sexual orientation, gender, gender identity, gender expression, 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:

Associate Superintendent, Administrative Services
200 Kalmus Drive, Costa Mesa, CA 92628
714-966-4061
rhendrick@ocde.us

In addition, the Alternative, Community, and Correctional Education Schools and Services (ACCESS) Division will establish a point person to facilitate the resolution of concerns and complaints of students in the ACCESS Division in coordination with the compliance officer. The Access point person may be contacted at:

Manager, ACCESS
1669 E. Wilshire Ave., Suite 607, Santa Ana 92705
(714) 245-6402
mzamora@ocde.us

Measures to Prevent Discrimination

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

1. Publicize the Orange County Department of Education'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, posting them on the Orange County Department of Education's web site and other prominent locations and providing easy access to them through Orange County Department of Education-supported social media, when available.
2. Provide to students a handbook that contains age-appropriate information that clearly describes the Orange County Department of Education'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.
3. Annually notify all students and parents/guardians of the Orange County Department of Education's nondiscrimination policy, including its responsibility to provide a safe, nondiscriminatory school environment for all students, including transgender and gender-nonconforming 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 the Orange County Department of Education's implementation of its nondiscrimination policies. The notice shall also inform all students and parents/guardians that, to the extent possible, the Orange County Department of Education will address any individual student's interests and concerns in private.
4. The Superintendent or designee shall ensure that students and parents/guardians, including those with limited English proficiency, are notified of how to access the relevant information provided in the Orange County Department of Education's nondiscrimination policy and related complaint procedures, notices, and forms in a language they can understand.
 - a. If 15 percent or more of students enrolled in a particular Orange County Department of Education school speak a single primary language other than English, the Orange County Department of Education's policy, procedures, 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 Orange County Department of Education shall ensure meaningful access to all relevant information for parents/guardians with limited English proficiency.
5. Provide to students, employees, volunteers, and parents/guardians age-appropriate training and information regarding the Orange County Department of Education'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 the Orange County Department of Education may use to provide a discrimination-free environment for all Orange County Department of Education students, including transgender and gender-nonconforming students.
6. At the beginning of each school year, inform school 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.

7. At the beginning of each school year, inform each principal or designee of the Orange County Department of Education's responsibility to provide appropriate assistance or resources to protect students' privacy rights and ensure their safety from threatened or potentially discriminatory behavior.

Enforcement of Orange County Department of Education Policy

The Superintendent or designee shall take appropriate actions to reinforce the policy regarding Nondiscrimination/Harassment. As needed, these actions may include any of the following:

1. Removing graffiti with discriminatory or harassing language or depictions
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 the Orange County Department of Education's policy and procedures regarding unlawful discrimination
4. Consistent with the laws regarding the confidentiality of student and personnel records, communicating the school's response to students, parents/guardians, and the community
5. Taking appropriate disciplinary action against students, employees, and anyone determined to have engaged in wrongdoing in violation of Orange County Department of Education policy, including any student who is found to have filed a complaint of discrimination that he/she knew was not true

Process for Initiating and Responding to Complaints

Any student who feels that he/she has been subjected to unlawful discrimination described above or in Orange County Department of Education policy is strongly encouraged to immediately contact the compliance officer, principal/designee, 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/designee, whether or not the alleged victim files a complaint.

Any school 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/designee within two school days, whether or not the alleged victim files a complaint.

Any school 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.

When a verbal report of unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, is made to or received by the principal, designee, or compliance officer, he/she shall make a note of the report and encourage the student or parent/guardian to file the complaint in writing, pursuant to the provisions in Uniform Complaint Procedures. Once notified verbally or in writing, the principal, designee, or 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 by the principal, designee, or compliance officer, or any other person to whom a report would ordinarily be made or complaint filed shall instead be made to or filed with the Superintendent or designee who shall determine how the complaint will be investigated.

Transgender and Gender-Nonconforming Students

Gender identity of a student means the student's gender-related identity, appearance, or behavior as determined from the student's internal sense of his/her gender, 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.

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.

Transgender student means a student whose gender identity is different from the gender he/she was assigned at birth.

Regardless of whether they are sexual in nature, 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 are prohibited. Examples of types of conduct which are prohibited in the Orange County Department of Education 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 his/her gender identity

2. Disciplining or disparaging a student or excluding him/her from participating in activities for behavior or appearance that is consistent with his/her gender identity or that does not conform to stereotypical notions of masculinity or femininity, as applicable
3. Blocking a student's entry to the bathroom that corresponds to his/her gender identity
4. Taunting a student because he/she participates in an athletic activity more typically favored by a student of the other sex
5. Revealing a student's transgender status to individuals who do not have a legitimate need for the information, without the student's consent
6. Use of gender-specific slurs
7. Physical assault of a student motivated by hostility toward him/her because of his/her gender, gender identity, or gender expression

The Orange County Department of Education's uniform complaint procedures shall be used to report and resolve complaints alleging discrimination against 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 Orange County Department of Education 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 transgender status, discriminatory enforcement of a dress code, and other instances of gender-based harassment.

To ensure that transgender and gender-nonconforming students are afforded the same rights, benefits, and protections provided to all students by law and Orange County Department of Education policy, the Orange County Department of Education shall address each situation on a case-by-case basis, in accordance with the following guidelines:

1. Right to privacy: A student's transgender or gender-nonconforming status is his/her private information and the Orange County Department of Education shall only disclose the information to others with the student's prior written consent, except when the disclosure is on a need to know for school employees, otherwise required by law, or when the Orange County Department of Education has compelling evidence that disclosure is necessary to preserve the student's physical or mental well-being. In any case, the Orange County Department of Education shall only allow disclosure of a student's personally identifiable information to employees with a legitimate educational interest as determined by the Orange County Department of Education pursuant to 34 CFR 99.31. Any Orange County Department of Education employee to whom a student's 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 an Orange County Department of Education employee by a student, the employee shall seek

the student's permission to notify the compliance officer/designee. If the student refuses to give permission, the employee shall keep the student's information confidential, unless he/she is required to disclose or report the student's information pursuant to this procedure, and shall inform the student that honoring the student's request may limit the Orange County Department of Education's ability to meet the student's needs related to his/her status as a 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/designee may discuss with the student any need to disclose the student's transgender or gender-nonconformity status or gender identity or gender expression to his/her parents/guardians and/or others, including other students, teacher(s), or other adults on campus. The Orange County Department of Education shall offer support services 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/designee shall accept the student's assertion of his/her gender identity and begin to treat the student consistent with his/her gender identity unless Orange County Department of Education 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 or designee shall arrange a meeting with the student and, if appropriate, his/her parents/guardians to identify and develop strategies for ensuring that the student's access to education programs and activities is maintained. The meeting shall discuss the 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/designee shall identify specific school site employee(s) to whom the student may report any problem related to his/her status as a transgender or gender-nonconforming individual, so that prompt action could 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 his/her 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 the Orange County Department of Education 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. To address any student's privacy concerns in using sex-segregated facilities, the Orange County Department of Education shall offer available options such as a gender-neutral or single-use restroom or changing area, a bathroom stall with a door,

an area in the locker room separated by a curtain or screen, access to a staff member's office, or use of the locker room before or after the other students. However, the Orange County Department of Education shall not require a student to utilize these options because he/she is transgender or gender-nonconforming. In addition, a student shall be permitted to participate in accordance with his/her 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 his/her gender identity shall not render invalid or inapplicable any other eligibility rule established for participation in the activity.

5. Student Records: A student's legal name or gender as entered on the mandatory student record required pursuant to 5 CCR 432 shall only be changed pursuant to a court order. However, at the written request of a student or, if appropriate, his/her parents/guardians, the Orange County Department of Education shall use the student's preferred name and pronouns consistent with his/her gender identity on all other Orange County Department of Education-related documents. Such preferred name may be added to the student's record and official documents as permitted by law.
6. Names and Pronouns: If a student so chooses, Orange County Department of Education personnel shall address the student by a name and the pronouns consistent with his/her gender identity, without the necessity of a court order or a change to his/her official Orange County Department of Education record. However, inadvertent slips or honest mistakes by Orange County Department of Education personnel in the use of the student's name and/or consistent pronouns shall not constitute a violation of this procedure or the accompanying Orange County Department of Education policy.
7. Uniforms/Dress Code: A student has the right to dress in a manner consistent with his/her gender identity, subject to any dress code adopted on a school site.