

LAWS REGARDING LESBIAN, GAY, BISEXUAL, AND TRANSGENDER (LGBT) STUDENTS IN SCHOOLS



Laws Addressing Mandated Reporting of Child Abuse

Mandated Reporting (California Penal Code 11165 - 7 and Education Code 44691 - 2)

All school employees are required to report any reasonable suspicion of neglect, sexual exploitation, and/or sexual or physical abuse of a minor to local law enforcement (excluding school police departments), probation department, or welfare department within a thirty-six hour window. Suspected psychological abuse may be reported, but is not required. Abuse or exploitation of LGBT students by parents or other adults would fall under the purview of this law. Reports are made as soon as there is reasonable suspicion of abuse; reporters should not conduct follow-up investigations before reporting. Employees are not required to disclose to their supervisors that they have made a mandated report, and the reporter's confidentiality is protected by law. **There are serious legal and civil penalties for failure to make a mandated report and/or for breaching confidentiality.**

Laws Addressing Bias and Discrimination

Freedom of expression (First Amendment to the U.S. Constitution)

All students have the right to dress according to their gender identity or gender expression. Students may not be restricted from wearing attire or adopting behavior typical of the other sex. Students have the right to express themselves on LGBT issues.

Equal protection and access (Fourteenth Amendment to the U.S. Constitution)

If a school provides a meeting place for non-curricular student-initiated activities, it must not deny similar meeting place for a student-initiated Gay-Straight Alliance.

Discrimination based on sex (20 USC 1681 [Title IX])

All rules and policies must be gender-neutral and enforced equally (e.g.: rules related to cosmetics, dress, and displays of affection must be the same for LGBT and straight students). This law has been used to hold schools liable for failure to address anti-gay harassment.

Hate crimes (California Penal Code 422.6)

No person shall force, threaten, injure, or intimidate another in the free exercise of rights and privileges because of actual or perceived disability, gender, sexual orientation, nationality, ethnicity, or religion. LGBT students must be protected from any form of harassment or intimidation.

Equal protection and access (California Education Codes 200-201)

Schools have the affirmative obligation to combat bias against any group listed in PC 422.6 and provide equal educational opportunity. Schools must undertake activities to counter discrimination, prevent and respond to hate, and teach students about their rights and the rights of others in order to promote tolerance and sensitivity.

Hate crime education (California Penal Code 422.89)

School districts are mandated to provide training to prevent violations of civil rights and hate crimes.

Rights and Responsibilities Concerning Bias and Discrimination

School Responsibilities:

- To ensure there is no discrimination against students on the basis of sexual orientation and gender
- To affirmatively protect students from bias-motivated harassment and violence by other students
- To have effective procedures for students to complain about harassment or discrimination
- To inform students about how to make a complaint of discrimination or harassment
- To raise students' awareness of the rights of others in order to eliminate hostile environments
- To uphold gender-neutral rules

Students' Rights:

- To a school environment free of violence, harassment, or discrimination
- To privacy and nondisclosure of their sexual orientation
- To freely express themselves, as long as it is not disruptive
- To form Gay-Straight Alliances at schools where non-curricular groups are allowed

Laws Related to School-Based Sexual Health Education and HIV/AIDS Prevention

Comprehensive Sexual Health Education (California Education Code 51933)

Schools must teach all listed topics in sexual health education or none at all. Instruction and materials must be medically accurate and free of racial, gender, sexual orientation, ethnic, and cultural bias.

Commencing in grade 7 (but permissible earlier) instruction must teach:

- Respect for marriage and committed relationships.
- Information about sexually transmitted diseases (STDs).
- Sexual abstinence is the only certain way to prevent pregnancy and STDs.
- Information about all FDA-approved methods to prevent pregnancy and STDs.
- Sex-related decision making/implementation skills.
- Safely Surrendered Baby law
- Information about local resources for sex-related medical testing and care

HIV/AIDS Prevention Instruction (California Education Code 51934)

School districts must provide instruction to all students in grades 7-12 at least once in middle school and once in high school. Instruction must include all of the following:

- Information about transmission and effects of HIV
- Assessing and reducing risk of HIV transmission with stress on abstinence, monogamy, and avoidance of shared needles
- Effectiveness of condoms
- Public health issues and local resources for testing and sex-related medical care
- Refusal skills
- Societal views, myths, and stereotypes about persons with HIV/AIDS

Parent Notification and Outside Speakers (California Education Code 51936 - 51939)

At the beginning of the school year school districts must notify parents of their rights regarding instruction in sexual health and/or HIV/AIDS prevention. Parents have the right to preview instructional materials, be provided with copies of EC 51930-51939, and to excuse their student(s) from participation. **Notification must be for passive consent.** Schools may contract with outside consultants to deliver sexual health education and/or HIV/AIDS instruction. If non-district employees deliver part of all of the instruction, parents must be notified in writing of the presenters' affiliation and dates of presentation and again given the opportunity to excuse their student. Students excused from sexual health and/or HIV/AIDS instruction shall be given alternative and non-punitive assignments.

California Minor Consent Laws			
Who can consent for what services and provider's obligations			
	Minor Consent Sufficient for Confidential Care	Parent/Guardian Consent Required	Parent/Guardian Notification Required
Abortion	Yes	No	Not allowed without consent of minor
Birth Control	Yes (except sterilization)	No (except sterilization)	
Pregnancy (Prev., Dx & TX)	Yes ¹	No ¹	
STD's, Contagious & Reportable Diseases (Dx & Tx)	Yes (minors ≥12 years)	Not needed for minors ≥12 years	
HIV Testing	Yes (minors ≥12 years and assessed as competent to give informed consent)	Not Needed for minors ≥12 years, unless deemed incompetent to consent	
Outpatient Mental Health Treatment	Yes ² (minors ≥12 years)	Yes (except ²)	An attempt should be made, except when the provider believes it is inappropriate
Alcohol/Drug Abuse Treatment	Yes (minors ≥12 years)	Not needed for minors ≥12 years, except for methadone treatment ^{1,3}	Not allowed without consent of minor
Rape ⁴	Yes (minors ≥12 years)	Not Needed ¹ for minors ≥12 years	
Sexual Assault ⁵	Yes	No	An attempt must be made except when provider believes parent or guardian was responsible

¹ Including inpatient Care

² If (1) the minor is ≥12 years, is mature enough to consent AND (2) the minor is (A) the victim of incest or child abuse or (B) would present a threat of serious physical or mental harm to self or others without treatment

³ However, parents can consent over the child's objection

⁴ Non-consensual sexual intercourse

⁵ Acts of rape, oral copulation, sodomy, and other violent crimes of a sexual nature

2006 National Center for Youth Law. Available at www.teenhealthrights.org and www.youthlaw.org. Understanding Confidentiality and Minor Consent in California.

For more information contact: