



Amor Para Todos

LGBTQIA+ Laws and How They Pertain to Schools

Leyes LGBTQIA+ y cómo se relacionan con las escuelas

1. How CA Ed Code and Other Laws Support Schools in Teaching **General** LGBTQIA+ and Inclusive Lessons/Curriculum

[CA Ed code 233.5](#), which is under the [Hate Violence Prevention Act](#) states that CA teachers should foster a class environment free from discriminatory attitudes, practices, events, or activities, in order to prevent acts of hate violence for potential victims. The victim verbiage stated in penal code [422.55](#) includes: Gender and Sexual Orientation.

233.5 (a) in more detail states:

Each teacher shall endeavor to impress upon the minds of the pupils the principles of morality, truth, justice, patriotism, and a true comprehension of the rights, duties, and dignity of American citizenship, and the meaning of equality and human dignity, including the promotion of harmonious relations, kindness toward domestic pets and the humane treatment of living creatures, to teach them to avoid idleness, profanity, and falsehood, and to instruct them in manners and morals and the principles of a free government. (b) Each teacher is also encouraged to create and foster an environment that encourages pupils to realize their full potential and that is free from discriminatory attitudes, practices, events, or activities, in order to prevent acts of hate violence, as defined in subdivision (e) of Section 233.

[AB 1078 Instructional Materials and Curriculum: Diversity](#) (Safe Place to Learn Act): The bill requires that all schools have an accurate and inclusive curriculum, along with ensuring that complaints can be made straight to the state superintendent of public instruction if an inclusive curriculum is being banned.

The bill would prohibit the governing board of a school district, a county board of education, or the governing body of a charter school from refusing to approve or prohibiting the use of any textbook, instructional material, or other curriculum or any book or other resource in a school library on the basis that it includes a study of the role

and contributions of any individual or group consistent with the described below requirements:

"People of all genders, Latino Americans, LGBTQ+ Americans, and members of other ethnic, cultural, religious, and socioeconomic status groups;"

relating to instruction in social sciences and the adoption of instructional materials that accurately portray the cultural and racial diversity of our society.

The bill would also prohibit the governing board of a school district or a county board of education from prohibiting the continued use of an appropriately adopted textbook, instructional material, or curriculum on the basis that it contains inclusive and diverse perspectives. Parents may file complaints with the state Superintendent of Public Instruction if they think a book has been banned in violation with this law.

This bill would reduce a school district's local control funding formula allocation by a specified amount if the Superintendent determines the school district has not provided sufficient textbooks or instructional materials pursuant to these provisions.

Also, this bill revised the list of the described groups to require instruction in social sciences to include a study of the role and contributions of people of "all genders" vs just "men and women," while still including Latino Americans, LGBTQ+ Americans, and members of other ethnic, cultural, religious, and socioeconomic status groups.

This bill requires the CDE, no later than July 1, 2025, to develop guidance and public educational materials to ensure that all Californians can access information about educational laws and policies that safeguard the right to an accurate and inclusive curriculum.

FAIR ACT SB 48 - the FAIR Act also supports educators in teaching LGBTQIA+ lessons to students. The piece that applies to us: It states: "To include fair, accurate, inclusive and respectful reference to contributions by people with disabilities and members of the LGBTQIA+ community in history and social studies curriculum."

Schools are required to teach about LGBTQ+ people and contributions to history in social science in 2nd, 4th, 5th, 8th, 11th, 12th grades. It has been stated by the CA Department of Education that, while not written into the law, it is also encouraged by other grade levels. *AB 1078 (above), revised some of the verbiage of SB 48's described groups to be taught to be more inclusive.* An amazing website resource with much more info on the FAIR Act is: [Teaching LGBTQ History](#).

House Resolution-57, was adopted to declare August as Trans History Month.

2. Inclusive Sexual Health Education Law

AB 329 California Healthy Youth Act (CHYA) - This act refers to comprehensive inclusive health sex education. The take aways for our purposes are:

This act has 5 primary purposes, one being: "To provide pupils with the knowledge and skills they need to develop healthy attitudes concerning adolescent growth and development, body image, **gender, sexual orientation**, relationships, marriage, and family."

A [question from the CA Dpt of Ed's website](#): What does the law say about lesbian, gay, bisexual, transgender and questioning (LGBTQ) students, sexual orientation and gender/gender identity?

"All instruction and materials in grades K-12 must be inclusive of LGBTQ students. Instruction shall affirmatively recognize that people have different sexual orientations and, when discussing or providing examples of relationships and couples, must be inclusive of same-sex relationships. (EC § 51933(d)(5).) It must also teach students about gender, gender expression, gender identity, and explore the harm of negative gender stereotypes. (EC § 51933(d)(6).) This means that schools must teach about all sexual orientations and what being LGBTQ means."

CHYA DOES NOT APPLY TO (EC 51932):

Description or illustration of human reproductive organs that may appear in a textbook. If the textbook does not include other elements of comprehensive sexual health education or HIV prevention education.

Instruction, materials, presentations, or programming that discuss gender, gender identity, gender expression, sexual orientation, discrimination, harassment, bullying, intimidation, relationships, or family and do not discuss human reproductive organs and their functions.

Therefore:

Anti-bias trainings or classroom lesson plans covering gender, sexual orientation or family life are **NOT** sexual health education and are allowed and recommended to be taught by Ca Ed Code 233.5.

Parents do not need to be notified of anti-bias instruction, which is separate from sex education; doing so would be discriminatory without doing the same for all other instructions as well. Parents may not remove their children from anti-bias content. Some schools have a "controversial topics clause" but this should only be applied to topics of trauma such as violence and abuse, not people's identities.

Also, in regards to teaching anti-bias instruction, the 14th amendment's Equal Protection Clause does not allow a staff member to notify parents/guardians about anti-bias education from one group and not another. For example: If a teacher gave prior notification to parents/guardians about an LGBTQIA+ lesson plan, they could be held accountable, if they did not give the same prior notification for a lesson on Martin Luther King or Cesar Chavez; as that could be discriminatory to one group.

Here is the link to [CHYA](#) and then you can follow the link to the [Act's FAQ](#). The state has funded [this](#) website to help schools and districts with the implementation of the California Healthy Youth Act.

3. LGBTQIA+ Training Laws

[AB 5 The Safe and Supportive Schools Act](#) - requires schools to provide staff training to support LGBTQ+ students by July 1, 2025. Commencing with the 2025–26 school year each local educational agency, as defined, serving pupils in grades 7 to 12, inclusive, to use the California Department of Education (CDE) online training delivery platform and curriculum, or an in-service alternative, to provide at least one hour of required training annually to teachers and other certificated employees at those schools, as provided. The bill requires each local educational agency to maintain records documenting the training.

[AB 493 Teachers: Lesbian, Gay, Bisexual, Transgender, Queer, and Questioning Pupil Resources and Training](#) - calls on public schools to provide training to teachers and other certificated staff members on LGBTQIA+ cultural competency and how to support LGBTQIA+ students, at least once every 2 years to teachers and other certificated employees. The bill took effect in 2020, and is overseen by the California Department of Education, overseen by State Superintendent of Public Instruction Tony Thurmond. This law infers that our state wants our schools to be trained on LGBTQIA+ cultural competency. *This law has now been updated to AB 5 where training is required, whereas AB 493 encouraged it.*

4. School Sports, Activities & Facility Access Laws

[School Success & Opportunity Act AB 1266](#) - This law allows students to participate in school sports, programs, activities and use facilities, such as restrooms, that align with their gender identity, irrespective of the gender listed on the student's records.

Students should be provided with bathroom options and be allowed to use the bathroom aligned with the gender with which they identify. Gender inclusive bathrooms must be accessible and should not be behind any sort of gatekeeping method, an example would be, in the nurse's office. Its [FAQ sheet](#) also refers to gender neutral bathrooms. The take aways that pertain to us:

1. As an alternative, a “gender neutral” restroom or private changing area may be used by any student who desires increased privacy, regardless of the underlying reason. The use of such a “gender neutral” restroom or private changing area shall be a matter of choice for a student and no student shall be compelled to use such restroom or changing area.

2. Some students (or parents) may feel uncomfortable with a transgender student using the same sex-segregated restroom or locker room. This discomfort is not a reason to deny access to the transgender student. School administrators and counseling staff should work with students and parents to address the discomfort and to foster understanding of gender identity, to create a school culture that respects and values all students.

5. Restroom Laws

[AB 1732 Single User Restrooms](#) - States that all single stall restrooms in CA, have to have all gender signage. This legislation is from 2016 and the bill came into effect in 2017.

[SB 760 School facilities: All-Gender Restrooms](#) - This bill requires that each school district, county office of education, and charter school, including charter schools operating in a school district facility, maintain any combination of classes from kindergarten to grade 12, inclusive, **to provide at least one all-gender restroom for pupil use at each of its schoolsites**. The bill would require the all-gender restroom to meet certain requirements, including that it (1) has appropriate signage identifying the bathroom facility as being open to all genders, (2) is unlocked, unobstructed, and easily accessible by any pupil without requesting access from teachers, faculty, or school staff, and (3) is stocked with menstrual products, as specified. The bill would require the local educational agency to designate a staff member to serve as a point of contact for these purposes and to post a notice regarding these requirements in a prominent and conspicuous location outside at least one all-gender restroom. The bill would require these requirements to be subject to compliance review, as specified. By imposing additional requirements on local educational agencies, the bill would impose a

state-mandated local program. The bill would authorize a local educational agency to use an existing restroom to satisfy these requirements, as provided.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

6. Protecting a Student's Gender Identity:

A transgender or gender nonconforming student may not express their gender identity openly in all contexts, including at home. Revealing a student's gender identity or expression to others may compromise the student's safety. Thus, preserving a student's privacy is of the utmost importance. The right of transgender students to keep their transgender status private is grounded in California's antidiscrimination laws as well as federal and state laws. Disclosing that a student is transgender without the student's permission may violate California's antidiscrimination law by increasing the student's vulnerability to harassment and may violate the student's right to privacy.

[AB 1955 The Support Academic Futures & Educators for Today's Youth \(SAFETY\) Act](#) - The SAFETY Act addresses these issues by:

- Prohibiting school districts from enacting forced outing policies.
- Providing resources for parents and students to manage conversations about gender and identity privately.
- Protecting teachers and school staff from retaliation if they refuse to forcibly out a student.

A. Public Records Act requests - The Education Code requires that schools keep student records private. Private information such as transgender status or gender identity falls within this code requirement and should not be released. (Education Code Section 49060.)

B. Family Educational and Privacy Rights (FERPA) - FERPA is federal law that protects the privacy of students' education records. FERPA provides that schools may only disclose information in school records with written permission from a student's parents or from the student after the student reaches the age of 18. (20 U.S.C. Section 1232g.) This includes any "information that . . . would allow a reasonable person in the school community . . . to identify the student with reasonable certainty." (34 C.F.R. Section 99.3.) *One threshold point that is often overlooked is that FERPA limits only the disclosure of records and information from records about a student. It does not limit disclosure or discussion*

of personal observations.

C. [California Constitution](#) - Minors enjoy a right to privacy under [Article I](#), Section I of the California Constitution that is enforceable against private parties and government officials. The right to privacy encompasses the right to non-disclosure (autonomy privacy) as well as in the collection and dissemination of personal information such as medical records and gender identity (informational privacy).

[AB-223 Change of Gender and Sex Identifier](#) (Transgender Youth Privacy Act) - This bill requires any petition for a change of gender and sex identifier or a petition for change of gender, sex identifier, and name filed by a person under 18 years of age, and any papers associated with the proceeding, to be kept confidential by the court. The bill requires the court to limit access to these records to specified individuals, including, among others, the minor, the minor's parents, and their attorneys.

[SB 179 Gender Recognition Act](#) from 2018 - Adds "Non-binary" designation along with male and female on birth certificates and Driver's licenses.

7. Other Supportive LGBTQIA+ Laws

[AB 537 The California Student Safety And Violence Protection Act](#) - is about preventing discrimination against LGBTQIA+ students, families, or school staff. The important takeaways from the law and fact sheet that pertain to us are:

1. AB 537, the California Student Safety and Violence Prevention Act of 2000, changed California's Education Code by adding actual or perceived sexual orientation and gender identity to the existing nondiscrimination policy.
2. AB 537 protects students and school employees against discrimination and harassment at all California public schools and any school receiving state funding except religious schools.
3. The protections cover any program or activity in a school, including extracurricular activities and student clubs. This gives APT and other LGBTQ-related student clubs state protection in addition to federal protection through the Equal Access Act. Here is a [FAQ on AB 537](#).

[AB 34 Pupils Bullying and Harassment Prevention Information](#) - this law works to prevent bullying and harassment for students, specifically noting those students who are

at higher risk, such as those in the LGBTQIA+ community.

This law requires each school to ensure that specified information on bullying and harassment prevention is readily accessible in a prominent location on the school's website in a manner that is easily accessible to parents or guardians and students. The bill would require local educational agencies to include specified State Department of Education policies and the policies adopted by a school district relating to hate violence, bullying, harassment, discrimination, and suicide prevention and resources relating to these topics. All public schools receiving federal funds should have been in compliance with this act by the beginning of the 2020-2021 School year. Per the act: (b) Pupils from diverse backgrounds, especially lesbian, gay, bisexual, transgender, queer, and questioning (LGBTQ) pupils, disproportionately face bullying and cyberbullying. Approximately 28 percent of pupils in grades 6 through 12, inclusive, have experienced bullying, and 70 percent of young people have witnessed bullying. While nearly 14 percent of pupils have experienced cyberbullying, 55 percent of LGBTQ pupils have reported being cyberbullied.

AB 1767 Pupil Suicide Prevention Policies - The governing board or body of a local educational agency that serves pupils in kindergarten and grades 1 to 6, inclusive, shall, before the beginning of the 2020–21 school year, adopt, at a regularly scheduled meeting, a policy on pupil suicide prevention in kindergarten and grades 1 to 6, inclusive. The policy shall be developed in consultation with school and community stakeholders, the county mental health plan, school-employed mental health professionals, and suicide prevention experts and shall, at a minimum, address procedures relating to suicide prevention, intervention, and postvention. (B) (3) The policy shall specifically address the needs of high-risk groups, including, but not limited to, all of the following: Youth bereaved by suicide. Youth with disabilities, mental illness, or substance use disorders. Youth experiencing homelessness or in out-of-home settings, such as foster care. Lesbian, gay, bisexual, transgender, or questioning youth. School districts were to do the same for grades 7 to 12 before the beginning of the 2017–18 school year.

AB 9 Seth's Law - Went into effect in July of 2012. This law strengthens existing state anti-bullying laws to help protect all California public school students. Seth's Law requires public schools in California to update their anti-bullying policies and programs, and it focuses on protecting students who are bullied based on their actual or perceived sexual orientation and gender identity/gender expression, as well as race, ethnicity, nationality, gender, disability, and religion.

SB-857 Advisory task force: LGBTQ+ pupil needs: This bill requires the Superintendent of Public Instruction, on or before July 1, 2024, to convene an advisory task force to identify the needs of lesbian, gay, bisexual, transgender, queer, questioning, and plus (LGBTQ+) pupils and to make recommendations to assist in implementing supportive policies and initiatives to address LGBTQ+ pupil education and well-being, as provided. The bill requires advisory task force members to be selected by the Superintendent, as provided. The bill requires the advisory task force to, on or before January 1, 2026, report their findings and recommendations to the Legislature, the Superintendent, and the Governor.

SB 345 - Health Care Services: Legally Protected Health Care Activities: Helps protect insurance providers against the enforcement of other states' laws that criminalize or limit reproductive health care services or gender-affirming health care.

SB 407 - Foster Care: Resource Families: Gives LGBTQ foster youth the right to be placed with foster homes according to their gender identity and with foster families that have received instruction on LGBTQ issues and sensitivity training and have committed to provide a gender-affirming home environment.

SB 543 Consent to Mental Health Services - A minor can consent to mental health treatment if he or she meets all of the following requirements: Age 12 or older, The minor is mature enough to participate intelligently in the treatment, The minor would be in danger of serious physical or mental harm to him/herself or others without treatment, or the minor is the victim of incest or child abuse. [Fact sheet.](#)

8. Federal Laws

Title IX (9) - Bans discrimination based on sex, protects students/staff at schools that receive federal funds. Courts have agreed that the sex discrimination prohibited by Title IX not only includes discrimination for being a girl or boy, but also includes sexual harassment and discrimination for failing to conform to gender stereotypes or for one's gender identity and or sexual orientation. Some key issue areas in which recipients have Title IX obligations are: recruitment, admissions, and counseling; financial assistance; athletics; sex-based harassment, which encompasses sexual assault and other forms of sexual violence; treatment of LGBTQI+ students; discipline; single-sex education; and employment. Title IX is a law that primarily deals with access, so, any denial of access to services, facilities, etc... based on gender is prohibited by this.

Equal Access Act - Any school that permits non-curriculum related clubs/groups must provide equal access to all clubs/groups, that includes equal access for APT Student clubs.

Equal access means that a group such as an APT Student group, must be afforded all the same rights and privileges as other groups/clubs to use the facilities at the school for meetings and communications, etc. This [law is written](#) for 7th-12 grade, though is used as a ceiling for elementary schools as well.

The 14th amendment's Equal Protection Clause of the U.S. Constitution -

“No state shall...deny to any person within its jurisdiction the equal protection of the laws.”

- This guarantees equal protection under the law to **all** citizens, **and it applies to public schools**. All students have a federal, constitutional right to equal protection, which means that schools have a duty to protect LGBTQ students from discrimination on an equal basis with all other students.

The First Amendment - School staff, advisors and students have the right to exercise: freedom of speech, or of the press; or the right of the people peaceably to assemble.

- *Freedom of Speech:*
 - The right to freedom of speech allows individuals to express themselves without government interference or regulation. This is true for school staff, advisors and students.
- *The Right to Assemble:*
 - The right to assemble allows people to gather for peaceful and lawful purposes. This allows for student groups, such as an APT Student Group to gather and have meetings at school.
 - The right to associate also prohibits the government from requiring a group to register or disclose its members or from denying government benefits on the basis of an individual's current or past membership in a particular group.
 - The right to associate also protects a student from having their gender and or sexual orientation disclosed to others; including their parents/guardians.
- *Freedom of Press:*
 - The right to freedom of the press allows an individual to express themselves through publication and dissemination. This means that an APT Student Group has the right and freedom to publicate and disseminate information at school that aligns with their group goals and mission.

*** Assembly Bills Versus Senate Bills:** *In California, the Assembly and the Senate are two chambers of the state legislature. Both chambers can introduce bills, but there are some differences in the types of bills that each chamber can initiate. [According to one](#), only the Assembly can introduce bills related to taxation and revenue. [On the other hand, only the Senate can draft legislation related to presidential nominations and treaties](#).*

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