



Connecticut Association of Boards of Education

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PRESENTS POLICY HIGHLIGHTS

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Warmer Weather and Dress Code Guidance

With March weather always full of surprises, April always seems to be a better month to highlight dress code guidance. As the string of warmer days would indicate, prom season is coming up fast. With the excitement and anticipation Spring brings to our schools, it's also a time when we can expect students to push the boundaries of acceptable school attire generally and with prom wear specifically. As you review your dress code policies, it will be prudent to consider various factors to ensure your policies and practice are aligned with legal decisions, Federal regulations, and State law.

In CABE's Dress and Grooming ([5132](#)) sample policy, the *Policy Background Information for Policy Review Committee* drafted in 2019 provides a general background and a framework for considering appropriate and legally defensible guidelines related to dress code policy and adherence. It notes, for example, that the provisions of the code must promote *legitimate educational interests*. These interests include the need to avoid disruption of the *educational process, student safety, or maintenance of the physical plant*. It also importantly emphasizes that the code must be enforceable and fairly applied.

The "fairly applied" standard is significant as the American Civil Liberties Union emphasizes that dress codes are legal as long as they do not "treat boys and girls differently, force students to conform to sex stereotypes or censor particular viewpoints. This includes protections for transgender, non-binary gender, or any other students who may choose to dress in nontraditional ways."

Related to protections for transgender students, Shipman & Goodman, in a 2023 CAS Mailbag on transgender access to locker rooms, provides useful guidance applicable to this topic as well as noting there are state protections for transgender and gender-nonconforming students. Connecticut law, Conn. Gen. Stat. §10-15c requires that students in our public schools have an equal opportunity to participate in school activities without discrimination on the basis of their gender identity or expression.

Beyond ensuring transgender students have access to school activities, which would include proms, and express their identity through the clothes they wear, staff should remain cognizant of their role in protecting student privacy rights identified in the Family Educational Right and Privacy Act (FERPA) Shipman & Goodwin notes that though you may not have the ability to prevent others from finding out about the student's gender identity and transgender status, it is important that you make every effort to keep this information private and avoid confirming other students' suspicions through a group conversation or otherwise.

In addition, when you are determining whether or not a specific staff member should have access to this information, you must remember to consider whether that individual has a legitimate educational interest related to such disclosure and only provide the information to those who do (and not to all staff generally). Such a group conversation could also be considered discrimination under federal and state antidiscrimination laws. Under applicable law, sex discrimination occurs when a person, because of their sex (here, gender identity and expression), is denied participation in or the benefits of any education program or activity. (Excerpted from the CAS Legal Mailbag, Shipman & Goodwin LLP, April 6, 2023)

Also useful in guiding current practice, the National Education Association has published a document to help Boards of Education establish policies and resolutions. The following is excerpted from its Sample School Board Resolution on LGBTQ+:

WHEREAS, in a landmark opinion, *Bostock v. Clayton County* decided on June 15, 2020, the Supreme Court recognized that discriminating on the basis of actual or perceived sexual orientation or gender identity is always a form of sex discrimination, and federal law prohibits sex discrimination in employment and education;

WHEREAS, The US Department of Education and the US Department of Justice have recognized that the Supreme Court’s reasoning in the *Bostock* decision applies to Title IX of the Education Amendments of 1972 and that Title IX prohibits discrimination against harassment of students and school employees based on their gender identity and sexual orientation;

WHEREAS, Title IX and other federal civil rights laws prohibiting discrimination on the basis of gender identity and sexual orientation preempt local and state laws that conflict, and failure to comply with the requirements of Title IX may jeopardize the District’s federal funding;

WHEREAS, Lesbian, Gay, Bisexual, Transgender Queer/Questioning (“LGBTQ”) students experience high rates of bullying, victimization, and harassment at school on the basis of their actual or perceived sexual orientation or gender identity or that of their associates;

WHEREAS, this bullying, victimization, and harassment has led to negative educational outcomes for LGBTQ students, including higher rates of dropping out, higher rates of absenteeism, and lower postsecondary school aspirations;

WHEREAS, LGBTQ students also report higher rates of anxiety and depression;

WHEREAS, creating a welcoming and safe environment for our LGBTQ students, staff, families, and caregivers makes our public schools more welcoming and safe for all.

WHEREAS, educational personnel are often the primary sources of support, resources, and information to assist and support students and student learning, which includes their social and emotional health...

(excerpted from Strengthening Public Schools for Student Success: School Board Policies and Resolutions, (Sample School Board Resolution on LGBTQ+ Issues, NEA, 2023)

As referenced earlier, it's important to note that Connecticut's state statutes protect students and staff from discrimination based on gender identity or expression and sexual orientation. These laws are found in Title 10, our K-12 public education laws (Section 10-15c), and Title 46a, our civil/human rights laws (Section 46a-51 et seq.).

Beyond the legal references, Boards of Education, through their policies, can express their deep and unwavering commitment to ensuring all students feel a sense of belonging and safety in the districts they serve. Ensuring policies remain compliant with the rapidly evolving legal landscape and express support for all students will remain both critical and challenging. Ensuring staff remain aware of these policies and Title IX Regulation updates will be important as well.

As Shipman advises in the earlier referenced CAS Mailbag, "It is a good idea to remind staff members of the school district's policies and regulations regarding discrimination, harassment, bullying, and Title IX. If your students are struggling with concepts related to gender identity and expression, you could consider identifying members of your staff who have received training on issues related to gender identity and expression and who can serve as resources to students." It's also advisable to ensure your dress code policies are up to date and conform with recent legislation and court decisions.