SACRAMENTO CITY UNIFIED SCHOOL DISTRICT
BOARD OF EDUCATION

Agenda Item# 11.1

Meeting Date: August 19, 2021

Subject: Public Hearing: First Reading of Revised Board Policy 5145.31 (Transgender and Gender Non-Conforming Students)

- ☐ Information Item Only
- ☐ Approval on Consent Agenda
- ☐ Conference (for discussion only)
- ☒ Conference/First Reading (Action Anticipated: _____)
- ☐ Conference/Action
- ☐ Action
- ☐ Public Hearing

Division: Legal Services and Student Support & Health Services

Recommendation: Approve revisions to Board Policy 5145.31

Background/Rationale: Title IX of the Education Amendments of 1972 requires that all educational programs and activities be conducted without discrimination based on sex or gender. Additional state and/or federal laws and regulations require that all educational programs and activities be conducted without discrimination based on additional factors, including but not limited to actual or perceived sexual orientation, gender identity and expression, or marital status. State law also directs that students shall be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with their gender identity, irrespective of the gender listed on the student's records.

In order to address the safety needs of all students, revisions to the policy concerning transgender and gender non-conforming students is necessary and specifically, to ensure students' comfort and healthy development while maximizing students' social integration into the school setting and minimizing stigmatization of the student. No prior updates to BP 5146 have occurred since its adoption in 2018. Such updates and enactment include language in the CSBA Gamut model policy with Equal Rights Advocates' input as well.

Documents Attached:
1. BP 5145.31 (Redlines)

Estimated Time of Presentation: 10 Minutes
Submitted by: Raoul Bozio, In House Counsel and Victoria Flores, Director III, Student Support & Health Services
Approved by: Jorge A. Aguilar, Superintendent

Board of Education Executive Summary

Legal Department

Revision to Board Policy (BP) 5145.31: Transgender and Gender Non-Conforming Students

August 19, 2021

I. Overview/History of Department or Program

Title IX of the Education Amendments of 1972 requires that all educational programs and activities be conducted without discrimination based on sex or gender. Additional state and/or federal laws and regulations require that all educational programs and activities be conducted without discrimination based on additional factors, including but not limited to actual or perceived sexual orientation, gender identity and expression, or marital status. State law also directs that students shall be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with their gender identity, irrespective of the gender listed on the student's records.

The current version of Board Policy 5145.31 was adopted in 2018. The proposed revisions to Board Policy 5145.31 are based on the updates provided by the California School Boards Association (CSBA) and based on input from Equal Rights Advocates.

The revised board policy provides guidelines for schools to follow in order to address the needs of transgender and gender non-conforming students (including a statement on non-binary inclusion) and to ensure the safety, comfort and healthy development of such students.

II. Driving Governance:

Pursuant to Education Code 220:

> No person shall be subjected to discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, including immigration status, in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance, or enrolls pupils who receive state student financial aid.

Pursuant to Education Code 221.5(f):

> A pupil shall be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil's records.

III. Budget:

The proposed policy is intended to address the safety needs of all students, including those needs related to a student's actual or perceived sexual orientation or gender identity. There is no direct budget impact from the revision to this policy.

IV. Goals, Objectives and Measures:

Pursuant to the District's core beliefs under Board Policy 0100, the District believes "that all people excel in an environment that is SAFE, and offers everyone UNLIMITED OPPORTUNITIES for continuous growth and PERSONAL SUCCESS." As such, the goal is to ensure the safety, comfort, and healthy development of the transgender or gender non-conforming student while maximizing the student's social integration into the school setting and minimizing stigmatization of the student.

V. Major Initiatives:

This transgender and gender non-conforming policy is critical to address the needs of transgender and gender non-conforming students and set forth how schools should respond to the needs of these students.

VI. Results:

Approval of revision to Board Policy 5145.31. Ensure compliance with Education Code.

VII. Lessons Learned/Next Steps:

Adoption of revised Board Policy 5145.31 concerning transgender and gender non-conforming students. Information and correspondences concerning this matter have previously been shared with the District. Further updates will be provided as necessary.

Sacramento City USD

Board Policy

Transgender And Gender Non-Conforming Students

BP 5145.31
Students

PURPOSE

The purpose of this Board Policy is to set out guidelines to District staff regarding issues related to transgender and gender non-conforming students. The Governing Board is committed to addressing the safety needs of all students, including those needs related to a student's actual or perceived sexual orientation or gender identity. The Board recognizes that a safe and civil environment is necessary for students to have equal access to all school programs and activities and is integral to student success. The Board acknowledges its role in providing students with an understanding of and respect for differences in the gender identity and gender expression of others.

This policy sets out guidelines for schools to follow in order to address the needs of transgender and gender non-conforming students. This policy sets forth how schools should respond to the needs of these students where questions may arise regarding how to protect the legal rights or safety of such students. This policy does not anticipate every situation that might occur and, therefore, the needs of each student must be assessed on a case-by-case basis. In all cases, the goal is to ensure the safety, comfort and healthy development of the transgender or gender non-conforming student while maximizing the student's social integration into the school setting and minimizing stigmatization of the student.

(cf. 0200 - Goals for the School District)
(cf. 1312.3 - Uniform Complaint Procedures)
(cf. 5137 - Positive School Climate)
(cf. 5142 - Safety)
(cf. 5145.3 - Nondiscrimination/Harassment/Intimidation/Bullying)
(cf. 5145.4 - Anti-bullying)
(cf. 5145.7 - Sexual Harassment)

Title VI of the Civil Rights Act of 1964 requires that all educational programs and activities be conducted without discrimination based on race, color, and national origin. Title IX of the Education Amendments of 1972 requires that all educational programs and activities be conducted without discrimination based on sex or gender. Additional state and/or federal laws and regulations require that all educational programs and activities be conducted without discrimination based on the above factors as well as additional factors, including but not limited to actual or perceived religion, ancestry, sexual orientation, gender identity and expression, marital status, parental status, or because of an association with a person who has or is perceived to have one or more of these characteristics. (Education Code 220 et seq.; Government Code

11135, 11138; Penal Code 422.55, 422.6) State law also directs that students shall be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with their gender identity, irrespective of the gender listed on the student's records. (Education Code 221.5(f), effective Jan. 1, 2014)

Transgender and gender non-conforming students shall be assured that they need not endure, for any reason, any bullying (including cyber bullying) or harassment which impairs the educational environment or the student's emotional wellbeing in school. Harassment involves unwelcome comments (written or spoken), or conduct which creates an intimidating, hostile or offensive environment, or which violates an individual's rights.

(cf. 1312.3 - Uniform Complaint Procedures)
(cf. 5145.3 - Nondiscrimination and harassment)
(cf. 5145.4 - Anti-bullying)
(cf. 5145.7 - Sexual Harassment)

DEFINITIONS

The following definitions are not intended to label students, but rather to assist in the general understanding of this policy, the legal rights of students and the legal obligations of school/district staff. Although students may or may not use these terms to describe themselves, these definitions can be used as functional descriptors.

Assigned Sex at Birth: The assignment of people as "male" or "female" at birth based upon physical anatomy.

Gender Expression: How individuals express themselves, including characteristics and behaviors such as appearance, dress, grooming, mannerisms, movement, speech patterns, and social interactions that are perceived as masculine or feminine.

Gender Identity: An individual's understanding, outlook, feelings and sense of oneself being masculine, feminine, both or neither, regardless of one's assigned sex at birth.

Gender Marker: The "male" ("M~~") or~~"), "female" ("F~~")~~"), or “non-binary” (“X”) on a student's Infinite Campus profile, cumulative folder, and other documents is called a "gender marker."

Gender Non-Conforming (GNC): An individual who is, or is perceived to have, characteristics or behaviors that do not conform to societal expectations of gender expression. Gender non-conforming individuals may or may not identify as lesbian, gay, bisexual, transgender or questioning (see sexual orientation).

Gender Pronoun: A word that refers to someone who is being talked about in place of their name (e.g., she, he, they, ze).

Sexual Orientation: An individual's emotional, romantic and/or sexual attraction to other people. Individuals may identify their sexual orientation as heterosexual, lesbian, gay, bisexual,

questioning, or may use other terms.

Transgender: An umbrella term used to describe an individual whose gender identity is different from their assigned sex at birth.

STATEMENT ON NON-BINARY INCLUSION

The Governing Board recognizes that many gender-segregated activities and facilities do not include a gender affirming option for students who identify outside of the gender binary (i.e. who do not identify as either a boy or a girl) and the impact this may have on these students' sense of acceptance and inclusion. Schools shall make reasonable efforts to create gender affirming options for non-binary students whenever possible. In the absence of such an option, schools should endeavor to permit non-binary students to choose the available option that is best suited for them based on individual circumstances.

DETERMINING A STUDENT'S GENDER IDENTITY

Schools should avoid assuming the role of gatekeeper and ~~should accept a student's~~shall respect the gender identity of all students. If faculty or staff have concerns relating to a student's asserted gender identity~~ unless there is a credible~~, they shall discuss the basis for ~~believing that the student is asserting a particular gender identity for some improper purpose. In such cases, the decision to deny a student's asserted gender identity will be made in consultation~~their concern with the ~~district's~~district's Title IX Coordinator and LGBTQ Support Services program.

There is no medical, mental health or legal threshold requirement that any student must meet in order to have their gender identity recognized and respected by a school.

The district will work with transgender and gender non-conforming students to provide protections in the following areas:

GENDER TRANSITION SUPPORT

Schools ~~should~~shall be prepared to support transgender students who choose to transition while in school. Schools ~~should~~shall not discourage transgender students or their families from a public transition simply because it requires additional planning. Regardless of whether a student's transition is public or private, schools ~~should~~shall be prepared for a variety of contingencies that could occur. Schools should continue to support students beyond their transition to ensure that the school environment remains a safe and supportive place to learn. Consultation and resources are available within the district (Connect Center - LGBTQ Support Services Program) to assist schools with how to appropriately support transgender students with their transition whether this is done publicly or privately.

PRIVACY AND SCHOOL RECORDS/STUDENT INFORMATION SYSTEMS

Transgender and gender non-conforming students have a right to privacy, including keeping their sexual orientation, gender identity, transgender status or gender non-conforming presentation at

school private. School personnel should not discuss information that may disclose a student's transgender or gender non-conforming status to others, including parents/legal guardians and other school personnel, unless legally required to do so or unless the student has authorized such disclosure. Transgender and gender non-conforming students have the right to discuss and express their gender identity and expression openly and to decide when, with whom, and how much personal information one wants to share about oneself to others.

The Governing Board recognizes the importance of keeping accurate, comprehensive student records as required by law. The District is required to maintain an official, permanent pupil record with the legal name and gender appearing on the student's birth certificate. In addition, the District is required to have procedures for maintaining the confidentiality of student records which shall be consistent with state and federal law. In terms of privacy for transgender and gender non-conforming students, it is important to note the distinction between school records and legal documents, as not all school records are legal documents.

Transgender and gender non-conforming students have the right to have their ~~requested~~lived name and/or gender marker and/or gender ~~pronoun(s)~~pronouns reflected on all (non-legal) school physical records and documents (e.g. yearbooks, school IDs, library cards, lunch cards, class rosters, diplomas, other certificates of advancement, etc.) and in after-school programs. Transgender and gender non-conforming students are also able to have their ~~requested~~lived name and/or gender marker reflected in the district's electronic Student Information Systems (e.g. Infinite Campus) via the Infinite Campus Name & Gender Update Form. Legal documents (e.g. official transcripts, IEPs, 504s, etc.) must have a student's legal name and gender marker~~,~~; however, these forms will include a section for a student's lived name and gender pronouns and school staff shall use a student's ~~requested~~lived name and gender ~~pronoun~~pronouns whenever possible throughout these documents.

NAMES/PRONOUNS/GENDER MARKER

Transgender and gender non-conforming students have the right to be addressed by the name(s) and gender ~~pronoun(s)~~pronouns that correspond to their gender identity. Using students' ~~requested~~lived name(s) and ~~pronoun(s)~~pronouns promotes the safety and wellbeing of students on campus. Students are not required to change their official school record or obtain a court-ordered name or gender change in order to be addressed at school by the name(s) and ~~pronoun(s)~~pronouns which correspond to their gender identity. Such a request may be made by the student or by the student's parent or guardian. If a transgender or gender non-conforming student obtains a legal name and/or gender change, the student or student's parent/guardian should notify the school and the SCUSD Enrollment Center of the court ordered name and/or gender change, and the student's official school records will be modified as appropriate in accordance with the court order. (83 Ops.Cal.Atty.Gen. 136 (2000)). In lieu of a legal name and/or gender change, students or their parent/legal guardian may request a change to the student's name and/or gender marker via the Infinite Campus Name & Gender Update Form.

The intentional or persistent refusal to respect a student's gender identity such as by referring to the student by a name or pronoun that does not correspond to the student's gender identity could be considered bullying or a form of discrimination or harassment, and is a violation of this

policy.

RESTROOM ACCESS

Schools may maintain separate restroom facilities for male and female students. (Education Code 231) Transgender and gender non-conforming students should be allowed access to restroom facilities that align with their gender identity. Ensuring access to restroom facilities that match a student's gender identity allows transgender and gender non-conforming students to maintain their right to privacy. Transgender and gender non-conforming students shall not be forced to use the restroom corresponding to their assigned sex at birth. If a transgender or gender non-conforming student or the student's parent/guardian provides notice to school officials of a request for the student to use the restroom that matches the student's gender identity, school officials shall permit the student to use said restroom. (Education Code 221.5(f), effective Jan. 1, 2014)

If a transgender or gender non-conforming student or the student's parent/guardian provides notice to school officials of a ~~reason or desire for increased privacy and/or safety with regard~~desire to use a gender neutral or more private restroom~~ use, regardless of the underlying reasons~~, the school shall take steps to provide a reasonable ~~accommodation~~option for the student, ~~including~~which may include but is not limited to, providing the student access to gender neutral restroom facilities or a single stall restroom. Transgender or gender non-conforming students shall not be asked to provide a reason or justification for their request.

LOCKER ROOM ACCESS

Schools may maintain separate locker room facilities for male and female students. (Education Code 231) Transgender and gender non-conforming students should be allowed access to locker room facilities that align with their gender identity. Transgender and gender non-conforming students~~, however,~~ shall not be forced to use the locker room corresponding to their assigned sex at birth. If a transgender or gender non-conforming student or the student's parent/guardian provides notice to school officials of a request for the student to use the locker room that matches the student's gender identity, school officials shall permit the student to use said locker room. (Education Code 221.5(f), effective Jan. 1, 2014)

If a transgender or gender non-conforming student or the student's parent/guardian ~~provides notice~~makes a request to school officials of a ~~reason or~~ desire for ~~increased privacy and/or safety with regard~~an alternative to locker room use, ~~regardless~~without requiring disclosure of the underlying reason, the student shall be provided access to a reasonable alternative locker room, including but not limited to:

- ~~?~~ Use of a private area in the locker room (such as a nearby restroom stall with a door, an area separated by a curtain, a P.E. instructor's office in the locker room, or a nearby gender neutral restroom) and/or

- ~~?~~ A separate changing schedule (either utilizing the locker room before or after other students~~).~~) that provides adequate opportunity to change without significantly

affecting the student's class schedule or learning opportunities.

PHYSICAL EDUCATION CLASS AND ATHLETICS

Transgender and gender non-conforming students shall be permitted to participate in physical education classes and intramural sports, in a manner that is consistent with their gender identity, pursuant to Title IX and the Code of Federal Regulations implementing Title IX and state law. (34 CFR 106.34(c); Education Code 221.5(f)., effective Jan. 1, 2014)

INTERSCHOLASTIC COMPETITIVE SPORTS TEAMS

Transgender and gender non-conforming students shall be permitted to participate in interscholastic sports teams in a manner consistent with their gender identity, pursuant to Title IX, and any other applicable laws, rules or bylaws. (Education Code 221.5(f), effective Jan. 1, 2014)

DRESS CODE

Transgender and/or gender non-conforming students have the right to dress in accordance with their gender identity and/or gender expression within the requirements of the school's dress code. Schools should avoid having gendered dress codes or distinguishing between clothing that is permitted for boys and girls.

(cf. 5132 - Dress and Grooming)

YEARBOOKS

Students shall be permitted to dress in accordance with their gender identity and/or gender expression in all yearbook photos, including senior portraits. School may also adopt a standardized, gender neutral picture uniform such as a cap and gown.

Names in Yearbooks: Yearbooks are school records and are not legal documents. As such, transgender and gender non-conforming students are not required to use their legal names in school yearbooks and shall not be forced to do so. School administrators/school staff should honor requests from transgender and gender non-conforming students to confirm how these students' names will appear in the yearbook.

TRANSFERRING A STUDENT TO ANOTHER SCHOOL

Schools should strive to keep transgender and gender non-conforming students enrolled in their assigned school site. School sites must ensure that transgender or gender non-conforming students are being provided a safe school environment which allows them equal access to all components of their education. The opportunity to transfer to another school site should not be a school's first response to harassment or bullying of a transgender or gender non-conforming student, and such a transfer should be considered only when requested by a student and or parent/guardian and when necessary for the protection, personal welfare or safety of the

transferring student. Schools should not offer or propose a transfer to another school on the assumption that a transgender or gender non-conforming student should expect to be harassed or bullied as a result of being open about their gender identity or gender expression.

GENDER SEPARATION IN OTHER ACTIVITIES

As a general rule, in any circumstances where students are separated by gender in school activities (e.g. classroom discussions, overnight field trips, national physical fitness testing, health and physical education classes, school dances and proms, etc.), transgender and gender non-conforming students shall be permitted to participate in accordance with their gender identity and/or gender expression. (Education Code 221.5(f), effective Jan. 1, 2014).

National Physical Fitness Testing (Fitness Gram) - Schools should allow transgender and gender non-conforming students the option to choose to test under the fitness guidelines that align with their assigned sex at birth or to test under the guidelines that align with their gender identity. Schools should inform students prior to making this choice of the differential standards for fitness testing for each gender. Transgender and gender non-conforming students shall not be forced to be assessed under the standard corresponding to their assigned sex at birth.

Overnight field trips - Transgender and gender non-conforming students should be allowed access to sleeping quarters that align with their gender identity. Transgender and gender non-conforming students shall not be forced to use sleeping quarters corresponding to their assigned sex at birth. In these instances, the school has an obligation to maintain the transgender/gender non-conforming student's privacy and cannot disclose or require disclosure of the student's transgender/gender non-conforming status to other students or their parents, regardless of whether the student's roommates know about the student's gender status.

Showering facilities - If showering facilities are communal, the school should find out whether the venue has available a single stall or more private shower facilities that students can use. Recognizing that a number of students may prefer more privacy while showering, the school should consider creating a schedule to allow those students to use the shower facilities one at a time, with appropriate adult supervision.

Activities that may involve the need for accommodation to address student privacy concerns will be addressed on a case-by-case basis as requested by the student or parent/guardian. In such circumstances, staff shall make a reasonable effort to provide an available and reasonable accommodation for the student that can address any such concerns.

(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)
(cf. 5145.1 - Privacy)
(cf. 5145.4 - Anti-bullying)

COMPLAINTS

A complaint of bullying based upon a student's transgender or gender non-conforming status, or a student's sex, gender, sexual orientation or gender identity or expression, may be submitted

under the district's Anti-Bullying Board Policy 5145.4 and the procedures set forth therein. A student or a student's parent/guardian may also submit a formal written complaint of discrimination, harassment, intimidation or bullying through the district's Uniform Complaint Procedures pursuant to District policy and regulation 1312.3. A student's actual or perceived characteristics as set forth in Penal Code 422.55 and Education Code sections 220 and 234.1, which includes disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of these actual or perceived characteristics, are protected classes. (5 CCR 4600-4671)

(cf. 1312.3 - Uniform Complaint Procedures)
(cf. 5145.3 - Nondiscrimination and harassment)
(cf. 5145.4 - Anti-bullying)
(cf. 5145.7 - Sexual Harassment)

Legal Reference:
EDUCATION CODE
200-262.4 Prohibition of discrimination on the basis of sex, especially:
212.5 Sexual harassment
212.6 Sexual harassment policy
221.5 Prohibited sex discrimination
221.7 School sponsored athletic programs; prohibited sex discrimination
230 Particular practices prohibited
231 Toilet, locker room, or living facilities
35160 Authority of governing boards
35160.1 Broad authority of school districts
48900 Grounds for suspension or expulsion; bullying
48907 Student exercise of free expression
49602 Confidentiality of pupil information
CODE OF CIVIL PROCEDURE
1276 Change of name_
GOVERNMENT CODE
11135 Nondiscrimination in programs or activities funded by state
11138 Rules and regulations
HEALTH AND SAFETY CODE
103425 Petition for change of gender
PENAL CODE
243.5 Assault or battery on school property
403-420 Crimes against the public peace, especially:
415 Fighting; noise; offensive words
422.55 Definition of hate crime
422.56 Definitions, hate crimes
422.6 Interference with constitutional right or privilege
UNITED STATES CODE, TITLE 20
1681-1688 Title IX, 1972 Education Act Amendments

UNITED STATES CODE, TITLE 42
2000d-2000d-7 Title VI Civil Rights Act of 1964 as amended
CALIFORNIA CODE OF REGULATIONS, TITLE 5
4600-4687 Uniform complaint procedures
4900-4965 Nondiscrimination in elementary and secondary education programs
CODE OF FEDERAL REGULATIONS, TITLE 34
106.34 Access to classes and schools
ATTORNEY GENERAL OPINIONS
83 Ops.Cal.Atty.Gen. 136 (2000)

Policy SACRAMENTO CITY UNIFIED SCHOOL DISTRICT
adopted: June 7, 2018 Sacramento, California
revised: TBD