



# Transgender Rights Creating Transgender-Affirming Workplaces and Schools



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FOR SUCCESS

SEPTEMBER 12-15, 2017  
SOUTH LAKE TAHOE, CA



# Presenters

- Kristine E. Kwong, Esq.
- Attorney with Musick, Peeler & Garrett, LLP
- Karla M. Rhay, Ed.D.
- CEO Joint Powers Authoroities
  - California Schools Risk Management (CSRМ)
  - California Schools Employee Benefits Association (CSEBA)



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# Problem Statement



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# Adverse Experiences in Workplace Settings

- Transgender individuals face significant wage disparities on the job, with transgender women experiencing gaps in pay attributable to their gender
    - 15% report making less than \$10,000 per year, a rate of poverty that is nearly four times that of the general population
  - 47% of transgender workers report being fired, not hired, or denied a promotion because of their gender identity
  - White trans/gender non-conforming individuals have twice the rate of unemployment as the general population
  - Trans/gender non-conforming people of color have four times the rate of unemployment of the general population
- Sources: Williams Institute, UCLA School of Law; Wilkinson, Willy (2015) *Born on the Edge of Race and Gender*



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# Adverse Experiences in School Settings

- Every student is uniquely different and deserves a customizable attention
- 90% of LGBT students hear anti-LGBTQ comments
- LGBTQ high school students hear 26 anti-LGBT slurs a day
- People who expressed a transgender identity or gender non-conformity while in grades K-12 reported alarming rates of harassment (78%), physical assault (35%) and sexual violence (12%)
- Increased reports in smoking, drug and alcohol abuse

# Terms

## Gender Expression

- Person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth

## Gender Identity

- Person's identification as male, female, a gender different from sex at birth or transgender

## Transgender

- A general term that refers to a person whose gender identity differs from the person's sex at birth



# Terms

- Sex
  - Pregnancy, childbirth, medical conditions related to pregnancy, childbirth, breastfeeding, gender identity and gender expression
- Sex Stereotype
  - Assumption about person's appearance or behavior, or about an individual's ability or inability to perform certain kinds of work based on myth, social expectation or generalization about the individual's sex



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# California Fair Employment & Housing Act

- Fair Employment and Housing Act bans discrimination on the basis of sex, gender, gender identity, and gender expression
  - Expanded sex to include person's gender - added in 2004
  - California became the fourth state in the nation to protect gender identity
    - Minnesota, Rhode Island, New Mexico
- FEHA protects transgender persons as well as persons undergoing gender transition, from discrimination and retaliation



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# FEHA/Gender Transition in the Workplace

- FEHA: Transgender person does not need to complete any step in gender transition to be protected
- Two kinds of gender transition
  - Social Transition
    - Person socially aligns gender with internal sense of self
      - Ex: Name change, bathroom usage
  - Physical Transition
    - Person undergoes medical treatments to physically align body with internal sense of self
      - Ex: Hormone therapy, surgical procedures



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# DFEH Guidance Employee Rights

## Department of Fair Employment & Housing (DFEH):

- Interview Process
  - Avoid questions designed to determine sexual orientation or gender identity
  - Avoid questions about whether applicant plans to have sex reassignment procedures or surgery
- Dress/Appearance
  - Dress code/grooming standards enforced in non-discriminatory manner
  - Transfer employee must be allowed to dress in same manner as a non-transgendered employee of the same sex/gender
    - Ex: transgender man must be allowed to dress/groom according to his gender identity, like other employees who identify as men at work
  - A transgendered employee's compliance with dress code cannot be judged harder than a non-transgendered person



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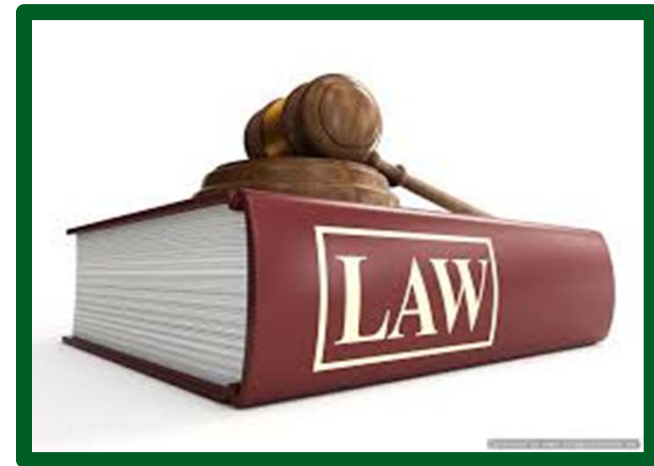


# DFEH/OSHA Guidance Employee Rights

- All employees have right to use locker room/restroom that corresponds with gender identity – regardless of assigned sex at birth
- DFEH suggestions:
  - Provide unisex single stall bathroom for employee would like increased privacy, without regard to gender identity or expression
  - Restroom may be used by employees who do not wish to share a restroom with transgender coworker
  - Use of single stall always a matter of choice
  - Employee should not be forced to use one either as a matter of policy or due to continuing harassment
- OSHA Guidance – Restroom access is a health and safety matter
  - Restricting employees' use of restroom based on gender or forcing to use gender-neutral facilities may make employees afraid of physical safety
  - Restroom restrictions may cause employees to avoid using facilities which can lead to injury/illness



# Statutory Sources for Schools



- Under the California Student Safety and Violence Prevention Act of 2000 (AB 537), all **California public schools have a duty to protect students from discrimination and/or harassment on the basis of sexual orientation or gender identity**
- On August 12, 2013, Governor Brown signed into law Assembly Bill **(AB) 1266**, which amends the Education Code regarding prohibited discrimination in public schools and **requires schools to allow a student to participate in sex-segregated school programs and use facilities consistent with the student's gender identity**



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# Statutory Sources for Schools

- Under Ed Code 66251, it is the policy of the State of California to **afford all persons, regardless of their disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other basis that is contained in the prohibition of hate crimes set forth in Section 422.6 of the Penal Code, equal rights and opportunities in the postsecondary educational institutions of the state**
- Further, in Ed Code 66271.2, the Trustees of the California State University, the Regents of the University of California, and the governing board of each community college district are requested to **designate an employee at each of their respective campuses as a point of contact for the needs of lesbian, gay, bisexual, and transgender faculty, staff and students** at their respective campus



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# Statutory Sources for Schools,

- Under existing law, **Education Code section 221.5 provides that elementary and secondary school classes and courses must be conducted without regard to the sex of the pupil enrolled in these classes and courses**
- California is one of 17 states that requires health insurance companies based in the state to cover transition-related surgery. Under the Affordable Care Act, most health insurers were **prohibited from discriminating based on gender identity and transgender status**. However, given recent remarks relative to the increased costs under the current administration regarding Transgender persons in the military, we anticipate there could be changes in healthcare



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# Statutory Source for Schools

- Under Title IX, it states **“No person in the US shall, on the basis of sex, be excluded from participation in, or denied the benefits of, or be subject to discrimination under any educational program or activity receiving Federal aid.”** The US Dept. of Justice and Dept. of Education’s Office for Civil Rights have both affirmed that Title IX prohibits discrimination based on gender identity





# Student Rights

- Students have the right to:
  - Access gender specific settings regardless of sex at birth
    - Locker rooms
    - Restrooms
  - Choose to adopt the dress of their chosen gender identity
  - Same access to opportunities to learn and participate in school life
  - Protect their privacy
  - Not be bullied, harassed or mistreated
  - Be referred to by the name and pronoun that matches their identity
  - Treatment according to their identity



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# Trans-Affirming Schools



- Every student has the right to learn in a safe and accepting school environment
- Supporting transgender students gives them the equal opportunity that all students need
- All adults must act as protective agents committed to the safety and well-being of the youth they serve, including those who are transgender or gender-expansive
- There are often gaps in trust — grounded in past or current experiences between students, families and educational institutions
  - It's okay to ask, “I would like to show you respect, what pronoun is appropriate?; how would you like to be addressed?; or, how would you like me to refer to you?”



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# Trans-Affirming Schools

- Use the appropriate name and pronoun in all paperwork and conversations, even when the person isn't present
- Develop organizational systems for documenting appropriate name and pronoun
- Educators and administrators need to engage in regular professional development and training to build a school climate that avoids gender stereotyping and affirms the gender of all children
- Creating a more welcoming environment for students' gender diversity is a more effective and lasting strategy than trying to “solve” the concerns associated with an individual transgender student



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# Practical Takeaways

- Create Gender Transition Plans that provide student and/or employee support
- Work as a team comprised of the individual, those that are around them and where appropriate, the family
- Balance timing and respect the sense of urgency
- Provide staff training, and for anyone else where appropriate
- Support the individual's need for privacy
  - Never disclose a trans status, legal name, or sex at birth
  - Disclosure of this nature, can put the individual at risk for ridicule, harassment, and or violence



# Practical Takeaways

- Provide ongoing training to all staff on addressing the needs of protected classes, ensuring training includes antidiscrimination laws and policies
- Define harassment based on sexual orientation and gender identity to include unwelcome verbal, written, or physical conduct
- Review your nondiscrimination policies for inclusion of protected classes (i.e., sexual orientation, racial and gender identity)
- Review policies against harassment and violence to further develop if necessary, implementation of such
- Evaluate policy effectiveness and if necessary, close any gaps by training all school staff and students
- Establish procedures for addressing complaints and prevent retaliation against those who report harassment



# Resources

- US Dept of Education, Office for Civil Rights
  - [www.ed.gov/ocr](http://www.ed.gov/ocr)
- National Center for Transgender Equality
  - <http://www.transequality.org/know-your-rights/schools>
- Human Rights Campaign
  - <http://www.hrc.org/resources/schools-in-transition-a-guide-for-supporting-transgender-students-in-k-12-s>
- GLSEN
  - <http://www.glsen.org/article/trans-and-gender-nonconforming-student-resources>
- California Teachers Association (CTA)
  - <http://www.cta.org/glb-t-resources>
- National Education Association (NEA)
  - <http://www.nea.org/>
- Gender Spectrum
  - [www.genderspectrum.org](http://www.genderspectrum.org)



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