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Pupil Confidentiality (School Counselors), Board Responsibilities & Discrimination

Pupil Confidentiality Laws & School Board Policy: The California Association of School Counselors is issuing this advisory in response to the recent policy decisions by some California school districts pertaining to LGBTQ+ rights and student confidentiality. In law, Local Education Agencies (LEAs) cannot impose policies that contradict legal requirements. An individual who holds a Pupil Personnel Services Credential with a specialization in School Counseling is obligated to adhere to state law & ethical standards. Listed below are relevant legal references

CA Confidentiality Law, School Counselors. “Any information of a personal nature disclosed by a pupil 12 years of age or older in the process of receiving counseling from a school counselor as specified in Section 49600 is confidential.” California Code, Education Code - EDC § 49602. It also defines that school counselors’ use of the privilege of confidentiality is to assist the pupil, and whenever possible to communicate more effectively with parents, school staff and others.

Confidential Disclosure: Opinion No. 08-509 issued by the California attorney general’s office upholds the confidentiality statute for school counselors, (California EDC § 49602). It concludes that that the law, “does not form the basis of civil liability against a school counselor under the doctrine of negligence per se….” It also defines exceptions to confidentiality as follows:

(c) Reporting information to the principal or parents of the pupil when the school counselor has reasonable cause to believe that disclosure is necessary to avert a clear and present danger to the health, safety, or welfare of the pupil...

Requirement for LEA school boards to pass policies consistent with law: School boards are responsible for adopting rules and policies, which are called “board policies,” that govern school employees and students. California Code, Education Code - EDC § 35010 states: “(b) The governing board of each school district shall prescribe and enforce rules not inconsistent with law, or with the rules prescribed by the State Board of Education, for its own government.” (California Code, Education Code - EDC § 35010)

Transgender Rights: Assembly Bill 1266 signed into law in 2013, provides transgender students the legal right to access sex-segregated facilities and activities consistent with their gender identity. The bill amends California Education Code section 221.5 to include, at subdivision (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.

Prohibition of Discrimination: ARTICLE 3. 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. (Amended by Stats. 2017, Ch. 493, Sec. 3. (AB 699) Effective January 1, 2018.)