

A Brief Introduction to the FAIR Education Act for Social Studies Educators

by **Damon Huss & Tascha Folsoi**



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California stands alone as the only U.S. state, so far, to mandate instruction inclusive of LGBT content. The mechanism for this inclusivity is the FAIR Education Act (“FAIR Act”), which stands for fair, accurate, inclusive, and respectful education. The law puts California social studies teaching at the forefront of a broad educational movement toward tolerance and anti-bullying on K-12 campuses

In contrast to the eight U.S. states with laws that restrict teachers and staff from even discussing LGBT issues at school,¹ California’s FAIR Act affords teachers in the state the latitude to teach about LGBT history; LGBT civil rights and legal issues; and the contributions of LGBT people to American society and politics. The term “latitude” is used here specifically because the plain language of the law does not enumerate specific grade levels, pedagogies, or texts to be used. However, many scholars, nonprofits, advocates, publishers, and the state itself have stepped in over the past six years to offer helpful resources to teachers and school authorities.

In this article, we present teachers with a primer on the FAIR Education Act, including an overview of

what the law says and how it influences instruction. We also provide a short list of nonfiction books for young readers to help them increase their own LGBT content knowledge and awareness (though teachers could benefit from reading them, too). Please note that we use the term LGBT, and not the oft-used and even more inclusive initialism LGBTQ,² as “LGBT” is the term used in the FAIR Act itself.

The Language of the FAIR Act

The FAIR Act amended the California Education Code to secure fairness in the treatment of different groups, including LGBT persons, in social studies instruction ([Cal. Ed. Code § 51204.5](#)). At the time of its initial passing in the California State Senate as SB 48, then-Interim Executive Director of Equality California Jim Carroll said, “This legislation will ensure all students understand the diversity of our state and its history, and it will foster greater awareness, respect and safer schools for all students” (as cited in Raja, 2011).

It is worth reading the entire amended section in full to get the objectives of the law’s approach to social

¹ Those states are Alabama, Arizona, Louisiana, Mississippi, Oklahoma, South Carolina, Texas, and Utah (Human Rights Watch, 2016).

² In LGBTQ, the letter Q stands for either “queer” or “questioning.”

studies teaching (the FAIR Act added the underlined terms):

Instruction in social sciences shall include the early history of California and a study of the role and contributions of both men and women, Native Americans, African Americans, Mexican Americans, Asian Americans, Pacific Islanders, European Americans, lesbian, gay, bisexual, and transgender Americans, persons with disabilities, and members of other ethnic and cultural groups, to the economic, political, and social development of California and the United States of America, with particular emphasis on portraying the role of these groups in contemporary society.

The FAIR Act also amended the Education Code to broaden anti-discrimination provisions by prohibiting teachers from instructing or school districts from sponsoring activities that “promote a discriminatory bias” against persons based on sexual orientation, as well as race or ethnicity, gender, and other protected classes of people ([Cal. Ed. Code § 51500](#)). State and governing boards are also prohibited from adopting textbooks and materials that “reflect adversely” upon persons based on sexual orientation ([Cal. Ed. Code § 51501](#)). In November 2017, the California State Department of Education approved 10 textbooks at the elementary and middle school levels that aim to give fair portrayals of people with disabilities (also covered under the FAIR Act) and LGBT people.

The anti-discrimination clauses also protect all students based on gender identity and gender expression, and not just sexual orientation ([Cal. Ed. Code § 220](#)). This includes those who are transgender (identifying as the “opposite gender,” in binary male-female terms, of the sex they were assigned at birth) and those who identify in some other way along a “gender spectrum.” For example, the spectrum includes persons who are intersex, or born with some combination of male and female reproductive anatomies, as well as those who are gender fluid, or whose gender identity is not permanently fixed as male or female (Gender Spectrum, n.d.).

The Framework and Civic Implications

The California Department of Education adopted a revised *History-Social Science Framework* in 2016. During the revision process, a coalition of LGBT advocacy groups petitioned for 97 revisions to the draft that would execute the FAIR Act’s provisions in a

practical way. Forty-eight revisions of the original 97 were included in the Framework.

As outlined by Romesburg, Rupp, and Donahue (2014), recommended framework revisions fell into specific grade levels and content areas that correspond to the main areas where this material now appears in the adopted framework:

In brief, recommended framework revisions by grade and theme include:

- Grade 2: LGBT families in the context of understanding family diversity as a contemporary and historical reality
- Grade 4: Central roles played by gender and sexuality in California’s history as a site of rich, contested, and changing diversity
- Grade 5: Variation over time, region, and culture in colonial American practices and laws with regard to gender and sexuality
- Grade 8: Fundamental transformations in gender and sexuality in conjunction with nineteenth-century urbanization and industrialization
- Grade 11: The evolution of modern LGBT communities and identities; twentieth-century persecution of sexual and gender minorities and the growth of the LGBT civil rights movement

The authors of the above-recommended revisions aimed to avoid an “additive model” that merely included isolated examples of LGBT persons in history. Instead, they aimed to reflect a *transformational* model “that includes LGBT history” and “encourages the kinds of diverse forms of analysis, multiple interpretations of evidence, and exploration of causality, change, and continuity over time that make the study of history a central aspect of student growth into engaged civic life.” (Romesburg et al., 2014)



The revised framework’s [Access and Equity](#) chapter provides guidelines for schools and teachers to address documented achievement gaps or unsafe conditions for students with a variety of backgrounds, including those with disabilities and LGBT students, both covered under the FAIR Act. Accordingly, a section on LGBT students recommends schools adequately address all forms of bullying, provide adequate professional learning, and adopt an inclusive curriculum (Access and Equity, 2017, pp. 531-532). There is a similar section for students with disabilities

with detailed guidelines for individualized education programs, as well as criteria for accommodations and modifications for disabled students (Access and Equity, 2017, pp. 533-540).

The FAIR Act's wide inclusion has important civic implications. According to Don Romesburg, Sonoma State University chair of women's and gender studies and co-editor of the [2014 report of the Committee on Lesbian, Gay, Bisexual, and Transgender History](#), "the understanding of gender diversity, family diversity, and same-sex relationships" in the past "helps us all prepare to be citizens for the present and future" (as cited in Sawchuk, 2017). Note "us all" includes straight youth as well as LGBT youth, and adults as well as young people.

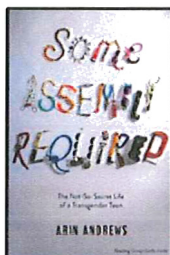
Members of a democratic society such as ours, regardless of any of our personal convictions or opinions about sexual orientation, should want a society of confident equals where no one is bullied or abused. Although the FAIR Education Act still has its critics, the law serves at the very least as an important buffer against bullying and as an exponent of a sense of fundamental fairness.

Classroom Resources for Students

To achieve inclusiveness for LGBT students, Chapter 20 of the framework recommends that schools "make available and share age-appropriate literature that reflects the diversity of humankind and thoughtfully deals with the complexities and dynamics of intolerance and discrimination" (Access and Equity, 2017, p. 532). The following is a short list of nonfiction books suitable for a middle- or high-school library, or as supplemental texts in middle- or high-school social studies or ELA classrooms. For a more comprehensive list, the Stanford Libraries maintain a regularly updated database of books for elementary, middle, and high school youth at the [Children's books with an LGBTQ theme](#) website. The reader is invited to examine the books listed below to determine age- and grade-level appropriateness for a specific school or classroom:

Some Assembly Required. Andrews, A. (2015). New York: Simon & Schuster Books for Young Readers.

This autobiography of Arin Andrews, a in Tulsa, Oklahoma, shows that people can safely and proudly. The road to self-faces a more daunting journey than most as provides a lot of insight into gender works hard to see things from his friends' patience with other people because he empathy toward them in a variety of gender identity.



transgender boy who steps out into the limelight find places all across the nation to live their lives acceptance is not easy for most teens, but Arin he emerges as a transgender teen. This book dysphoria and the process of transitioning. Arin and family's perspectives. He demonstrates understands the feelings of others and shows situations, some of which have nothing to do with

The Survival Guide for Gay, Bisexual, Transgender, and Questioning Teens. Huegel, K. (2011). GLBTQ: Minneapolis: Free Spirit Publishing.

This is a book that could be read by all teens, straight or LGBT, and perhaps many adults. It is a complete and very specific manual for how to know oneself, stand up for oneself, and respect others. The book walks GLBTQ (aka LGBTQ) teens through assessing and responding to a wide variety of situations: Is it safe to come out to your family? What are some constructive responses



FAIR Act Informational Webcasts

The Los Angeles County Office of Education has produced two webcasts, one specifically designed for teachers and another for school administrators. They both provide valuable information on the background and purpose of the FAIR Act, the surrounding controversy, and practical guidelines for schools.

The webcast for teachers features Michelle Herczog, Consultant III, History-Social Science at the Los Angeles County Office of Education, Damon Huss, senior editor and curriculum specialist at Constitutional Rights Foundation, and Leslie Smith, a teacher at John A. Rowland High School in Rowland Heights, California. The presentation provides some very practical suggestions, tips, and resources for teachers to use in classrooms—what to do and not do and how to navigate sensitive topics. View the webcasts for no cost at:

<https://www.lacoe.edu/CurriculumInstruction/HistorySocialScience/FAIRAct.aspx>

you can give to others' doubts and questions? At school, does anyone bully you, or is someone just being ignorant? The book does touch on sensitive sexual topics in order to help teens consider questions like "Do I feel comfortable saying no when I need to?" and "Am I comfortable talking about sex and my boundaries with my partner?" The author also lists seven arguments teens may hear against engaging in safe sex and provides seven responses to help those teens stand their ground and stay safe. The message of the book is that teenage life—with all its joys, sorrows, and stresses is manageable when teens know who, when, and how to ask for help.

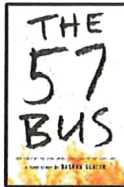
Being Jazz: My Life as a (Transgender) Teen. Jennings, J. (2016). New York: Crown Books for Young Readers.

Jazz Jennings did not doubt she was a girl from the moment she could walk and talk. In this memoir, Jennings demonstrates confidence and comfort with who she is and writes with the voice of an inspiring spokesperson for trans-kids. For anyone seeking to understand what it feels like to be transgender, Jazz's descriptions of her experiences and perspective shed great light on the experiences of trans-people.



The 57 Bus: A True Story of Two Teenagers and the Crime That Changed Their Lives. Slater, D. (2017). New York: Farrar, Straus and Giroux.

This book can be a transformative attending Oakland High School. who takes a bus home from their (the school in Berkeley, California, to to a sleeping Sasha's skirt on the bus. incredible awe for Sasha, who suffers for Richard, who finds himself facing being charged as an adult for a hate crime. While no excuse is made for Richard's actions, the book takes a deep look at the vulnerability both of the transgender community and of inner-city kids struggling in the criminal justice system.



read for young people. Richard is an African-American boy Sasha is an agender youth (not identifying with any gender) preferred gender-neutral pronoun) open-minded private their home in Oakland. Egged on by friends, Richard sets fire With great tenderness, the author helps the reader feel charred legs and a brutal recovery, as well as great empathy

Resources for Educators

California Department of Education

Frequently Asked Questions: Senate Bill 48

<http://www.cde.ca.gov/ci/cr/cf/senatebill48faq.asp>

California's Diversity: Past and Present – Lessons for the FAIR Education Act of 2011

This resource developed by Constitutional Rights Foundation provides a number of lessons that can be used to comply with the FAIR Education Act. Lessons are aligned to the California Common Core State Standards for English Language Arts

<http://ca3rsproject.org/diversity/california-diversity-past-and-present.pdf>

Finding Common Ground in Public Schools on the Difficult Issue of Student Sexual Orientation Policy

This publication of the California Three Rs Project (Rights, Responsibilities, and Respect) describes the need for schools to build processes for creating policies on the principles of the First Amendment for implementing the FAIR Education Act and similar policies intended to respect the rights of people to have differing views based on religious and other understandings. The publication also describes the responsibility imperative to protect the physical and psychological safety of young people in their critical formative years. The California Three Rs is a project of Constitutional Rights Foundation with support from the California County Superintendents Educational Services Committee and the Religious Freedom Center at the Newseum.

<http://ca3rsproject.org/pdfs/Hot%20Topics.pdf>

Public Schools and Sexual Orientation

A few years ago, the First Amendment Center brought together representatives from the American Association of School Administrators, the Association for Supervision and Curriculum Development (ASCD), BridgeBuilders, the Christian Educators Association International, and the Gay, Lesbian and Straight Education Network (GLSEN)

to develop a consensus document on a process to resolve conflicts related to sexual orientation and public schools. The document this group developed, entitled *Public Schools and Sexual Orientation: A First Amendment Framework for Finding Common Ground*, is available in pdf format at the First Amendment Center website.

[Public Schools and Sexual Orientation \(PDF\)](#)

ONE Archives Foundation

The ONE Archives Foundation, in partnership with [ONE Archives at the USC Libraries](#), is the country's leading expert on LGBTQ history and has been involved on many levels with the implementation of California's Fair, Accurate, Inclusive and Respectful (FAIR) Education Act (SB 48), which was signed into law in the state of California on July 5, 2011.

<http://www.onearchives.org/education-2/education/>

LGBT-Inclusive Curriculum

GLSEN has created this resource, recommended by the First Amendment Center, to incorporate LGBT history, themes, and people into the curriculum.

<https://www.glsen.org/educate/resources/curriculum>

Lesson Plans on Bullying, Bias, and Diversity

This resource page, recommended by the First Amendment Center and created by GLSEN, offers lesson plans to help students develop the skills to interact in a diverse world.

<https://www.glsen.org/educate/resources/lesson-plans>

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