



A-CHANGING
INDEPENDENT SCHOOLS
TEARING DOWN WALLS, BUILDING CAPACITY, & DESIGNING OUR FUTURE

National Association of Independent Schools

The Times They Are A-Changin': State Trends and National Impacts

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About Me:

Whitney Silverman

NAIS Staff Attorney

Contact Info:

Silverman@nais.org , 202.973.9722

Attorney Disclaimer

Agenda

- Overview: NAIS Legal and GR Resources
- State Trends
 - Pay Equity and Salary History
 - Family Leave
 - Sexual Harassment
 - Data Privacy and Breach
 - Gender Identity and Sexual Orientation

NAIS Resources

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About NAIS

The National Association of Independent Schools (NAIS) is a nonprofit membership association that provides services to more than 1,800 schools and associations of schools in the United States and abroad, including more than 1,500 independent private K-12 schools in the U.S. Learn more below!

ABOUT

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About the President

Donna Orem was named president of NAIS in November 2016. Orem served as NAIS's chief operating officer for 11 years before becoming president. Orem speaks frequently about leadership, governance, trends in independent education, and workforce development. She is the author of numerous


Independent School Magazine



Winter 2019

Explore how advancement builds strategic connections among fundraising, engagement, communications

Click on “Learn”




The screenshot shows the 'Learn' section of the NAISAC website. At the top right, there is a navigation menu with links for 'PARTICIPATE', 'LEARN', 'ANALYZE', 'About', and 'Membership'. The 'Learn' section is divided into several categories, each with a horizontal line separator below it. The categories are: 'Independent Ideas Blog', 'Independent School Magazine' (with a thumbnail for Spring 2019, Volume 78 Number 3), 'Independent Teacher' (with a thumbnail for Fall 2018, Volume 16 Number 1), 'Principles of Good Practice (PGPs)', 'Knowledge Center' (with a list of topics including Admission and Financial Aid, Alumni/ae Relations, Curriculum and Instruction, Diversity and Inclusion, Faculty and Staff Management, Environmental Sustainability, Global Education & International Students, Governance and Leadership, Legal and Legislative Resources, Operations and Administration, Parent-School Relations, Research and Statistics, and Students), 'Research Clearinghouse', 'NAIS Washington Watch', and 'NAIS Action Center'. On the right side, there are two more categories: 'NAIS Podcasts' (with links for Member Voices and The Trustee Table) and 'NAIS Bulletin'. Below these is 'Inspiration Lab'. A faint watermark of the 'Independent School Magazine' cover is visible in the bottom right corner of the page.

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Independent Ideas Blog

Independent School Magazine

 Spring 2019:
Volume 78 Number 3

Independent Teacher

 Fall 2018:
Volume 16
Number 1

Principles of Good Practice (PGPs)

Knowledge Center

- Admission and Financial Aid
- Alumni/ae Relations
- Curriculum and Instruction
- Diversity and Inclusion
- Faculty and Staff Management
- Environmental Sustainability
- Global Education & International Students
- Governance and Leadership
- Legal and Legislative Resources
- Operations and Administration
- Parent-School Relations
- Research and Statistics
- Students

Research Clearinghouse

NAIS Washington Watch

NAIS Action Center

NAIS Podcasts

- Member Voices
- The Trustee Table

NAIS Bulletin

Inspiration Lab

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Click on “Legal and Legislative Resources”

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Legal and Legislative Resources

Browse Topics

This section of the Knowledge Center contains legal and legislative resources, information, and best practices from NAIS. Find what you're looking for by using the Search fields.

Search Articles By:

pay equity
Start Date
End Date
Topic

SEARCH

NAIS Legal Advisory: Changing Tides: The New Frontier in Pay Equity
January 18, 2019
The argument for pay equity is simple: All employees should earn equal pay for equal work.

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Explore how advancement builds strategic connections among fundraising, engagement, communications, admissions, and more.

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Upcoming Events



2019 NAIS Annual Conference
February 27, 2019
Long Beach, CA



NAIS Diversity Leadership Institute
June 23, 2019
Alexandria, VA

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Featured Products



2018-2019 NAIS Trendbook

[▶ ADMISSION AND FINANCIAL AID](#)

[▶ ALUMNI/AE RELATIONS](#)

Click on “Washington Watch”

NAIS Washington Watch



Changes to Watch in School Hiring Practices

Revisit your hiring practices to align with local, state, and federal changes. In particular, concerns around compensation discrimination have been growing.

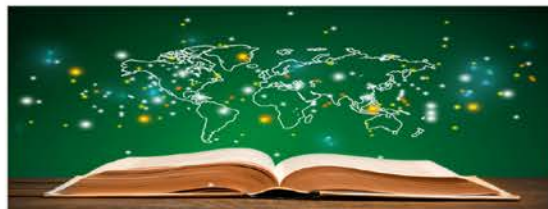
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Risk Management for Study Abroad and



About NAIS Washington Watch

Our Legal and Government Relations team lets you know what the latest developments from Congress, federal agencies, and the courts mean for independent schools.

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Winter 2019

Explore how advancement builds strategic connections among fundraising, engagement, communications, admissions, and more.

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Featured Products



2018-2019 NAIS Trendbook

Help your school change and grow. Explore 36 research-based trends in enrollment, the

Pay Equity

Sunnyside School is reviewing its compensation practices. Sunnyside is a large school with several “Dean” positions including Dean of Faculty, Dean of Students, Dean of Academic Affairs, Dean of College Counseling, Dean of Residential Affairs, and Dean of Multicultural Affairs. A review of these positions shows the male deans’ compensation is 15% higher than the female deans.

- Is there a federal law that covers this scenario?
- What other data points or types of information would you like to know?
- What do the states have to say?

Pay Equity—Independent School Snapshot

NAIS DASL DATA AND ANALYSIS FOR SCHOOL LEADERSHIP

Administrator Compensation - Male Female Comparisons

The report juxtaposes base salaries for male and female administrators in various areas of independent school leadership.
Year(s): 2017-18

	Average Salary - Male	Average Salary - Female
Head of School	\$258,934	\$193,209
Business Officer	\$160,092	\$119,650
Assistant Head of School	\$135,056	\$118,175
Associate Head of School	\$150,480	\$125,658
Director of HR	\$94,300	\$88,050
Director of Admissions	\$101,741	\$86,270
Director of Advancement	\$148,801	\$114,715
Director of Development	\$124,168	\$99,032
Director of PR/Communications	\$87,460	\$80,597
Director of Financial Aid	\$84,104	\$71,726
Director of Diversity	\$82,599	\$89,568
Director of Alumni/ae Affairs	\$74,879	\$66,698
Dean of Students	\$87,102	\$83,679
Upper School Head	\$126,177	\$115,345
Middle School Head	\$114,430	\$109,079
Lower School Head	\$118,972	\$109,762
Highest Paid Dept Chair	\$94,682	\$91,533
Director of Physical Plant	\$88,507	\$86,901
Director of Technology/MIS	\$96,034	\$84,519
Director of Technology/Curriculum	\$89,565	\$79,263
Director of Studies	\$104,363	\$96,296
College Counselor	\$97,725	\$86,730

This report was generated by NAIS DASL on 9/4/2018.

Information subject to change.

Zeros indicate data not collected or applicable.

Dashes indicate that not enough schools responded to generate that statistic.

Two asterisks (**) indicate the current user does not have permission to view the data.

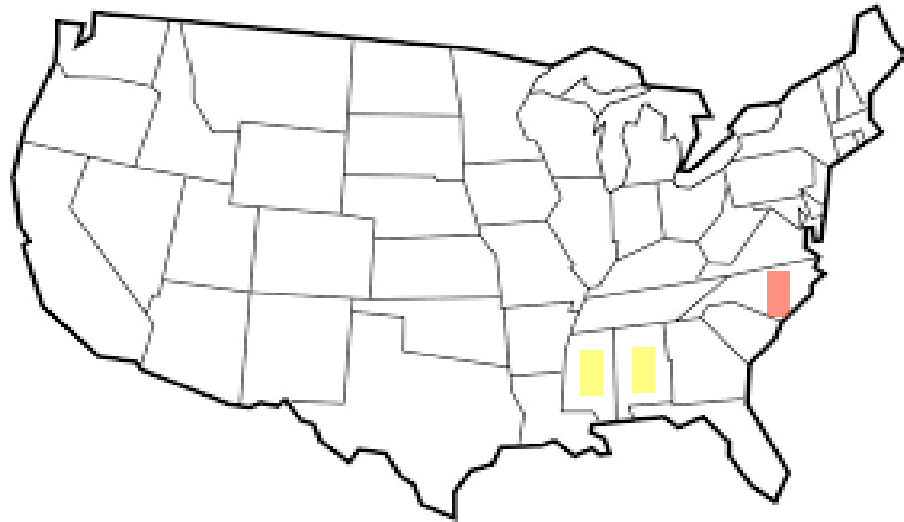
Pay Equity: Federal Law

- Equal Pay Act (1963): Prohibits wage discrimination based on sex for employees who
 - Work in the same establishment AND
 - Perform equal work ON
 - Jobs which require equal skill, effort, and responsibility.
- If jobs are considered “equal” employers can still differentiate salary based on:
 - A seniority system;
 - A merit system;
 - A System measuring earnings by quantity or quality of production; or
 - Any other factor besides sex.

Pay Equity—View from the States

47 states have wage discrimination laws.

Many state laws mirror the federal EPA, though they may have longer statutes of limitations and additional remedies.



Mississippi and Alabama do not have pay equity laws. North Carolina has a general employment discrimination law.

Pay Equity State Trends

Pay equity laws vary from state to state. While some state laws closely mirror the federal EPA, other state laws have gone further in some key ways by:

- Covering categories beyond gender/sex;
- Broadening the comparison group by looking at jobs that are “comparable” rather than “equal” or “substantially similar;” and
- Tightening the factors that can be used to justify wage differentials including a strict interpretation of what qualifies as a “factor besides sex.”

A few states encourage employers conduct pay audits and rectify pay disparities by providing a safe harbor.

Salary History Bans

Sunnyside has also decided to review their employment application. For many years, the school has asked applicants to provide information about their past salary.

- Can Sunnyside continue to ask this question?
- Should Sunnyside continue to ask this question?
- What other options could Sunnyside consider instead?

Salary History Bans

- California, Connecticut, Delaware, Hawaii, Massachusetts, Oregon, Puerto Rico, and Vermont have enacted laws prohibiting or restricting the use of salary history.
- Cities and counties are getting involved as well: San Francisco; Albany, Westchester, and Suffolk counties in New York; New York City, and Philadelphia* have passed their own salary history laws.
- More salary history ban laws are likely to come in 2019.

Salary History Bans

Common themes in salary history bans include:

- A prohibition on requesting (verbally or in writing) salary history information.
- Generally, applicants may still voluntarily disclose salary history information.
- Requesting information on salary expectations is still generally allowable.

IS new federal legislation on the horizon? The Pay Check Fairness Act has been re-introduced in both chamber, but passage is unlikely during the current Administration.

Pay Equity and Salary History Tips

- Understand the salary history laws in your state, county, and city. If your school is in a jurisdiction that prohibits salary history inquiries in the hiring process, remove that information from your application materials.
- Consider alternatives to salary history to find the right applicant pool, even if your state has not adopted a ban on salary history questions.
- Maintain awareness of your salary process and pay scale when posting a new position or negotiating with potential hires.
- If considering a pay practices audit, work with an expert.

Paid Leave

Sunnyside School is reviewing its leave policies. Currently, Sunnyside employees may take up to 12 weeks of unpaid leave to care for a new child, a family member, or their own serious medical condition. They are thinking about adopting a new paid leave policy.

- Is there a federal law that covers this scenario?
- What do the states have to say?

Federal Leave-FMLA

The Family Medical Leave Act (1993) provides 12 weeks of unpaid for a new child (birth, adoption, foster care), to care for a close family member with a serious health condition, or to care for the employee's own serious health condition.

Not all employees are eligible. To be eligible an employee:

- Must work for employer who has 50+ employees within 75 miles;
- Must have worked for the employer for at least 12 months; and
- Must have worked for the employer for at least 1,250 hours .

New Federal Legislation?

- There are proposals from both sides of the aisle, but the quickly approaching 2020 election season is likely to stymie significant progress.

State Paid Family/Medical Leave Programs

Many states have unpaid leave laws that mirror the federal FMLA although eligibility criteria, potential uses for the leave, and the length of leave provided vary. Jurisdictions are also starting to provide paid family/medical leave via state insurance programs.

States with operational paid family/medical leave programs:
California, New York, New Jersey, Rhode Island



States with paid family/medical leave programs (passed, not yet implemented):
Washington State, Massachusetts, Washington, DC

State Paid Family/Medical Leave Programs

While state paid leave programs have common themes, they tend to vary on the following points:

- Eligibility criteria: options include wages earned, number of weeks worked, and meeting eligibility for other programs;
- Financing: options include employee payroll tax contributions, employer payroll taxes contributions, and a combination of the two;
- Benefits: program benefits range from 4 to 12 weeks and generally provide for a percentage of weekly salary up to maximum amount;
- Job Protection: not all paid leave programs provide job protection guarantees; and
- Interaction with other family/medical leave programs: each program differs on how this paid leave interacts with other forms of paid and unpaid leave that may be provided.

Paid Leave Tips

- Understand your federal, state, and local obligations regarding leave before drafting a new policy including requirements around:
 - federal unpaid leave;
 - state unpaid leave;
 - state or local paid family/medical leave;
 - State or local paid sick leave; and
 - other types of leave (domestic violence, jury duty).
- Consult an expert in employment and benefits in your locality. They will be able to help you draft a compliant policy and explain how various leave requirements interact with one another.

Data Privacy and Breach

Sunnyside’s Head of School comes to work on Monday to discover a truly alarming state of affairs. The school has been targeted by a ransomware attack—none of the information maintained by school servers is accessible to school employees and the IT director has received a threat—the attackers are demanding a payment in exchange for a decryption key that will unlock access to the data. If the school does not pay, they will publicly release student and staff private information.

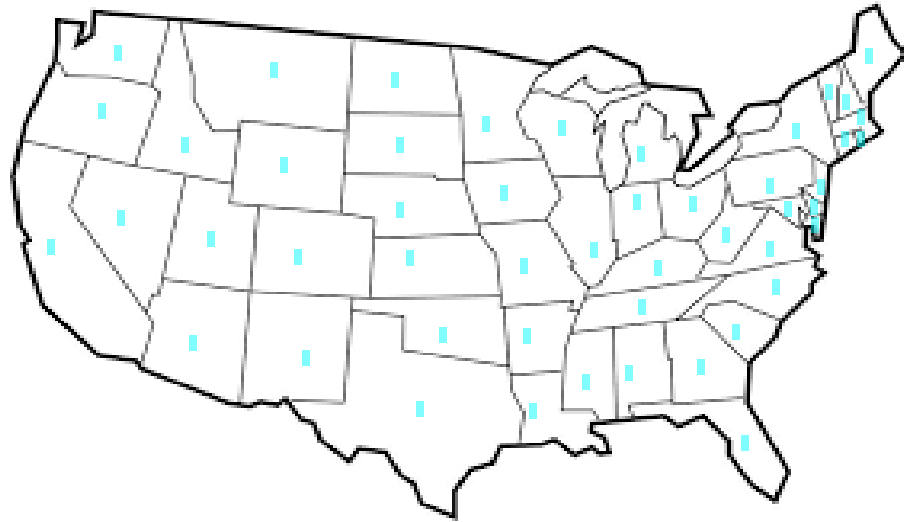
- Is there a federal law that covers this situation?
- What do the states have to say?
- What other considerations beyond legal ramifications may be relevant?

Federal Data Privacy Laws

- The U.S. does not have a general privacy law.
- On the federal level, privacy law is sector specific (finance, health, education).
- On the state level, there are constitutional protections, sector specific laws, and general laws governing data protection and data breaches.
- There are also “common law” claims.
- Is there a chance for new federal privacy law?

State Data Breach Notification Laws

All 50 states
+ DC have a
data breach
law



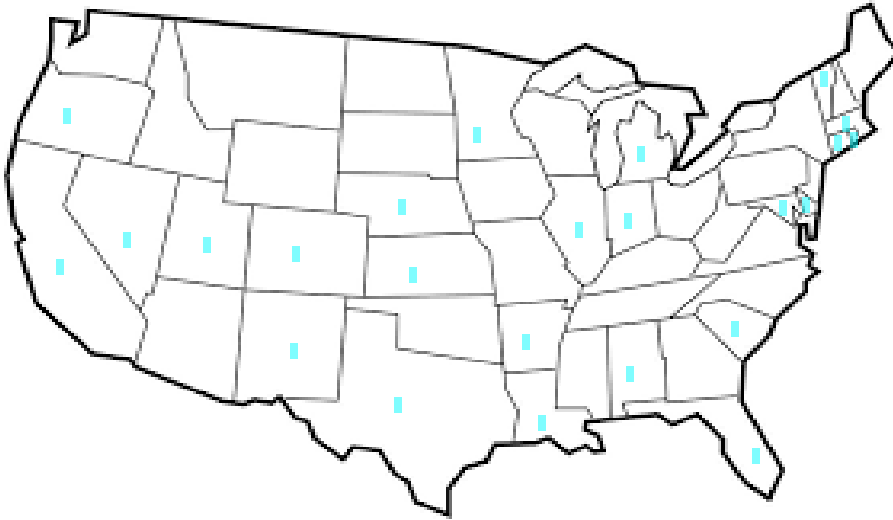
State Data Breach Notification Laws

Laws require notification in the case of a data breach. The laws vary in:

- the definition of personal information (what data is protected);
- the definition of “breach;”
- Whether a risk analysis is required;
- Whether this is an ‘encryption safe harbor;
- Timing of breach notification, who must be notified, and what information the notification must include; and
- Whether there is a private right of action, government enforcement, or both.

State Data Security Laws

24 states have laws that cover private sector data security practices. Some of these laws are industry specific.



Generally these laws require entities who hold personal information to create and maintain reasonable security procedures and practices.

Tips to Address Data Privacy and Security

- Be ready to respond to a data breach incident but focus on prevention.
- Consider conducting a cybersecurity audit:
 - Establish a team and take an inventory of the types of data or personal information the school collects, from whom it is collected, where it is stored, and how it is protected.
 - Evaluate the weak points and risks in your IT system.
 - Determine what types of data protections—both technological and process-related—you can implement in the near and long term and train your staff accordingly.
 - Review your insurance coverage.
 - Be aware of common cyber threats.
 - Develop a response plan and run table top exercises.

Sexual Harassment

Sunnyside School is generally a great place to work, but as the HR director, it is challenging to find time to update the employer handbook and fit in all the trainings you would like to do in a year. Sunnyside has a sexual harassment policy, but there hasn't been a dedicated training in a few years. You haven't received any complaints lately, but you've also heard whispers that employees don't really understand the process for reporting potential cases of harassment. The latest rumor floating around is that Lisa's supervisor Jon has asked her out several times even though she has declined.

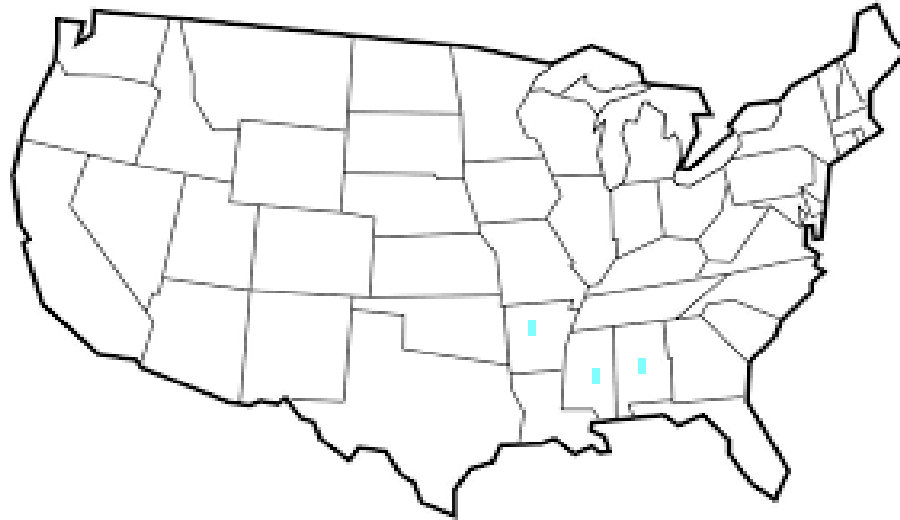
- Is there a federal law that potentially covers this scenario?
- What do the states have to say?

Federal Law: Sexual Harassment

- Sexual harassment is a type of sex discrimination that is prohibited under Title VII of the Civil Rights Act.
- Sexual harassment can be verbal, written, or physical and can include unwelcome and unwanted advancements, crude comments/stories/gestures, sharing explicit images, making remarks about another's appearance or body, and continuing to ask someone out on a date.
- Harasser can be the same a man or woman and can be the same sex as the victim.
- Harasser can be fellow employee, supervisor, or other person in workplace.
- Harassment must be “severe” and “pervasive” to create an “abuse” or “hostile” work environment or involve a quid pro quo.

State Sexual Harassment Laws

Most states prohibit workplace sexual harassment in their employment, civil rights, or human rights laws.



*Mississippi and Alabama do not have an employment discrimination law. Arkansas law doesn't expressly prohibit sexual harassment.

MeToo Effect

In 2018, several states passed new laws to address sexual harassment in the workplace including Arizona, California, Delaware, Maryland, New York, Tennessee, Vermont, and Washington State.

While each state's law is different, common themes include:

- Bans or limits on non-disclosure agreements;
- Bans on mandatory arbitration on sexual harassment claims (potential conflict with federal law); and
- Sexual harassment policy and training requirements (*New York & California in particular)

Tips to Address Sexual Harassment

- Understand any obligations your jurisdiction may have regarding sexual harassment policies and training.
- Update employee handbook, forms, and training materials as needed.
- Ensure that all employees understand reporting mechanisms and that there are multiple pathways to report in case an employee's harasser is their supervisor .
- Evaluate usage of mandatory arbitration provisions and nondisclosure agreements based on developments in your area.

Sexual Orientation and Gender Identity

Sunnyside School has an employment nondiscrimination policy that prohibits discrimination based on race, color, sex, national origin, religion, and age. Sunnyside wants to live its values and be a welcoming and inclusive school for a diverse range of employees. Sunnyside is evaluating whether it should expand its nondiscrimination policy to include sexual orientation and gender identity.

- Is there a federal law that prohibits discrimination based on sexual orientation and gender identity?
- What do the states have to say?

Title VII—Sexual Orientation and Gender Identity

Title VII of the Civil Rights Act prohibits discrimination on the basis of sex. Federal courts—and the federal government itself—are currently split on whether this prohibition includes sexual orientation and gender identity.

State Employment Laws: Sexual Orientation and Gender Identity

- Many states have laws or executive orders protecting against discrimination based on gender identity, sexual orientation, or both.
- 21 states plus the District of Columbia have laws that explicitly protect employees based on gender identity and sexual orientation. Another two states interpret their laws prohibiting sex discrimination to include sexual orientation and gender identity, and one state has a law that explicitly prohibit sexual-orientation discrimination.
- As of January 2018, at least 225 cities or counties have municipal-level protections for transgender employees, including in the states of Louisiana and Kansas, which do not have other explicit legal protections.

Tips to Move to a More Equitable Workplace

- Each year, the Human Rights Campaign publishes a Corporate Equality Index, rating employers on four key categories: 1) the presence of nondiscrimination policies; 2) equitable benefits for LGBTQ workers and their families; 3) internal education and accountability metrics; and 4) a public commitment to LGBTQ equality.
- Employers can:
 - Review and revise their policies and handbooks as necessary;
 - Ensure that employment benefits are provided equally for opposite and same sex partners;
 - Provide inclusive health care options;
 - Provide training to supervisors and employees on nondiscrimination or inclusion policies and other cultural competencies; and
 - Have a policy and process to support an employee's gender transition.

Links to NAIS Resources

- [The New Frontier in Pay Equity](#)
- [Legal Protections for LGBTQ Employees and Guidance for Creating Diverse and Welcoming Workplaces](#)
- [Cybersecurity in Independent Schools: Data Breach Threats and Prevention Techniques](#)
- [Sexual Harassment and Retaliation: Recent Developments](#)