

CENTER FOR CREATIVITY, INNOVATION, AND DISCOVERY

Gender Non-Discrimination Policy

Purpose

The Board of Directors of the Center for Creativity, Innovation, and Discovery (CCID) strives to ensure that all individuals in the school community are safe and respected in their learning and work environments, regardless of their gender identity or expression, including intersex, transgender, and gender-nonconforming students and employees. In upholding the principle of non-discrimination, the board supports the full integration and healthy development of those who are transgender or gender nonconforming, and prohibits the stigmatization of or discrimination against any such individual.

This policy seeks to maintain the privacy of all individuals; to ensure all students equal access to educational programming, activities, and facilities; to integrate transgender, gender nonconforming, and intersex students and employees; and to ensure all employees equal access to employment opportunities.

Definitions

Assigned Sex: refers to one's sex assigned at the time of birth, which usually aligns with a child's anatomical sex and phenotype.

Bullying: means the same as that term is defined in the school's *Bullying Policy*.

Changing Room: means a dressing room, fitting room, locker room, or shower room; and a restroom when a changing room contains or is attached to the restroom.

Facility: includes a subset of a publicly owned or controlled building, structure, or other improvement, including a restroom or locker room.

Education Record: means the same as that term is defined in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Sec. 1232g.

Gender Expression: The manner in which a person represents or expresses gender to others, often through behavior, clothing, hairstyles, activities, voice, or mannerisms.

Gender Identity: Refers to one's internal sense of one's own gender. It may or may not correspond to the sex assigned to a person at birth, and may or may not be made visible to others. Gender Identity has the meaning provided in the Diagnostic and Statistical Manual (DSM-5). A person's gender identity can be shown by providing evidence, including, but not limited to, medical history, care or treatment of the gender identity, consistent and uniform assertion of the gender identity, or other evidence that the gender identity is sincerely held, part of a person's core identity, and not being asserted for an improper purpose.

Gender-Nonconforming: A term for people whose gender expression differs from stereotypical expectations. This includes people who identify outside traditional gender categories or identify as both genders. Other terms that can have similar meanings

include gender diverse or gender expansive.

Gender Transition: A process by which an individual may change aspects of themselves (e.g., appearance, name, pronouns, and/or physical changes to their body) to be more congruent with the gender they know themselves to be. This term may also refer to an individual's affirmed gender.

Government Entity: means the state or any country, municipality, special district, special service districts, or other political subdivision or administrative unity of the state; these include state institutions of higher education as defined in Utah Code §53B-2-101; or a local education agency as defined in Utah Code §53G-7-401.

Harassment: means the same as this term is defined in the school's *Bullying Policy*.

Intersex: means the same as that term is defined in Utah Code §26B-8-101.

Men's Restroom: means a restroom that is designated for the exclusive use of males and not females.

Non-Discrimination: refer to the school's *Non-Discrimination Statement*.

Open to the General Public: means that a privacy space is freely accessible to a member of the general public; accessible to an individual who has purchased a ticket, paid an entry fee, paid a membership fee, or otherwise paid to access the facility containing the relevant privacy space; or is accessible to a student of an institution of higher education described in Utah Code §52B-2-101. Open to the General Public does not include a privacy space that is only accessible to employees of a government entity or any area that is not normally accessible to the public.

Parent: means a parent or legal guardian with legal custody of the child in question.

Privacy Space: means a restroom or changing room within a publicly owned or controlled facility, where an individual has a reasonable expectation of privacy.

Publicly Owned or Controlled: means that a government entity has at least a partial ownership interest in or has control of a facility, program, or event.

Restroom: means any space that includes a toilet including sex-designated men's restrooms, sex-designated women's restrooms, unisex restrooms, and single-occupant restrooms.

Sex: means the biological, physical condition of being male or female, determined by an individual's genetics and anatomy at birth.

Sex-Designated: means that a facility, program, or event is designated specifically for males or females and not the opposite sex.

Sexual Orientation: an enduring pattern of romantic, emotional, or sexual attraction (or a combination of these and/or a lack thereof) to persons of the opposite or same sex, or to more than one sex.

Single-Occupant: means, in relation to a single occupant facility or privacy space, that the facility or privacy space has floor-to-ceiling walls, has an entirely encased and locking door, and is designated for single occupancy.

Transgender: an adjective describing a person whose gender identity or expression is

different from the sex assigned at birth.

Unisex: means, in relation to a unisex facility or privacy space, that the facility or privacy space is designated for the use of both sexes, or is not sex designated.

Women's Restroom: means a restroom that is designated for the exclusive use of females and not males.

Parental Rights and Primary Responsibility

CCID shall ensure that no part of this policy shall shield a student's education record from the student's parent, interfere with the fundamental parental right and primary responsibility to direct the education of the parent's child, or interfere with a parent's freedom of access to information regarding the parent's child. Notwithstanding any other provision of law, CCID will not prohibit a parent of a child from accessing the child's education record or, without written parental consent, make changes to a student's education record regarding a student's gender identity that does not conform with the student's sex.

Gender Non-Discrimination

CCID fosters an environment that is safe and free from discrimination for all individuals regardless of sex, sexual orientation, gender identity, or gender expression. This policy uses the terms transgender and gender nonconforming as inclusive terms for all forms of gender identity and expression.

Bullying, cyber-bullying, hazing, discrimination, retaliation, and harassment based on the transgender or gender nonconforming status of a student or employee is prohibited. Such actions are illegal and abusive, and can negatively affect not only the school or work environment, but also an individual's health and well-being.

Student Confidentiality and Privacy

The school's personnel must take reasonable steps to protect the privacy of a student related to their transgender status, including their birth name or sex assigned at birth. A school may maintain student records with this information, but such records should be kept confidential.

Nonconsensual disclosure of personally identifiable information, such as a student's birth name or assigned sex, could be harmful to or invade the privacy of transgender students. Such breaches of confidentiality may also violate the Family Educational Rights and Privacy Act ("FERPA") and the Utah Student Data Protection Act.

To protect a student's privacy, school staff should take care not to inadvertently disclose information that is intended to be kept private or that is legally protected from disclosure (such as confidential medical information). The paramount consideration in such

situations should be the health and safety of the student, while also making sure that the gender identity of the student is affirmed in a manner that maintains privacy and confidentiality.

When appropriate, school personnel should work closely with the student and parent in devising an appropriate plan regarding the confidentiality of the student's transgender status. While parental permission is required to change a student's formal education record regarding a student's gender identity that does not conform with the student's assigned sex, parental permission is *not* required for a student to request a general accommodation.

Employee Confidentiality and Privacy

Transgender employees have the right to discuss their gender identity or expression openly, or to keep that information private. The transgender employee gets to decide when, with whom, and how much to share their private information.

Administrators, the Business Office, or coworkers should not disclose information that may reveal an employee's transgender status or gender expansive presentation to others. This type of confidential information may only be shared with the individual's consent and with coworkers who truly need to know to do their jobs. Where necessary, the school may maintain records with this information, but such records should be kept confidential. Information about an employee's transgender status (such as assigned sex) constitutes medical information under privacy laws like the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

Records and References

The official records of a student, such as a student's permanent record, standardized test scores, and legal name in a student information system shall reflect the student's legal name and gender, which is the name and gender listed on the student's birth certificate or as changed by a court order. Under FERPA, an eligible student (student who is 18) or parent may request that the student's formal education record be amended to correct information that is misleading, inaccurate, or in violation of the student's privacy rights.

Accommodations

Schools *can* use preferred names/pronouns (e.g., in yearbooks, on daily assignments) with the consent of a parent or guardian, or at the request of a student if the student is 18. These accommodations may include, but are not limited to, the following:

- Changing a student's unofficial record to reflect the student's preferred name, such as on daily school assignments;

- Changing a student's unofficial record to reflect the student's preferred pronouns and identified gender;
- Addressing a student by the student's preferred name and consistent with preferred pronouns.

Distinctions on the Basis of Sex Prohibited

The school, as a government entity, may not, on the basis of sex, exclude an individual from participation in, deny an individual from the benefits of, or subject an individual to a sex-based distinction in or under any government or otherwise publicly owned or controlled facility, program, or event, unless the distinction is substantially related to an important government objective. Each government entity shall ensure the preservation of distinctions on the basis of sex that protect individual privacy and competitive opportunity (per Utah Code §63G-31-201).

Sex-Based Distinctions to Protect Individual Privacy and Opportunities

A distinction on the basis of sex that provides separate accommodations for the sexes is considered in Utah to be substantially related to important government objectives:

- Individual Privacy: To protect individual privacy including in a privacy space (per Utah Code §63G-31-202);
- Health and Competitive Opportunity: To protect health and competitive opportunity in the availability of quality of an athletic venue, event, or program within the public education system (per Utah Code §63G- 31-203);
- Preservation of Individual Privacy of Females: To preserve the individual privacy and competitive opportunity of females, an individual is not entitled to and may not access, use, or benefit from a government entity's athletic facility, program, or event if the facility, program, or event is designated for females and the individual is not female.
- Preservation of Individual Privacy of Males: To preserve the individual privacy and competitive opportunity of males, an individual is not entitled to and may not access, use, or benefit from a government entity's athletic facility, program, or event if the facility, program, or event is designated for males and the individual is not male.

Prohibited Sex-Based Distinctions

The following actions within the public education system constitute a violation of Utah Code §63G-31-201-4:

- Providing a sex-designated facility, program, or event of a higher quality to one sex and of a lesser quality to the opposite sex rather than ensuring equivalent quality or rotational sharing, including the use of athletic facilities or venues;

- Providing males or females preferred or more advantageous scheduling of facilities, programs, or events in comparison to the opposite sex rather than ensuring equivalent scheduling practices or rotational sharing, including the scheduling of athletic events or practices;
- Providing males or females with more sex-designated opportunities than the opposite sex in excess of a 10% disparity; requiring males or females to participate or compete against the opposite sex in any sex-designated facility, program, or event; or
- Requiring, giving official authorization for, or knowingly allowing males or females to use a sex-designated facility in the presence of the opposite sex.

Sex-Designated Privacy Spaces in Public Schools

To preserve the individual privacy of male and female students in the public education system, a student may only access an operational sex-designated privacy space within a public school that is designated for student use if the student's sex corresponds with the sex designation of the privacy space (per Utah Code §63G-31-301). The school satisfies its duties regarding student use of a privacy space if the school gives notice to students of the provisions of this section; takes administrative action to address violations of and promote compliance with this section; and, develops a privacy plan in accordance with guidelines in this policy.

Accommodations

For a student who makes a request to use a privacy space other than the sex-designated privacy space that corresponds with the student's sex because of the student's gender identity or reasonable fear of bullying, the school shall coordinate with the student's parent or guardian to develop a privacy plan that provides the student with:

- Reasonable access to a unisex or single-occupant facility; or
- Reasonable access to a faculty or staff restroom; or,
- If the access described above is unavailable, reasonable access to private use of an otherwise sex-designated privacy space through staggered scheduling or another policy provision that provides for temporary private access.

Defending Allegations Related to the Use of Privacy Spaces

An individual may use the following evidence as a defense to an allegation that the student is not eligible to access and use a sex-designated privacy space:

- The student's unamended birth certificate that corresponds with the sex designation of a privacy space;
- A documentation of a medical treatment or procedure that is consistent only with the sex designation of the privacy space.

Use of Sex-Designated Changing Rooms

Per Utah Code §63G-31-302, an individual may only access an operational sex-designated changing room in a government entity's facility that is open to the general public if:

- The individual's sex corresponds with the sex designation of the changing room; or,
- The individual has legally amended the individual's birth certificate to correspond with the sex designation of the changing room, which may be supported with a review of any amendment history; and,
- Undergone a primary sex characteristic surgical procedure as defined in Utah Code §58-67-102 to correspond with the sex designation of the changing room.

Limitations of Above Requirements on the Use of Sex-Designated Changing Rooms

Limitations on the use of sex-designated changing rooms do not apply to the following:

- A minor child who requires assistance to access or use the changing room that corresponds with the sex of the minor's parent, guardian, or relative;
- A dependent minor, as defined in Utah Code §76-5-110, or a dependent adult, as defined in Utah Code §76-5-111 who requires assistance to access or use the changing room that corresponds with the sex of a caretaker;
- An individual providing public safety services, including law enforcement, emergency medical services, and fire protection;
- An employee of a healthcare facility to provide health care services to a patient of the health care facility or a healthcare provider performing similar functions at the school; or,
- An individual whose employment duties include the maintenance or cleaning of the changing room.

Commitment to Accommodate All Students

The school provides reasonable and legally required accommodations to transgender students, gender nonconforming students, and any other student upon request. Any student, whether transgender, gender nonconforming, or not, may express a need or desire for increased privacy in a restroom or changing room.

- If a transgender or gender nonconforming student requests an alternative arrangement, the school should provide an alternative arrangement in a way that protects the student's ability to keep the student's transgender or gender nonconforming status private.

- The Executive Director will provide any student who requests additional privacy with reasonable alternative arrangements. Reasonable alternative arrangements may include:
 - the use of a private area to change;
 - the implementation of a separate changing schedule;
 - the use of a single stall restroom.

Student Transition Planning or Accommodations

A transgender student or their parents should contact the Executive Director to schedule a meeting to develop a plan to address a students' particular circumstances and needs. Upon receiving the request for accommodation, the Executive Director shall formally document the request in writing. Students may make requests for accommodation which include, but are not limited to, those described below.

Dress Code for Students

The school will enforce its dress codes as written and published. Students shall have the right to dress in accordance with their gender identity within the guidelines of the dress codes adopted by the school.

Classes and Activities

Accommodations that involve privacy concerns, such as overnight trips, will be addressed by the Executive Director in accordance with the purpose and goals of this policy. In no case should a transgender student be denied the right to participate in an overnight field trip because of the student's transgender status.

Employee Transition Planning/Accommodations

Employees who transition on the job can expect the school's discretion and accommodation. The Executive Director will work with each transitioning employee to ensure a successful workplace transition. A transgender/transitioning employee who would like a workplace transition plan should contact their supervisor or the Executive Director to develop a plan to address the employee's particular circumstances and needs.

Any supervisor who receives a request for accommodation shall inform the individual requesting the accommodation that they may also contact the Executive Director to assist with the development of a plan. Upon receiving the request for accommodation, the supervisor or the Executive Director shall document the request in writing.

Requests for accommodation shall be evaluated by determining the reasonableness of any given situation. When evaluating the reasonableness of a request for an

accommodation, supervisors are expected to consider the needs of the individual on a case-by-case basis. Requests for accommodation should routinely be granted absent extraordinary circumstances.

Once the supervisor or Executive Director has evaluated a request and decided whether to grant or deny the request, that decision shall be communicated both orally and in writing to the person requesting the accommodation. If an accommodation request is granted, the supervisor will take steps to ensure that the accommodation is implemented and followed. If an accommodation request is denied, the individual requesting the accommodation may follow the appeal procedures described below.

Staff Dress Code

The school's dress code for employees will avoid gender stereotypes and instead will require attire and grooming professionally appropriate to the workplace, address safety concerns, outline legal regulations, and promote employee visibility. Transgender and gender nonconforming employees have the right to comply with professional dress codes in a manner consistent with their gender identity or gender expression.

Employee Records and References

An employee has the right to be addressed by the name and pronouns corresponding to the employee's gender identity. An employee's official records will be updated to reflect a change in name or gender upon request from the employee. Most records can be changed to reflect a person's preferred name without proof of a legal name change. However, a legal name change may be required before a person's name can be changed on certain types of records, like those relating to payroll and retirement accounts.

The transitioning employee, Business Office, and the employee's supervisor will develop a plan for the employee's preferred name and pronouns to be communicated to coworkers and others in the school community, as requested by the employee. An employee's school photograph and identification will be updated at the transitioning employee's request, so the transitioning employee's gender identity and expression are represented accurately.

Other Accommodations for Employees

The school aims to support transgender and gender nonconforming employees by providing them with reasonable accommodations. A transgender or gender nonconforming employee may request an alternative arrangement for use of restrooms and changing rooms that protects employees' ability to keep their transgender status

private. Any employee, whether transgender, gender nonconforming, or not may express a need or desire for increased privacy in restrooms or a changing room.

Sex-Specific Employment Opportunities

In the highly unlikely event that the school creates sex-specific jobs or assignments, transgender employees will be classified and assigned in a manner consistent with their gender identity and not the assigned sex.

Health Insurance Benefits

The school's health insurance benefits will not be denied to employees who are transgender or gender nonconforming. These benefits may include mental health services related to gender dysphoria. However, there are limitations on coverage for physical transition measures as determined by the school's medical benefits that may vary from year to year.

Review of Decisions

If a student, parent, or employee is not satisfied with the decision of the Executive Director on any matter referenced in this policy, the decision may be appealed to the Board of Directors.

The appeal to the Board must be made in writing, and mailed or emailed to the Board Chair within thirty (30) days of the date of the Executive Director's decision.

- The Board's Executive Committee will review the matter, and may, if appropriate, request additional information or documentation.
- The Board's Executive Committee will render a decision on the appeal within thirty (30) days of receipt of the appeal unless a longer period of time is deemed necessary.
- The Executive Committee may take the matter to the full board at the committee's discretion.
- The decision of the Executive Committee is the final and decisive action in the matter; or, if the committee determines to take the matter to the full board, then the decision of the Board of Directors shall serve as the final and decisive action in the matter.

Training and Professional Development

The school shall conduct training for all staff members on their responsibilities under applicable laws and this policy, including administrators, teachers, counselors, social workers, specialists, and health staff. Information regarding this policy shall be incorporated into training for new school employees.

To the extent funding is available, the school shall implement ongoing professional development to build the skills of all staff members to prevent, identify and respond to bullying, harassment, and discrimination. The content of such professional development shall include, but not be limited to:

- Developmentally appropriate strategies for preventing and intervening in bullying incidents, including cyberbullying;
- Classroom-management practices, curriculum, and resources that educators can integrate into their classrooms to help foster a non-discriminatory environment for all students;
- School policies regarding bullying, harassment, discrimination, suicide prevention, and responsibilities of staff;
- State law, federal law, and USBE rule regarding bullying, harassment, discrimination, and suicide prevention;
- State law, federal law, and USBE rule regarding parental rights in accessing and determining aspects of their child's education records;
- State law, federal law, and USBE rule regarding student data privacy and security.

Outside Reporting Procedures

If concerns cannot be resolved at the school level, discrimination complaints may be filed with the Office of Civil Rights as listed below:

Office for Civil Rights
Region VIII, U.S. Department of Education
Cesar E. Chavez Memorial Building
1244 Speer Boulevard, Suite 310
Denver, Colorado, 80204-3582

Telephone: 303-844-5695
Fax: 303-844-4303
TDD: 800-877-8339
Email: OCR.Denver@ed.gov

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