

Gender Identity Guidance for Utah Public Education

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Disclaimer

This document is provided for guidance only and contains information associated with federal and state law. It is not an exhaustive treatment of the law on this subject, nor is it intended to be a substitute for the advice of an attorney. The legal landscape around gender issues in education is rapidly evolving and may be different from state to state. Every student and school is unique and accommodations must be assessed on a case-by-case basis with cooperation between school officials and staff, students, parents¹, and licensed practitioners to create an environment for high-quality academic success

Background

The Utah State Board of Education recognizes that academic success depends on access to an educational environment that is safe, conducive to the learning process, and free from unnecessary disruption. We value educational equity which the Board has defined as “acknowledging that all students are capable of learning, educational equity is the distribution of resources to provide equal opportunities based upon the needs of each individual student. Equitable resources include funding, programs, policies, initiatives, and support that recognize each student’s unique background and school context to guarantee that all students have access to high-quality education.”

School policies should advance the goals of creating a respectful school climate for all students, defending constitutional protections, maintaining the trust of the community, and accommodating the needs of students and parents. Utah educators shall treat all students with respect and fairness regardless of personal feelings and ideology while maintaining professional boundaries including private relationships both in personal friendships and on social media as outlined in R277-217.

In recent years, more students have been expressing as transgender and gender nonconforming and requesting support in school. In addition, more parents have been requesting that schools recognize and accommodate the needs of their students who are transgender and/or gender nonconforming.

Schools should accept a student’s consistently asserted gender identity even if the gender

¹ 34 C.F.R. § 300.30:

(a) Parent means—

(1) A biological or adoptive parent of a child;

(2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;

(3) A guardian generally authorized to act as the child’s parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);

(4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare; or

(5) A surrogate parent who has been appointed in accordance with §300.519 or section 639(a)(5) of the Act.

identity is different from the sex assigned at birth. A “consistent assertion”² involves more than a casual declaration of gender identity, but it does not necessarily require any substantiating evidence. Establishing gender identity can present differently from student to student.

Students who are transgender and/or gender nonconforming are often at greater risk of discrimination, family rejection, homelessness, bullying/assault, substance abuse, reduced academic achievement, absenteeism, and dropping out. Many of these students also present with co-occurring mental health conditions, such as depression, anxiety, and suicidality.³ Parental involvement and family support is an important protective factor against suicide, homelessness, and psychological distress for students who are transgender and/or gender nonconforming.⁴

Through collaboration with parents, school officials, and qualified professionals, combined with clear policies and implementation plans, students who are transgender or gender nonconforming will have an equal opportunity to be fully engaged in the school environment and to achieve academic success.

Dress Codes and Grooming Standards

Dress codes and grooming standards should encompass reasonable and clear guidelines that are not gender-specific and are free from gender stereotypes. Any education program or activity that requires dress and/or grooming standards, such as school dances, yearbook photos, dance performances, choral concerts, uniforms, or graduation gowns should meet these guidelines. Dress codes should offer options that avoid the disruption of the classroom atmosphere and decorum and prevent disturbances among students.⁵ Nonconformity to sex stereotypes reflects a student expressing their unique individual personalities and imaginations, and should not be seen as an indication of a student’s gender or gender identity. Dress codes should be enforced consistently for all students.

Examples of implementing dress codes and grooming standards

EXAMPLE ONE: A student who appears to be male arrives at school in a dress. Unless the dress style violates the school’s dress code, the student should not be required to change.

EXAMPLE TWO: A student who appears to be male is accepted onto the cheerleading team and wants to wear the girl’s cheerleading uniform. Regardless of whether the student is transgender

² See U.C.A. § 34A-5-102(1)(o) (“‘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.”)

³ See Pollitt *et al.*, 2019; Robinson & Espelage, 2011; Robinson & Espelage, 2012; Russell *et al.*, 2018; Ryan *et al.*, 2010; Utah SHARP survey, 2019; Trevor Project, 2019; USDOJ & USDE/OCR, 2021.)

⁴ See James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). The Report of the 2015 U.S. Transgender Survey. Washington, DC: National Center for Transgender Equality.

⁵ See U.C.A. § 53G-7-802 - School Uniforms

or not, the student should be allowed to wear the designated uniform of their choice.

EXAMPLE THREE: A student who appears to be female is seen by school staff to be wearing baggy jeans that expose the student's undergarments. If this is in violation of the school dress code, regardless of gender, the student should be subject to consequences for violating the dress code.

EXAMPLE FOUR: A school traditionally requires boys to wear blue gowns and girls to wear gold gowns at graduation. The school may continue this practice, but allow students to choose their color of gown. The school may decide to assign the gown color to be worn based on last name (e.g., last names from A-M wear blue and last names from N-Z wear gold).

Facilities

Local Education Agencies (LEAs) should adopt formal policies and procedures regarding the authorized use of facilities for all students. Facilities include, but are not limited to, locker rooms, restrooms, showering facilities, costume rooms/backstage areas, nurse's offices, and athletic training rooms. School policies should respect the privacy and safety concerns of students and parents. The LEA should make its policies and procedures publicly available on its website and school and district policy manuals. The LEA's website should provide students and parents with instructions for requesting accommodations or reporting concerns.

Students should have access to facilities that correspond to their consistently asserted gender identity. A student who is transgender should not be compelled to use an alternative restroom. If any student, whether transgender, cisgender, or any other consistently asserted gender identity desires increased privacy, or feels uncomfortable using group facilities, schools should make every effort to provide the student with reasonable access to an alternative facility. An alternative arrangement for any student should be safe and accessible and provided in a way that minimizes the loss of instructional time and protects the privacy of the student. Reasonable alternative arrangements may include:

- use of a private area for changing/showering
- use of a single-stall restroom
- additional time to use facilities outside of normal class breaks

Examples of implementing facility usage policies

EXAMPLE ONE: A student who is transgender wants to use the restroom that aligns with their consistently asserted gender identity. They should be allowed to use the restroom of their choice since this is consistent with their consistently asserted gender identity.

EXAMPLE TWO: A cisgender student is uncomfortable because a student who is transgender has been using the restroom and locker room that does not align with their sex assigned at birth. The cisgender student should be allowed to use an alternative restroom and locker room.

EXAMPLE THREE: A girl who is transgender is uncomfortable using the girls' restroom and locker room but does not want to use the boys' restroom and locker room since she feels unsafe in that environment. The student should be allowed to use an alternative restroom and locker room.

School Records and Student Privacy

School Records - Each school is required to maintain an official permanent record of each student. The record should include the legal name and sex as shown on the student's official birth certificate. Documentation is required when a change in the name and sex of a student is requested. For a legal change of name, a court order or birth certificate is required demonstrating the student's new name.⁶ Local Education Agencies (LEAs) should adopt formal policies and procedures regarding requests for name changes on official and unofficial school records. The LEA should make its policies and procedures publicly available on its website and school and district policy manuals. The LEA's website should provide students and parents with information about name change requests.

In situations where schools are required to use or to report the legal name or sex assigned at birth of a student who is transgender, such as for purposes of standardized testing or student data reporting to the State Education Agency (SEA), school staff should adopt practices to avoid the inadvertent disclosure of such information. Schools should eliminate gender markers from their forms, documents, and records when feasible.

To the extent that the school is not legally required to use a student's legal name or sex on school records and other documents, the school should use the name and sex, including pronouns, requested by the student and parents, or by a student who is over 18 years of age. Unofficial records such as yearbooks, school IDs, and daily assignments may reflect the preferred name and sex that is entered into the LEA's Student Information System and is consistently asserted at school by the student.

When an accommodation is requested, to ensure consistency among teachers, school administrators, substitute teachers, and other staff, every effort should be made to immediately update student official and unofficial education records (for example, class rosters, attendance records, transcripts, Individualized Education Programs, I.D. cards, etc.) with the appropriate changes.

Student Privacy - The Family Educational Rights and Privacy Act ("FERPA") serves to protect student privacy and the confidentiality of student records, which includes a student's gender identity. Student information and records must be kept confidential and not disclosed without the permission of the student's parents unless there is legitimate educational interest, and in certain other listed circumstances permitted by law.⁷

Parents have a right to inspect and review their child's education records, the right to seek to amend the records, the right to consent to the disclosure of personally identified information from the records (except when a child is over 18 or in other special circumstances), and the right to file a complaint regarding an alleged failure by a school to comply with FERPA. Schools must abide by legal custody orders when working with parents of students who are transgender and and/or gender nonconforming .

School personnel shall maintain privacy and confidentiality when student peers ask questions about a classmate who is transgender or gender nonconforming. Staff shall direct students to work with the designated administrator or school counselor to discuss additional questions.

Privacy and confidentiality concerns for students who are transgender and/or gender

⁶ See R277-419-10(c) – Pupil accounting

⁷ See 34 C.F.R. § 99.31(a)(1) – Family Education Rights to Privacy Act

nonconforming who do not have supportive families should be referred to designated administrators or counselors and handled on a case-by-case basis, considering the parental rights and the health, safety or other concerns raised by the student. When a student who is transgender and/or gender nonconforming requests accommodations, the presumption should be to work with the student to appropriately inform parents.⁸ **If no accommodations are requested, a student's privacy should be respected, and no information should be disclosed.**

LEAs should also consider policies relating to requests by former students for changes to records. A former student may request amendments to school records to reflect a new name and gender that are different from those recorded during their attendance. Former students may want to ensure that information on their records such as transcripts and standardized test scores are consistent with the information they are submitting such as those on college or job applications. A court order or amended birth certificate is typically required for any retroactive changes to school records.

Participation in Education Programs and Activities

Students should be permitted to participate in any education program or activity (e.g. field trips, extracurricular activities, courses such as physical education and STEM) consistent with their sincerely held gender identity. Schools should limit gender-based programs or activities. Any single-sex classes or extracurricular activities must be consistent with Title IX and applicable regulations, including that the decision to offer a single-sex class or activity generally must be substantially related to an important educational objective. In any gender-specific activities, students shall be permitted to participate consistent with their consistently asserted gender identity. For example, girls who are transgender should be allowed to self-select into a "girls in STEM" program.

Schools should provide accommodations to ensure the safety and privacy interests of all students, including students who are transgender and/or gender nonconforming, during activities inside the school setting as well as outside. When the LEA agrees on accommodations for the student's use of facilities at school, school officials must be prepared to ensure that the student has comparable arrangements outside of school.

Clubs

If a school allows any student clubs, students have the right to form LGBTQIA+-affirming clubs, such as GSAs, on the same terms as any other student group⁹. Under the federal Equal Access Act, secondary schools that allow meetings of other non-curricular student clubs are also prohibited from discriminating against any student group based on its viewpoint, including GSAs.¹⁰ All student clubs must be treated the same, regardless of purpose. A school must obtain prior written parental consent included with the activity disclosure statement before attending or participating in any curricular and non-curricular clubs.¹¹

⁸ See U.C.A. § 53G-9-203(2) – Public Education System – Local Administration, Health and Welfare, Miscellaneous Requirements

⁹ See (East High Gay/Straight Alliance v. Board of Educ. of Salt Lake City, 30 F. Supp. 2d 1356 (D. Utah 1998); Colin ex rel. Colin v. Orange Unified Sch. Dist., 83 F. Supp. 2d 1135 (C.D. Cal. 2000))

¹⁰ 20 U.S.C. § 4071 – Denial of equal access prohibited

¹¹ See U.C.A. § 53G-7-708, 709 – Public Education System – Local Administration, Public School General Requirements, Student Clubs

Overnight trips

The same guidance provided with respect to using facilities and participating in activities also apply to room arrangements and facility use for students who are transgender during overnight trips. Schools must allow students who are transgender to access overnight lodging accommodations that are consistent with the student's consistently asserted gender identity. As with school facilities, any student seeking more privacy should be provided that privacy. Schools must not require a student who is transgender to stay in single-occupancy accommodations or to disclose personal information when not required of other students. A school is, however, not prohibited from honoring any student's voluntary request for single-occupancy accommodations.

Considerations for overnight trips

- Include a general notification regarding requests for accommodations to address privacy and safety concerns, referencing the school's accommodation request procedure, in the disclosure documents distributed at the beginning of each term or semester. Personal or identifying information regarding specific students who are transgender must not be disclosed.
- Add a section on the activity disclosure for students to request names of peers to room with. Include the option for students to select their preference for single or double occupancy.
- Work with students who are transgender and their parents to discuss what type of arrangements will make the student feel safe, supported, and included.
- Set clear expectations about respecting one another's privacy and boundaries.
- Apply school policies for facility use that allow for privacy.

Athletics

For interscholastic sports, Utah High School Activities Association ([UHSAA guidelines](#)) apply, and participation is resolved on a case-by-case basis. Charter schools with athletic programs follow the guidelines and requirements as defined by the [Utah Charter and Small School Athletic League](#).

Participation in School Programs and Activities Examples

EXAMPLE ONE: A girl who is transgender wants to run for prom queen. She should be allowed to run for prom queen and should not be compelled to run for prom king because of her assigned sex at birth. As an alternative, schools may consider, for example, replacing "prom king and queen" with "prom royalty."

EXAMPLE TWO: Students in a 3rd-grade class are asked to line up boys on one side, girls on the other, for a classroom activity. A student who is transgender should be allowed to line up on the side that aligns with their gender identity. As an alternative, the teacher could have the students count off or line up using some other gender-neutral method.

EXAMPLE THREE: A student who is transgender is a participant in the school choir. The choir has a concert performance scheduled off-campus. The student who is transgender is particularly concerned because the performance requires a costume change, and they typically use a private room to change at school. The school is obligated to make comparable arrangements for the student

who is transgender at the concert location.

EXAMPLE FOUR: A boy who is transgender is on the boys' soccer team. They are traveling overnight to a competition. At the beginning of the season, the coach distributed a disclosure to all the players. The disclosure gave players the option to list potential roommates and state their preference for single or double occupancy. The boy who is transgender requested to share a room with one of their friends on the team. The teammate also requested to share a room with the boy who is transgender. In preparation for the event, the coach reviewed and accounted for any privacy accommodations previously requested and sent out a document with travel details, including lodging arrangements, to parents. The document requires a signature to consent for the arrangements. It includes the coach's contact information if parents want to follow up with any questions or concerns. Coaches honor the parent's decision if they do not provide consent for the travel arrangements. If parents do not provide consent for their student's lodging request, the coach will work with the student and parents to make arrangements that will make the student feel safe, supported, and included.

EXAMPLE FIVE: A girl who is transgender wants to try out for the girls' basketball team. The administrator follows the UHSAA guidelines for athletic participation for students who are transgender.

Preferred Names and Pronouns

Students may ask teachers and other school staff to refer to them by an alternative name or pronoun that does not align with those listed on their official school records. Students have the right to be addressed by names and pronouns that correspond to their consistently asserted gender identities.

Should a student make a request to a teacher to be referred to by any alternative name or nickname that is not a derivation of the student's given name (i.e., first, middle, last, initials, abbreviations, or common substitute – e.g., William/Bill, Charlotte/Charlie/Chuck/Charles), the student will be referred by the teacher to a designated administrator or their designee (e.g., school counselor, social worker, or school psychologist). This process provides for consistency and adherence to procedures and removes individual teachers from the decision-making process.

When a student requests a pronoun that does not align with the commonly used pronoun associated with their sex listed on the official school record the student will be referred by the teacher to a designated administrator or their designee (e.g., school counselor, social worker, or school psychologist). For example, a male assigned at birth commonly uses he/him. A female assigned at birth commonly uses she/her. Teachers can refer to any student using the pronouns they/them since they/them may be used as a singular nonbinary pronoun¹². Teachers and other staff may also use the student's name in place of a pronoun.

¹² See [Webster definition](#) for "they"

School employees should not survey students to ascertain their gender identity. Teachers and schools are in positions of power when it comes to soliciting information from students. As such, laws have been passed at both the federal level, which are designed to ensure transparency, protect parental rights and protect student privacy in cases where sensitive information might be collected.

¹³ Educators or staff should not make assumptions based on appearance or hearsay. An educator may share their own pronouns with students if the educator desires.

An educator refusing to refer to a student by an agreed-upon alternative name and/or pronoun can be considered discriminatory conduct. The U.S. Department of Education's Office for Civil Rights (OCR) and the U.S. Department of Justice's (DOJ) 2021 guidance cites a failure to address a student who is transgender by the student's chosen name and pronouns is an example of sex-based discrimination within the agencies' enforcement authority under Title IX. According to Utah Educator Standards (R277-217-3 (3)) educators shall take prompt and appropriate action to prevent harassment or discriminatory conduct toward a student or school employee that the educator knew or should have known may result in a hostile, intimidating, abusive, offensive, or oppressive environment. This does not prohibit inadvertent slips or honest mistakes but does apply to intentional or persistent refusal to respect and use a student's agreed-upon alternative name and/or pronoun.

The process when a student requests to be referred to by an alternative name or pronoun

- a) The student is referred by the teacher to a designated administrator or their designee (e.g., school counselor, social worker, or school psychologist).
- b) Once a referral is made, the administrator or designee will seek to understand the individual student's needs and inform the student of policies and privacy limitations that require parental involvement. Each situation should be handled on a case-by-case basis. The request should be handled in a manner that makes the student feel safe, supported, and included, and protects the health and safety of the student.
- c) The presumption should be in favor of parent/guardian involvement. If needed, the designated person should support the student as they involve their parents. The student should be provided with the option to inform their parents independently. It could also be supportive for the designee to be present during the conversation with the student's parents to help facilitate. School personnel should proactively work together with parents and students to create constructive dialogue.
- d) School personnel should document interactions and support requests by students and parents to assist with the consistent application of policies, open communication, and to prevent misunderstandings. Schools should respect parents' decisions for their children while balancing these decisions with constitutional, legal, and civil rights. R277-217.

¹³ See 34 C.F.R. § 98 – Protection of Pupil Rights Amendment (PPRA); 20 U.S.C. § 1232h – General Education Provisions Act (GEPA); U.C.A. § 53E-9-203 – Student Privacy, Activities prohibited without prior written consent.

- e) Students may not have revealed their transgender or gender nonconforming identity to their families. The student may have safety concerns or fear of rejection. If the student raises legitimate safety concerns, Utah law requires any person who has reason to believe that a child has been subjected to abuse, neglect, or dependency to immediately notify the nearest office of Child and Family Services, a peace officer, or a law enforcement agency. *(See mandatory reporting requirements)*
- f) If an alternative name and/or pronoun is agreed upon the designee (e.g., administrator, school counselor, social worker, or school psychologist) will work with the student and parent(s)/guardian(s) to develop and implement a plan to communicate the information to appropriate school personnel. A student's agreed-upon name and/or pronoun should be used consistently throughout the school. The school administrator will be responsible for ensuring the plan is implemented and addressing any violations.

Examples of addressing requests by students to use alternative names and pronouns

EXAMPLE ONE: Marvin, a student whose sex assigned at birth is male, approaches their teacher and requests that the teacher refer to them as Margaret and use the pronouns she/her. The teacher follows the referral process outlined in the school policy.

EXAMPLE TWO: Charles asks their teacher to refer to them as Charlie, which is a derivation of their name on record. They want to use pronouns that differ from those commonly used with the sex listed on their official school records (i.e., he/him). This request would require a referral because their pronouns do not reflect the commonly used pronouns associated with the sex listed on their official school record.

EXAMPLE THREE: A student wants to be referred to by a nickname (e.g., Swish, Tank, Shortie, Slim, Ace, etc.). The student would need to be referred because it is not their name on record or a derivation thereof.

EXAMPLE FOUR: In the middle of class instruction, a student asks to be referred to by a name/pronoun that is different from the name/pronoun on record. The teacher respectfully requests the student meet with them after class to discuss school policy and refers to the student using they/them pronouns or the student's name for the duration of the class. The teacher should not overly concern themselves about inadvertent slips or honest mistakes.

Relevant Federal Law	
Title IX	Title IX of the Education Amendments of 1972 (20 U.S.C. §1681 et seq.). Title IX prohibits discrimination and harassment based on sex in educational institutions, programs, and activities that receive federal financial assistance. The majority of courts (the trend) hold Title IX applies to gender identity discrimination. OCR is the federal agency with the responsibility for enforcing Title IX. The Title IX statute and regulations were not designed to answer this question when they were adopted in the 1970s. Due to this uncertainty, the issue of rights of students who are transgender to access sex-specific facilities based on gender identity has been litigated in many states. The legal trend strongly supports a student's right to use the facilities corresponding to the student's gender identity. There are several cases that have found it discriminatory to mandate that a student who is transgender use a particular bathroom or locker room. See, e.g., <u>Doe v. Clenchy</u>, No. 09-201 (Me. Super. Ct. April 11, 2011; <u>Mathis v. Fountain-Fort Carson School District #8</u>, No. P20130034X (Colorado Division of Civil Rights. June 17, 2013). But, there are cases that find to the contrary. <u>Johnston v. University of Pittsburgh</u>, 2015 WL 1497753 (W.D.Pa., March 31, 2015); <u>GG v. Gloucester County School Board</u>, Civil No. 4:15cv54L (E.D.Va., Sept. 17, 2015). Federal guidance: <u>USDE guidelines issued in 2014</u> and <u>OCR guidance memorandum issued on 3/26/2021</u> OCR guidance memorandum clarify USDE's position that Title IX's sex discrimination prohibition <i>extends to claims of discrimination based on gender identity</i> or failure to conform to stereotypical notions of masculinity or femininity.
	When school districts fail to provide protections, OCR and the Justice Department's Civil Rights Division have initiated complaint investigations and districts have been held liable for failure to protect. (<u>Arcadia Unified School District</u>, OCR 09-1201020, DOJ 169- 12-C- 70, United States Department of Education Office of Civil Rights, July2013; <u>Maine Supreme Court John and Jane Doe, on behalf of Susan Doe v. Regional School Unit 26, A.3d</u> ,2014 WL 325906; <u>US Department of Justice DOJ Case No. DJ 169-12C-70</u>, OCR Case No. 09-12-1020; United States Department of Education Office for Civil Rights, <u>Downey Unified School District</u> (CA) (2011). Case No. 09-12- 1095.
FERPA	FERPA protects the privacy of student education records. Under FERPA, schools must have prior written consent before releasing information from a student's education record to others aside from a parent/legal guardian. FERPA allows a parent to see all educational records related to his/her child. The FERPA annual notification must include information regarding a parent's right to inspect and review his or her child's education records, the right to seek to amend the records, the right to consent to the disclosure of PII from

	the records (except in certain circumstances), and the right to file a complaint with SPPO regarding an alleged failure by a school to comply with FERPA.
U.S. Constitution	1st Amendment – Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances. 14th Amendment - All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
Courts	Some federal courts have concluded that schools should not disclose sensitive student information such as sexual orientation to parents without a legitimate stated interest to do so. Other cases regarding parents’ rights to information related to their child are pending with the courts. • See <u>Nguon v. Wolf</u>, 517 F. Supp. 2d 1177, (C.D. Cal. 2007) (finding a legitimate purpose for disclosure but stating school could not have —gratuitously disclosed student’s sexual orientation to parents); • See <u>Wyatt v. Kilgore Indep. Sch. Dist.</u>, 200 WL 601 6467 (E.D. Tex. Nov. 30, 2011), rev’d in part on other grounds, 718 F.3d 496 (5th Cir. 2013), (finding right to privacy regarding student’s sexual orientation and denying summary judgment to school district). Students who are transgender have been determined to have a right to use facilities corresponding to their consistently asserted gender identity. The Supreme Court declined to hear the Grimm case. • See <u>G.G. v. Gloucester County School Board</u>, In the first major case to address this issue, Gavin Grimm, a boy who is transgender who was a student in Virginia, challenged a school district policy that required him to use unisex facilities rather than the communal boys’ restroom. In 2020, the Fourth Circuit Court of Appeals held that the school district’s policy violated Title IX and the <u>Equal Protection Clause</u>. (The school district settled with Gavin for \$1.3M). Numerous other federal courts have similarly ruled in favor of the rights of a student who is transgender, particularly in the wake of the U.S. Supreme Court’s decision in <u>Bostock</u>. OCR and DOJ’s 2021 guidance cites a district’s refusal to allow a student who is transgender to use the restroom according to the student’s gender identity as an example of sex-based discrimination within the federal agencies’ enforcement authority under Title IX.

Relevant State of Utah Law	
UCA	53E-9- 203(1)(c) "...policies adopted by a school district or charter school ... shall include prohibitions on the administration to a student of any ... survey ... without the prior written consent of the student's parent, in which the purpose or evident intended effect is to cause the student to reveal information, whether the information is personally identifiable or not, concerning the student's or any family member's: *** c) sexual behavior, orientation, or attitudes; (i) If a school employee or agent believes that a situation exists which presents a serious threat to the well-being of a student, that employee or agent shall notify the student's parent without delay. (ii) If, however, the matter has been reported to the Division of Child and Family Services within the Department of Human Services, it is the responsibility of the division to notify the student's parent of any possible investigation, prior to the student's return home from school. (iii) The division may be exempted from the notification requirements described in this Subsection (6)(b)(ii) only if it determines that the student would be endangered by notification of the student's parent, or if that notification is otherwise prohibited by state or federal law. (7)(a) If a school employee, agent, or school resource officer believes a student is at-risk of attempting suicide, physical self-harm, or harming others, the school employee, agent, or school resource officer may intervene and ask a student questions regarding the student's suicidal thoughts, physically self-harming behavior, or thoughts of harming others for the purposes of: (i) referring the student to appropriate prevention services; and (ii) informing the student's parent.
	53E-9- 203(6)(b)(i) "If a school employee or agent believes that a situation exists which presents a serious threat to the well-being of a student, that employee or agent shall notify the student's parent without delay."
	53G-9- 604(1) A school shall: (a) notify a parent if the parent's student threatens to commit suicide; or (b) notify the parents of each student involved in an incident of bullying, cyber-bullying, hazing, abusive conduct, or retaliation of the incident involving each parent's student.

	53G-9- 203(2) School personnel <i>may</i>: (a) provide information and observations to a student's parent about that student, including observations and concerns in the following areas: (i) progress; (ii) health and wellness; (iii) social interactions; (iv) behavior;
	62A-4a- 201 (parental rights statute) Parents have a “fundamental liberty interest in the care, custody, and management of the parent’s children.” Also, “a parent has the right, obligation, responsibility, and authority to raise, manage, train, educate, provide and care for” their children. Also, parents have “primary control over the care, supervision, upbringing, and education of their children.”
	53G-9- 602 Anti-bullying statute
	53G-8-202 Public school discipline policies -- Basis of the policies -- Enforcement.
	53G-9-702 Utah Suicide Prevention statute (2) In collaboration with the public education suicide prevention coordinator, a school district or charter school shall implement a youth suicide prevention program, which, in collaboration with the training, programs, and initiatives described in Section 53G-9-607, shall include programs and training to address: (a) for elementary grades and secondary grades: (i) life-affirming education, including on the concepts of resiliency, healthy habits, self-care, problem-solving, and conflict resolution; (ii) methods of strengthening the family; and (iii) methods of strengthening a youth's relationships in the school and community; and (b) for secondary grades: (i) prevention of youth suicide; (ii) decreasing the risk of suicide among youth who are: (A) not accepted by family for any reason, including lesbian, gay, bisexual, transgender, or questioning youth; or (B) suffer from bullying;
	34A-5 Utah Antidiscrimination Act The Utah Antidiscrimination Act prohibits employment discrimination on the basis of race, color, religion, sex, age (40 or over), national origin, disability, sexual orientation, gender identity, pregnancy, childbirth, or pregnancy-related conditions.
	62A-4a-403. Reporting requirements -- Exceptions.

	(1) Except as provided in Subsection (3), if an individual, including an individual licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58, Chapter 67, Utah Medical Practice Act, has reason to believe that a child is, or has been, the subject of abuse or neglect, or observes a child being subjected to conditions or circumstances that would reasonably result in abuse or neglect, the individual shall immediately report the suspected abuse or neglect to the division or to the nearest peace officer or law enforcement agency. (2) (a) (i) If a peace officer or a law enforcement agency receives a report under Subsection (1), the peace officer or law enforcement agency shall immediately notify the nearest office of the division. (ii) If the Division receives a report under Subsection (1), the division shall immediately notify the appropriate local law enforcement agency. (b) (i) The division shall, in addition to the division's own investigation in accordance with Section 62A-4a-409, coordinate with the law enforcement agency on investigations undertaken by the law enforcement agency to investigate the report of abuse or neglect under Subsection (1). (ii) If a law enforcement agency undertakes an investigation of a report under Subsection (1), the law enforcement agency shall provide a final investigatory report to the division upon request.
	62A-4a-201. Rights of parents -- Children's rights -- Interest and responsibility of state. School officials, faculty or staff members, school counselors, nurses, or psychologists should avoid reporting a parent to civil authorities for simply not agreeing with a child's perceived gender identity. In Utah law, it states: "Until the state proves parental unfitness, and the child suffers or is substantially likely to suffer, serious detriment as a result, the child and the child's parents share a vital interest in preventing erroneous termination of their natural relationship and the state cannot presume that a child and the child's parents are adversaries. A fundamentally fair process must be provided to parents if the state moves to challenge or interfere with parental rights. A governmental entity must support any actions or allegations made in opposition to the rights and desires of a parent regarding the parent's children by sufficient evidence to satisfy a parent's constitutional entitlement to heightened protection against government interference with the parent's fundamental rights and liberty interests and, concomitantly, the right of the child to be reared by the child's natural parent."
R277-613	LEA Policies and Training Regarding Bullying, Cyber-bullying, Hazing, Retaliation, and Abusive Conduct. Schools are required to have anti-bullying policies, which includes gender identity (2) The purpose of the rule is to:

	(a) require LEAs to develop, update, and implement bullying, cyber-bullying, hazing, retaliation, and abusive conduct policies at the school district and school level; (b) provide for regular and meaningful training of school employees and students; (c) provide for enforcement of the policies in schools, at the state level and in public school athletic programs; and (d) require an LEA to review allegations of bullying, cyber-bullying, hazing, retaliation, and abusive conduct. Included are: (B) Discrimination under the following federal laws: (I) Title VI of the Civil Rights Act of 1964; (II) Title IX of the Education Amendments of 1972; (III) Section 504 of the Rehabilitation Act of 1973; and (IV) Title II of the Americans with Disabilities Act of 1990; (C) how bullying, cyber-bullying, hazing and retaliation are different from discrimination and may occur separately from each other or in combination; (D) bullying, cyber-bullying, hazing, and retaliation based upon the students' or employees' actual or perceived characteristics, including race, color, national origin, sex, disability, religion, gender identity, sexual orientation, or other physical or mental attributes or conformance or failure to conform with stereotypes; and (E) the right of free speech and how it differs for students, employees, and parents;
R277-217	Prohibited Conduct by an Educator An educator may not: (19) expose students to material the educator knows or should have known to be inappropriate given the age and maturity of the students. (23) exclude a student from participating in any program, deny or grant any benefit to a student, or encourage a student to develop a prejudice on the basis of: (a) race; (b) color; (c) creed; (d) sex; (e) national origin; (f) marital status; (g) political or religious belief; (h) physical or mental condition; (i) family, social, or cultural background; (j) sexual orientation; or (k) gender identification;
R277-419	Pupil accounting An LEA shall require all students to provide their legal first, middle, and last names at the time of registration to ensure that the correct SSID follows students who transfer among LEAs. (a) A school shall transcribe the names from the student's birth certificate or other reliable proof of the student's identity and age, consistent with Section 53G-6-603; (b) The direct transcription of student names from birth certificates or other reliable

	proof of student identity and age shall be the student's <i>legal</i> name for purposes of maintaining <i>school records</i>; and (c) An LEA may modify the order of student names, provide for nicknames, or allow for different surnames, consistent with court documents or parent preferences, <i>so long as legal names are maintained on student records and used in transmitting student information to the Superintendent.</i> (3) <i>The Superintendent and LEAs shall track students and maintain data using students' legal names.</i> (4) If there is a compelling need to protect a student by using an alias, an LEA should exercise discretion in recording the name of the student. (5) An LEA is responsible to verify the accuracy and validity of enrollment verification data, prior to enrolling students in the LEA, and provide students and their parents with notification of enrollment in a public school. (6) An LEA shall ensure enrollment verification data is collected, transmitted, and stored consistent with sound data policies, established by the LEA as required in Rule R277-487. 53E-9-305 Collecting student data -- Prohibition -- Student data collection notice -- Written consent. https://le.utah.gov/xcode/Title53E/Chapter9/C53E-9-S301_2020051220200512.pdf (4) An education entity may collect the necessary student data of a student if the education entity provides a student data collection notice to: (a) the student, if the student is an adult student; or (b) the student's parent, if the student is not an adult student. (5) An education entity may collect optional student data if the education entity: (a) provides, to an individual described in Subsection (4), a student data collection notice that includes a description of: (i) the optional student data to be collected; and (ii) how the education entity will use the optional student data; and (b) obtains written consent to collect the optional student data from an individual described in Subsection (4). (6) An education entity may collect a student's biometric identifier or biometric information if the education entity: (a) provides, to an individual described in Subsection (4), a biometric information collection notice that is separate from a student data collection notice, which states: (i) the biometric identifier or biometric information to be collected; (ii) the purpose of collecting the biometric identifier or biometric information; and (iii) how the education entity will use and store the biometric identifier or biometric information; and (b) obtains written consent to collect the biometric identifier or biometric information from an individual described in Subsection (4). Additional Laws: Utah Constitution Article I, Section 15, which provides that no law shall be passed to abridge or restrain the freedom of speech; Utah Constitution Article I, Section 27, which affirms recurrence to fundamental principles as essential to the security of individual rights; 53G-10-205 Waivers of participation. (1) As used in this section, "school" means a public school. (2) If a parent of a student, or a secondary student, determines that the student's participation in a portion of the curriculum or in an activity would require the student to
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	affirm or deny a religious belief or right of conscience, or engage or refrain from engaging in a practice forbidden or required in the exercise of a religious right or right of conscience, the parent or the secondary student may request: (a) a waiver of the requirement to participate; or (b) a reasonable alternative that requires reasonably equivalent performance by the student of the secular objectives of the curriculum or activity in question. (3) The school shall promptly notify a student's parent if the secondary student makes a request under Subsection (2). (4) If a request is made under Subsection (2), the school shall: (a) waive the participation requirement; (b) provide a reasonable alternative to the requirement; or (c) notify the requesting party that participation is required. (5) The school shall ensure that the provisions of Subsection 53G-10-203(3) are met in connection with any required participation under Subsection (4)(c). (6) A student's academic or citizenship performance may not be penalized if the secondary student or the student's parent chooses to exercise a religious right or right of conscience in accordance with the provisions of this section. 34A-5-111 Application to the freedom of expressive association and the free exercise of religion. This chapter may not be interpreted to infringe upon the freedom of expressive association or the free exercise of religion protected by the First Amendment of the United States Constitution and Article I, Sections 1, 4, and 15 of the Utah Constitution https://law.justia.com/cases/utah/supreme-court/1982/17386-0.html There is extensive history attached to this 1982 Utah Supreme Court Ruling relevant to the Constitutionally Protected Rights of Parents. (Remaining questions regarding more applicable laws related to education)
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Definitions - TBD	
Gender Identity	
Transgender	
Gender nonconforming	
Cisgender	
Sex assigned at birth	