

## 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 identity 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, parents<sup>1</sup>, 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/or 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

<sup>1</sup> 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 biological sex. A “consistent assertion”<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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 or not, the student should be allowed to wear the designated uniform of their choice.

<sup>2</sup> 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.”

<sup>3</sup> 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; Kaczowski *et al.*, 2022.

<sup>4</sup> 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.

<sup>5</sup> See U.C.A. § 53G-7-802 - School Uniforms

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. No student should be compelled to use an alternative restroom. If any student 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 student who is transgender has been using a certain restroom or locker room should be allowed to use an alternative restroom and/or locker room.

EXAMPLE THREE: A student who is transgender does not feel comfortable using the girls or the boys' restroom and/or locker room. The student should be allowed to use an alternative restroom and/or 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.<sup>6</sup> 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 regarding school records, including change requests, publicly available on its website and school and district policy manuals.

In situations where schools are required to use or to report the legal name or biological sex 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 unnecessary 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 biological 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 requested 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 the privacy and 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.<sup>7</sup>

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 as outlined in law), 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.

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

<sup>6</sup> See R277-419-10(c) – Pupil accounting.

<sup>7</sup> See 34 C.F.R. § 99.31(a)(1). FERPA is defined as a federal law that affords parents the right to have access to their children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of personally identifiable information from the education records. See <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>.

an administrator or their designee<sup>8</sup> to discuss additional questions.

Privacy and confidentiality concerns for students who are transgender and/or gender nonconforming without a concurring parent, who needs additional support, should be referred to an administrator or their designee 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.<sup>9</sup> If a student does not request a record accommodation, the student’s privacy should be respected and no information should be affirmatively disclosed.

LEAs should also consider policies relating to requests by former students for changes to records. 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. 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

A school may establish and maintain a limited open forum for student clubs pursuant to Utah Code 53G-7-701 et seq., state board rules, and LEA governing board policies. Only curricular clubs may be authorized for elementary schools. A school governing body may limit, or permit a secondary school to limit, the authorization of clubs at the secondary school to only curricular clubs. 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.<sup>10</sup>

#### Overnight trips

The same guidance provided with respect to using facilities and participating in activities also applies to room arrangements and facility use for students who are transgender during overnight trips.

<sup>8</sup> A designee may be a school counselor, social worker, or school psychologist.

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

<sup>10</sup> See U.C.A. § 53G-7-709 – Public Education System – Local Administration, Public School General Requirements, Student Clubs

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 and Activities**

For interscholastic sports and activities, schools that participate in the Utah High School Activities Association (UHSAA) adhere to its guidelines, and participation is resolved on a case-by-case basis. Schools that participate in other leagues or activity associations including, but not limited to, Utah School Sports Association (USSA) and Utah Charter and Small School Athletic League (UCSSAL), will similarly adhere to respective guidelines.

#### **Participation in School Programs and Activities Examples**

EXAMPLE ONE: A student who is a transgender girl 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 biological sex. 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 student who is a transgender boy 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 student who is a transgender boy requested to share a room with one of their friends on the team. The teammate also requested to share a room with the student who is a transgender boy. 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 other arrangements.

EXAMPLE FIVE: A student who is a transgender girl wants to try out for the girls' basketball team. The administrator follows the appropriate association/league 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 addressed 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 substitutes such as William/Bill, Charlotte/Charlie/Chuck/Charles), the student will be referred by the teacher to an administrator or their designee. This process provides for consistency and adherence to procedures and removes individual teachers from the decision-making process. A teacher should not engage in counseling students regarding gender identity.

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. Teachers and other staff may also use the student's name in place of a pronoun.

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.

<sup>11</sup> Educators or staff should not make assumptions based on appearance or hearsay. Teachers and

<sup>11</sup> 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.



administrators may, but are not required to, identify their pronouns, and may not compel students to use certain pronouns when referring to self or others.

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<sup>12</sup> 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 an administrator or their designee.
- 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 protects the health and safety of the student.
- c) The presumption should be in favor of parent/guardian involvement.<sup>13</sup> A student should be given the opportunity to open the dialogue with parents or seek support from the designated administrator at the student's request.
- d) School personnel should document requested accommodations 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.
- e) Students may not have revealed their transgender and/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 student 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 U.C.A. § 62A-4a-403.

<sup>12</sup> See Confronting Anti-LGBTQI+ Harassment in Schools <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-tix-202106.pdf>

<sup>13</sup> "It is the public policy of this state that parents retain the fundamental right and duty to exercise primary control over the care, supervision, upbringing, and education of their children...[Schools] cannot presume that a child and the child's parents are adversaries." U.C.A. § 62A-4a-201.

- f) If an alternative name and/or pronoun is agreed upon the designee will work with the student and parents 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.

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

EXAMPLE ONE: Marvin, a biological 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.

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