

Utah Public Schools Gender Guidance Resource

Utah Law and Policy

What We Know

- There has been a dramatic increase in the rate of adolescents expressing discomfort with their sex who are presenting within the education setting.
 - According to the *Utah Department of Commerce – Utah Controlled Substance Database*: in 2015, there were only 5 children undergoing a “medical transition” from a female to male appearance. By 2019 that number increased to 552 (11,000% increase). Current estimates suggest a **13,000% increase** in gender transition treatment.
 - A 2018 study by Lisa Littman, Public Library of Science (PLOS One) showed that the increasing numbers of transgender-identified individuals are correlated to access to transgender-promoting information, overuse of YouTube, Social media outlets (reddit, tumblr, TikTok, Facebook), as well as their social network or friends identifying as transgender [<https://doi.org/10.1371/journal.pone.0202330>]
- Number of Students in Utah Public Schools: **675,247**
 - Number of Utah Students (Age 13-17): **417,785**
 - Estimated number of trans-identifying students in Utah (age 13-17): **1,400 or 0.33%**
- The knowledge of the factors contributing to gender identity development in adolescence is still evolving and not yet fully understood by scientists, clinicians, community members, and other stakeholders in equal measure.
- There are polarized views and mixed evidence regarding treatment options for people presenting with gender identity concerns, especially children and young people. It is important to understand the different factors, complexities, theories, and research relating to Gender Dysphoria.
- Many gender nonconforming youth present with co-occurring psychiatric problems, including autism, depression, anxiety, suicidality, trauma, substance abuse, and others.
- The legal landscape on gender identity is filled with contradiction in regards to Constitutional and statutory protections. There is **NO** current **Federal decision interpreting the Constitution that requires Utah public schools to enact particular policies or accommodations for transgender individuals. In particular, the Supreme Court decision in Bostock v. Clayton County DID NOT address Title IX or otherwise address issues such as privacy facilities and sports teams.**
 - Due to the dramatic increase and mixed evidence and research around gender identity, public schools should be cautious how they proceed as they engage in policy making. 1
- Utah law **is strong on protecting** parental rights and government overreach. § Section

Utah Schools need to take a clear stance on healthy support of gender non-conforming students which includes the inclusion of parents at every level of decision making and progression. Through collaboration with parents, school officials, and qualified professionals, combined with comprehensive policies and implementation plans, will provide trans-identified and gender-nonconforming students with an equal opportunity to be fully engaged in the school environment and to achieve academic success.

Moving Forward

Local Education Agencies (LEAs which includes districts and charters) should always: defend Constitutional protections within the school, maintain the trust of the community, create a respectful school climate for ALL students, and accommodate the needs of parents as they engage with schools on behalf of their children.

- All policies should be based on current Utah law, avoid discrimination in any form, protect the parent/child relationship, and adhere to consistent application for all students.
- Practitioners, parents, students, and school officials should work together on a case-by-case basis to make needed accommodations within the school setting.
- Avoid policies which are not required or clearly described under federal or state law
- Flags, symbols, and “inclusive practices” that seek to politicize the classroom are divisive and lead to a sectarian environment within LEAs. These practices should be avoided as they often lead to controversy and activism in place of a safe environment for educators, parents and students within a classroom.
- Content matters when teaching youth to think and learn within the classroom setting. No school should ever compromise on the quality of their literature simply to satisfy certain activists within communities. Sexualized content titled in Utah law as “sensitive materials” should never find its way into Utah classrooms. §Section 53G-10-103

Schools should apply existing procedures to determine reasonable accommodations for the needs of students undergoing gender transition procedures, according to already established policies.

* ***Consistent application*** of clear policies aligned with law is the number one preventative measure against legal action.

Utah Law

“Under both the United States Constitution and the state constitution of Utah, a parent possesses a fundamental liberty interest in the care, custody, and management of the parent's children.”

Parents trust that the education system in Utah will promote a public education climate of high expectations and academic excellence that is free from Sectarian Control.

Utah Constitution

1. Article I, Section 15: no law shall be passed to abridge or restrain the freedom of speech;
2. Article I, Section 27: affirms recurrence to fundamental principles as essential to the security of individual rights;
3. Article X, Section 3: vests general control and supervision over public education in the Board
4. Article X, Section 8: affirms that no religious or partisan test or qualification shall be required as a condition of employment, admission, or attendance in the state's education system;
5. Article X, Section 1: [Free nonsectarian schools.] The Legislature shall provide for the establishment and maintenance of the state's education systems including: (a) a public education system, which shall be open to all children of the state; and (b) a higher education system. Both systems shall be free from sectarian control.

Utah Code

1. § Section 53E-2-303: recognizes the importance of parental participation in the educational process, and requires each LEA to adopt a policy on parental involvement in the schools of the district that is designed to build consistent and effective communication among parents, teachers, and administrators
2. § Section 53E-6103(1)(b), (2) (a) and (b): focuses on improving interaction with parents and promoting greater parental involvement in the public schools
3. § Section 53G-10-202: requires Utah schools to maintain constitutional freedom in public schools
4. § Section 53G-10-202(4): prohibits school officials and employees from using their positions to endorse, promote, or disparage a particular religious, denominational, sectarian, agnostic or atheistic belief or viewpoint.
5. § Section 62A-4A-201: The state's role is secondary and supportive to the primary role of a parent.
6. § Section 62A-4A-201(1): it is the public policy of this state [Utah] that **parents retain the fundamental right and duty to exercise primary control over the care, supervision, upbringing, and education of their children...**At all times, a parent retains a vital interest in preventing the irretrievable destruction of family life. Prior to an adjudication of unfitness, government action in relation to parents and their children may not exceed the least restrictive means or alternatives available to accomplish a compelling state interest...the right of a fit, competent parent to raise the parent's child without undue government interference...The fundamental liberty interest of a parent concerning the care, custody, and management of the parent's children is recognized, protected, and does not cease to

placed in the temporary custody of the state. At all times, a parent retains a vital interest in preventing the irretrievable destruction of family life...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.”

7. Except as provided in Section § 53G-10-202, political, atheistic, sectarian, religious, or denominational doctrine may not be taught in the public schools.
8. § 53G-10-202: Maintains constitutional freedom in the public schools.
9. §53G-10-403: Sex education instruction or instructional programs means any course, unit, class, activity or presentation that provides instruction or information to students as outlined in law. Gender identity topics are **not outlined anywhere in Utah law or board rule** and should not be covered as “sex education”. Utah law shall be followed for **any course or class** touching on the content listed in law, allowing for parental opt-ins and appropriate vetting of curriculum. Board rule [R277-474](#)

The Family Educational Rights and Privacy Act (FERPA): is a federal law that affords parents the right to have access to their child’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.

<https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>.

Student information and records must be kept confidential and not disclosed without the permission of the student’s parents until the child reaches age 18, unless in certain limited circumstances permitted by law (34 C.F.R. § 99.31(a)(1)). FERPA is **not** a basis for withholding information about a child’s gender identity from his or her own parents.

Educator Resources

- According to USBE Administrative Rule, R277-217, Utah educators and staff should treat all children with respect and fairness regardless of personal feelings and ideology, maintaining professional boundaries and not becoming personal friends with students, both in person or on social media. As is the case with all students, emphasis and effort should be put in place to ensure that no student is discriminated against or harassed in any manner.
- School staff is required to notify parents if a student expresses a desire to identify as transgender, change his or her name, or use pronouns at school that don’t correspond to their biological sex on their birth certificate. Utah allows for amendments to a child’s birth certificate when accompanied by a court order. Students should be encouraged to talk with a parent or guardian about their concerns.
- Teachers and administrators should not require, coerce, or compel others to use certain pronouns.

- If a student requests different pronouns from their birth certificate, the teachers and other staff

may use the student's name in place of a pronoun.

- A Utah educator may not promise to keep confidences from a student's parents. In addition to compliance with the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPAA), a school must guard each student's privacy from unwarranted disclosures within the school setting – but never from the students' parents.
- School personnel shall, however, maintain privacy and confidentiality when student peers ask questions about a classmate who identifies as transgender, gender-nonconforming, desisting, or detransitioning student. Staff shall direct students to work with the designated administrator or school counselor as they engage with parents.
- A teacher should never participate in explorative or therapeutic conversations with students about gender issues whether as a class or as an individual student. Teachers should be well trained in the ability to refer such students to the appropriate administrators and to their parents, and if requested to refer their parents to mental health professionals.

It is against Utah Law for an individual to participate in activities governed by licensure requirements such as mental health therapy, social work, counseling, substance use disorder, etc., in accordance with the Unlawful Conduct definition described in Utah Code § 58-60-109. The penalty for unlawful conduct in accordance with subsection 58-60-109(1) is guilty of a 3rd degree felony and subsection 58-60-109(2), a Class A misdemeanor.

- Efforts by educators should **focus on improving interaction with parents and promoting greater parental involvement in the public schools**. Staff shall direct children to discuss their gender questions with a parent or guardian, recognizing the right of a fit, competent parent to raise the parent's child without undue government interference.
- Nonconformity to sex stereotypes reflects children expressing their unique individual personalities and imaginations, and should not be seen as a sign that a student is transgender. Students have a right to be treated with respect, and to be free from stereotyping and discrimination.
- School employees should not survey students to ascertain their gender identity or pronouns. 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 (the Protection of Pupil Rights Amendment, or PPRA; 20 USC 1232h and 34 CFR 98) and state level (Utah FERPA; 53E-9-203), which are designed to ensure transparency, protect parental rights and protect student privacy in cases where sensitive information might be collected.

Current USBE Policies and Applicable Law

Anti-bullying

Incidents of bullying or harassment of a student due to perceived gender issues or nonconformity

to gender stereotypes shall be addressed by educators pursuant to established anti-bullying policies under R277-613.

Dress Code

Dress codes should be consistent in application for all in accordance with State Code §53G-7-802, as well as State and LEA policy.

Dress codes and uniform policies should offer both gender specific and neutral options for students allowing individual preference in application. Uniform policies should emphasize modesty and cleanliness, with the goal of eliminating distractions or attention-seeking behavior. Dress codes and grooming standards should encompass reasonable and clear guidelines

Facilities

- In accordance with Utah Code §34A-5-110, administrators and/or staff of Utah public facilities may not be prohibited “from adopting reasonable rules and policies that designate sex-specific facilities, including restrooms, shower facilities, and dressing facilities, provided that the employer’s rules and policies adopted under this section afford reasonable accommodations based on gender identity to all employees.” (§ section 34A-5-110)
- School policies must respect the religious, cultural, and family beliefs of all students, particularly those who cannot be compelled to disrobe or shower, dress or room with individuals of the opposite biological sex.
- According to Utah Code §53G-6-1005, “Nothing in this part prohibits an athletic association, LEA, or school from adopting reasonable safety and privacy rules and policies that designate facilities, including restrooms, shower facilities, and dressing facilities, provided that the rules and policies described in this section afford reasonable accommodations.” <https://le.utah.gov/~2022/bills/hbillenr/HB0011.pdf>
- Based on these code sections it is understood that schools may adopt reasonable policies maintaining designated sex-separated facilities in the interest of safety and privacy, so long as reasonable accommodations based on gender identity are provided.

Freedom of speech:

Utah Code §34A-5-112 Religious liberty protections - Expressing beliefs and commitments in workplace -Prohibition on employment actions against certain employee speech. (1) An employee may express the employee's religious or moral beliefs and commitments in the workplace in a reasonable, non-disruptive, and non-harassing way on equal terms with similar types of expression of beliefs or commitments allowed by the employer in the workplace, unless the expression is in direct conflict with the essential business-related interests of the employer. (2) An employer may not discharge, demote, terminate, or refuse to hire any person, or retaliate against, harass, or discriminate in matters of compensation or in terms, privileges, and conditions of employment against any person otherwise qualified, for lawful expression or expressive activity outside of the workplace regarding the person's religious, political, or personal convictions, including convictions about marriage, family, or sexuality, unless the expression or expressive activity is in direct conflict with the essential business-related interests of the employer.

Utah Code §34A-5-111 - Application to the freedom of expressive association and the free exercise of religion - 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.

Though the rights and reasonable request for accommodation by all individuals should be considered, there is no currently no Federal or State law that requires the use of personal pronouns that do not coincide with the perceived biological sex of an individual.

Parent notification:

Parents shall be notified by the school of any changes in school or classroom policies under consideration concerning gender identity or sexual orientation, including at any upcoming school board meetings. Administrators shall solicit comments from parents on proposed changes.

In the event a student threatens suicide, parents shall be contacted immediately pursuant to R277-620.

No school official, faculty or staff member, counselor, nurse or psychologist may report a parent to civil authorities for a parent choosing to uphold their child’s biological sex or refusal of the parent to affirm a child’s gender belief or expression.

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 (Pupil accounting R277-419-10(c)).

Clubs

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 as required by sections Utah Code 53G-7-708 and 53G-7-709. Clubs shall not engage in or conduct mental health therapy, counseling, or psychological services for which a license would be required under state law. As stated in Utah Code, clubs should protect the: physical, emotional, psychological, or moral well-being of students and faculty; protect the rights of parents and students; and take into consideration other provisions listed in section 53G-7-705.

School Athletics

Participation in school athletics should be in accordance with the Utah House Bill 11 (2022), the Utah High school Activities Association handbook when applicable, and LEA policy.

In accordance with UHSAA Handbook, pages 26-27, a trans-identifying student that wishes to participate in high school Activities should provide the following:

- a. A complete list of all the student's prescribed, non-prescribed or over the counter, treatments or medications
- b. Written verification from an appropriate health-care professional (doctor, psychiatrist, or psychologist) of the student's consistent gender identification and expression; and c. Any other pertinent documentation or information which the student or parent(s)/legal guardian(s) appointed by a court of competent jurisdiction believe relevant and appropriate.

Conclusion

It is imperative that LEA's, administrators, staff, and students understand the humanity of all, including their rights and liberties as citizens of this great nation. No rights shall be infringed.

All individuals should receive optimal opportunity to thrive in an environment free of discrimination and full of support to all. The students of Utah Schools are entitled to an academic environment that fosters quality education and dynamic learning, free from pervasive ideologies, prejudice, or injustice.

Families entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance views that may conflict with the private beliefs of the student and his or her family. Students in such institutions are impressionable, and their attendance is involuntary. The State exerts great authority and coercive power through mandatory attendance requirements and because of the students' emulation of teachers as role models and the children's susceptibility to peer pressure. (Ref: Edwards v. Aguillard, 482 U.S. 578 (1987) Utah Sectarian views)

"[T]he public school is at once the symbol of our democracy and the most pervasive means for promoting our common destiny. In no activity of the State is it more vital to keep out divisive forces than in its schools. . ."

(Ref: Illinois ex rel. McCollum v. Board of Education, 333 U. S. 203, 333 U. S. 231 (1948))

Free society relies on diversity characteristics based on family autonomy. In order to ensure required pluralism, parents should be allowed maximum latitude in the rearing of their own children. On the contrary, there is no surer way to weaken society and threaten pluralism than to cause to be withdrawn the rights of parents who contradict officially approved values imposed by empowered activists who seek to determine what is in the "best interest" of someone else's child. It is in the best interest of all Utah students, and thus society, to strengthen familial bonds, and support the cooperative instruction of Utah children within the walls of all Utah schools.
<https://law.justia.com/cases/utah/supreme-court/1982/17386-0.html>. *In re JP*, 648 P.2d 1364 (1982)

