

Understanding Gender Identity to Better Support Students Utah State Board of Education Draft Document

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, discrimination, and harassment.¹ 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.” Educators have a responsibility to create and maintain an environment of dignity and respect for all, and to strive for understanding.² They must foster a learning environment that is safe and respectful of all students by implementing principles and strategies of inclusion, as they pertain to students with varying abilities and backgrounds.³

Many transgender, non-binary, and gender diverse students struggle to feel a sense of inclusion, belonging, and support in the educational environment. They are often at greater risk for negative outcomes due to perceptions of others regarding their gender identity. Transgender, non-binary, and gender diverse students are at increased risk of discrimination, prejudice, denial of civil and human rights, family rejection, homelessness, bullying/assault, depression, suicidal ideation/attempts/completion, substance abuse, HIV/AIDS, human trafficking, reduced academic achievement, absenteeism, and dropping out (SHARP Survey data, 2019; Murphy, L. T., 2017; Pollitt et al., 2019; Robinson & Espelage, 2011; Robinson & Espelage, 2012; Russell et al., 2018; Ryan et al., 2010; USDOJ & USDOE, 2021).

Questions are frequently asked about the rights of transgender, non-binary, and gender diverse students to be referred to by a different name or pronoun as their name on record in school. This guidance document enumerates laws, policies, and best practices to address these questions. This guidance does not anticipate every situation that may occur, and the needs of each student must be assessed on a case-by-case basis. Every student and school are unique and building administrators should discuss these issues with students and their families and draw on the experiences and expertise of their colleagues as well as external resources where appropriate.

¹ Public school discipline policies -- Basis of the policies -- Enforcement 53G-8-202.

² USBE Resolution No. 2021-01 Denouncing Racism and Embracing Equity in Utah Schools.

³ Educational Equity in Schools R277-328.

STUDENTS' PREFERRED NAMES & PRONOUNS

- When determining a student's request to use a different name or pronoun in school, educators must consider the rights of the student's parent(s) or guardian(s). The interpretation of the Utah statute regarding the rights of parents⁴, requires permission from a legal parent or guardian to use a different name/pronoun (even a nickname) other than the name/pronoun on record for all students regardless of gender identity. A student's request to be referred to by a different name should be granted if they ask the educator to use a derivation of their name on record (i.e., first, middle, last, initials, abbreviations, or common substitute – e.g., William/Bill, Charlotte/Charlie). The pronoun they/them/theirs have been established as gender-neutral, singular pronouns and may be used when addressing all students.
- School staff should consult with the student before reaching out to the student's legal parent(s) or guardian(s). Sometimes students have not revealed their transgender or non-binary identity to their families. There may be safety concerns for the student and fear of rejection. Students should be provided with the option to inform parents independently. It can also be supportive for staff to offer to be present during the conversation to help facilitate. School counselors, social workers, and school psychologists are often skilled facilitators who can serve in this role. If there are serious safety concerns it might be necessary for school staff to contact DCFS (Division of Child and Family Services). Under these circumstances the student's parent(s) or guardian(s) should not be contacted.
- Except as set forth herein, school personnel should not disclose information that may reveal a student's transgender, non-binary, and gender diverse status. Under the Family Educational Rights Privacy Act (FERPA)⁵, only those school employees with a legitimate educational need should have access to a student's records or the information contained within those records. Disclosing confidential student information to other employees, students, parents of other students, or other third parties may violate privacy laws, including but not limited to FERPA. Transgender, non-binary, and gender diverse students have the ability, as do all students, to discuss and express their gender identity and expression openly and decide when, with whom, and how much of their private information to share with others.

⁴ Utah Rights of parents -- Children's rights -- Interest and responsibility of state [62A-4a-201](#)

⁵ The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records.

SUPPORTING STUDENTS

- LEAs (Local Education Agency, i.e., charter schools and districts) must take preventative measures to provide protective factors for transgender, non-binary, and gender diverse students. In accordance with the Utah Suicide Prevention statute⁶, LEAs must provide training on decreasing the risk of suicide among youth who are not accepted by family for any reason. In addition, LEAs are required to provide training regarding bullying, cyber-bullying, hazing, retaliation, and abusive conduct, for all students, school employees, coaches, and volunteers, which shall include information on bullying, cyber-bullying, hazing, and retaliation based upon the students' or employees' actual or perceived characteristics, including gender identity.⁷

Engaging in supportive practices, such as honoring the use of a requested name/pronoun of a transgender, non-binary, or gender diverse student leads to better educational outcomes and the overall safety and wellbeing of students (Pollitt et al., 2018; Pollitt et al., 2019). When a transgender, non-binary, or gender diverse student reveals their gender identity to a staff member this information should be kept confidential. Disclosing confidential student information to other employees, students, parents of other students, or other third parties may violate privacy laws, including but not limited to FERPA⁸. There is no requirement under the law to report the gender identity of a student to a parent or guardian unless the student is asking to be referred by a different name (or derivation of) than the name on record (see information regarding reporting requirements in other sections).

It is illegal for a school employee to administer any “psychological or psychiatric examination, test, or treatment, or any survey, analysis, or evaluation without the prior written consent of the student's parent or legal guardian, 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 about a student’s sexual behavior, orientation, or attitudes” (Section 53E-9-203).⁹ Courts have frequently used the terms “sex” and “gender” interchangeably

⁶ Utah Suicide Prevention statute [53G-9-702](#), “in collaboration with the public education suicide prevention coordinator, a school district or charter school shall implement a youth suicide prevention program, which shall include programs and training [in secondary grades] to address decreasing the risk of suicide among youth who are not accepted by family for any reason, including lesbian, gay, bisexual, transgender, or questioning youth or suffer from bullying.”

⁷ Utah Administrative Rule R277-613 LEA -- Policies and Training Regarding Bullying, Cyber-bullying, Hazing, Retaliation, and Abusive Conduct.

⁸ Prohibited Conduct by an Educator R277-217-2. “An educator may not: (25) knowingly violate student confidentiality unless revealing confidential information to an authorized person serves the best interest of the student and serves a lawful purpose.” (See also footnote 5).

⁹ Activities prohibited without prior written consent -- Validity of consent -- Qualifications -- Training on implementation 53E-9-203. .

when discussing sexual attitudes, orientation, beliefs, and identity. In applying this to the language of the statute quoted above, the prohibition against asking a student about their sexual attitudes, orientation, or beliefs would likewise apply to asking about gender attitudes, orientation, or beliefs. This would include a student's own attitude and belief regarding the gender to which they identify. Thus, questions regarding a student's preferred pronouns or gender identity would require parental consent. Note, it is not a violation of the statute for a student to share information with an employee spontaneously or unsolicited by the employee. Allow students to approach staff they trust to share information. Do not make assumptions based on appearance or hearsay. A supportive practice that encourages an inclusive environment is for an educator to share their own preferred pronouns. This reaffirms to all students that there are adults who they can trust to share their gender identity.

SUPPORTING FAMILIES

- Great care should be taken when school staff engage in conversations with parents or guardians regarding their student's gender identity. Families are a vital protective factor for transgender, non-binary, and gender diverse students and it can be a sensitive topic (Ryan et al., 2010). While supporting the concerns of the student's family, it is important to express any concerns regarding the student's health and safety. When transgender, non-binary, and gender diverse youth are not allowed to use their chosen name in places such as work, school and at home, their risk of depression and suicide increases (Russell, Pollitt, Li, Grossman, 2018). Refusal to refer to a transgender, non-binary, or gender diverse student by their preferred name/pronoun in school could "out" the student in front of their peers and increase the likelihood of bullying and harassment, which can jeopardize their safety, wellbeing, and educational access. Ultimately, school staff are required to abide by the wishes of the legal parent(s) or guardian(s).
- Schools should work closely with the student and family in devising an appropriate plan regarding the confidentiality of the student's transgender, non-binary, or gender diverse status that works for both the student and the school. Privacy considerations may vary with the age of the student. In some cases, transgender, non-binary, and gender diverse students may feel more supported and safer if other students are aware of their gender identity. In these cases, school staff should work closely with the student, family, and other staff members on a plan to inform and educate the student's peers.

SCHOOL & DISTRICT POLICIES

- Each person is unique, so the needs of individual transgender, non-binary, and gender diverse students vary. An LEA policy setting forth general principles for supporting transgender, non-binary, and gender diverse students can help set clear expectations for students and staff and avoid unnecessary confusion, invasions of privacy, and other

potential harm. The local and national education community continues to develop and revise policies and practices to address the rights of transgender, non-binary, and gender diverse students and reflect our evolving understanding and the individualized nature of their needs. LEAs should ensure that policies do not marginalize, stigmatize, stereotype, or exclude students. Policies should be written to apply to the unique LEA community and are not governed by USBE.

FEDERAL PROTECTIONS TO KNOW

The Equal Protection Clause of the U.S. Constitution¹⁰ and Title IX of the Education Amendments Act¹¹ protects students from discrimination based on sex, including sexual orientation and gender identity.

STUDENT RECORDS

- Each school is required to maintain a permanent record of each student. The record should include the legal name of the student as well as the student’s biological 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.¹²
- Schools are also required to use a student’s legal name and sex on standardized tests and reports to the State Education Department via the LEA SIS (Student Information System).¹³
- 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, preferred by the student and parent(s)/guardian(s). 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 as “preferred” and is consistently asserted at school by the student.
- On occasion, a former student who has obtained a change of legal name and sex may request the school or district to apply the information to past student records. In order to ensure that records accurately reflect circumstances in effect at the time each record was made, the former name and/or sex will be maintained in archived data in the LEA database. Reproduction of a diploma reflecting a legal name change cannot be provided.

¹⁰ Equal Protection Clause <https://constitution.congress.gov/browse/amendment-14/section-1/>

¹¹ Letter to Educators on Title IX’s 49th Anniversary
<https://www2.ed.gov/about/offices/list/ocr/correspondence/stakeholders/educator-202106-tix.pdf>

¹² Pupil accounting ([R277-419-10\(c\)](#))

¹³ Ibid.

SPECIAL EDUCATION & SECTION 504 CONSIDERATIONS

- LEAs should be careful to not equate transgender, non-binary, and gender diverse identities as being indicative of a disability. Title II of the Americans with Disabilities Act (ADA)¹⁴ specifically excludes “gender identity disorders not resulting from physical impairments” from its definition of disability; as such, requests for accommodations for a student’s gender-related needs are not within the purview of Section 504. Accordingly, LEAs should accommodate transgender needs outside of a 504 Plan or IEP and ensure that a student’s 504 Plan or Individualized Education Program (IEP) is focused on the student’s disability-related educational needs.
- School staff involved in developing and implementing 504 Plans or IEPs should respect student privacy and preferred names. LEAs should ensure that IEP team members and service providers use the student’s preferred name and pronouns. In terms of official school records, the student’s biological name will be on their official record unless they have had an official name change but staff can write, “referred to as...” or “also known as...” on a 504 Plan or IEP. School staff refusal to use a student’s preferred name and pronoun may be viewed as harassment.

FURTHER READING & AVAILABLE RESOURCES

- [American Psychological Association](#)
- [Confronting Anti-LGBTQI+ Harassment in Schools](#) (June 23, 2021)
- [Dear Educator Letter on 49th Anniversary of Title IX](#) (June 23, 2021)
- [Family Acceptance Project](#)
- [Inclusive Language Guidelines](#)
- [National Association of School Psychologists](#)
- [Salt Lake City School District gender policy](#)
- [Sevier District transgender student policy](#)
- [Supporting Transgender Youth in School](#) (June 2021)
- [USBE data privacy guidebook](#)
- [Utah Department of Human Services Child and Family Services](#)
- [Utah SHARP survey](#)

DEFINITIONS OF TERMS

There are several terms preferred by individuals whose gender identity does not fall within the traditional binary of man (boy) or woman (girl). Each individual should be allowed to express their preferred identity term. The terms used in this document are not exhaustive but are used for the purpose of providing guidance as educators endeavor to support their students and families.

¹⁴ Title II of the Americans with Disabilities Act (ADA) <https://www.ada.gov/pubs/adastatute08.htm>

- “Biological Sex” refers to an infant’s sex as determined or assigned based on the appearance of external reproductive organs and structures and sometimes chromosomal testing. Infants are assigned either of the two major forms of individuals that are distinguished respectively as female or male.
- “Educational Equity” is defined by USBE 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 supports that recognize each student’s unique background and school context to guarantee that all students have access to high-quality education.”
- “Gender Identity” relates to a person's internal sense of being male, female, some combination of male and female, or neither male nor female. 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.¹⁵
- “Gender Binary” is a classification system consisting of two genders, girl/boy or man/woman.
- “Gender Expression” relates to the physical and behavioral manifestations of one's gender identity.
- “Gender Diverse” noting or relating to a person whose gender identity or gender expression does not conform to socially defined male or female gender norms.
- “Inclusion” means the practice of ensuring students feel a sense of belonging and support.
- “Non-binary” is a gender identity term often used by people who do not identify with being a boy/man or girl/woman. (See definition of Gender Binary)
- “Sexual Orientation” is a person's sexual identity or self-identification (e.g., lesbian, gay, bisexual, heterosexual, pansexual, asexual, etc.) that refers to one's inherent attraction to a sexual partner of a certain gender, or the absence of gender preference in a sexual relationship.
- “Transgender (aka Trans)” is a term relating to a person, whose gender identity differs from the sex the person had or was identified as having at birth.

¹⁵ Utah Antidiscrimination Act <https://le.utah.gov/xcode/Title34A/Chapter5/34A-5-S102.html>

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