

Guiding Principles for Respecting Gender Diversity in Alpine School District USBE District Examples Matrix

Every child has a right to feel safe, respected, and have a sense of belonging. Educators partner with families to support students academically, socially, and emotionally.

Educators and staff must ensure that all students, including transgender and gender-nonconforming students, have safe school environments. Educators create and maintain a learning environment of dignity and respect for all by implementing inclusion strategies for and about students with varying abilities and backgrounds. Furthermore, discrimination, bullying, and harassment on the basis of sex, sexual orientation, gender identity, or gender expression is prohibited in the Alpine School District.

Guiding Principles

- Partner with students' parent/guardian
- Listen and empathize with all students about their unique needs and address all situations with respect
- Treat students who identify as transgender, non-binary, and gender diverse equal to their peers
- Link students and families to community resources
- School staff should not ask students their gender identity
- It is not a violation of statute for a student to share information with an employee spontaneously or unsolicited by the employee
- Facilitate compliance with local, state and federal laws concerning bullying, harassment, privacy, and discrimination (Title IX, FERPA)
- Report any act of discrimination, hazing, or bullying

How are students who identify as transgender, non-binary, and gender diverse protected in schools?

Title IX Discrimination/Harassment

A recent supreme court (Bostock v. Clayton County, 140 S. Ct. 1731, 590 U.S. ____ 2020) decision clarified that protections against sex discrimination encompass discrimination based on sexual orientation and gender identity. Further, the application of Bostock v.

Clayton County to Title IX of the Education Amendments of 1972 reasoned that "[a]II persons should receive equal treatment under the law, no matter their gender identity or sexual orientation."

How do educators partner and work with families of students who identify as transgender, non-binary, and gender diverse?

Preferred names/pronouns

- Utah statute regarding the rights of parents (Utah Rights of Parents--Children's rights-Interest and responsibility of state 80-2a-201) requires permission from a parent and
 guardian to use a different name/pronoun other than the
 name/pronoun on record for all students regardless of gender identity.
- When a parent or guardian approves the use of a preferred name/pronoun for their student, educators should honor their request, to the extent possible.
- The pronouns they/them/theirs have been established as gender-neutral, singular pronouns and may be used when addressing all students.

Privacy and Confidentiality

- Under the Family Education Rights Privacy Act (FERPA), only school employees with a legitimate educational need should have access to students' records or the information contained within those records.
- There is no requirement under the law to report the gender identity to a parent or guardian unless the student is asking for a change to their educational record or program (such as to be referred by a different name than the name on record or pronouns).
- When a student makes a gender identity disclosure to an educator, the educator
 could provide the student with the option to inform parent/guardian independently
 and/or dialogue with the student about reaching out to the student's parent or
 guardian in a safe and supportive environment. (*See safety concern statement
 below).
- Educators are prohibited from administering any psychological or psychiatric
 assessments, tests, treatments, surveys, analysis, materials, or evaluations of students
 without parental written consent, including asking questions regarding the students'
 sexual or gender attitudes, orientation, or beliefs.

^{*} Due to safety concerns, there may be circumstances wherein students' parents or guardians should not be contacted. Please work with school counselors, social workers, psychologists, and the Division of Child and Family Services under these circumstances.

Official Student Records

- The student's permanent records 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 from a Court Order or ASD's Name Change Affidavit is required when a change in the name of the student is requested for official student educational records.
- Only a Court Order can change the biological sex on a student record.
- To the extent that the school is not legally required to use a student's legal name or sex on school records or other documents, the school should use the name and sex, including pronouns, preferred by the student and parent or guardian.

What additional accommodations support our students who identify as transgender, non-binary, or gender-diverse to thrive academically, socially, and emotionally?

Accessibility (Facilities)

- Schools should work closely with the student and parent/guardian in devising an appropriate plan regarding the student's transgender, non-binary, or gender-diverse needs that works for both the student and school.
- This plan should include locker room and restroom options.
- Arrangements can be made for increased privacy for any student in consultation with their parent/guardian.

Overnight school trips

- Overnight accommodations should be addressed on a case by case basis.
- Schools should honor alternate accommodations, to the extent possible, to meet each student's and parent's/guardian's needs and/or requests.

Dress code

• Students who identify as transgender, non-binary, or gender-diverse can dress in a manner consistent with their gender identity or gender expression as long as it complies with the school's and district's dress code.

Reference:

Rafferty J, Aap Committee On Psychosocial Aspects Of Child And Family Health, Aap Committee On Adolescence, Aap Section On Lesbian, Gay, Bisexual, And Transgender Health And Wellness. Ensuring Comprehensive Care And Support For Transgender And Gender Diverse Children And Adolescents. Pediatrics. 2018;142(4): E20182162

Tool: Recognizing Microaggressions and the Messages They Send

Microaggressions are the everyday verbal, nonverbal, and environmental slights, snubs, or insults, whether intentional or unintentional, that communicate hostile, derogatory, or negative messages to target persons based solely upon their marginalized group membership (from <u>Diversity in the Classroom</u>, UCLA Diversity & Faculty Development, 2014). The first step in addressing microaggressions is to recognize when a microaggression has occurred and what message it may be sending. The context of the relationship and situation is critical. Below are common themes to which microaggressions attach.

THEMES	MICROAGGRESSION EXAMPLES	MESSAGE
Alien in One's Own Land When Asian Americans, Latino Americans and others who look different or are named differently from the dominant culture are assumed to be foreign-born	 "Where are you from or where were you born?" "You speak English very well." "What are you? You're so interesting looking!" A person asking an Asian American or Latino American to teach them words in their native language. Continuing to mispronounce the names of students after students have corrected the person time and time again. Not willing to listen closely and learn the pronunciation of a non-English based name. 	You are not a true American. You are a perpetual foreigner in your own country. Your ethnic/racial identity makes you exotic.
Ascription of Intelligence Assigning intelligence to a person of color or a woman based on his/her race/gender	 "You are a credit to your race." "Wow! How did you become so good in math?" To an Asian person, "You must be good in math, can you help me with this problem?" To a woman of color: "I would have never guessed that you were a scientist." 	People of color are generally not as intelligent as Whites. All Asians are intelligent and good in math/science. It is unusual for a woman to have strong mathematical skills.
Color Blindness Statements that indicate that a White person does not want to or need to acknowledge race.	 "When I look at you, I don't see color." "There is only one race, the human race." "America is a melting pot." "I don't believe in race." Denying the experiences of students by questioning the credibility /validity of their stories. 	Assimilate to the dominant culture. Denying the significance of a person of color's racial/ethnic experience and history. Denying the individual as a racial/cultural being.
Criminality/Assumption of Criminal Status A person of color is presumed to be dangerous, criminal, or deviant based on his/her race.	 A White man or woman clutches his/her purse or checks wallet as a Black or Latino person approaches. A store owner following a customer of color around the store. Someone crosses to the other side of the street to avoid a person of color. While walking through the halls of the Chemistry building, a professor approaches a post-doctoral student of color to ask if she/he is lost, making the assumption that the person is trying to break into one of the labs. 	You are a criminal. You are going to steal/you are poor, you do not belong. You are dangerous.
Denial of Individual Racism/Sexism/Heterosexism A statement made when bias is denied.	 "I'm not racist. I have several Black friends." "As a woman, I know what you go through as a racial minority." To a person of color: "Are you sure you were being followed in the store? I can't believe it." 	I could never be racist because I have friends of color. Your racial oppression is no different than my gender oppression. I can't be a racist. I'm like you. Denying the personal experience of individuals who experience bias.
Myth of Meritocracy Statements which assert that race or gender does not play a role in life successes, for example in issues like faculty demographics.	 "I believe the most qualified person should get the job." "Of course he'll get tenure, even though he hasn't published much—he's Black!" "Men and women have equal opportunities for achievement." "Gender plays no part in who we hire." "America is the land of opportunity." "Everyone can succeed in this society, if they work hard enough." "Affirmative action is racist." 	People of color are given extra unfair benefits because of their race. The playing field is even so if women cannot make it, the problem is with them. People of color are lazy and/or incompetent and need to work harder.

Tool: Recognizing Microaggressions and the Messages They Send

THEMES	MICROAGGRESSION	MESSAGE
Pathologizing Cultural Values/Communication Styles The notion that the values and communication styles of the dominant/White culture are ideal/"normal".	 To an Asian, Latino or Native American: "Why are you so quiet? We want to know what you think. Be more verbal." "Speak up more." Asking a Black person: "Why do you have to be so loud/animated? Just calm down." "Why are you always angry?" anytime race is brought up in the classroom discussion. Dismissing an individual who brings up race/culture in work/school setting. 	Assimilate to dominant culture. Leave your cultural baggage outside. There is no room for difference.
Second-Class Citizen Occurs when a target group member receives differential treatment from the power group; for example, being given preferential treatment as a consumer over a person of color.	 Faculty of color mistaken for a service worker. Not wanting to sit by someone because of his/her color. Female doctor mistaken for a nurse. Being ignored at a store counter as attention is given to the White customer. Saying "You people" An advisor assigns a Black post-doctoral student to escort a visiting scientist of the same race even though there are other non-Black scientists in this person's specific area of research. An advisor sends an email to another work colleague describing another individual as a "good 	People of color are servants to Whites. They couldn't possibly occupy high status positions. Women occupy nurturing positions. Whites are more valued customers than people of color. You don't belong. You are a lesser being.
	Black scientist." Raising your voice or speaking slowly when addressing a blind student. In class, an instructor tends to call on male students more frequently than female ones.	A person with a disability is defined as lesser in all aspects of physical and mental functioning. The contributions of female students are less worthy than the contributions of male students.
Sexist/Heterosexist Language Terms that exclude or degrade women and LGBT persons.	 Use of the pronoun "he" to refer to all people. Being constantly reminded by a coworker that "we are only women." Being forced to choose Male or Female when completing basic forms. Two options for relationship status: married or single. A heterosexual man who often hangs out with his female friends more than his male friends is labeled as gay. 	Male experience is universal. Female experience is invisible. LGBT categories are not recognized. LGBT partnerships are invisible. Men who do not fit male stereotypes are inferior.
Traditional Gender Role Prejudicing and Stereotyping Occurs when expectations of traditional roles or stereotypes are conveyed.	 When a female student asks a male professor for extra help on an engineering assignment, he asks "What do you need to work on this for anyway?" "You're a girl, you don't have to be good at math." A person asks a woman her age and, upon hearing she is 31, looks quickly at her ring finger. An advisor asks a female student if she is planning on having children while in postdoctoral training. Shows surprise when a feminine woman turns out to be a lesbian. Labeling an assertive female committee chair/dean as a "b," while describing a male counterpart as a "forceful leader." 	Women are less capable in math and science. Women should be married during child-bearing ages because that is their primary purpose. Women are out of line when they are aggressive.

Practical Tips for Interacting with Transgender Students

DEFINITIONS

<u>Biological sex at birth</u>: objectively measureable organs a child is born with. Also referred to "birth assigned gender" or "gender assigned at birth"

<u>Gender identity</u>: how people think of themselves and which gender they feel they are. In other words, gender identity is an emotional, rather than a physical characteristic. It is generally believed that gender identity is formed by about the age of four (although an individual may not realize it until later) and it very rarely changes after that.

<u>Gender expression</u>: how people demonstrate their gender to the outside world through things like dress, speech, and behavior. Gender expression may change depending on circumstances.

<u>Transgender person</u>: a person whose gender identity does not match his/her biological sex at birth. Importantly, a person's status as transgender does not depend upon whether that person has undergone (or even intends to undergo) any medical treatment for gender reassignment.

<u>Transgender female</u>: a person whose assigned sex at birth is male but identifies and lives as a female. Also referred to as MTF, or male-to-female.

<u>Transgender male</u>: a person whose assigned sex at birth is female but identifies and lives as a male. Female-to-male, or FTM

<u>Transition</u>: the process a transgender individual goes through to live as their self-identified gender. Although it may include medical intervention, no such treatment is required for a person to transition.

Social transition:

- Use a different name
- Use of a different pronouns
- He, she, her
- They, zey
- Surface transformations of physical appearance (hair cut, earrings,--expression side)
- Use of bathrooms that suits the person's gender more accurately

Medical transition (any combination):

- Use of a medical interventions to block natal puberty
- Use of cross-sex hormones
- Gender Confirmation Surgery (vs. sex reassignment or sex change—not changing anything, just confirming)
- Use of a bathroom that suits the person's gender more accurately

COMMON ISSUES

1. Names and pronouns

- Recognize that this is often the first step in transitioning from one gender to another.
 When a request to refer to a student by a different name comes to your attention, consider asking the student if he/she would like to schedule a meeting with parents to discuss other issues that may arise and to ensure there is a plan in place to help the student feel safe.
- Transgender students, like all students, should be addressed in informal verbal and
 written communication by the preferred name and/or pronoun. If you require parental
 permission to call students something different than what is on the roll or not, you
 must apply the requirement to all students, even-handedly.
- Policies that require "proof" or a formal evaluation or diagnosis of a student's gender identity are looked down upon, however, districts across the country do ask for "more than a casual declaration of gender identity or expression.

2. Telling parents

- Note that the ACLU is very protective of a student's right to privacy in his/her sexuality.
- If a school employee believes that "a situation exists which presents a serious threat to the well-being of a student," the employee must notify parents without delay. (Utah Code 53A-13-302(6)(b)(i)). Other than a threatening situation, volunteering known information about a student's sexuality with parents is not advised. Consider the following factors in making a determination about talking to parents:
 - Age of students
 - Whether student is being bullied based on sexuality or gender identity
 - Student requests
 - Knowledge of parents' relationship with students
- What if a student asks to be called a preferred name/pronoun and parents object? Unless the student is 18, parents' requests should govern.

3. School Records

- In Utah, official school records must include information found on the student's birth certificate. This includes name and gender. (R277-419-10)
- Under FERPA, a parent may request a school to amend a student's records, including the name on official records, but it is ultimately up to the school whether the request will be granted. If an amendment to a record is denied, parents have the right to insert a statement in the record setting forth his or her views.
- A court order changing the birth certificate is the only way a students' name and gender can be changed on official school records.

- "School records" is not defined in this rule. FERPA uses the term "education record" for a very broad set of records. "School records" can be interpreted more narrowly for purposes of this rule.
- **Best practice:** Accommodate preferred name/gender where possible on non-official school records, such as:
 - Classroom seating chart
 - A roll
 - Notes to parents about the student
 - Student homework
 - Yearbook

4. School Bathrooms/Locker rooms

- No court in Utah has taken a position on this issue.
- Nebo's position is to review each matter on a case-by-case basis
- Many schools provide a uni-sex bathroom or faculty bathroom to any student desiring to use the bathrooms. Make sure the uni-sex bathroom is not so inconveniently located that a student may claim unequal access.
- Long term solution? Closed stalls in all locker rooms and all bathrooms for use by any or all students.
- Access should not be controlled by other students' or parents' comfort level regarding the access.

5. School Overnight Trips

- Review on a case-by-case basis.
- Work with district officials.
- Work with transgender student and family.
- Consider providing a single room for the student, if the student is okay with this. Forcing the student to be in a single room where all other students get to share a room could be problematic.
- Consider the putting 2 kids in a 2 bed room, rather than 4.
- Consider putting the student with a close friend—male or female—also going on the trip.
- May be okay to say, "Nebo will not permit students who do not share the same anatomy to share intimate spaces overnight."
- BUT do not jump to this answer.

6. Student-on-student harassment/bullying

 Schools have a legal duty to protect ALL STUDENTS from harassment by adults and other students. Supreme Court in Davis v. Monroe (1998) has stated that school officials may be liable if they are "deliberately indifferent" to student-on-student harassment that is persistent, pervasive, and severe.

- Licensed school employees have a professional responsibility under 277-515 both not to harass students and to protect students from harassment by other students.
- If you are receive a complaint that other students are harassing/bullying a student based on his gender identity—even if you don't believe it's happening—document, investigate, document your investigation, follow-up with parents, and put a safety plan in place if necessary. DO NOT DO NOTHING!

7. Communication and Confidentiality

- First and foremost, soliciting information about a student's sexual behavior, orientation, or attitudes is prohibited under Utah Code 53A-13-302(1)(c). Resist the urge to play therapist!
- Once information has been obtained—regardless of how— respect the student's privacy rights.
- Keep confidential information about students discussed with administrators and with other faculty. Discussions about students with other faculty should only be on a needsto-know basis.
- Official school records that identify the student's legal name and gender as they appear on the birth certificate are considered "education records" under FERPA and may not be shared with anyone outside of the exceptions under the law.

8. Dress Code

- Ensure your school dress code is gender neutral.
- If a transgender boy is wearing a dress and he is not doing anything to harm anyone else, even if it is causing disruption, address the disruption, not the dress.
- Dance attire: Think twice before punishing a transgender female (born male, identifies as female) from wearing a dress to Prom. Especially if she has been elected Prom Queen
- Graduation attire: if you have gender-specific graduation attire, consider getting rid of it or allowing transgender students to wear the attire of the gender they identify with.
- Recognize that some students do not identify with either gender, or consider themselves gender fluid—moving back and forth between male and female. For this reason, it is problematic to require any kind of "proof" that the student is transgender before allowing him/her to wear attire of the gender they identify with.

9. Sports

UHSAA Interpretation and Guidelines 1.1.4: Transgender Participation: "A student shall be permitted to participate on a gender specific sports team that is consistent with the public gender identity of that student for all other purposes. In making a determination of eligibility, the UHSAA will first refer to the confirmation of the student and his or her local school regarding gender identification. The UHSAA will require that member school districts and schools make a determination of a student's eligibility to participate in gender specific sports team for a particular season based on the gender identification of that student (1) in current school records, and, (2) daily life activities in the school and community at the time that sports eligibility is determined."

- Factors in making an eligibility determination for transgender athletes
 - Documentation from individuals such as, but not limited to, parents /legal guardians appointed by a court of competent jurisdiction, friends and/or teachers, which affirm that the actions, attitudes, dress and manner demonstrate the student's consistent gender identification and expression;
 - A complete list of all the student's prescribed, non-prescribed or over the counter, treatments or medications;
 - Written verification from an appropriate health-care professional (doctor, psychiatrist, or psychologist) of the student's consistent gender identification and expression; and
 - 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.

10. Parents' Involvement

- Because of the many issues that can arise when working with transgender students, parental involvement at the outset is key. Work with the parents to establish a plan for:
 - What name to call the student,
 - What pronoun to use
 - Bathroom/locker room accommodations
 - Overnight field trips
 - Athletic team participation
 - Preventing bullying/harassment
- FOR THIS REASON, HELP THE STUDENT UNDERSTAND THE VALUE OF INFORMING PARENTS. KEEP IN MIND, AGE MATTERS. A 17 YEAR OLD TRANS STUDENT MAY BE ABLE TO NAVIGATE THE WORLD OF TRANSITIONING BETTER THAN A 12 YEAR OLD WITHOUT PARENTAL INVOLVEMENT.

GENDER SENSITIVITY TRAINING

Part I

TREE of LIBERTY SOCIETY



Gender Stereotyping in Society

Women do/are

- The household chores—cook and clean
- Raise children
- More organized
- More emotional and sensitive
- Communicative
- Nurturing and kind

Men do/are

- Work outside the home
- Assertive
- Leaders
- Unorganized
- Handy with tools
- Emotionally inept
- Unable to communicate

Gender stereotyping in commercials THEN...



AND NOW...



TREE of LIBERTY SOCIETY

Gender stereotyping in our schools

Girls do/are...

- Neat
- Better at reading and arts
- Quiet/Shy
- Emotional
- Good
- Careful



Boys do/are...

- Messy
- Better at math and science
- More rambunctious
- Louder
- Poor handwriting
- Quick to act, not think



When stereotyping becomes discrimination...

 Stereotyping becomes discrimination when actions are taken against a particular group to limit opportunities or benefits



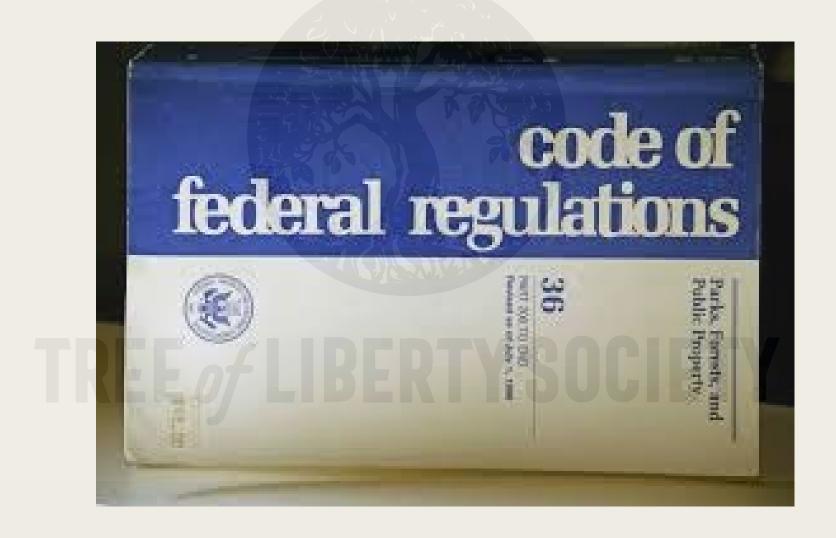


Title IX

20 U.S.C. 1681(a) (2006)

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance..."

Title IX Federal Regulations





34 Parts 1 to 299 Revised as of July 1, 2010

Education

34 C.F.R 106

- Subpart A: Introduction
- Subpart B: Coverage
- Subpart C: Discrimination on the <u>Basis of Sex</u> in Admission and Recruitment Prohibited
- Subpart D: Discrimination on the <u>Basis of Sex</u> in Education Programs or Activities Prohibited
- Subpart E: Discrimination on the <u>Basis of Sex</u> in Employment in Education Programs or Activities Prohibited
- Subpart F: Procedures [Interim]



A school district shall not, on the basis of sex:

- Treat one person differently from another in determining whether such person ...[receives any] aid, benefit, or service;
- Provide different aid, benefits, or services or ... in a different manner;
- Deny any person any such aid, benefit, or service;
- Subject any person to separate or different rules of behavior, sanctions, or other treatment;
- Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

34 CFR 106.31(b)

Discrimination Prohibited

Monitoring Officer

School districts shall:

- Designate at least one employee to coordinate efforts to comply with and carry out its responsibilities ... including any investigation of any complaint.
- Notify all its students and employees of the name, office address and telephone number of the employee or employees appointed.

34 C.F.R. 106.8(a)

Complaint Procedures

[School Districts] shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints.

TREE & LIBERTY 34 C.F.R. 106.8(b)



Notification of Policy

[A school district] shall implement specific and continuing steps to notify [everyone] that it does not discriminate on the basis of sex in the educational program.

34 C.F.R. 106.9(a)

TREE of LIBERTY SOCIETY





Ladies

Gents

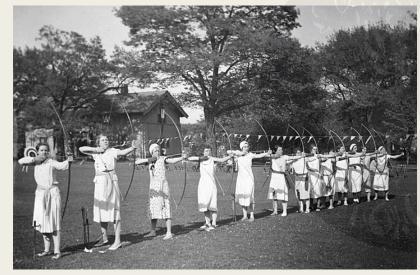
A [school district] may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

Comparable Facilities

34 CFR 106.33

Access to Course Offerings

34 CFR 106.34



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A [school district] shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

No Single-Sex Courses (Limited Exceptions, see next slide)

Access to Course Offerings

34 CFR 106.34



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Exceptions:

- (b) grouping of students in PE
 by ability as assessed by
 objective standards;
- (c) separation by sex in PE classes during wrestling, boxing, rugby, ice hockey, football, basketball, other contact sports;
- (e) separate sessions for human sexuality instruction;
- (f) choirs based on vocal range.

Exceptions to 'No Single-Sex Courses' Rule

Guidance Counseling

34 CFR 106.36



A [school district] shall not discriminate against any person on the basis of sex in the counseling or guidance of students.

Where a [school district] finds that a particular class contains a substantially disproportionate number of individuals of one sex, the [district] shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling.

Pregnant Students

34 CFR 106.40



- A [school district] shall not discriminate against any student ... on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests <u>voluntarily</u> to participate in a separate portion of the program or activity.
- A [school district] which operates a portion of its education program or activity separately for pregnant students ... shall ensure that the separate portion is *comparable* to that offered to non-pregnant students.

Voluntary and Comparable

Athletics 34 CFR 106.41



District shall provide equal athletic opportunity:

- Interests and abilities
- Equipment and supplies
- Scheduling
- Travel
- Coaching opportunities

- Coaching compensation
- Facilities
- Medical services
- Housing and dining
- Publicity

Equal Athletic Opportunities

The Supreme Court on Title IX





Cannon v. University of Chicago 441 U.S. 677 (1979)





 Supreme Court says Title IX includes an implied right of action, meaning people can sue under it.



Franklin v. Gwinnett County Public Schools 503 U.S. 60 (1992)

- Sexual harassment constitutes sex discrimination under Title IX
- Title IX not only provides equitable remedies to require fair treatment, it also provides for damages awards (i.e., district can be sued for money)



Sex Discrimination v. Sexual Harassment

- Sex discrimination means:
 - treating one person differently from another in determining whether such person ...[receives any] aid, benefit, or service;
 - Providing different aid, benefits, or services or ... in a different manner;
 - Denying any person any such aid, benefit, or service;
 - Subjecting any person to separate or different rules of behavior, sanctions, or other treatment;
 - Otherwise limiting any person in the enjoyment of any right, privilege, advantage, or opportunity.

Sex Discrimination v. Sexual Harassment

- Sexual Harassment means harassment that:
 - --is sexual in nature;
 - --is unwelcome; AND
 - -denies or limits a student's ability to participate in or benefit from a school's education program

MONROE COUNTY

BOARD OF EDUCATION

For example, in 1999 (*Davis v. Monroe Board of Education*), Aurelia Davis, the mother of LaShonda, a fifth grader, brought a claim under Title IX for the alleged continuous sexual harassment of her daughter by a classmate.

Over a six-month period, a fifth-grade student identified as G. F. harassed or abused LaShonda (and others) by attempting to fondle her, fondling her, and directing offensive language toward her. An example of G. F.'s behavior occurred in December of 1992, when G. F. attempted to touch LaShonda's breasts and vaginal area, telling her "I want to get in bed with you," and "I want to feel your boobs." In another example, G. F. placed a doorstop in his pants and behaved in a sexually suggestive manner toward LaShonda.

"Severe, Pervasive, and Persistent"

What does it mean to deny or limit a student's ability to participate in or benefit from a school's program?

It means the conduct is **PERVASIVE**, **PERSISTENT**, **or SEVERE*** and it adversely affects a student's education by creating a hostile or abusive education environment

*Courts also state the behavior must be "objectively offensive" in order to claim monetary damages under a Title IX lawsuit.



Examples of Potentially Sexually Harassing Behaviors

- Expressing inappropriate sexual comments, jokes, gestures, or looks creating an uncomfortable atmosphere
- Spreading sexual rumors
- Name-calling, using sexually offensive terms
- Offensively calling another student gay or lesbian
- Showing, giving, sending, offering, or leaving sexual pictures, photographs, illustrations, messages, letters, emails, or notes
- Writing sexual messages or graffiti about a student on school property (bathroom, walls, buses, locker rooms, etc.)

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And More Examples...

- Flashing or "mooning" another student
- Touching, grabbing, or pinching self or others in a sexual way
- Spying on others as they dress or undress or shower at school
- Intentionally brushing up against another in a sexual way
- Pulling off or pulling down another's clothing
- Blocking another's way or cornering another in a sexual way
- Forcing another to kiss him or her
- Forcing another to do something sexual other than kissing

Identifying It

Scenario #1: Jane, a sixth grade girl, walked into her new class. Two boys whistled and one boy said under his breath (and while leering at Jane), "Wow. She looks old enough to be in junior high—check out the knockers." Jane responded to the teacher's concern by mumbling, "I'm fine, it's no big deal." Boys continued to make similar comments about her breasts, until after 2 weeks Jane's mother asked to have her transferred to a different class.

Is this sexual harassment? What should the teacher do?



DISCUSSION

- Is this sexual harassment?
 - Is it sexual in nature?
 - Is the behavior unwelcome?
 - Does the behavior have the effect of denying or limiting the student's ability to participate in or benefit from a school's education program?

Identifying It, cont.

Scenario #2: A group of 20 third graders was playing kick ball during recess at the beginning of the school year. It was Joe's turn to kick. He kicked the first ball and started running to first base. Suddenly several boys in the infield were mocking the way he ran; one boy called out: "Hey, Joe-Ellen! You run like a girl!" Joe stuck his tongue out at the boys and continued to run.

TREE OF LIBERTY SOCIETY

Is this sexual harassment? What should the teacher do?



DISCUSSION

- Is this sexual harassment?
 - Is it sexual in nature?
 - Is the behavior unwelcome?
 - Does the behavior have the effect of denying or limiting the student's ability to participate in or benefit from a school's education program?

Identifying It, cont.

Scenario #3: Throughout the football season, the players heckle another player with comments based on the player's sexual orientation. (e.g., "Gay students shouldn't be allowed to play football," and "This ain't the ballet.") As the season progresses, the team members take turns heckling the boy in the locker room, pulling down his pants "to check to see if he has man parts," and shoving their penises in the boy's face as other boys hold him down in the showers. The student drops out of football and sports altogether to avoid the locker room.

Is this sexual harassment?

TREE of LIBERTY S



DISCUSSION AND ANSWER

- Is this sexual harassment?
 - Is it sexual in nature?
 - Is the behavior unwelcome?
 - Does the behavior have the effect of denying or limiting the student's ability to participate in or benefit from a school's education program?

Identifying It, cont.

Scenario #4: A local high school sponsors a "Men's Week" and a "Women's Week" throughout the school year. During Men's Week, students hung banners and posters with statements like, "If you believe men are the superior gender, enter here" and "It's mankind for a reason" and "What's a women's point of view? The kitchen window."

Is this sexual harassment?

TREE of LIBERTY SOC





DISCUSSION AND ANSWER

- Is this sexual harassment?
 - Is it sexual in nature?
 - Is the behavior unwelcome?
 - Does the behavior have the effect of denying or limiting the student's ability to participate in or benefit from a school's education program?

WHAT DO YOU DO WHEN YOU SEE POSSIBLE SEXUAL HARASSEMENT?

- A. Ignore it
- B. Join in
- C. Tell the students to knock it off and continue with your day
- D. Follow District policies and procedures

TREE of LIBERTY SOCIETY

Schools' Obligations to Respond to Sexual Harassment

- I. Provide notice of nondiscrimination
 - A. Identify a Title IX coordinator
 - B. Establish grievance procedures
 - 1. Publish notice of grievance procedures
 - 2. Conduct impartial investigation of complaints
 - 3. Provide designated and prompt time frames
 - 4. Send notice of outcome to complainant

- II. Correct discriminatory effects
 - A. Remedies
 - 1. Individual (escorts, separation, counseling, medical, tutoring)
 - 2. School-wide (counseling, health, training, publicity)

GENDER SENSITIVITY TRAINING

Part II

TREE of LIBERTY SOCIETY

Obligation to LGBTQ Students

THE LEGAL OBLIGATION TO PROTECT STUDENTS FROM DISCRIMINATION AND HARASSMENT APPLIES TO STUDENTS WHO ARE BEING DISCRIMINATED OR HARASSED ON THE BASIS OF THEIR SEXUAL ORIENTATION, GENDER IDENTITY, OR GENDER NON-CONFORMITY





Legal History Re: Transgender Students in Schools

- No Utah law or court case with regard to accommodating transgender students.
- In September, 2015, a federal district court in Virginia upheld a school district's resolution that restrooms must be used according to a student's sex, not gender. G.C., a student born as female but who identified as male, had challenged the resolution as discriminatory under Title IX and the Equal Protection Clause
- On March 23, 2016, North Carolina passed a law, H.B. 2, requiring individuals to use only restrooms and changing facilities that correspond to the sex on their birth certificates when in government buildings (including schools)
- In April, 2016, the 4th Circuit overturned the district court's determination, holding that the school board's resolution was in fact discriminatory.
- On May 9, 2016, the Department of Justice sued North Carolina over H.B. 2, claiming it is discriminatory against transgender individuals in violation of Title VII and Title IX.

Legal History, cont.

- On May 13, 2016, the Department of Education and the Department of Justice jointly issued a "Dear Colleague Letter" stating federal funds may be withheld if schools do not:
 - Treat students consistent with their gender identity even if their education records of identification documents indicate a different sex, using pronouns and names consistent with a student's gender identity
 - Allow transgender students to use restrooms and locker rooms and participate in athletics consistent with their gender identity
 - Protect transgender students' privacy rights by maintaining school records with the student's birth name or sex assigned at birth confidential
- On May 25, 2016, 11 states, including Utah, filed a lawsuit challenging the "Dear Colleague Letter", claiming the guidance "has no basis in law" and could cause "seismic changes in the operations of the nation's school districts." 10 more states filed suit on July 8, 2016
- On August 3, 2016, the Supreme Court issued a "stay" on the 4th Circuit's grant of a preliminary injunction which would have allowed the student to use the boys' bathroom in the Virginia case
- ❖ In February, 2017, Trump administration withdrew May 25 DCL
- ❖ TO DATE: 23 lawsuits have been filed around the country over transgender issues, namely use of restrooms

In the meantime...

So, what are schools to do while the courts fight it out?

E, D, U, C, A, T, E,

- 1. Educate ourselves
- 2. Be aware of the issues
- 3. Ensure a practice of non-discrimination across the board, for all students



TREE of LIBERTY SOCIETY

WHAT IS GENDER?



- <u>Biological sex at birth</u>: objectively measureable organs a child is born with. Also referred to "birth assigned gender" or "gender assigned at birth"
- Gender identity: how people think of themselves and which gender they feel they are. In other words, gender identity is an emotional, rather than a physical characteristic. It is generally believed that gender identity is formed by about the age of four (although an individual may not realize it until later) and it very rarely changes after that.
- <u>Gender expression</u>: how people demonstrate their gender to the outside world through things like dress, speech, and behavior. Gender expression may change depending on circumstances.
- *NOTE: Sexual attraction is not a factor in determining gender identity or gender expression. Often, gender identity is defined long before a person is sexually attracted to anyone.

Terminology

- <u>Transgender person</u>: a person whose gender identity does not match his/her biological sex at birth. Importantly, a person's status as transgender does not depend upon whether that person has undergone (or even intends to undergo) any medical treatment for gender reassignment, nor does it depend on who a person is sexually attracted to.
- <u>Transgender female</u>: a person whose assigned sex at birth is male but identifies and lives as a female. Also referred to as MTF, or male-to-female.
- <u>Transgender male</u>: a person whose assigned sex at birth is female but identifies and lives as a male. Female-to-male, or FTM
- <u>Transition</u>: the process a transgender individual goes through to live as their self-identified gender. Although it may include medical intervention, no such treatment is required for a person to transition.

Terminology, cont.

Social transition

- Use a different name
- Use of a different pronouns
 - He, she, her
 - They, zey
- Surface transformations of physical appearance (hair cut, earrings,--expression side)
- Use of bathrooms that suits the person's gender more accurately
- Medical transition (any combination)
 - Use of a medical interventions to block natal puberty
 - Use of cross-sex hormones
 - Gender Confirmation Surgery (vs. sex reassignment or sex change—not changing anything, just confirming)
 - Use of a bathroom that suits the person's gender more accurately

Issue #1 Facing Transgender Students:

→ Names and Pronouns



- This is often the first step in transitioning from one gender to another. Consider asking the student if he/she would like to schedule a meeting with parents to discuss other issues that may arise and to ensure there is a plan in place to help the student feel safe.
- Transgender students, like all students, should be addressed in informal verbal and written communication by the preferred name and/or pronoun.
 - If you require parental permission to call students something different than what is on the roll or not, you must apply the requirement to all students, even-handedly.
- Policies that require "proof" or a formal evaluation or diagnosis of a student's gender identity are looked down upon, however, some districts do ask for "more than a casual declaration of gender identity or expression."

Issue #2: School Records

- In Utah, official school records must include information found on the student's birth certificate. This includes name and gender.
- Under FERPA, a parent may request a school to amend a student's records, including the name on official records, but it is ultimately up to the school whether the request will be granted. If an amendment to a record is denied, parents have the right to insert a statement in the record setting forth his or her views.
- A court order changing the birth certificate is the only way a students' name and gender is changed on official school records.
- What constitutes an official school record?
 - Classroom seating chart? Probably not
 - A roll? (Probably not)
 - Notes to parents about the student? (Probably not)
 - Student homework? (Probably not)
 - Transcripts? (Probably)
 - Yearbook?



Issue #3: School bathrooms/locker rooms

- No court in Utah has taken a position on this issue.
- ➤ Of the courts around the country that have addressed this issue, most have been settled out of court or voluntarily dismissed; many are pending, and a few have granted a preliminary injunction level. Only 1 denied a preliminary injunction for plaintiff.
- Many school provide a uni-sex bathroom to any student desiring to use the bathrooms.
- Accommodations should not be controlled by other students' or parents' comfort level regarding the accommodations. Advise parents that concerned about privacy
- ➤ .BEST PRACTICE: Review on a case by case basis and work with parents to ensure students do not feel discriminated against. Consider age of student, age of transition, physical nature of facilities, location/proximity of faculty or single sex bathrooms, and student's desire
- Long term solution? Closed stalls in all locker rooms and all bathrooms for use by any or all students.

Issue #4: Student-on-Student Harassment/Bullying

- Schools have a legal duty to protect ALL STUDENTS from harassment by adults and other students. Supreme Court in *Davis v. Monroe* (1998) has stated that school officials may be liable if they are "deliberately indifferent" to student-on-student harassment that is persistent, pervasive, and severe.
- Licensed school employees have a professional responsibility under 277-515 both not to harass students and to protect students from harassment by other students.
- If you are receive a complaint that other students are harassing/bullying a student based on his gender identity—even if you don't believe it's happening--document, investigate, document your investigation, follow-up with parents, and put a safety plan in place if necessary. Do NOT do NOTHING!

Issue #5: Communication and Confidentiality

- Soliciting information about a student's sexual behavior, orientation, or attitudes is prohibited under Utah Code 53G-9-203(1)(c). Resist the urge to play therapist!
- Once information has been obtained—regardless of how— respect the student's privacy rights. For many students, being 'outed' is their biggest fear. A transgender female who has transitioned may not want anyone to know she was born male. Respect that desire!
- Keep confidential information about students discussed with administrators and with other faculty.*
 - *Discussions about students with other faculty should only be on a needs-to-know basis.
- Official school records that identify the student's legal name and gender as they appear on the birth certificate are considered "records" under FERPA and may not be shared with anyone outside of the exceptions under the law.
- Telling parents?

Issue #6: Telling Parents...

- Utah Code 5GA-9-203(6)(b)(i) states, "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 or guardian without delay."
- Knowledge of a student's gender identity or sexual orientation alone does not likely constitute a serious threat. Unless the student is being bullied on the basis of his gender identity or sexual orientation, it is unlikely that you can establish a serious threat to a student's well-being, even if you know the student's parents and know that the student's parents would not approve.
- The ACLU is very protective of a student's right to privacy in his/her sexuality.

Scenario #1:

John has been in your 7th grade class for an entire semester. He is a good student—does his homework and his never disruptive. Near the end of the semester, John approaches you and asks if he can talk to you. You are busy entering grades and without much thought, say, "Sure, what's up?" John says, "I'm struggling with my gender identity. I've never felt like myself; I feel awkward as a boy; I think I should have been born a girl." That gets your attention and you look up. He continues, "I haven't really talked to anyone about this; my parents don't know and I'm not sure how they'd take it if I told them. I'd appreciate it if you didn't tell anyone."

TREE WHAT DO YOU DO???

Do you:

- A. Tell John, "Wow, tell me more!"
- B. Keep it to yourself
- C. Call John's parents right away
- D. Run next door to your colleague's classroom and report to her but make her promise not to tell anyone
- E. Contact your administrator
- F. Tell John, "I respect your desire to keep this private but I think you might feel better talking about it to someone who is trained to have these conversations" and encourage him to talk to the school counselor.
- G. Other ideas?

Scenario #2

Tina, a 16 year old girl in your class, raises her hand one day in the middle of class and says, "Mr./Ms. Teacher, I'd like you to start calling me Troy. And use "he" whenever you refer to me please."

Do you:

- A. Say, "That's ridiculous. You're a girl. We'll call you Tina until you get a sex change."
- B. Send Tina/Troy to the office to be disciplined for getting the class off topic?
- C. Say, "Sure. Everybody hear that? Tina is now to be called Troy." And leave it at that.
- D. Get the class back on task and talk to Tina/Troy privately about talking to the school counselor so the staff can have a better understanding of Tina/Troy's transition and so the counselor can communicate with parents about necessary accommodations for Tina/Troy.
- E. Other ideas?

Parents' Involvement

- Because of the many issues that can arise when working with transgender students, parental involvement at the outset is key. Work with the parents to establish a plan for:
 - What name to call the student,
 - What pronoun to use
 - Bathroom/locker room accommodations
 - Overnight field trips
 - Athletic team participation
 - Preventing bullying/harassment

FOR THIS REASON, HELP THE STUDENT UNDERSTAND THE VALUE OF INFORMING PARENTS. KEEP IN MIND, AGE MATTERS. A 17 YEAR OLD TRANS STUDENT MAY BE ABLE TO NAVIGATE THE WORLD OF TRANSITIONING BETTER THAN A 12 YEAR OLD WITHOUT PARENTAL INVOLVEMENT.

Issue #7: Dress Code



- Ensure your school dress code is gender neutral.
- If a transgender boy is wearing a dress and he is not doing anything to harm anyone else, even if it is causing disruption, address the disruption, not the dress.
- Graduation attire: if you have gender-specific graduation attire, consider getting rid
 of it or allowing transgender students to wear the attire of the gender they identify
 with.
- Extracurricular uniforms
- Recognize that some students do not identify with either gender, or consider themselves gender fluid—moving back and forth between male and female. For this reason, it is problematic to require any kind of "proof" that the student is transgender before allowing him/her to wear attire of the gender they identify with.

Issue #8: Overnight Trips

- When it's an elementary school field trip, my advice is reconsider those. For so many reasons!
- Before drawing a firm line anywhere in the sand, work with parents!
- Other overnight trips where kids are rooming together, consider getting a separate room for the transgender student.
- Review on a case by case basis to ensure student does not feel discriminated against.

Issue #9: Sports

A student shall be permitted to participate on a gender specific sports team that is consistent with the public gender identity of that student for all other purposes. In making a determination of eligibility, the UHSAA will first refer to the confirmation of the student and his or her local school regarding gender identification. The UHSAA will require that *member school districts and schools make a determination of a student's eligibility to participate in gender specific sports* team for a particular season based on the gender identification of that student (1) in current school records, and, (2) daily life activities in the school and community at the time that sports eligibility is determined.

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Factors School Can Rely on To Make an Eligibility Determination for Transgender Athletes

- 1. Documentation from individuals such as, but not limited to, parents /legal guardians appointed by a court of competent jurisdiction, friends and/or teachers, which affirm that the actions, attitudes, dress and manner demonstrate the student's consistent gender identification and expression;
- 2. A complete list of all the student's prescribed, non-prescribed or over the counter, treatments or medications;
- 3. Written verification from an appropriate health-care professional (doctor, psychiatrist, or psychologist) of the student's consistent gender identification and expression; and
- 4. 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.

STATS ON TRANS STUDENTS

- LGBTQ youth are 3 times more likely to experience harsh disciplinary treatment than their straight counterparts
- 47% LGBTQ had experienced suspension vs. non-LGBTQ (30%) (usually when these kids stand up for themselves
- 40% of homeless youth are LGBTQ
- LGBTQ youth are 120% more likely to experience homelessness than their non-LGTBQ peers
- Only 27% of LGBTQ youth can "definitely" be themselves in school as an LGBTQ person (including sexual identity)
- 13% of LGBTQ of youth report hearing positive messages about being LGBTW in school
- Only 26% of LGBTQ youth report that they always feel safe in the classroom
- 40-50% for attempts when they are not supported or affirmed; when supported or affirmed, number drops to 4% (the average for population of non-transgender persons)

Ways to Prevent Gender Discrimination In School and In the Classroom

- Educate staff and selves to understand the complexities of gender as well as specific methods to stop gender based harassment, bullying and hurtful teasing
- Provide training for all school personnel—from teachers, aides, counselors to administrative staff, bus drives, recess aides, and cafeteria workers
- Use inclusive phrases to address your class—students, children, or scholars
- Group students in ways that do not rely on gender—instead of "boys over here, girls over there."—table groups, letters in their names, colors of their clothes
- Be a role model! Give example of how you or people you know like to do things outside of gender stereotypes. Model gender diversity in your own manner of expression

Ways to Prevent Discrimination, cont.

- Ensure privacy for transgender students. Clarify who has access to records.
- Revisit your dress code to ensure it is not gender specific
- Assign an ally for students
- Consider reframing Men's/Women's Week
- Consider reframing Royalty
- Consider eliminating designated colors for boys'/girls' graduation robes
- Ensure there is good supervision of hallways, playgrounds, and cafeterias to increase a sense of safety
- Interrupt student comments based on gender stereotypes or identity-always. Make it a teachable moment.
- Stop hurtful teasing and bullying based on gender put-downs. Immediately!

Discrimination Lawsuits Are Not Fun!

- They cost money
- They cost time
- They are anxiety inducing
- They drag on forever



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Also, Discriminating is Not Cool!

- All students have a right to feel safe and protected at school.
- It is our responsibility to ensure ALL students feel that way.



QUESTIONS?

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TREE of LIBERTY SOCIETY

DIVERSITY

HEIDI J. ALDER
LEAR & LEAR, OF COUNSEL
EDUCATION LAW SECTION

TREE of LIBERTY SOCIETY

The Office – Diversity Day



How Diverse is Our School?

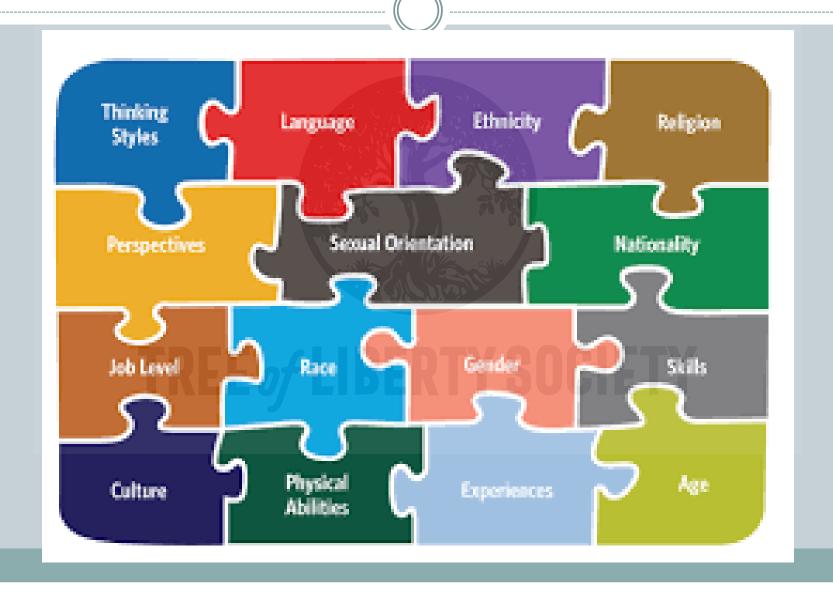
Raise your hand and keep them up if you teach or interact with:

 White students, born and raised in Utah, who are members of the Church of Jesus Christ of Latter-day Saints (LDS faith) and who speak English as their primary language and who live with both mom and dad

Put your hand down if you have:

- Students who are 1st generation immigrants
- Students who are 2nd generation immigrants
- Students who are not LDS
- Students who are not born and raised in Utah
- Students who are gay
- Students who are transgender
- Students who are black
- Students who are Hispanic/Latino
- Students who do not speak English as their primary language
- Student who live with mom OR dad OR grandparents OR aunt/uncle

How Do We Handle Diversity in Our School?



Tip #1: Recognize that we all have biases.



Explicit Bias vs. Implicit Bias

Explicit Bias	Implicit Bias
Express Directly	Expressed Indirectly
Aware of Bias	Unaware of Bias
Operates Consciously	Operates Sub-Consciously
Example: "I like whites more than Latinos"	Example: Sitting further away from a Latino than a white individual

Implicit Bias

• Refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner and can cause us to have feelings or attitudes about other people based on characteristics such as race, ethnicity, age, and appearance.

 Activated involuntarily and without an individual's awareness or intentional control.

A Few Key Characteristics of Implicit Biases

- Implicit biases are pervasive. Everyone possesses them, even people with avowed commitments to impartiality such as judges.
- The implicit associations we hold do not necessarily align with our declared beliefs or even reflect stances we would explicitly endorse.
- We generally tend to hold implicit biases that favor our own in-group, though research has shown that we can still hold implicit biases against our in-group.

Tip #2: Acknowledge that left unchecked, biases turn into stereotypes that turn into prejudices and discrimination.

• NOTE: Implicit biases can be changed. Our brains are incredibly complex, and the implicit associations that we have formed can be gradually unlearned.

Tip #3: Research and take classes, professional development, or continuing education courses on how to implement a curriculum that is multicultural and focused on equity and inclusion.



Tip #4: Understand legal obligations to ensure discrimination does not occur in our school.



Our Legal Responsibility

Sex/Gender

Title IX of the Education Amendments Act of 1972 Race/Color/ Nat'l Origin/Religion

Titles IV and VI of the Civil Rights Act of 1964 **Disability**

Section 504 of the Rehabilitation of 1973

Americans with Disabilities Act (ADA)

Individual with Disabilities Education Act (IDEA)

Federal Laws

• Title IX

• To make sure no student is discriminated against on the basis of that individual's sex/gender, sexual orientation, or gender identity

Titles IV and VI

 To make sure no student is discriminated against on the basis of his/her race, national origin, skin color, or religion

Section 504/ADA/IDEA

 To make sure students with disabilities are not discriminated against and that they have equal access to education as the non-disabled students

Examples of Discrimination Complaints in Utah

- Complaint that a district discriminates on the basis of race and color by assigning less qualified teachers to teach in West side schools and by failing to provide appropriate busing for West side students.
- Complaint that a basketball coach used the "n" word and the term "monkey boy" when referring to students of color.
- Complaint against school district for lack of correction and prevention of alleged bullying targeted at a gay student who later committed suicide.
- Complaint about clothing (t-shirts) with messages that may be considered offensive to others based on race, gender, color, religion, or national origin.
- Complaint from parent of transgender male student (born as girl, transitioned to boy) who wanted to have yearbook picture taken wearing what the boys wore, when school refused.
- Complaint that a district discriminated on the basis of race by subjecting students of color to disproportionate disciplinary measures, including in-school suspensions and suspensions of greater than 10 days, and to disproportionate contact with law enforcement.

Tip #5: Be an equal opportunity disciplinarian.

- A large number of civil rights complaints involve the disparity in discipline between white and non-white students for the same offense.
- Research supports that this is happening in schools across the country.
- Be aware of the inadvertent tendency for school personnel to discipline minority students (particularly black students) harsher than white students and be vigilant about ensuring ALL students get the same treatment for the same or similar offenses.

Tip #6: Be familiar with Nebo School District's policies on non-discrimination.

- NSD Policy JDC
 - Student Discrimination and Harassment
- NSD Policy JDD/GBEA
 - o Prohibition of Bullying, Hazing, and Retaliation
- Familiarize yourself with the policy examples of types of conduct that could be considered bullying, discrimination, and harassment based upon a student's race, color, religion, sex/gender, national origin, disability, or other legally protected classification

Tip #7: Recognize when other students' teasing/bullying is tied to race, national origin, sex, or disability.

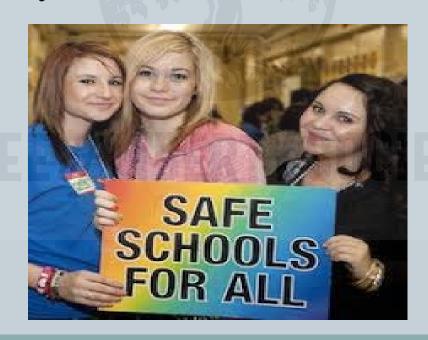
FOR EXAMPLE:

- Use of the "n" word, "wetback," or other derogatory terms for a student's race or national origin.
- Use of the term "retarded" and/or making fun of students' disabilities (even if a student is not disabled, comparing a non-disabled student to a disabled student in a disparaging way).
- Terms that suggest sexual promiscuity or impropriety (e.g., whore, slut), or spreading rumors about a student's sexual proclivities.
- Sending nude or semi-nude images of a student without the student's permission; or soliciting through pressure or blackmail images of nude or semi-nude images of a student.

Tip #8: Recognize that the term "sex" in Title IX has been interpreted by several courts and the Office for Civil Rights (OCR) to include "sexual orientation" and "gender identity."



Tip #9: Put aside whatever personal thoughts/feelings/beliefs from whatever source they come and treat LGBTQ students with the same love and care you show for all other students.



Statistics on LGBTQ Youth

- LGBTQ students are 3 times more likely to experience harsh disciplinary treatment than their straight counterparts (47% LGBTQ had experienced suspension vs. 30% non-LGBTQ -- usually when these kids stand up for themselves).
- LGBTQ youth are more likely to experience homelessness than their non-LGTBQ peers (40% of homeless youth are LGBTQ).
- 27% of LGBTQ youth report they can "definitely" be themselves in school as an LGBTQ person (including sexual identity).
- 13% of LGBTQ of youth report hearing positive messages about being LGBTQ in school.
- 26% of LGBTQ youth report that they always feel safe in the classroom.
- 40-50% of LGBTQ attempt suicide when they *are not* supported or affirmed. When they *are* supported or affirmed, number drops to 4% (the national average for non-LGBTQ persons).

Legal History of Transgender Students in Schools

- ❖There have been 30+ lawsuits filed around the country in both state and federal courts over transgender student issues, and particularly regarding the use of restrooms and locker rooms.
- ❖ To date, no there is no Utah law or controlling court case with regard to accommodating transgender students.
- *However, all students (transgender or not) are entitled to receive an education free from illegal discrimination and harassment.

What To Do While the Courts Fight it Out?

In the meantime

- 1. Educate ourselves (listen and learn).
- 2. Be aware of the issues that need to involve school administration.
- 3. Ensure a practice of non-discrimination for all students.

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Step 1. Education

Listen and Learn . . .

- Listen to the stories of transgender persons. Hear their experience and the experience of those who love them. These can come from people you know, TEDx Talks, YouTube videos, etc.
- Listen to students and parents who are expressing concern and worry to you about their well-being and school safety.
- Listen carefully and seek to understand before responding.



Step 1: Education, Cont.



Terminology:

- Biological Sex: The sex organs a child is born with.
- <u>Gender Identity</u>: How a people think of themselves and which gender they feel they are. In other words, gender identity is an emotional, rather than a physical characteristic. It is generally believed that gender identity is formed by about the age of four (although some may not realize it until later) and it very rarely changes after that.
- <u>Gender Expression</u>: How people demonstrate their gender to the outside world through things like dress, speech, and behavior. Gender expression may change depending on circumstances.

<u>NOTE</u>: Sexual attraction is not a factor in determining gender identity or gender expression. Often, gender identity is defined long before a person is sexually attracted to anyone.

Step 1: Education, Cont.

Terminology:

- Transgender Person: A person whose gender identity does not match his/her biological sex at birth. Importantly, a person's status as transgender does not depend upon whether that person has undergone (or even intends to undergo) any medical treatment for gender reassignment, nor does it depend on who a person is sexually attracted to.
- <u>Transgender Female</u>: A person whose assigned sex at birth is male but identifies and lives as a female. MTF or male-to-female.
- <u>Transgender Male</u>: A person whose assigned sex at birth is female but identifies and lives as a male. FTM or female-to-male.
- <u>Transition</u>: The process a transgender individual goes through to live as their self-identified gender. It includes social transitions and may or may not include medical transitions.

Step 2. Transgender Student Issues

Transgender student issues which you should refer to, or seek direction from, school administration include:

- Use of different names and pronouns
- Communications with the student and parents
- School records
- Use of school bathrooms / locker rooms
- School overnight trips
- Student-to-Student harassment or bullying
- Dress code issues
- Participation in gender specific sports and activities

NOTE: Nebo School District addresses transgender student issues on a case-by-case basis. This is generally done after school administrators consult with district legal counsel.

Step 3. Preventing Gender Discrimination at School

- Be aware of gender based bullying, harassment, and hurtful teasing.
- Use inclusive phrases to address your class (e.g., students, children, scholars, etc.).
- Group students in ways that do not rely on gender (e.g., instead of "boys over here, girls over there," group students by tables, letters in their names, colors of their clothes, etc.).
- Immediately intervene when you hear derogatory gender stereotypes.
- Demonstrate your care for ALL students. Students know a safe place when they feel it.

Tip #10: Be nice to EVERYONE.

- As educators and other school officials we have responsibility to ensure schools are free from discrimination and that ALL students feel safe.
- Role model inclusion. Show kids how to treat others by including all.
- Ensure there is good supervision of classrooms, hallways, playgrounds, and cafeterias to increase a sense of safety.
- Interrupt student comments based on stereotypes or identity. Make it a teachable moment.
- Stop hurtful teasing and bullying based on gender put-downs, racial slurs, insults based on disability, etc.

Remember Why You Do What You Do

- Take a step back from all the political agendas and remind yourself why you went into education.
- You love kids.* You inspire kids.
- Love them ALL the same. Inspire them ALL the same.
- Find the good in every child and drag it out.

*If you don't, get out of education!

Be a Mr. Jensen



DIVERSITY

PRESENTATION ADAPTATION FROM

HEIDI J. ALDER
ATTORNEY AT LAW
LEAR & LEAR

TREE of LIBERTY SOCIETY

The Office – Diversity Day



How Diverse is our School District?

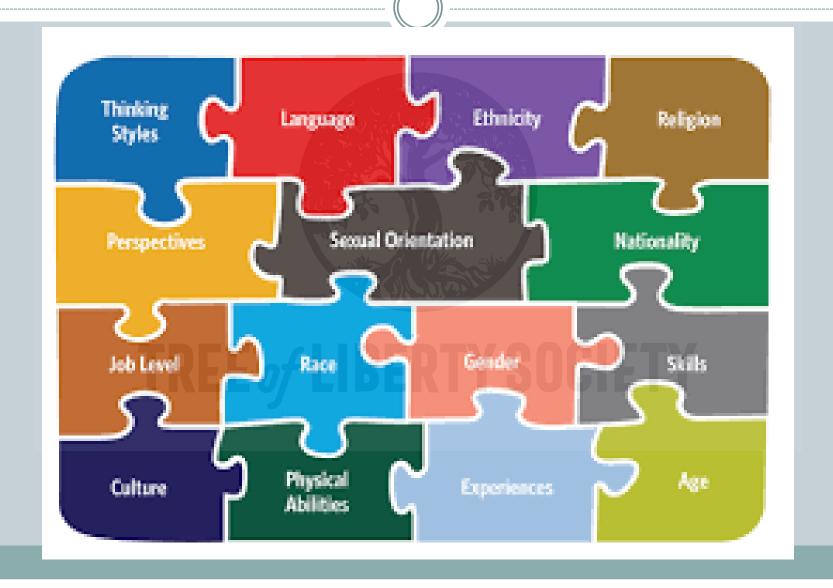
Raise your hand and keep them up if you have in the course of your job interacted with:

• People of the white race, born and raised in Utah, who are members of the Church of Jesus Christ of Latter-day Saints (LDS faith) and who speak English as their primary language

Put your hand down if you have in the course of your job interacted with:

- Individuals who are 1st generation immigrants
- Individuals who are 2nd generation immigrants
- Individuals who are gay
- Individuals who are transgender
- Individuals who are not LDS
- Individuals who are not born and raised in Utah
- Individuals who are black
- Individuals who are Hispanic/Latino
- Individuals who do not speak English as their primary language

How Do We Handle Diversity?



Tip #1: Recognize that we all have biases.



Explicit Bias vs. Implicit Bias

Explicit Bias	Implicit Bias
Express Directly	Expressed Indirectly
Aware of Bias	Unaware of Bias
Operates Consciously	Operates Sub-Consciously
Example: "I like whites more than Latinos"	Example: Sitting further away from a Latino than a white individual

Implicit Bias

• Refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner and can cause us to have feelings or attitudes about other people based on characteristics such as race, ethnicity, age, and appearance.

 Activated involuntarily and without an individual's awareness or intentional control.

Key Characteristics of Implicit Biases

- Implicit biases are pervasive. Everyone possesses them, even people with avowed commitments to impartiality such as judges.
- The implicit associations we hold do not necessarily align with our declared beliefs or even reflect stances we would explicitly endorse.
- We generally tend to hold implicit biases that favor our own in-group, though research has shown that we can still hold implicit biases against our in-group.

Tip #2: Acknowledge that left unchecked, biases turn into stereotypes that turn into prejudices and discrimination.

• NOTE: Implicit biases can be changed. Our brains are incredibly complex, and the implicit associations that we have formed can be gradually unlearned.

Tip #3: Research and take classes, professional development, or continuing education courses focused on multiculturalism, equity and inclusion.



Tip #4: Understand legal obligations to ensure discrimination does not occur in our school district.



Our Legal Responsibility

Sex/Gender

Title IX of the Education Amendments Act of 1972 Race/Color/ Nat'l Origin/Religion

Titles IV, VI and VII of the Civil Rights Act of 1964 **Disability**

Section 504 of the Rehabilitation of 1973

Americans with Disabilities Act (ADA)

Individuals with
Disabilities Education
Act (IDEA)

Federal Laws

• Title IX

O To make sure no student or employee is discriminated against on the basis of that individual's sex/gender, sexual orientation, or gender identity

Titles IV and VI

 To make sure no student is discriminated against on the basis of his/her race, national origin, skin color, or religion

Title VII

 To make sure no employee is discriminated against on the basis of his/her sex, race, national origin, skin color, or religion

Section 504/ADA/IDEA

 To make sure students and employees with disabilities are not discriminated against and are provided equal access and reasonable accommodations

Examples of School Discrimination Complaints in Utah

- Complaint that a school district discriminates on the basis of race and color by assigning less qualified teachers to teach in West side schools and by failing to provide appropriate busing for West side students.
- Complaint that a basketball coach used the "n" word and the term "monkey boy" when referring to students of color.
- Complaint against school district for lack of correction and prevention of alleged bullying targeted at a gay student who later committed suicide.
- Complaint about clothing (t-shirts) with messages that may be considered offensive to others based on race, gender, color, religion, or national origin.
- Complaint from parent of transgender male student (born as girl, transitioned to boy) who wanted to have yearbook picture taken wearing what the boys wore, when school refused.
- Complaint that a school district discriminated on the basis of race by subjecting students of color to disproportionate disciplinary measures, including in-school suspensions and suspensions of greater than 10 days, and to disproportionate contact with law enforcement.

Tip #5: Be familiar with Nebo School District's policies on non-discrimination.

- NSD Policy JDC
 - Student Discrimination and Harassment
- NSD Policy GBEA
 - Employee Discrimination and Harassment
- NSD Policy JDD/GBEA
 - o Prohibition of Bullying, Hazing, and Retaliation
- Familiarize yourself with the policy examples of types of conduct that could be considered bullying, discrimination, and harassment based upon an individual's race, color, religion, sex/gender, national origin, disability, or other legally protected classification

Tip #6: Recognize when an individual's teasing/bullying is tied to race, national origin, sex, or disability.

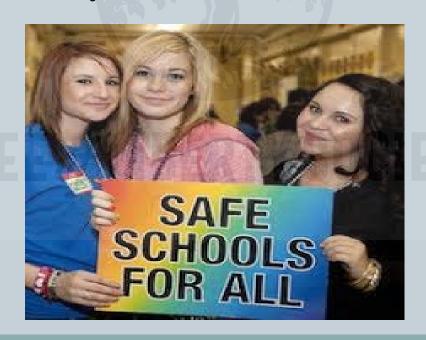
FOR EXAMPLE:

- Use of the "n" word, "wetback," or other derogatory terms for a person's race or national origin.
- Use of the term "retarded" and/or making fun of a person's disabilities.
- Terms that suggest sexual promiscuity or impropriety (e.g., whore, slut), or spreading rumors about a person's sexual proclivities.
- Sending inappropriate messages or images to an individual.

Tip #7: Recognize that the term "sex" in Title IX has been interpreted by several courts and the Office for Civil Rights (OCR) to include "sexual orientation" and "gender identity."



Tip #8: Put aside whatever personal thoughts/feelings/beliefs from whatever source they come and treat LGBTQ people with the same love and care you show for others.



Statistics on LGBTQ Youth

- LGBTQ students are 3 times more likely to experience harsh disciplinary treatment than their straight counterparts (47% LGBTQ had experienced suspension vs. 30% non-LGBTQ -- usually when these kids stand up for themselves).
- LGBTQ youth are more likely to experience homelessness than their non-LGTBQ peers (40% of homeless youth are LGBTQ).
- 27% of LGBTQ youth report they can "definitely" be themselves in school as an LGBTQ person (including sexual identity).
- 13% of LGBTQ of youth report hearing positive messages about being LGBTQ in school.
- 26% of LGBTQ youth report that they always feel safe in the classroom.
- 40-50% of LGBTQ attempt suicide when they *are not* supported or affirmed. When they *are* supported or affirmed, number drops to 4% (the national average for non-LGBTQ persons).

Legal History of Transgender Students in Schools

- ❖There have been 30+ lawsuits filed around the country in both state and federal courts over transgender student issues, and particularly regarding the use of restrooms and locker rooms.
- *To date, no there is no Utah law or controlling court case with regard to accommodating transgender students.
- *However, all students (transgender or not) are entitled to receive an education free from illegal discrimination and harassment.

What To Do While the Courts Fight it Out?

In the meantime

- 1. Educate ourselves (listen and learn).
- 2. Be aware of the issues that need to involve school administration.
- 3. Ensure a practice of non-discrimination for all students.

TREE of LIBERTY SOCIETY

Step 1. Education

Listen and Learn

- Listen to the stories of transgender persons. Hear their experience and the experience of those who love them. These can come from people you know, TEDx Talks, YouTube videos, etc.
- Listen to students and parents who are expressing concern and worry to you about their well-being and school safety.
- Listen carefully and seek to understand before responding.



Step 1: Education, Cont.



Terminology:

- Biological Sex: The sex organs a child is born with.
- <u>Gender Identity</u>: How a people think of themselves and which gender they feel they are. In other words, gender identity is an emotional, rather than a physical characteristic. It is generally believed that gender identity is formed by about the age of four (although some may not realize it until later) and it very rarely changes after that.
- <u>Gender Expression</u>: How people demonstrate their gender to the outside world through things like dress, speech, and behavior. Gender expression may change depending on circumstances.

<u>NOTE</u>: Sexual attraction is not a factor in determining gender identity or gender expression. Often, gender identity is defined long before a person is sexually attracted to anyone.

Step 1: Education, Cont.



Terminology:

- Transgender Person: A person whose gender identity does not match his/her biological sex at birth. Importantly, a person's status as transgender does not depend upon whether that person has undergone (or even intends to undergo) any medical treatment for gender reassignment, nor does it depend on who a person is sexually attracted to.
- <u>Transgender Female</u>: A person whose assigned sex at birth is male but identifies and lives as a female. MTF or male-to-female.
- <u>Transgender Male</u>: A person whose assigned sex at birth is female but identifies and lives as a male. FTM or female-to-male.
- <u>Transition</u>: The process a transgender individual goes through to live as their self-identified gender. It includes social transitions and may or may not include medical transitions.

Step 2. Transgender Student Issues

Transgender student issues which you should refer to, or seek direction from, school administration include:

- Use of different names and pronouns
- Communications with the student and parents
- School records
- Use of school bathrooms / locker rooms
- School overnight trips
- Student-to-Student harassment or bullying
- Dress code issues
- Participation in gender specific sports and activities

NOTE: Nebo School District addresses transgender student issues on a case-by-case basis. This is generally done after school administrators consult with district legal counsel.

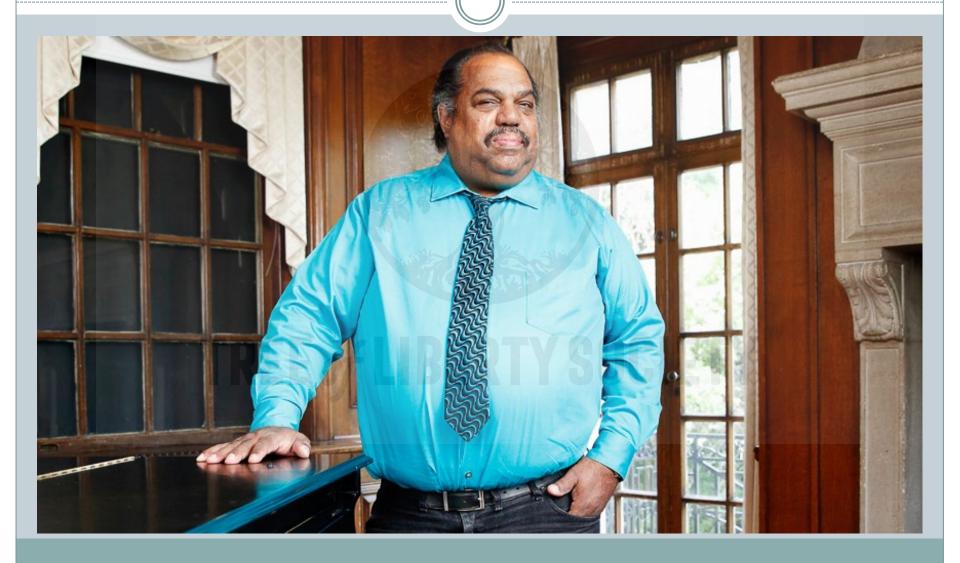
Step 3. Preventing Gender Discrimination at School and Work

- Be aware of gender based bullying, harassment, and hurtful teasing.
- Use inclusive phrases to address students and employees
- Immediately intervene when you hear derogatory gender stereotypes.
- Demonstrate your care for ALL students and employees. People know a safe place when they feel it.

Tip #10: Be nice to EVERYONE.

- As school district employees we have responsibility to ensure our schools and workplaces are free from discrimination and that ALL students and employees feel safe.
- Role model inclusion. Be an example on how to appropriately treat others.
- Ensure there is proper supervision to increase a sense of safety.
- Interrupt inappropriate comments based on stereotypes or identity. Make it a teachable moment.
- Stop hurtful teasing and bullying based on gender put-downs, racial slurs, insults based on disability, etc.

Daryl Davis



Daryl Davis



Be a Mr. Jensen



Diversity

HEIDI J. ALDER
LEAR & LEAR, OF COUNSEL
EDUCATION LAW SECTION

TREE of LIBERTY SOCIETY

How diverse is Nebo School District?

Raise your hand and keep them up if you have:

• White students, born and raised in Utah, who are members of the Church of Jesus Christ of Latter Day Saints (LDS faith) and who speak English as their primary language and who live with both mom and dad

Put your hand down if you have:

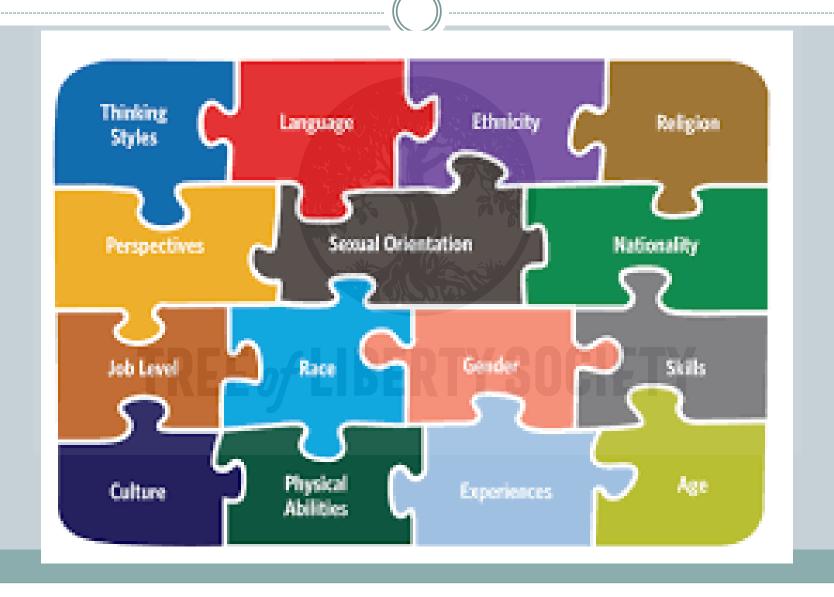
- Students who are not born and raised in Utah
- Students who are 1st generation immigrants
- Students who are 2d generation immigrants
- Students who are not LDS
- Students who are gay
- Students who are transgender
- Students who are black
- Students who are Hispanic/Latino
- Students who do not speak English as their primary language
- Student who live with mom OR dad OR grandparents OR aunt/uncle





The Office - Diversity Day (Episode Highlight).mp4

So, How Do We Handle Diversity in Our Schools?



Tip #1: Recognize that we all have biases.

- Go to implicit.harvard.edu/implicit/selectatest.html
- Chose one of the following tests to take:
 - Disability IAT
 - o Race IAT
 - Sexuality IAT
 - o Religion IAT
 - o Weapons IAT

Implicit Bias

- Refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner and can cause us to have feelings or attitudes about other people based on characteristics such as race, ethnicity, age, and appearance
- Activated involuntarily and without an individual's awareness or intentional control
- In addition to early life experiences, the media and news programming are often-cited origins of implicit associations.

A Few Key Characteristics of Implicit Biases

- Implicit biases are pervasive. Everyone possesses them, even people with avowed commitments to impartiality such as judges.
- The implicit associations we hold do not necessarily align with our declared beliefs or even reflect stances we would explicitly endorse.
- We generally tend to hold implicit biases that favor our own ingroup, though research has shown that we can still hold implicit biases against our ingroup.
- Implicit biases are malleable. Our brains are incredibly complex, and the implicit associations that we have formed can be gradually unlearned through a variety of debiasing techniques.

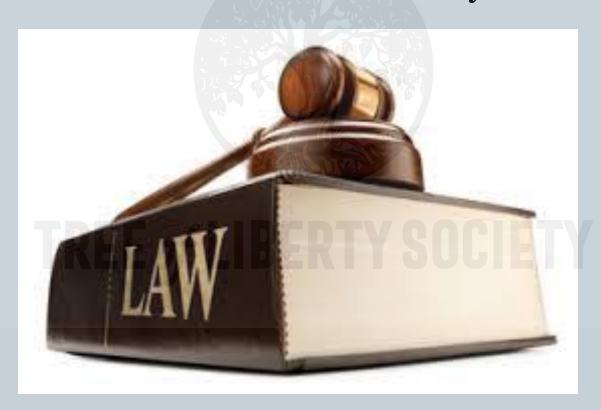
Tip #2: Acknowledge that left unchecked, biases turn into stereotypes turn into prejudices and discrimination



Tip #3: Research and take classes, professional development, or continuing education courses on how to implement a curriculum that is multicultural and focused on equity and inclusion.



Tip #4: Understand your legal obligations to ensure discrimination does not occur in your schools.



Our Legal Responsibility

Sex/Gender

Title IX of the Education Amendments Act of 1972 Race/Color/ Nat'l Origin/Religion

Titles IV and VI of the Civil Rights Act of 1964 Disability

Section 504 of the Rehabilitation of 1973

Americans with Disabilities Act (ADA)

Individual with Disabilities Education Act (IDEA)

What Does the Law Say Exactly?

- Title IX, Title VI, and Section 504 all have the same language:
 - Title IX: "No person in the United States shall, on the basis of sex...
 - Title VI: "No person in the United States shall, on the ground of race, color, national origin...
 - Section 504: No otherwise qualified individual with a disability...
 shall, solely by reason of her or his disability ...

be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any [education] program or activity receiving Federal financial assistance

So What IS Our Legal Responsibility?

Under Section 504/ADA/IDEA?

 →To make sure our disabled students are not discriminated against and ensure they have equal access to education as our non-disabled students

• Under Titles IV and VI?

 → To make sure no student feels discriminated against on the basis of his race, national origin, or skin color or religion or sex

Under Title IX?

- →To make sure no student feels discriminated against on the basis of that person's sex
- Or sexual orientation
- Or gender identity

Examples of Discrimination Complaints in Utah

- Complaint that a district discriminates on the basis of race and color by assigning less qualified teachers to teach in West side schools and by failing to provide appropriate bussing for West side students.
- Complaint that a basketball coach used the "n" word and the term "monkey boy" when referring to students of color
- Complaint against school district for lack of correction and prevention of alleged bullying targeted at a gay student who later committed suicide.
- Complaint about clothing (t-shirts) with messages that may be considered offensive to others based on race, gender, color, religion or national origin
- Complaint from parent of transgender male (born as girl, transitioned to boy) student wanted to have yearbook picture taken wearing what the boys wore, when school refused.
- Complaint that a district discriminated on the basis of race by subjecting students of color to disproportionate disciplinary measures, including ISS and suspensions of greater than 10 days, and to disproportionate contact with law enforcement

Tip #5: Be an equal opportunity disciplinarian

- A large number of civil rights complaint involve the disparity in discipline between white and non-white students for the same offense.
- Research supports that this is happening in schools across the country.
- Be aware of the inadvertent tendency for personnel to discipline minority students (particularly black students) harsher than white students and be vigilant about ensuring ALL students get the same treatment for the same or similar offenses

BUT...

- Recognize that some students acting out may have a reason for their behavior.
 - For example, an autistic student who argues with a teacher loudly and seemingly belligerently, about a point the student believes the teacher got wrong.
 - A student with ADHD who can't sit still and constantly bothers other students
 - A student with Tourette Syndrome who blurts out inappropriate comments in the middle of class
 - A student with ED or BD or any other disability that affects the student's behavior.
- Before launching into stern discipline for these students, consider the student's disability and how their conduct may be driven by their disability.
- (This doesn't mean you have to excuse the behavior; just rethink the disciplinary approach.)

Tip #6: Know your district's policies on non-discrimination

QUIZ TIME!

- Q: What is your district's policy on non-discrimination?
- A: Policy JDC: Student Discrimination and Harassment
- Q: Who is Nebo's Title IX Coordinator? (1.2)
- A: Coordinator of Student Services

Digression: District Policy Quiz, Cont.

- Q: True/False: The District will only investigate written complaints of discrimination (3.5)
- A: False! The District will promptly investigate all verbal and written complaints
- Q: What are three examples of discrimination on the basis of race, color, religion, sex, national origin, or disability, according to Section 5?
- A: Lot of answers
- Q: What are three examples of sexual harassment, according to Section 6?
- A: Lots of answers
- Q: A student who feels harassed or discriminated against should describe what happened on what form? (8.1.2.1)
- A: Upon receiving a complaint of discrimination from a student, who must the Building Administrator contact?

Tip #7: Recognize when other students' teasing/bullying is tied to a race, national origin, sex, or disability.

FOR EXAMPLE

- Use of the "N" word, "wetback", or other derogatory terms for a student's race or national origin
- Use of the term "retarded" and/or making fun of students' disabilities (even if a student is not disabled, comparing a non-disabled student to a disabled student in a disparaging way)
- Terms that suggest sexual promiscuity or impropriety: "whore" "slut", spreading rumors about a student's sexual proclivities
- Sending nude or semi-nude images of a student without the student's permission; soliciting through pressure or blackmail images of nude or semi-nude images of a student

Tip #8: Recognize that the term "sex" in Title IX has been interpreted to include "sexual orientation", "gender identity", and gender-nonconforming by OCR and some courts.



Tip #9: Put aside whatever personal thoughts/feelings/beliefs from whatever source they come and treat LGBTQ students with the same love and care you show for all other students.



Stats on LGBTQ Youth

- LGBTQ students are 3 times more likely to experience harsh disciplinary treatment than their straight counterparts (47% LGBTQ had experienced suspension vs. 30% non-LGBTQ --usually when these kids stand up for themselves)
- LGBTQ youth are 120% more likely to experience homelessness than their non-LGTBQ peers (40% of homeless youth are LGBTQ)
- LGBTQ youth Only 27% of LGBTQ youth can "definitely" be themselves in school as an LGBTQ person (including sexual identity)
- 13% of LGBTQ of youth report hearing positive messages about being LGBTQ in school
- Only 26% of LGBTQ youth report that they always feel safe in the classroom
- 40-50% of LGBTQ attempt suicide when they are <u>not</u> supported or affirmed; when supported or affirmed, number drops to 4% (the average for population of non-transgender persons

How To Handle Emerging Issues with LGBTQ Students

• Title VI---->

• 1964

• Title IX----->

• 1972

• Section 504---->

• 1973

 IDEA (Originally known as the Education of Handicapped Children Act)

• 1975

Legal History Re: Transgender Students in Schools

- No Utah law or court case with regard to accommodating transgender students.
- ❖ In September, 2015, a federal district court in Virginia upheld a school district's resolution that restrooms must be used according to a student's sex, not gender. G.C., a student born as female but who identified as male, had challenged the resolution as discriminatory under Title IX and the Equal Protection Clause
- On March 23, 2016, North Carolina passed a law, H.B. 2, requiring individuals to use only restrooms and changing facilities that correspond to the sex on their birth certificates when in government buildings (including schools)
- ❖ In April, 2016, the 4th Circuit overturned the district court's determination, holding that the school board's resolution was in fact discriminatory.
- ❖ On May 9, 2016, the Department of Justice sued North Carolina over H.B. 2, claiming it is discriminatory against transgender individuals in violation of Title VII and Title IX.

Legal History, cont.

- On May 13, 2016, the Department of Education and the Department of Justice jointly issued a "Dear Colleague Letter" stating federal funds may be withheld if schools do not:
 - Treat students consistent with their gender identity even if their education records of identification documents indicate a different sex, using pronouns and names consistent with a student's gender identity
 - Allow transgender students to use restrooms and locker rooms and participate in athletics consistent with their gender identity
 - Protect transgender students' privacy rights by maintaining school records with the student's birth name or sex assigned at birth confidential
- On May 25, 2016, 11 states, including Utah, filed a lawsuit challenging the "Dear Colleague Letter", claiming the guidance "has no basis in law" and could cause "seismic changes in the operations of the nation's school districts." 10 more states filed suit on July 8, 2016
- ❖ On August 3, 2016, the Supreme Court issued a "stay" on the 4th Circuit's grant of a preliminary injunction which would have allowed the student to use the boys' bathroom in the Virginia case
- ❖ In February, 2017, Trump administration withdrew May 25 DCL
- ❖ The Supreme Court sent the Virginia case back to the 4th Circuit to be considered in light of Trump's rescission of the DCL.
- June, 2017, the student in the Virginia case graduated and withdrew his lawsuit (filed an amended one in district court, where the case is now)
- * TO DATE: Approximately, almost 2 dozen lawsuits have been filed around the country over transgender issues, namely use of restrooms.

In the meantime...

So, what are schools to do while the courts fight it out?



- 1. Educate ourselves
- 2. Be aware of the issues and best practice tips
- 3. Ensure a practice of non-discrimination across the board, for all students

Step 1. Education

- Listen to the stories of transgender persons. Hear their experience and the experience of those who love them.
 - o For some insight from a mother of a trans child, watch: https://www.youtube.com/watch?v=9LTaBGDrw4M
- Listen to students and parents who are expressing concern and worry to you about school safety.
- Listen, before responding with a definitive answer.

Education, cont.



- <u>Biological sex at birth</u>: objectively measureable organs a child is born with. Also referred to "birth assigned gender" or "gender assigned at birth"
- Gender identity: how people think of themselves and which gender they feel they are. In other words, gender identity is an emotional, rather than a physical characteristic. It is generally believed that gender identity is formed by about the age of four (although an individual may not realize it until later) and it very rarely changes after that.
- <u>Gender expression</u>: how people demonstrate their gender to the outside world through things like dress, speech, and behavior. Gender expression may change depending on circumstances.

*NOTE: Sexual attraction is not a factor in determining gender identity or gender expression. Often, gender identity is defined long before a person is sexually attracted to anyone.

Terminology

- Transgender person: a person whose gender identity does not match his/her biological sex at birth. Importantly, a person's status as transgender does not depend upon whether that person has undergone (or even intends to undergo) any medical treatment for gender reassignment, nor does it depend on who a person is sexually attracted to.
- <u>Transgender female</u>: a person whose assigned sex at birth is male but identifies and lives as a female. Also referred to as MTF, or male-to-female.
- <u>Transgender male</u>: a person whose assigned sex at birth is female but identifies and lives as a male. Female-to-male, or FTM

Terminology, cont.

• <u>Transition</u>: the process a transgender individual goes through to live as their self-identified gender. Although it may include medical intervention, no such treatment is required for a person to transition.

Social transition

- Use a different name
- Use of a different pronouns
 - × He, she, her
 - × They, zey
- Surface transformations of physical appearance (hair cut, earrings,--expression side)
- Use of bathrooms that suits the person's gender more accurately

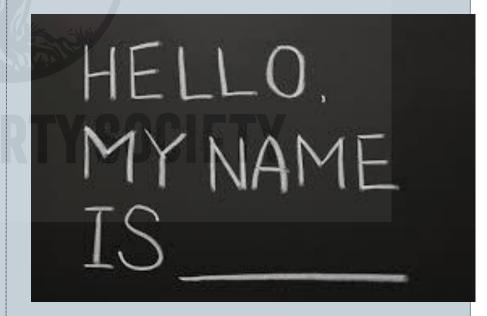
• <u>Medical transition</u> (any combination)

- Use of a medical interventions to block natal puberty
- Use of cross-sex hormones
- Gender Confirmation Surgery (vs. sex reassignment or sex change—not changing anything, just confirming)
- Use of a bathroom that suits the person's gender more accurately

Step 2. Beware of the Issues and Best Practices Issue #1: Names and Pronouns

- Recognize that this is often the first step in transitioning from one gender to another. When a request to refer to a student by a different name comes to your attention, consider asking the student if he/she would like to schedule a meeting with parents to discuss other issues that may arise and to ensure there is a plan in place to help the student feel safe.
- Transgender students, *like all* students, should be addressed in informal verbal and written communication by the preferred name and/or pronoun.
 - o If you require parental permission to call students something different than what is on the roll or not, you must apply the requirement to all students, even-handedly.

 Policies that require "proof" or a formal evaluation or diagnosis of a student's gender identity are looked down upon, however, districts across the country do ask for "more than a casual declaration of gender identity or expression."



Issue #2: Telling Parents

- Note that the ACLU is very protective of a student's right to privacy in his/her sexuality.
- If a school employee believes that "a situation exists which presents a serious threat to the well-being of a student," the employee must notify parents without delay. (Utah Code 53A-13-302(6)(b)(i)). Other than a threatening situation, volunteering known information about a student's sexuality/gender identity with parents is not advised. Consider the following factors in making a determination about talking to parents:
 - Age of students
 - Whether student is being bullied based on sexuality or gender identity
 - Student requests
 - Knowledge of parents' relationship with students
- What if a student asks to be called a preferred name/pronoun and parents object? Unless the student is 18, parents' requests should govern.

Issue #3: School Records

- In Utah, official school records must include information found on the student's birth certificate. This includes name and gender. (R277-419-10(2)(b): "The direct transcription of student names from birth certificates or other reliable proof of student identity and age shall be the student's legal name for purposes of maintaining school records.")
- Under FERPA, a parent may request a school to amend a student's records, including the name on official records, but it is ultimately up to the school whether the request will be granted. If an amendment to a record is denied, parents have the right to insert a statement in the record setting forth his or her views.
- A court order changing the birth certificate is the only way a student's name and gender is changed on official school records.
- What constitutes an official school record?
 - o Classroom seating chart? (Probably not)
 - o A roll? (Probably not)
 - o Notes to parents about the student? (Probably not)
 - o Student homework? (Probably not)
 - o Transcripts? (Probably)
 - Yearbook? (Probably not)

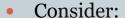


Issue #4: School bathrooms/locker rooms

- > No court in Utah has taken a position on this issue.
- Of the courts around the country that have addressed this issue, most have been settled out of court or voluntarily dismissed; many are pending, and a few have granted a preliminary injunction level. Only 1 denied a preliminary injunction for the transgender student.
- Many schools provide a uni-sex bathroom to any student desiring to use the bathrooms. Make sure the uni-sex bathroom is not so inconveniently located that a student may claim unequal access.
- Access should not be controlled by other students' or parents' comfort level regarding the access. Advise parents that concerned about privacy
- Long term solution? Closed stalls in all locker rooms and all bathrooms for use by any or all students.
- In the meantime, BEST PRACTICE: Review on a case by case basis and work with parents to ensure students do not feel discriminated against. Consider age of student, age of transition, physical nature of facilities, location/proximity of faculty or single sex bathrooms, and student's desire. Consult with district officials.

Issue #5: School Overnight Trips

- When it's an elementary school field trip, my advice is reconsider those. For so many reasons!
- Review on a case-by-case basis.
- Work with district officials.
- Work with transgender student and family.



- o Providing a single room for the student, *if the student is okay with this*. Forcing the student to be in a single room where all other students get to share a room could be problematic.
- o Putting 2 kids in a 2 bed room, rather than 4.
- o Putting the student with a close friend—male or female—also going on the trip.
- May be okay to say, "Nebo will not permit students who do not share the same anatomy to share intimate spaces overnight."
- BUT do not jump to this answer. Remember Step 1: Listen.



Issue #6: Student-on-Student Harassment/Bullying

- Schools have a legal duty to protect ALL STUDENTS from harassment by adults and other students. The Supreme Court in *Davis v. Monroe* (1998) has stated that school officials may be liable if they are "deliberately indifferent" to student-on-student harassment that is persistent, pervasive, and severe.
- Licensed school employees have a professional responsibility under 277-515 both not to harass students and to protect students from harassment by other students.
- If you are receive a complaint that other students are harassing/bullying a student based on his gender identity—even if you don't believe it's happening—document, investigate, document your investigation, follow-up with parents, and put a safety plan in place if necessary. DO NOT DO NOTHING!

Issue #7: Communication and Confidentiality

- **Soliciting information** about a student's sexual behavior, orientation, or attitudes is prohibited under Utah Code 53G-9-203(1)(c). Resist the urge to play therapist!
- Once information has been obtained—regardless of how— **respect the student's privacy rights**. For many students, being 'outed' is their biggest fear. A transgender female who has transitioned may not want anyone to know she was born male. Respect that desire!
- **Keep confidential** information about students discussed with administrators and with other faculty.*
 - *Discussions about students with other faculty should only be on a needs-to-know basis.
- Official school records that identify the student's legal name and gender as they appear on the birth certificate are considered "records" under FERPA and may not be shared with anyone outside of the exceptions under the law.

Issue #8: Dress Code

• Ensure your school dress code is gender neutral.

- If a transgender boy is wearing a dress and he is not doing anything to harm anyone else, even if it is causing disruption, address the disruption, not the dress.
- Dance attire: Think twice before punishing a transgender female (born male, identifies as female) from wearing a dress to Prom. Especially if she has been elected Prom Queen.
- Graduation attire: if you have gender-specific graduation attire, consider getting rid of it or allowing transgender students to wear the attire of the gender they identify with.
- Recognize that some students do not identify with either gender, or consider themselves gender fluid—moving back and forth between male and female. For this reason, it is problematic to require any kind of "proof" that the student is transgender before allowing him/her to wear attire of the gender they identify with.

Issue #9: Sports

UHSAA Interpretation and Guidelines 1.1.4: Transgender Participation:

"A student shall be permitted to participate on a gender specific sports team that is consistent with the public gender identity of that student for all other purposes. In making a determination of eligibility, the UHSAA will first refer to the confirmation of the student and his or her local school regarding gender identification. The UHSAA will require that member school districts and schools make a determination of a student's eligibility to participate in gender specific **sports** team for a particular season based on the gender identification of that student (1) in current school records, and, (2) daily life activities in the school and community at the time that sports eligibility is determined."

Factors School Can Rely on To Make an Eligibility Determination for Transgender Athletes

- 1. Documentation from individuals such as, but not limited to, parents /legal guardians appointed by a court of competent jurisdiction, friends and/or teachers, which affirm that the actions, attitudes, dress and manner demonstrate the student's consistent gender identification and expression;
- 2. A complete list of all the student's prescribed, non-prescribed or over the counter, treatments or medications;
- 3. Written verification from an appropriate health-care professional (doctor, psychiatrist, or psychologist) of the student's consistent gender identification and expression; and
- 4. 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.

Issue #10: Parents' Involvement

Because of the many issues that can arise when working with transgender students, parental involvement at the outset is key. Work with the parents to establish a plan for:

- What name to call the student,
- What pronoun to use
- Bathroom/locker room accommodations
- Overnight field trips
- Athletic team participation
- Preventing bullying/harassment

FOR THIS REASON, HELP THE STUDENT UNDERSTAND THE VALUE OF INFORMING PARENTS. KEEP IN MIND, AGE MATTERS. A 17 YEAR OLD TRANS STUDENT MAY BE ABLE TO NAVIGATE THE WORLD OF TRANSITIONING BETTER THAN A 12 YEAR OLD WITHOUT PARENTAL INVOLVEMENT.

Scenario #1:

John has been in your 7th grade class for an entire semester. He is a good student-does his homework and his never disruptive. Near the end of the semester, John approaches you and asks if he can talk to you. You are busy entering grades and without much thought, say, "Sure, what's up?" John says, "I'm struggling with my gender identity. I've never felt like myself; I feel awkward as a boy; I think I should have been born a girl." That gets your attention and you look up. He continues, "I haven't really talked to anyone about this; my parents don't know and I'm not sure how they'd take it if I told them. I'd appreciate it if you didn't tell anyone."

WHAT DO YOU DO???

Do you:

- A. Tell John, "Wow, tell me more!"
- B. Keep it to yourself
- c. Call John's parents right away
- D. Run next door to your colleague's classroom and report to her but make her promise not to tell anyone
- E. Contact your administrator
- F. Tell John, "I respect your desire to keep this private but I think you might feel better talking about it to someone who is trained to have these conversations" and encourage him to talk to the school counselor.
- **G.** Other ideas?

Scenario #2

Tina, a 16 year old girl in your class, raises her hand one day in the middle of class and says, "Mr./Ms. Teacher, I'd like you to start calling me Troy. And use "he" whenever you refer to me please."

Do you:

- A. Say, "That's ridiculous. You're a girl. We'll call you Tina until you get a sex change."
- B. Send Tina/Troy to the office to be disciplined for getting the class off topic?
- C. Say, "Sure. Everybody hear that? Tina is now to be called Troy." And leave it at that.
- D. Get the class back on task and talk to Tina/Troy privately about talking to the school counselor so the staff can have a better understanding of Tina/Troy's transition and so the counselor can communicate with parents about necessary accommodations for Tina/Troy.
- E. Other ideas?

Scenario #3

The parents of a 17 year old transgender student call you regarding their child who was born male but identifies female. The student played basketball on the boys' team all through junior high but was recently cut from the team, and the parents are now asking you to allow the student to try out for the girl's team. What is your response?

- A. "If you think I'm that stupid, you're stupid!"
- B. "I'm sorry but we can't allow a boy to try out for a girl's team just because he got cut from the boy's team. It wouldn't be fair to the girls."
- C. "I didn't realize your child was transgender. I'm not exactly sure what the district's policy on this matter is, but let me do some research and get back to you. Also, I'd love to sit down with you and your student and discuss further your student's gender identity and how we can assist you and your student with a transition, including name changes, pronoun changes, dress code, bathroom/locker-room use, etc."
- D. "Of course your student can try out for girl's basketball. Not a problem."

Ways to Prevent Gender Discrimination In School and In the Classroom

- Educate staff and selves to understand the complexities of gender as well as specific methods to stop gender based harassment ,bullying and hurtful teasing
- Provide training for all school personnel—from teachers, aides, counselors to administrative staff, bus drives, recess aides, and cafeteria workers
- Use inclusive phrases to address your class—students, children, or scholars
- Group students in ways that do not rely on gender—instead of "boys over here, girls over there"—table groups, letters in their names, colors of their clothes.
- Ensure privacy for transgender students. Clarify who has access to records.
- Immediately intervene when student gender stereotype in a derogatory way.
- Putting up pride flag in classroom? Not necessary if you demonstrate love and care for **all** kids. Students know a safe place when they feel it.

Back To Diversity Tips 1-10

Tip #10: Be nice. To EVERYONE.

- As educators, we have moral responsibility to ensure schools are free from discrimination and that ALL students feel safe
- Be an ally for students. Stand up for them.
- Role model inclusion. Show kids how to treat others by including all.
- Ensure there is good supervision of hallways, playgrounds, and cafeterias to increase a sense of safety
- Interrupt student comments based on stereotypes or identity. Always. Make it a teachable moment.
- Stop hurtful teasing and bullying based on gender put-downs, racial slurs, insults based on disability, etc. Immediately!

Remember Why You Do What You Do

- Take a step back from all the political agendas and remind yourself why you went into education.
- You love kids.* You inspire kids.
- Love them ALL the same. Inspire them all the same.
- Find the good in every child and drag it out.



Inspirational Video- Be a Mr. Jensen- MUST WATCH!!.mp4

*If you don't, get out of education!



HOW TO UNDERSTAND, IDENTIFY, AND STOP SUBTLE ACTS OF EXCLUSION

How to be more inclusive in your everyday dialogue regarding race, ethnicity, gender, sexuality, age, religion, and ability.

TREE of LIBERTY SOCIETY

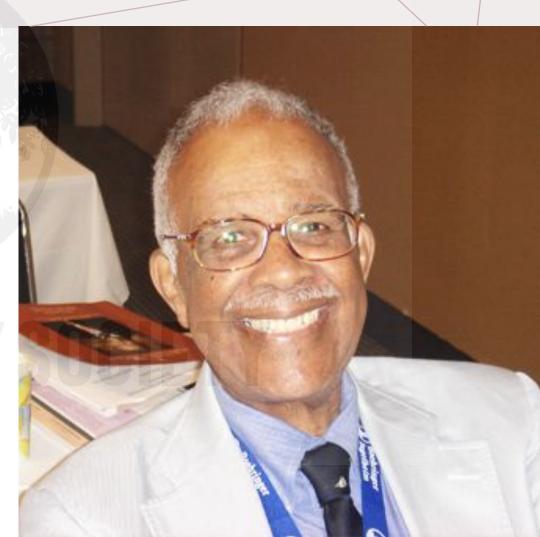
AGENDA

- Defining SAEs
- Intent
- Nothing Micro About It
- Types and Examples
- · What to Do If
- Intentional Acts of Inclusion

MICROAGGRESSIONS

- Originated in 1970s, Chester Pierce
- Black Americans and women

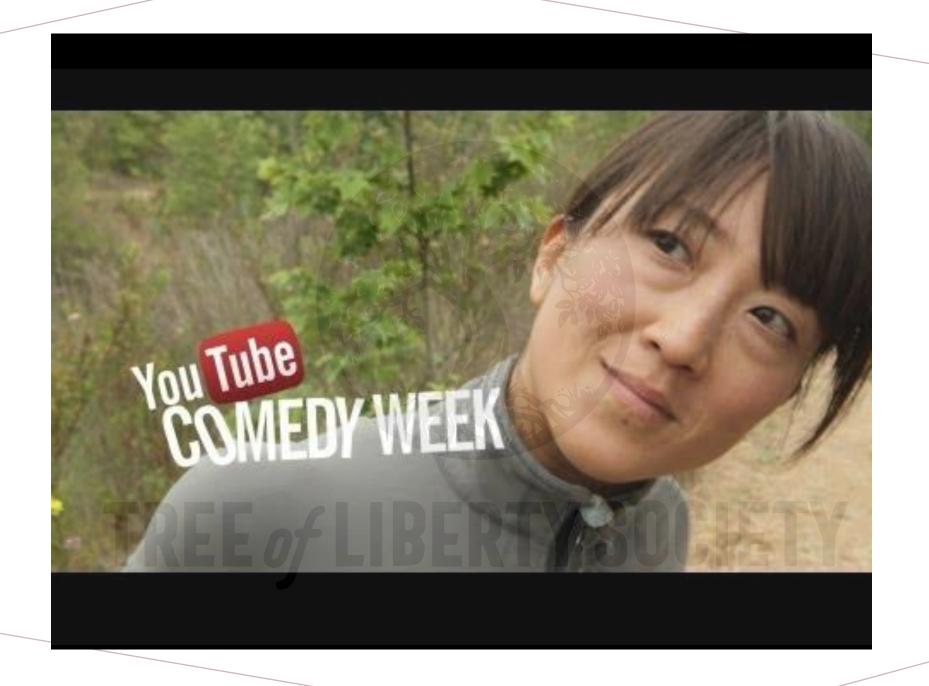
TREE of LIBERTY





-TIFFANY JANA





Lets debrief

- What are the first things that struck you about the clip?
- Have you heard some of these types of interactions happen between folks before?
- What is going on in the video?
- What are the things that you heard that you felt were problematic?
- Why do you think the man made the comments that he made? What was he trying to accomplish?
- Do you think that connecting with others or wanting to relate is often behind microaggressions?
- How do these microaggressions perpetuate or not perpetuate racism and implicit bias?

THERE'S NOTHING MICRO ABOUT IT



Microaggression Video



WHY SUBTLE ACTS OF EXCLUSION?

- **Subtle** confusing, hard to identify, and hard to talk about
- Acts things we say AND do
- They serve to Exclude



FRAMEWORK

You are invisible.

You (or people like you) are inadequate.

You are not an individual.

You don't belong.

You are not normal.

You are a curiosity.

You are a threat.

You are a burden.

DO YOU IDENTIFY WITH ANY OF THE FOLLOWING?

- Gender and Sexuality
- Race and Ethnicity
- Ability
- Religion
- Age and Generation
- Political affiliation

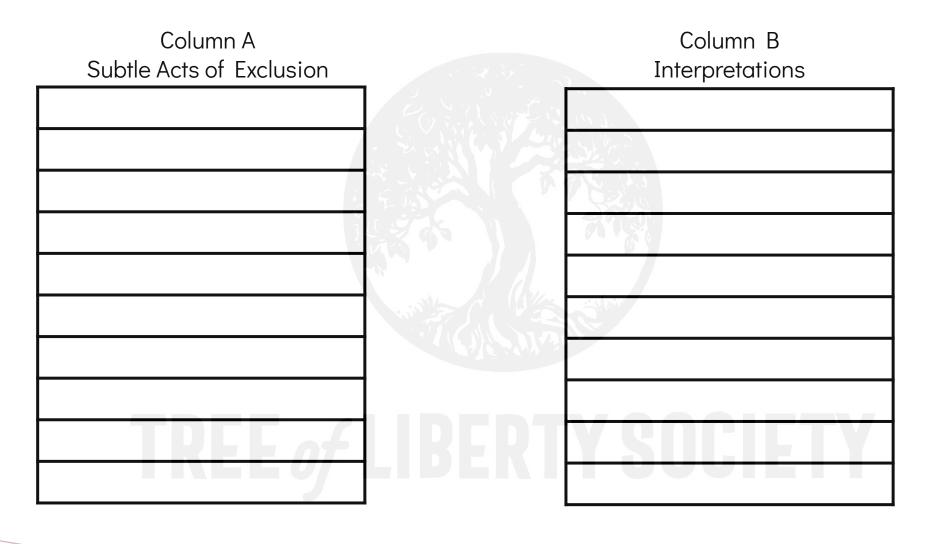
- Are you differently abled?
- Are you a racial or ethnic minority?
- Are you a gender minority?
- Are you living away from your home nation?
- Do you identify as queer?
- Were you less affluent than your peers' families growing up?
- Are you a first-generation student?
- Are you a single parent?
- Are you part of a religious minority?

Subtle Acts of Exclusion Worksheet

- Jot down SAEs, in column A.
- Think about what the interpretation of the SAE is and jot down your thoughts in column B.
- Remember it's not about intent. It's about the impact.
- Be ready to share at the end.

TREE of LIBERTY SOCIETY

Subtle Acts of Exclusion Activity





SUBJECT – person or group who is excluded

 INITIATOR - the person who says or does the SAE

OBSERVER – someone who overhears or sees

BYSTANDER – an observer who does not speak up

ALLY – an observer who speaks up

HOW TO BE MORE THAN A BYSTANDER

1

Connect with marginalized parts of identity.

2

Amplify marginalized voices without speaking over them.

3

Expose SAEs with compassion.

WHAT TO DO IF...

YOU ARE THE SUBJECT OR ALLY

Be prepared

Pause the action

Assu good intent

Explai why the action was paused

Have patience but expect progress



WHAT TO DO IF...

IF YOU ARE THE INITIATOR

Be prepared

Listen to understand

Acknowledge the feedback with **gratitude**

Replace defensiveness with **curiosity** and **empathy**

Follow through and follow up



GENDER

- Assuming a man is in charge in a mixed gender group
- Giving a man credit for an idea already presented by a woman
- Broad generalizations about either gender
 - Dads are clueless and forgetful
 - Moms are more dedicated to the children than their jobs
 - · Dads don't help clean at home





SEXUALITY

- Refusing to use a person's preferred pronoun (grammatical issues, faith)
- Assuming a person's gender identity
- Assuming a person's sexual preference (male / female marriage)
- Downplaying people of different sexual orientation or preference





RACE AND ETHNICITY

- Calling a person of color articulate
- Expecting a person of Asian descent to be "smart" and making a comment if they make an error on a task.
- Assuming that all black Americans are good at sports

RACE AND ETHNICITY

- Where are you really from?
- Mistreating someone's name
- I don't see color
- Touching a Black person's hair
- No problemo
- You don't speak Spanish?
- You're Korean? I was so close!
- Your accent is so cute!
- I love your skin color





ABILITY

- Refusing to use a microphone during a large conference
- "You're such an inspiration."
- Disbelieving a person's disability because it is not visible.
- Flippant use of mental illness terms.
- Not creating an environment that individuals might be able to physically access items.

RELIGION

- Requiring people of various religions to use vacation time to celebrate important holidays.
- Assuming everyone celebrates the holidays celebrated by the majority.
- Group prayer without consideration of attendee's religious beliefs.



Religion- Community

 When are you going to/ Where did you serve a mission?

 Talking about your church/ religious related topics in groups and assuming everyone understands





AGE AND GENERATION

- When is he going to retire?
- You're not like other millennials.
- You are too young to know anything about that.
- Joking about the older generations' understanding of technology.
- Complaining about the "youth" of today.
- Calling an older individual "cute".

ALWAYS THINK BEFORE YOU SPEAK

- Is what I am about to say/ask based on stereotypes or assumptions?
- Is what I am about to say/ask unnecessarily intrusive?
- Am I overstepping?
- Would I say the same thing to a person of a different gender/color/race, etc.?
- Is this going to make the person feel inadequate or as if they don't belong?
- Does this question their normalcy or make them feel like a threat or a curiosity?
- Will this make someone feel invisible, as if they are not an individual?

INTENTIONAL ACTS OF INCLUSION

- Expect it to happen.
- Communicate the norm.
- Practice speaking up.



YOU ARE ENOUGH
YOU ARE AN INDIVIDUAL
YOU BELONG
YOU ARE NORMAL
YOU ARE SPECIAL
YOU ARE SAFE

I SEE YOU



RESOURCES

- Book: <u>Subtle Acts of Exclusion: How to Understand, Identify, and Stop Microaggressions by Tiffany Jana and Michael Baran</u>
- Ted Talk: <u>"The Power of Privilege"</u> by Tiffany Jana
- Resource: #StopMakingItWeird
- #disabilitytwitter
- Resource: Recognizing Microaggressions Tool

