

TITLE 33
EDUCATION

CHAPTER 66 [67]

PROTECTING THE PRIVACY AND SAFETY OF STUDENTS IN PUBLIC SCHOOLS

33-6601 [33-6701]. LEGISLATIVE FINDINGS. The legislature finds that:

- (1) There are real and inherent physical differences between men and women;
- (2) Every person has a natural right to privacy and safety in restrooms and changing facilities where such person might be in a partial or full state of undress in the presence of others;
- (3) This natural right especially applies to students using public school restrooms and changing facilities where student privacy and safety is essential to providing a safe learning environment for all students;
- (4) Requiring students to share restrooms and changing facilities with members of the opposite biological sex generates potential embarrassment, shame, and psychological injury to students, as well as increasing the likelihood of sexual assault, molestation, rape, voyeurism, and exhibitionism;
- (5) Providing separate public school restrooms and changing facilities for the different biological sexes is a long-standing and widespread practice protected by federal law, state law, and case law;
- (6) Federal legislative action, federal executive action, and federal court judgments that prevent public schools from maintaining separate restrooms and changing facilities for different biological sexes are inconsistent with the United States constitution and violate the privacy and safety rights of students; and
- (7) A statewide policy ensuring separate school restrooms and changing facilities on the basis of biological sex is substantially related to the important governmental interest in protecting the privacy and safety of all students.

[33-6601 [33-6701], added 2023, ch. 120, sec. 1, p. 343.]

33-6602 [33-6702]. DEFINITIONS. For the purposes of this chapter:

- (1) "Changing facility" means a facility in which a person may be in a state of undress in the presence of others, including a locker room, changing room, or shower room.
- (2) "Public school" means any public school teaching K-12 students within an Idaho school district or charter school.
- (3) "Sex" means the immutable biological and physiological characteristics, specifically the chromosomes and internal and external reproductive anatomy, genetically determined at conception and generally recognizable at birth, that define an individual as male or female.

[33-6602 [33-6702], added 2023, ch. 120, sec. 1, p. 344.]

33-6603 [33-6703]. SCHOOL RESTROOMS. (1) Every public school restroom or changing facility accessible by multiple persons at the same time must be:

- (a) Designated for use by male persons only or female persons only; and
 - (b) Used only by members of that sex.
- (2) No person shall enter a multi-occupancy restroom or changing facility that is designated for one sex unless such person is a member of that sex. The public school with authority over the building shall ensure that all re-

strooms and changing facilities provide its users with privacy from members of the opposite sex.

(3) In any other public school setting where a person may be in a state of undress in the presence of others, school personnel must provide separate and private areas designated for use by persons based on their sex, and no person may enter these private areas unless such person is a member of the designated sex.

(4) During any school authorized activity or event where persons share overnight lodging, school personnel must provide separate sleeping quarters for members of each sex. No person shall share sleeping quarters, a restroom, or a changing facility with a person of the opposite sex, unless the persons are members of the same family.

[33-6603 [33-6703], added 2023, ch. 120, sec. 1, p. 344.]

33-6604 [33-6704]. EXEMPTIONS. This chapter shall not apply:

(1) To single-occupancy restrooms and changing facilities or restrooms and changing facilities that are conspicuously designated for unisex or family use;

(2) To restrooms and changing facilities that have been temporarily designated for use by that person's biological sex;

(3) To a person of one sex who uses a single-sex facility designated for the opposite sex, if such single-sex facility is the only facility reasonably available at the time of the person's use of the facility;

(4) To a person employed to clean, maintain, or inspect a restroom or single-sex facility;

(5) To a person who enters a restroom or facility to render medical assistance;

(6) To a person who is in need of assistance and, for the purposes of receiving that assistance, is accompanied by a family member, a legal guardian, or the person's designee who is a member of the designated sex for the single-sex restroom or changing facility;

(7) To coaching staff and personnel during athletic events; or

(8) During an ongoing natural disaster or emergency, or when necessary to prevent a serious threat to good order or student safety.

[33-6604 [33-6704], added 2023, ch. 120, sec. 1, p. 344.]

33-6605 [33-6705]. REASONABLE ACCOMMODATION. (1) A public school shall provide a reasonable accommodation to a student who:

(a) For any reason, is unwilling or unable to use a multi-occupancy restroom or changing facility designated for the person's sex and located within a public school building, or multi-occupancy sleeping quarters while attending a public school-sponsored activity; and

(b) Provides a written request for reasonable accommodation to the public school.

(2) A reasonable accommodation does not include access to a restroom, changing facility, or sleeping quarter that is designated for use by members of the opposite sex while persons of the opposite sex are present or could be present.

[33-6605 [33-6705], added 2023, ch. 120, sec. 1, p. 345.]

33-6606 [33-6706]. CIVIL CAUSE OF ACTION. (1) Any student who, while accessing a public school restroom, changing facility, or sleeping quarters designated for use by the student's sex, encounters a person of the opposite sex has a private cause of action against the school if:

(a) The school gave that person permission to use facilities of the opposite sex; or

(b) The school failed to take reasonable steps to prohibit that person from using facilities of the opposite sex.

(2) Any civil action arising under this chapter must be commenced within four (4) years after the cause of action has occurred.

(3) Any student who prevails in an action brought under this chapter may recover from the defendant public school five thousand dollars (\$5,000) for each instance that the student encountered a person of the opposite sex while accessing a public school restroom, changing facility, or sleeping quarters designated for use by aggrieved student's sex. The student may also recover monetary damages from the defendant public school for all psychological, emotional, and physical harm suffered.

(4) Any student who prevails in action brought under this chapter is entitled to recover reasonable attorney's fees and costs from the defendant public school.

(5) Nothing in this chapter limits other remedies at law or equity available to the aggrieved student against the school.

[33-6606 [33-6706], added 2023, ch. 120, sec. 1, p. 345.]

33-6607 [33-6707]. PREEMPTION. This chapter preempts any law, regulation, policy, or decree enacted or adopted by any city, county, municipality, or other political subdivision within the state that purports to permit or require public schools to allow persons to use facilities designated for the other sex.

[33-6607 [33-6707], added 2023, ch. 120, sec. 1, p. 345.]