

Considerations for Using Student Preferred Names

November 9, 2020



Kentucky Department of
EDUCATION

Question: A student may request that a school use a pronoun/name when referring to them in school and that request should be honored.

However, how should a school address this request if a student wants to be referred to with one pronoun and name at school and have the school use another pronoun/name when communicating with parents who do not wish for the school to use that pronoun/name?

Analysis: To begin, if a student requests a teacher use a pronoun/name to refer to them, the student's request should be honored by the school. This has important ramifications for a student's ability to participate meaningfully in school and is trauma informed.

The issue is if a parent or guardian does not wish to have the school refer to the student by their chosen pronoun/name. This particular issue is currently being litigated. You can [read more information about this litigation here](#).

[New Jersey's guidance](#), which is reliant on state law, has been to accept a student's stated identity and not inform parents. New Jersey's guidance states, "A school district shall accept a student's asserted gender identity; parental consent is not required."

Generally speaking, parents have rights to guide their children's education. These rights are not absolute and may be subject to judicial intervention per *Troxel v. Granville*, 530 U.S. 57 (2000).

Schools also must comply with Title IX. Title IX requires that 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.

[Currently, the U.S. Department of Education, \(USED\) does not consider the failure to use the correct pronouns – on its own – to be a Title IX violation](#). However, the U.S. Supreme Court recently held that discrimination on the basis of being transgender fell under Title VII protections in *Bostock v. Clayton*. It is almost certain that the same reasoning would be translated into Title IX programs.

The above referenced USED letter stated, "Thus, harassing a student – including acts of verbal, nonverbal, or physical aggression, intimidation, or hostility – based on the student's failure to conform to stereotypical notions of masculinity and femininity can constitute discrimination on the basis of sex under Title IX in certain circumstances. Schools have a responsibility to protect students against such harassment." This underlines that schools should honor a student's stated gender identity to avoid running afoul of Title IX, even while USED is not, at this point in time, determined to say that failure to do so in and of itself is a violation of Title IX. ***In other words, failure to honor the student's stated gender identity could almost certainly lead to a situation where the school engaged in a Title IX violation.***

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In the situation where a student wishes to use different pronouns or a different name than the parents wish for the school to use, it puts the school at an extreme disadvantage of becoming the go-between for some very challenging issues. With this in mind, a school presented with this situation should consider the following factors:

- *The student's request* – The student is the person who is going to be most negatively impacted by not having their preference honored. Therefore, the student's wishes should take a **primary** role in how the school addresses this request/matter. A student should be informed that it is likely that the school only can utilize one name in Infinite Campus, and possibly other reporting programs, and as such, this may limit what the school can do in order to keep communications with parents under the name the student wishes to use with the parents, while using the preferred name or pronoun at school.
- *The student's safety* – This could be a potentially scary situation for the student. Parents will likely, ultimately, become aware of this situation. As such, when the student makes this request, schools may wish to ask if the student has a support network and possibly how their parents view their identity. If the student believes they are in a home where there is the possibility of abuse as a result of this issue, then every effort that is possible for the school to engage in should be made to alleviate this concern. This may include counseling services.
- *The parent's desires* – Parents are afforded wide latitude to determine the educational path of their children. Assuming that there is no safety concern, if the school is unable to honor this request – i.e., refer to the student by one name and keep communications with parents under another name – then efforts should be made to inform parents, **only with the student's consent**, that the student has requested them to use these pronouns and the school is determined to honor this request. The reasons for this are practical and legal. First, parents likely will learn of this situation, either through third parties or an inadvertent communication by the school. Second, parents may, constitutionally, attempt to remove their children from school or enroll their children in a private school or choose homeschooling that will not honor their gender identity. This could be an educationally disadvantageous situation for the student. Third, schools are likely unable to use Infinite Campus in such a manner as to have a preferred name or pronoun so it would be kept confidential from parents.

In short, the student's request should be honored by the school. To do otherwise would likely lead to a Title IX violation due to the actions that would accompany failing to acknowledge the student's stated gender identity.

The student should be offered available resources to navigate this experience, including but not limited to: certain [inclusive curricula](#), an alternative restroom, access to a Gay/Straight Alliance, individual school counseling or small group counseling and information about the [Trevor Lifeline](#) or other [crisis phone](#) or [text lines](#).

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Assuming that the student feels safe, an effort should be made – *with the student's consent* – to inform the parents of the student's request in a nonconfrontational manner. Parents should be informed that it is district policy to honor the student's chosen pronouns and name. Parents also may be informed that the district's failure to acknowledge the student's stated gender identity and pronouns, while not a violation of Title IX itself, would likely lead to a Title IX violation and the district is bound to comply with Federal law/requirements.

Question: How do I add a student's preferred name to Infinite Campus?

Answer: Use the information found in the [Enrollment data standard – Protected Identity Information](#) (found at the top of page 7).

(jl, dls, mr)