

BACK TO SCHOOL WITH THE ACLU OF IDAHO



**NAVIGATING NEW AND CHANGING LAWS,
PROTECTING STUDENTS' CIVIL RIGHTS AND CIVIL LIBERTIES**

2023 REPORT

ACLU
Idaho

Introduction

IN 2023, THE IDAHO STATE LEGISLATURE PASSED A NUMBER OF BILLS THAT COULD IMPACT THE CIVIL RIGHTS AND LIBERTIES OF STUDENTS AND STAFF IN IDAHO PUBLIC SCHOOLS.

The ACLU of Idaho created this guide as a resource for students and their families, as well as Idaho public school staff and faculty.

Our hope is the information provided here will help those close to public schools navigate new laws that will shape the 2023-2024 school year.

This report is a guide. We hope it provides useful information - but the report is not legal advice.

Review your district's policies -- and speak with building principals, district and board officials, and the Idaho Department of Education -- to better understand how changes in the law might affect you and those you care about.

BACK TO SCHOOL WITH THE ACLU: 2023 REPORT

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PART I: 2023 LEGISLATION AND IDAHO PUBLIC SCHOOLS

PUBLIC SCHOOL RESTROOMS

In early 2023, Idaho state lawmakers passed a bill (SB 1100) to ban transgender students from using restrooms and other changing facilities that match their gender.

Thankfully, SB 1100 cannot be enforced now, thanks to a Temporary Restraining Order issued by the court in a legal challenge filed by an Idaho seventh grader (Rebecca Roe), her parents (Ryan and Rachel Roe), and members of Boise High's Sexuality and Gender Alliance. The lawsuit asks the court to immediately and permanently stop Idaho's exclusionary restroom law - and explains how the policy violates transgender students' rights.

ALL STUDENTS HAVE A RIGHT TO FEEL SAFE AT SCHOOL AND TO BE TREATED THE SAME AS THEIR PEERS.

Idaho's exclusionary restroom law would have allowed public school students to sue their schools for encountering a person of the "opposite sex" in a school restroom. Allowing students to sue schools - for at minimum five thousand dollars - would likely foster unsafe and hostile conditions for LGBTQ+ students.

EXCLUSIONARY RESTROOM POLICIES DEPUTIZE STUDENTS: IDAHO'S RESTROOM BILL WOULD HAVE CREATED A KIND OF "BOUNTY" SYSTEM, WHERE STUDENTS ARE COMPENSATED FOR POLICING AND REPORTING THEIR TRANSGENDER PEERS.

Idaho's discriminatory restroom law is currently on hold until the court process is completed. That means the State cannot force public schools to implement discriminatory restroom policies. However, the temporary court order doesn't require districts that had discriminatory policies of their own before SB 1100, to change them to protect trans students. Ask the ACLU if you want to know your district's bathroom policy.



PUBLIC SCHOOL RESTROOMS: KEY TAKEAWAYS

As of August 2023, Idaho's anti-trans restroom bill is on hold. Until the court reaches a decision, the state of Idaho cannot force public schools to create or implement discriminatory school restroom policies. If you, your child, or your students are experiencing difficulty accessing gender-aligned restrooms, report a civil liberties violation with us.

And remember, bad as it is, there are limits to SB 1100:

1. It only applies to public school restrooms and changing facilities, and only those facilities designated as multiple occupancy.
2. SB 1100 does not undo the requirement for schools to provide “reasonable accommodations” to students. With or without SB 1100, students can ask their school to provide adequate individual restroom facilities. Students can make reasonable accommodation requests for any reason and their school must honor these requests.



TRANSGENDER STUDENT ATHLETES

In 2020, Idaho passed a law that bans trans women and girls from participating in women's sports. Lindsay Hecox, a Boise State University athlete, sued Idaho in April 2020 because the law could violate her privacy, is exclusionary, and is discriminatory. Lindsay is represented by the ACLU and ACLU of Idaho.

The law is currently on hold while Lindsay's case moves through the courts. Unfortunately, and despite the pause, some local districts have begun to implement anti-trans policies on sports participation. West Bonner School District, for example, implemented an anti-LGBTQ+ policy in August 2023 that bans transgender students from participating in certain sports.

There are currently 16 states that restrict transgender athletes from participating in sports aligned with their gender. In Idaho, West Virginia and Arizona such bans are on hold.

Earlier this year, the US Supreme Court refused to reinstate one state's ban on trans girls in sports. The case could return to the Supreme Court in the future.

Here in Idaho, while we await the court's decision, you can follow Lindsay's and other court cases by visiting the State of Idaho Judicial Branch's [Cases of Interest webpage](#), the [ACLU of Idaho website](#), or on our partner organizations' websites. These and other resources are listed at the end of this report.

IF YOU OR YOUR CHILD IS HAVING DIFFICULTY PLAYING SPORTS IN IDAHO BECAUSE OF THEIR GENDER, PLEASE REPORT A CIVIL LIBERTIES VIOLATION WITH US.



STUDENT PRIVACY

Idaho lawmakers passed a law in 2023 that requires public schools to disclose changes in a students' mental health to parents or guardians. Under the law, schools must ensure parents have access to their child's education and health records, parents must approve any non-academic surveys or questionnaires, and parents must have "reasonable" access to in-school visits.

In most cases, Idaho schools cannot shield student data from disclosure – all student health and education records must be available to parents upon request.

Some parts of this new law are relatively standard. That is, many districts across the state have similar policies in place.

We are still concerned about this law: it requires school officials to disclose changes in students' mental health to parents/guardians but gives no details about what kinds of changes must be reported, nor does it explicitly protect information about students' sexuality or gender identity. That means it's possible school staff may feel pressure to out LGBTQ+ students – including to unsupportive parents or guardians.

Decades of research shows the positive impact of school-based support for LGBTQ+ students (Linley et al. 2016).

Supportive school staff are also instrumental to the wellbeing of students of color (Villegas et al. 2012; Tomlinson et al. 2006) and LGBTQ+ students of color (Truong et al. 2020; Baams and Russell 2021).



STUDENT PRIVACY

Access to school-based mental health services and other support provided by schools, particularly for queer, racialized, and otherwise marginalized students in unsupportive households can be life changing and life-saving ([Poteat et al. 2021](#)).

ALL STUDENTS, REGARDLESS OF GENDER, SEXUALITY, AND OTHER ASPECTS OF THEIR IDENTITY, HAVE A RIGHT TO FEEL SAFE SHARING OR WITHHOLDING INFORMATION ABOUT THEMSELVES AT SCHOOL.

The benefits of school-based support is linked to students' trust in school personnel – and the expectation of student privacy. Students have a constitutional right to privacy and the right to control their own private information. This right means the government is not allowed to share information about personal matters, particularly those that are protected by the Constitution. Legal scholars have demonstrated that outing queer students is dangerous ([Schafer 2014](#)).

The new law does not require school staff to out LGBTQ+ students. Teachers and other school officials will likely continue to have a fair amount of discretion about what kinds of information they report to parents. All school faculty and staff should review district policy on student disclosures and should familiarize themselves with any updates in district confidentiality policy and procedures.

Courts across the U.S. are taking up questions spurred by leg legislation aimed at student privacy. In August 2023, a [federal appeals court said](#) that parents cannot challenge a school policy that protects students' gender identity. While we welcome this good news, we remain vigilant of legislation that erodes student privacy. That's because many of these privacy laws are rooted in Christian ideals. We know Christian-based laws will likely have a disproportionately harmful impact on LGBTQ+ students.



STUDENT PRIVACY: KEY TAKEAWAYS

- Beginning July 2023, schools in Idaho have to share certain information about students with the students' parents.
- Your school district may have updated its student health disclosure policy since last year. Students, parents, and school officials should familiarize themselves with any new rules about student health and other student data disclosures.
- Some federal regulations (e.g., FERPA) apply to K-12 students but not college students. Other federal privacy protections (e.g., HIPPA) do not apply to (or have only narrow applications in) public schools. Ask your building principal or superintendent for your school's student privacy policy. Ask for clarification about any areas of the policy that are unclear.



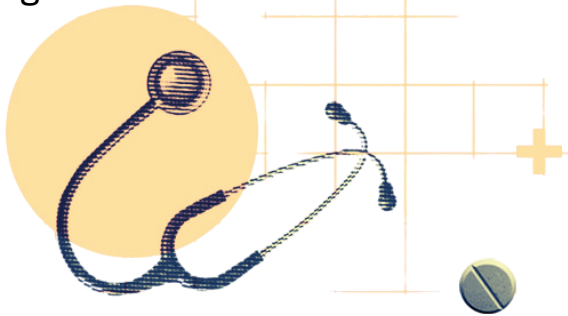
GENDER-AFFIRMING HEALTHCARE BAN

In 2023, Idaho passed a law that, beginning January 2024, would prohibit health care professionals from providing certain kinds of gender-affirming healthcare to youth. While Idaho's gender-affirming medical care ban may not directly impact schools, we know parents, students, and public school officials may want or need clarity on the new law.

If you or your child is currently receiving gender-affirming healthcare, it is unclear if, after January 1st, 2024, you or your child will be allowed to continue to receive treatment. If the court does not rule on our legal challenge, the ban will go into effect. We hope that doesn't happen, and we will continue to stand up for trans kids' rights.

Idaho's ban on gender affirming healthcare is scheduled to go into effect on January 1, 2024. However, and importantly, two Idaho families filed a lawsuit challenging the ban in May 2023. In July, we asked the court to hold off on implementing the ban until our lawsuit makes its way through the Courts.

Meanwhile, TALK to your medical team about TREATMENT options as soon as possible. And, if you or your child is suffering from gender dysphoria, it is also a good idea to speak with trusted healthcare providers about treatment. Absent a court action, medical professionals have the right to speak about and provide gender affirming healthcare to youth in our state.





GENDER-AFFIRMING HEALTHCARE BAN: KEY TAKEAWAYS

- Idaho’s ban on gender-affirming care may not directly impact public schools but it will almost certainly impact transgender students and their families. Public school officials should get familiar with district policy, particularly regarding student mental health monitoring and disclosures, restrooms, and other policies that may impact LGBTQ+ students.
- There are resources for students in crisis. Visit [Idaho Legal Aid](#) for a list of support lines in Idaho, and [GLAAD](#) and [Trans Lifeline](#) for nationwide support services.
- Visit [our website](#) for additional information on [Idaho’s gender-affirming care ban](#), updates on [our lawsuits](#), info on [LGBTQ+ student rights](#) and more about our [LGBTQ+ Justice](#) work.



"SILENT" PRAYER IN PUBLIC SCHOOLS

Idaho lawmakers created a new law that allows public school employees to pray aloud, on campus, “at any time [they are] otherwise free to engage in personal conversations” (See [Idaho Code § 33-6603](#)). The law applies to K-12 schools and colleges in Idaho.

Allowing prayer in public school is part of a broader trend; several states passed similar laws in 2023. School prayer laws appear to be motivated by a [2022 Supreme Court decision](#) that found school employees have a right to pray during school hours. However, that 2022 Court decision permits only private, quiet, and personal prayer. Idaho’s new law includes no such guardrails.

Districts cannot punish students for refusing to participate in prayer, and students that are discriminated against or punished for opting out of prayer can file a lawsuit against their school.

School employees can also file legal challenges if they are prevented from praying in school.

The law took effect July 1, 2023.

KEY TAKEAWAYS

- Permitting audible prayer in public school erodes foundational safeguards that separate church and state. Permitting teacher-led prayer in public schools could create instances where students that do not wish to pray may feel excluded and unwelcome at school.
- The US Department of Education has [offered guidance](#) on students’ rights regarding prayer and religious expression in public schools (linked in this report). In addition to these protections, students, guardians, and school officials should check with their administrators and school boards about the new law.
- Familiarize yourself with any procedures or guidance for cases when you, your student, or fellow school faculty or staff feel uncomfortable with teacher-led prayer during school hours.



SEX EDUCATION

Idaho lawmakers introduced several bills related to sexual education in 2023. One bill would have required all K-12 sexual ed to be “opt-in” rather than default curriculum and another would have prohibited any sex education before 5th grade. Thankfully, both failed.

A third sex ed bill HB 228, which passed, redefines the word abstinence in Idaho law. This new law went into effect in July 2023.

Under the new law, abstinence in Idaho means “...the absence of any sexual activity prior to marriage...”

In the U.S., sex education is generally a local matter: states decide how to fund sex ed., and local schools establish guidance and policy for what concepts sexual education programs should cover.

Linking abstinence to marriage is factually inaccurate and inserts morality - specifically conservative Christianity - into Idaho law.

About 40 states require sex education, but only 17 require such curricula be scientifically sound and medically accurate.

In Idaho, schools are not required to teach sex ed. Schools that do must encourage abstinence. Idaho schools do not have to teach students about sexual orientation, gender identity, or information on consent. Idaho parents have a right to “opt-out” of sexual education for their children.

Idaho does not have any laws that require medically or scientifically accurate sex education, but the Idaho Department of Education does require health education to be medically accurate.

Idaho’s legislation regulating sexual education is part of a broader trend across the U.S. In some states, new laws require teens learn about consent and other ways to prevent sexual violence; elsewhere, active and comprehensive sexual education is under attack.



SEX EDUCATION: KEY TAKEAWAYS

- There appears to be an organized effort to limit comprehensive sex ed, [linked to organizations](#) like the Christian Coalition, Focus on the Family, and others.
- When public schools limit sexual education instruction, students miss critical information about consent, relationships, contraception, personal safety, and protection.
- What's more, limiting information about sex and sexuality violates civil liberties. Abstinence-only education [censors essential information](#) and can inhibit free expression.
- We know the full exercise of reproductive rights rests on teaching and learning accurate information and we'll continue to monitor attacks on sex ed and defend the right of every student and educator to learn and teach accurate, medically-backed information.

Laws that limit sexuality education can violate students' rights to learn medically accurate information about topics ranging from puberty to pregnancy, sexually transmitted diseases, sexual assault, and more.

Planned Parenthood of Greater Washington and North Idaho created a peer-based education program that helps empower young people to make informed decisions about their sexual health.

You can learn more about the program [here](#).



PUNISHMENT IN SCHOOLS

In 2023, state lawmakers passed a law that establishes new guidelines on classroom punishment, restraints, and seclusion. According to State Superintendent Debbie Critchfield, the new law is rooted in concerns from parents and teachers across Idaho. The law aims to provide support and training for teachers, particularly regarding students experiencing crises.

Under the new law, Idaho teachers can only restrain or seclude a student when a student has placed themselves, a teacher, or other students in imminent danger. It is against the law to restrain or seclude a student as behavioral or classroom management strategies.

Research has shown Black and Latinx students are disciplined more harshly and more often across the US (Gordon 2018). Harsher discipline can lead to a host of problems for students, including decreased academic performance (AMA 2021). In our recent Education Equity report, we found similar trends here at home: Idaho has a troubling and persistent history of over-disciplining school children, particularly students of color, especially Black, Latinx, Indigenous students, and students with special needs and disabilities (Rodarte 2023).

RESOURCES

For more information on Idaho's school discipline policy:

- US Department of Education's Office for Civil Rights [report](#) on Idaho School Discipline Laws and Regulation
- ACLU of Idaho's Proud to be Brown: Punishing Latine Culture [report](#)
- ACLU Idaho's Know Your Rights as a Student [webpage](#)



PUNISHMENT IN SCHOOLS: KEY TAKEAWAYS

- It is against the law for teachers and other school officials to use seclusion or restraints to punish students.
- Isolating or preventing a student from moving is only allowed in very specific circumstances. School districts must update their student discipline policies and create processes for transparent reporting to parents/guardians.
- Certain school staff must be trained on how to de-escalate their classroom, and how (and when) to properly use restraint or seclusion.
- It is against the law for a teacher or school official to restrain or seclude a student to punish behavior.
- If you or a classmate have been punished by restraint or seclusion, tell your district and school board and report a civil rights violation with us.
- If your child tells you they were punished with force, talk to your child's school and report a civil rights violation with us.

PART II: STUDENT RIGHTS IN IDAHO



In this section, we discuss laws that protect students' rights. These laws are created and enforced at different levels of government. Laws created by a legislature are called statutes or legislation. Legislation can be made at the state or federal level.

Generally, federal law applies to everyone in the United States. State and local laws are created by state or local governments -- and only apply to people that live (or work) in a particular place.

Typically, federal law governs state law. We might think about this as federal law having more "power" than state or local laws. So, while sometimes state and local law give additional rights to residents, state and local law are generally not meant to take away the rights that are given (and protected) by federal law.



STUDENT RIGHTS: FEDERAL PROTECTIONS

All Idaho students have the right to be treated with dignity and respect at school. There are federal laws and rules that protect LGBTQ+ students.

One law is Title IX, which protects from sex-based discrimination in education. In 2022, the U.S. Department of Education proposed to update Title IX so that it explicitly protects transgender students.

Title IX supersedes state law. That means that if the proposed changes to Title IX are approved, it will be against the law to discriminate against students because of their sexual orientation and/or gender identity. Across the US, many courts have already said that Title IX applies to LGBTQ+ (and specifically transgender) students.

When the United States Department of Education proposed changes to Title IX, many states adopted the proposal as if it were final. Idaho (and 19 other states) did not. Instead, Idaho and 19 other states sued the U.S. Department of Education over its proposed new rules. While we wait to hear what the court decides on this lawsuit, Idaho schools do not have to comply with the proposed changes to Title IX. More specifically, an Idaho school that discriminates against an LGBTQ+ student cannot be punished by the federal government for violating the rights of that student. Schools outside of Idaho (and the 19 other states) are, however, required to respect LGBTQ+ students, and cannot enforce rules that only apply to these students, whether about dress code, names, or pronouns.



STUDENT RIGHTS FEDERAL PROTECTIONS CONT.

Importantly, the U.S. Department of Education’s proposed Title IX changes tell us that the Department is serious about its intentions to extend its anti-discrimination laws to sexual orientation and gender identity. Still, those proposed changes are not yet official – and, because of the lawsuit, Idaho is basically exempted from having to follow Title IX guidelines.

We expect the U.S. Department of Education to make those proposed Title IX rules official very soon. Keep an eye out for an announcement sometime this fall, perhaps as early as October 2023.

Until the U.S. Department of Education officially announces its updated Title IX rules (and because of that ongoing, 20-state lawsuit) the federal government cannot enforce gender identity and sexual orientation anti-discrimination law in Idaho schools. Crucially, however, school boards, districts, and even individual campuses still have a lot of power.

Even with pending litigation and proposed rule changes, Title IX very likely protects against sexual orientation and gender identity discrimination if such discrimination involves sex stereotyping. And, once the proposed Title IX rules take effect, they will pre-empt Idaho law.





STUDENT RIGHTS: LOCAL POLICY

It is important to remember that part of the motivation for proposing changes to Title IX is the harsh reality that LGBTQ+ students are more likely to experience bullying, harassment, violence, and other kinds of harm in schools.

Trans students commonly receive harsher punishment than their peers, may experience exclusion, bias, bullying, and stereotyping at higher rates than their peers. Schools in Idaho have the choice to provide protections to LGBTQ+ students – no Idaho law prevents local school boards or districts from implementing protective and proactive policy. That means community members, families, students themselves, and allies can help lead efforts for positive change in schools across our state.

We can also think about local policy in terms of municipalities. In Idaho, several cities and counties already have proactive and protective [local policies that help protect LGBTQ+ people](#), including students, from discrimination. Check with your local representative, city, or county website to get familiar with local anti-discrimination policies. If your town does not yet have protections in place, you might consider developing a policy in your school district, city, or municipal government.



STUDENT RIGHTS: PRIVACY

FEDERAL PRIVACY PROTECTIONS

Students in public and private K-12 schools, colleges, and universities are protected by the federal Family Educational Rights and Privacy Act (FERPA). FERPA gives students (or K-12 students' parents) control over their educational records. Schools can't share any information that could identify a student without your permission. Students in college and over 18 years old have complete control over how their personal information in education records is shared.

Health information is protected by federal law (known as HIPPA) however, these laws generally do not apply to public schools. According to the U.S. Department of Health and Human Services, public schools are not a HIPPA covered entity. HIPPA rules only apply to medical insurance agencies and the electronic transfer of health information. So, while public schools may employ health care providers (e.g., nurses, counselors, physicians), these employees do not engage in electronic transfers of medical information, and HIPPA does not apply to public schools.

LOCAL PRIVACY PROTECTIONS

Schools can craft policy changes that help protect students' personal information. In states like Maryland and California, some local schools have implemented policy that keeps student information private unless and until students grant permission to share. Safeguards around student information disclosure can help prevent LGBTQ+ students from being outed to unsupportive families, and may help LGBTQ+ students feel safe seeking support from trusted school officials.

We know the political climate in Idaho (and across the broader U.S.) can make crafting and implementing proactive student privacy policies difficult. Protecting student privacy is local project: school districts and boards, and even counties and cities (see page 21) have different avenues to create common sense policies that ensure youth are safe in schools. School districts and Idaho public school teachers still have a fair amount of discretion about reporting student data, and should work to guard LGBTQ+ students' information in instances that may make their home life less safe.



STUDENT RIGHTS: PRIVACY

DISTRICT-LEVEL STUDENT PRIVACY PROTECTIONS

Idaho public K-12 school districts establish policies for their schools - some of which can help LGBTQ+ students. For example, some policies outline how parents should go about helping their child change their name and/or pronouns on official school records. Others offer guidance to students and/or parents about how to request restroom and other accommodations.

Idaho public school teachers can protect student privacy in different ways. For example, even with the new student health disclosure law passed in 2023 (HB 163 - which requires school officials to disclose information about a student under certain circumstances, discussed above), school officials still have a fair amount of discretion about reporting. That is, school districts can establish policies that require teachers to discuss changes in student health with building principals or other administrators before disclosing information to students' parents or guardians.



STUDENT RIGHTS: FREE SPEECH

FEDERAL SPEECH PROTECTIONS

Students in Idaho are protected by the First Amendment. That means students can express themselves through speech, in their clothing, and other forms of expression.

Speech protections are generally regulated in terms of the time, place, and manner of expression. However, students' speech cannot be restricted based on the viewpoints they express. Students do not lose their right to free speech simply by walking onto campus. For more information of students' rights in Idaho, visit our website.



STATE-LEVEL SPEECH PROTECTIONS

The U.S. and Idaho constitutions' say that we all have the right to freely express ourselves, and that everyone has equal access to this right. Federal and Idaho state law give special protections to students against discrimination based on sex. The right to freely express yourself, coupled with your protections against sex-based discrimination means you can choose to express your gender through clothing (so long as you adhere to your school dress code). Speech and anti-discrimination protections also mean that schools cannot create sex- or gender-based dress code policy: boys and girls have an equal right to wear skirts, pants, or other dress-code appropriate clothes to school. Non-discrimination protections also mean students may bring who they'd like to prom, and all students are free to dress how they'd like for the occasion. Similarly, you can wear what you'd like for your yearbook photo, and your school cannot punish you for your choice.

PART III: WHAT TO EXPECT IN 2024 AND BEYOND



Expected Legislation: Overview

We expect certain kinds of bills – and new laws – to reappear in 2024 and in the years to come. Specifically, we anticipate legislation that will impact student privacy, involve censorship of library materials and public performances, and attempt to limit sexual education. These anticipated changes will have an impact on Idaho students’ lives so it’s important we all stay watchful – and hold lawmakers accountable.



What’s more, 2024 is a presidential election year and a state-level legislative election year. Presidential election years tend to bring out far more voters to the polls. As a result, election years can create intense, politically charged environments: lawmakers might be focused on their own campaigns for re-election and may feel pressure to please their home district voters. In some cases, this pressure can lead to lawmakers avoiding controversial issues, avoiding voting in ways that contradict their party, avoiding unpopular kinds of legislation, and other scenarios.

While we cannot precisely predict what bills we’ll see in the Idaho statehouse come January 2024, experience tells us many of the social-based issues discussed in this report will continue to dominate Idaho politics. In the following section, we review a handful of bills that did not make it into law in 2023, but that could be introduced in the coming legislative session.

PART III: WHAT TO EXPECT IN 2024 AND BEYOND



Parental Rights & Student Privacy

Idaho and other conservative states have recently made students, schools, and so-called parental rights an important part of their legislative platforms. In fact, Idaho lawmakers falsely stylized the ban on gender affirming care, restrictive abortion law, and school voucher bills as matters of parental rights.

We saw nearly a dozen bills explicitly focused on so-called parental rights in 2023 - but many failed to pass into law.

Nevertheless, parental rights legislation is important to consider, not least because we'll likely see similar legislation in the future.

One 2023 parental rights bill claimed to protect students and families from government “intrusion” into private matters. This bill failed but would have allowed parents to review all curriculum and required parental approval of in-class assignments that mention student identity (e.g., sexuality, political beliefs, mental health, home life, “critical appraisals” of family or family friends) (see: [Senate Bill 1099, Pupil and Parental Rights Act, 2023](#)).

Parental rights bills have a direct impact on Idaho public schools, their staff, and students' privacy and rights of expression.

Another failed parental rights bill would have censored electronic devices based on vague, misleading, and unconstitutional standards of what kinds of material is considered “harmful” to students (see: [Senate Bill 1163, Protection of Minors 2023](#)).

Elsewhere, lawmakers attempted to prevent local school districts from creating policies that protect sensitive information about students, including their gender identity and sexual orientation (see: [Senate Bill 1102 Parental Rights, 2023](#)). Most of these bills appeared to target LGBTQ+ students and threaten their privacy and other civil rights.

PART III: WHAT TO EXPECT IN 2024 AND BEYOND

Parental Rights + Student Privacy - Cont.



Lawmakers also attempted to pass a bill that would require parents to approve their child's participation in a school club (see: [House Bill 196, Education, 2023](#)). This bill would have required school boards to approve and supervise clubs, publish information about the club advisor, and publish information about the club's activities and aims. The bill also would have prohibited boards from “discriminating” against any school club based on ideology.

Requiring parental permission for participation in a school club would likely have disproportionately negative impacts on certain students. For example, LGBTQ+ students may want to join a LGBTQ+ positive club at school but may not feel comfortable disclosing their sexuality or gender identity to their parents or guardians. For others, cultural, race, and ethnicity-based students clubs may provide new ways for students to understand and explore their identities in affirming ways ([Harper and Quaye 2007](#)).

Researchers have shown that historically marginalized students (e.g., students that identify as Black, Brown, Indigenous, LGBTQ+, poor, etc.) may benefit from school-based and other extracurricular activities that affirm their identities ([Pendergras at al. 2018](#)). All students have the right to feel safe and be themselves at school. And, students should feel comfortable joining clubs in school and be free to explore new ideas, thinking, cultures, and other aspects of social and educational life beyond what they learn at home. In fact, our democracy depends on a well-informed public.

Bills that ask schools to censor information, force educators to tailor curricula based on the opinions of parents (rather than standard, factual, and science-based education), disclose sensitive information about students, or obtain parental permission for student activities likely violate students' right to privacy. Students have the right to share or not share information about themselves (including their sexual orientation or gender identity) with their parents, teachers, and other school officials. What's more, asking schools to disclose information about student club activities and/or advisors could have a chilling effect on school clubs generally. Teachers may feel targeted or unsafe if the content or ideas discussed in their clubs are weaponized by community members with differing views.

We fully expect to see bills concerning student privacy in the coming legislative session. Talk to your school board to learn about student privacy policies in your local district, and reach out to us for more information about your school's policy. You can also visit the ACLU's website for information and materials on student rights, protections, and privacy.

PART III: WHAT TO EXPECT IN 2024 AND BEYOND



Library Censorship

We saw several library censorship bills in 2023. Thankfully, none of these bills passed into law. We celebrate this victory but anticipate similar legislation in the coming legislative session. We also remain vigilant beyond the statehouse: Nampa School District passed its own censorship policy in June of 2023, similar to the infamous “Don’t Say Gay” Florida policy.

At the statehouse, the failed 2023 library censorship bills tended to define what kinds of materials are permitted in schools based on moral, rather than legal, terms. Any content-based restrictions on library books is illegal. It violates our right to express and exchange information without government interference.

Library censorship bills are troubling for many reasons. For one, these bills often argue that certain materials are “harmful” to students but rely on vague and overly broad definitions of what “harmful” means. Without clear and objective definitions of “harmful,” school officials might err on the side of caution and remove books from libraries that might be considered “harmful.”

Without clear and objective definitions of “harmful,” school officials might err on the side of caution and remove books from libraries that might be considered “harmful.” When librarians are forced to remove books they could be punished for circulating, students are unable to access information – which could have a chilling effect on the free exchange of ideas and information in schools.

Because students have a right to learn without government censorship, and because it’s against the law for local, state, and the federal government to suppress information, banning books based on their content is not only bad policy, it’s against the law.



PART III: WHAT TO EXPECT IN 2024 AND BEYOND



Library Censorship Cont.

Idaho’s library censorship bills, in addition to being unconstitutional, target the LGBTQ+ community. In 2023, every one of Idaho’s library censorship bills mischaracterized homosexuality in ways that could create or amplify exclusion and even harm to the broader LGBTQ+ community. More broadly, censoring books could prevent students from learning about diverse perspectives, ideas, and communities. In fact, we’ve seen an increase in attempts to censor not only LGBTQ+ positive content, but also crucial information concerning American history, racism, and race. These kinds of attacks on information are dangerous; censorship could prevent students from learning fact-based, critical, and science-driven information.

Finally, the 2023 library censorship bills deputized students (and parents) by allowing them to file lawsuits if they encountered “harmful” library materials. Allowing students to sue schools appears to set school and public libraries open to non-stop litigation – ultimately, Idaho taxpayers would foot these bills. Talk to your local school board, library board, and librarians about their policies on materials. Some local libraries, like Idaho Falls, have created “restricted” library card policies, but we know these policies do not address the concerning impact censorship has on students’ rights to freely exchange ideas and information.

PART IV: ADDITIONAL RESOURCES

KEY PLAYERS IN IDAHO EDUCATION

Idaho High School Activities Association (IHSAA)

- What is the IHSAA?
 - The Idaho High School Activities Association (IHSSA) is a sports association that oversees sports and other interscholastic activities in Idaho high schools. It is governed by a Board of Directors, which hold six meetings each year. Board meeting minutes and Board financial statements are available on the IHSSA website. As of August 2023, about 170 high schools are listed as IHSSA members.
- What resources does the IHSAA make available to the public?
 - The IHSAA Board of Directors' has rules and guidelines specific to high school sports published on the web. These rules cover a wide range of topics, including how long student athletes can play and practice, conduct and discipline expectations, and more. Some rules ensure student athletes are protected from bullying and hazing rituals. Rule 11 outlines the IHSAA's non-discrimination policy. It says that transgender student athletes are allowed to participate in sports consistent with their gender identity, and details the conditions (e.g., the students' current medical treatment plan and treatment duration) and eligibility requirements for participation. For more information, visit the IHSAA website, linked later in this report.

PART IV: ADDITIONAL RESOURCES

KEY PLAYERS IN IDAHO EDUCATION

Idaho State Department of Education

- What is the Idaho State Department of Education?
 - The Idaho State Department of Education (SDE) is a government agency that oversees Idaho education and is responsible for elementary and secondary school matters. The head of SDE is the Idaho Superintendent of Public Instruction, which is an elected position. There are several departments within SDE, including operations and management and educational services. The Superintendent is responsible for implementing Idaho school policies. School funds are distributed through SDE and educators are certified through SDE.
- What resources does the SDE make available to the public?
 - The SDE has information about Idaho school spending and the state education budget, Idaho curriculum standards, information on federal standards applicable to public schools, and more. SDE is a helpful resource for understanding the laws that govern public schools, education initiatives, and policies that affect Idaho students.
 - SDE publishes guidance on important topics, including anti-discrimination and gender equality. These resources are useful for school officials, parents, and students alike because they outline the laws that schools in Idaho have to follow. SDE also has crafted several important initiatives, including an anti-bullying campaign and a rural school campaign, plus information on numerous education-related topics.

PART IV: ADDITIONAL RESOURCES

KEY PLAYERS IN IDAHO EDUCATION

Idaho School Boards Association

- What is the Idaho school boards association?
 - The Idaho School Boards Association (ISBA) is an organization made up of school boards across Idaho. The ISBA is not a government entity (it receives no direct funding from the state or federal government), nor is ISBA affiliated with the National School Boards Association.
- What resources does the ISBA have available to the public?
 - ISBA Policy and Policy Guidance
 - The ISBA primarily works with school districts in Idaho. The organization has internal policy and resolutions, and offers support to its school board members through education and training. Typically, ISBA policies and policy guidance are for-fee resources, available only to members. Thankfully, the ISBA has made several important policies available free of cost to the public – because the organization recognizes the urgency and need for policy guidance at the school board level. Parents, students, and school faculty and staff can access ISBA policy on the ISBA website – including policy and procedure for Title IX regulations.
 - ISBA Legislative Advocacy
 - ISBA also works in the state legislature to advocate for Idaho public schools, students, and protect local school autonomy and interests. The ISBA’s legislative advocacy arm produces great resources for parents, students, and school officials.

PART IV: ADDITIONAL RESOURCES

ISBA “Capitol Notes”

During the legislative session (from about early January to mid-April) parents, students, and school staff can track education-related issues by visiting the Capital Notes section of ISBA’s website. Capital Notes are compiled each week; the updates include overviews, analysis, and updates of education bills moving through the statehouse; guidance on contacting your lawmakers; information about hot-topic education legislation and guidance on key bills – and how to keep track of important legislation. The ISBA aims to support and improve policy and policy implementation. The organization offers training, education, and other policy services to Idaho school districts that are members of ISBA. Read more about the ISBA on the organization’s website, linked later in this report.

PART V: HOW TO...

WHERE DO I FIND SCHOOL POLICY GUIDELINES?

The best way to learn about your school's policy is to ask your building principal or administrators. For additional guidance on what kinds of policies exist in Idaho public schools, visit the following:

- Idaho High School Activities Association (IHSA). Webpage. <https://idhsaa.org/>
- IHSSA. 2023-2024 Rule Changes. <https://idhsaa.org/rules>
- Idaho State Boards of Education (ISBA). Policy. <https://www.idsba.org/blog/publications/>
- Office of the State Board of Education. Board Policies. <https://boardofed.idaho.gov/board-policies-rules/board-policies/>

PART V: HOW TO...

HOW DO I TRACK IDAHO COURT CASES ?

There are a few ways to keep track of court cases that impact Idaho students. You may have to track down information about the case -- including whether the case is a federal or state case, and where the case is in the legal process. The ACLU has useful tools on our website for figuring out these questions: you can review court documents, and chart how the case is progressing.

The Idaho Supreme Court has a case information system online. Federal courts, including the U.S. Court of Appeals, offer searchable, online case databases. These data are available to the public, but you will need to create a (free) account.

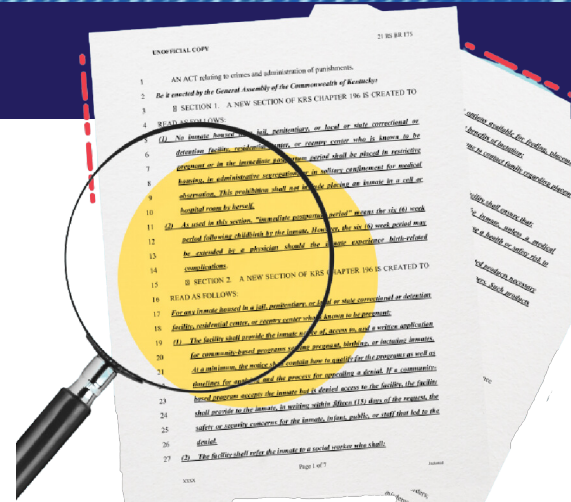
Here are some useful links for finding court cases:

- Lambda Legal (2023). Lambda Legal’s case work. <https://lambdalegal.org/litigation-library/>
- State of Idaho Judicial Branch (2023). Cases of Interest. <https://coi.isc.idaho.gov/>
- State of Idaho Judicial Branch (2023). Live Court Streaming. <https://coi.isc.idaho.gov/LiveStream>
- ACLU of Idaho. Cases. <https://www.acluidaho.org/en/cases>
- ACLU. In the Courts. <https://www.aclu.org/court-cases>



PART V: HOW TO...

HOW DO I TRACK AND PARTICIPATE IN IDAHO STATE LEGISLATIVE SESSIONS?



You can engage in the legislative session in different ways. We encourage you to read about new bills by following the [ACLU of Idaho bill tracker](#), which is powered by Fast Democracy.

You can participate in particular issue areas (or specific bills) that matter to you in several ways. The public can attend hearings at the statehouse. You can testify on issues by speaking in front of the legislative committee that is taking up your bill of interest. In some committees, you can register and testify remotely, using the Idaho Legislature's website. You can also send in (or hand deliver) written testimony. If a bill passes through the House and Senate, you can also write the governor and ask for support -- or a veto -- of the bill. Testifying can be intimidating. The statehouse and state legislature are sites of tremendous power; the legislative process can be confusing, or it can make folks feel out of place.

We encourage you to familiarize yourself with the legislative process. Read about the different ways you can engage, and find a method that makes sense for you. We offer resources, including videos, in-person trainings, and written materials to help you feel more prepared for your work fighting for your rights, and the rights and liberties of those close to you.

PART V: HOW TO...

HOW DO I TRACK AND PARTICIPATE IN IDAHO STATE LEGISLATIVE SESSIONS?

Here are some additional resources that can help you navigate the legislative session:

- ACLU of Idaho (2023). ACLU Idaho legislative bill tracker. <https://www.acluidaho.org/en/2023-aclu-idaho-legislative-bill-tracker>
- ACLU of Idaho (2023). Legislation web page. <https://www.acluidaho.org/en/legislation>
- Fast Democracy (2023). Idaho. <https://fastdemocracy.com/states/id/>
- Idaho Association of Counties (2023). Bill tracker. <https://idcounties.org/advocacy/bill-tracker-2/>
- Idaho Legislature (2023). Bill tracker. https://lso.legislature.idaho.gov/MyBillTracker/Login_input.do
- Idaho Legislature (2023). Testifying before legislative committees. <https://legislature.idaho.gov/resources/committeetestimony/>
- Legal Voice (2023). Legal Voice 2023 legislative updates. <https://legalvoice.org/leg-updates/>



PART VI: ADDITIONAL INFORMATION



General LGBTQ+

- Add the Words, Idaho (2023). Idaho LGBTQIA+ community resources. <https://www.addthewords.org/>
- ACLU (2023). LGBTQ Rights <https://www.aclu.org/issues/lgbtq-rights>
- ACLU (2023). Know your rights/ LGBTQ rights <https://www.aclu.org/know-your-rights/lgbtq-rights>
- ACLU (2023). Mapping attacks on LGBTQ rights in state legislatures. <https://www.aclu.org/legislative-attacks-on-lgbtq-rights>
- ACLU (2023). Transgender rights. <https://www.aclu.org/issues/lgbtq-rights/transgender-rights>
- ACLU (2023). Nondiscrimination protections. <https://www.aclu.org/issues/lgbtq-rights/lgbtq-nondiscrimination-protections>
- GLAAD (2023). Equality Resources for trans people and families with trans kids. <https://glaad.org/equality-now/resources/>
- Idaho Legal Aid Services, Inc. (2023). LGBT community resources. <https://www.idaholegalaid.org/topics/2799/lgbtq>
- Trans Lifeline (2023). <https://translifeline.org/>

Public School Restrooms

- Albert Henry, A. (2019). Exclusionary bathroom policies harm transgender students. American Medical Association. https://www.ama-assn.org/delivering_care/population-care/exclusionary-bathroom-policies-harm-transgender-students
- ACLU of Idaho (2023). Senate Bill 1100 analysis <https://www.acluidaho.org/en/legislation/2023-sb-1100-restroom-and-locker-room-restrictions>
- Brown, R. (2023). Senate passes bill to mandate separate school bathrooms. Idaho Reports <https://blog.idahoreports.idahoptv.org/2023/03/09/senate-passes-bill-to-mandate-separate-school-bathrooms/>
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- National Center for Transgender Equality (no date). Fact sheet on U.S. Department of Education Policy Letter on Transgender Students <https://transequality.org/sites/default/files/ED-DCL-Fact-Sheet.pdf>
- Senate Bill 1100. Full bill text available on the Idaho Legislature website: <https://legislature.idaho.gov/sessioninfo/2023/legislation/s1100/>



Student Privacy

- Idaho State Board of Education (2014). Idaho Student Data Transparency and Accountability Act of 2014 <https://boardofed.idaho.gov/wp-content/uploads/2017/02/Model-Policy-approved-8-14-14-v2.pdf>
- Sterling v. Borough of Minersville, 232 F.3d 190 (3d Cir. 2000) <https://casetext.com/case/sterling-v-borough-of-minersville>
- The National Association of Secondary Schools (2023). Student data privacy. <https://www.nassp.org/top-issues-in-education/position-statements/student-data-privacy/>
- The National Association of Secondary Schools (2023). Transgender students. <https://www.nassp.org/top-issues-in-education/position-statements/transgender-students/>
- U.S. Department of Health and Human Services (2023). Does the HIPAA privacy rule apply to an elementary or secondary school? <https://www.hhs.gov/hipaa/for-professionals/faq/513/does-hipaa-apply-to-an-elementary-school/index.html>
- U.S. Department of Education (2021). Family Educational and Privacy Act (FERPA) <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>
- U.S. Department of Education (no date). Family Educational and Privacy Act (FERPA) Frequently Asked Questions. <https://studentprivacy.ed.gov/frequently-asked-questions>
- Whalen v. Roe. 429 U.S. 589-609 (1977) <https://supreme.justia.com/cases/federal/us/429/589/>

Gender-Affirming Medical Care

- ACLU of Idaho (2023). Families of trans youth ask court to pause health care ban. <https://www.acluidaho.org/en/press-releases/families-trans-youth-ask-court-pause-health-care-ban>
- ACLU of Idaho (2023). HB 71 – Ban on medical care for transgender youth (bill analysis and talking points). <https://www.acluidaho.org/en/legislation/2023-hb-71-ban-medical-care-transgender-youth>
- ACLU of Idaho (2023). HB 71 community fact sheet. <https://www.acluidaho.org/en/hb-71-community-fact-sheet>

Prayer in public schools

- Americans United for Separation of Church and State (2023). Know your religious freedom rights in public school. <https://www.au.org/knowyourrights/>
- Idaho State Legislature (2023). House Bill 182, Establishment clause and free speech compliance <https://legislature.idaho.gov/sessioninfo/2023/legislation/h0182/>
- U.S. Department of Education (2023). Guidance on constitutionally protected prayer and religious expression in public elementary and secondary schools. https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html

PART VI: ADDITIONAL INFORMATION



Sex Education

- ACLU of Indiana (2023). ACLU of Indiana challenges law censoring classroom discussion. <https://www.aclu-in.org/en/press-releases/aclu-indiana-challenges-law-censoring-classroom-discussions>
- ACLU of New York (2021). Legislative memo: comprehensive sex ed. <https://www.nyclu.org/en/legislation/legislative-memo-comprehensive-sex-ed>
- Future of Sex Education (2020). National Sex Education Standards. <https://siecus.org/wp-content/uploads/2020/03/NSES-2020-web-updated-1.pdf>
- Goldstein, SR (1976) The asserted constitutional right of public school teachers to determine what they teach. University of Pennsylvania Law Review Vol 124, No. 6: 1293-1357
- Leebaert v. Harrington, 332 F.3d 134 (2d Cir. 2003)
- Medeiros v. Kiyosaki, 52 Haw. 436, 478 P.2d 314 (Haw. 1970)
- Planned Parenthood of Greater Washington and North Idaho (2023). Youth Empowerment Program (YEP) <https://www.plannedparenthood.org/planned-parenthood-greater-washington-north-idaho/learn/teens>
- Sex Ed for Social Change (2023). <https://siecus.org/>
- Smith v. Ricci, 446 A2d 501, 503 (N.J. 1982)
- World Health Organization (2023). Comprehensive sexuality education. <https://www.who.int/news-room/questions-and-answers/item/comprehensive-sexuality-education>

Transgender Student Athletes

- ACLU of Idaho (2020). HB 500 – Barring transgender girls in sports (basis of Hecox v. Little) <https://www.acluidaho.org/en/legislation/2020-hb-500-barring-transgender-girls-sports>
- Block, M. (2021). Idaho’s transgender sports ban faces a major hurdle. NPR <https://www.npr.org/2021/05/03/991987280/idahos-transgender-sports-ban-faces-a-major-legal-hurdle>
- ACLU (2023). Hecox v. Little <https://www.aclu.org/cases/hecox-v-little>
- NCLR (2020). Hecox v. Little amicus <https://www.nclrights.org/our-work/cases/hecox-v-little/>
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- Strangio, C. and Arkles, G., (2020). Four myths about trans athletes, debunked. ACLU <https://www.aclu.org/news/lgbtq-rights/four-myths-about-trans-athletes-debunked>
- Transathlete. <https://www.transathlete.com/k-12>



Punishment in Public Schools

- ACLU of Idaho (2023). Education Equity for Latinx Students in Idaho. <https://www.acluidaho.org/en/campaigns/education-equity-latinx-students-idaho>
- ACLU of Idaho (2023). Know your rights as a student. <https://www.acluidaho.org/en/know-your-rights/know-your-rights-student>
- APA [American Psychological Association] (2021). For Black students, unfairly harsh discipline can lead to lower grades. <https://www.apa.org/news/press/releases/2021/10/black-students-harsh-discipline>
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- Idaho State Department of Education (2023). Professional Standards Commission. <https://www.sde.idaho.gov/cert-psc/psc/>
- Idaho State Legislature (2023). House Bill 281 – Restraint and Seclusion. <https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2023/legislation/H0281.pdf>
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- U.S. Department of Education (2022). Idaho compilation of school discipline laws and regulations. <https://safesupportivelearning.ed.gov/sites/default/files/discipline-compendium/Idaho%20School%20Discipline%20Laws%20and%20Regulations.pdf>
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CONTACT US

Jenna Damron, Advocacy Intern

- jdamron@acluidaho.org

Julianne Donnelly Tzul, Advocacy Director

- jdonnellytzul@acluidaho.org

Amy Dundon, Legislative Strategist

- adundon@acluidaho.org

Rosseli Guerrero, Advocacy Fellow

- rguerrero@acluidaho.org

Ruby Mendez Mota, Campaign Strategist

- rmendez@acluidaho.org



REPORT A CIVIL LIBERTIES VIOLATION

If you have suffered or witnessed a civil liberties violation in Idaho, and you would like the ACLU of Idaho to review your complaint, please fill out and submit our online form. Find the complaint form [here](#).

Important Notes

- We only review complaints submitted in writing. If you have a disability, please contact us how you can.
- We don't have legal staff to answer phones and can't see people on a walk-in basis.
- We can't give legal advice unless we agree to take your case.
- We are a small staff. Sometimes we're not able to respond quickly; if your complaint is urgent, please let us know - and don't wait to hear back from us before taking additional action.
- Read more about the complaint process on our [website](#).

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