



Factsheet: Senate Bill 1100

Overview

Senate Bill 1100 concerns public school restrooms. It requires students in public schools to use the restroom that corresponds with their sex assigned at birth. SB 1100 prohibits students from using multi-occupancy restrooms that align with their gender in cases where their gender does not match their sex assigned at birth. SB 1100 applies to public K-12 schools across the state, including all public K-12 charter schools. In addition to restrooms, SB1100 applies to changing facilities, showers, locker rooms and any other dressing room facility in public schools. **The bill does not apply to private schools, colleges, universities, or other public agency facilities in Idaho.**

How is SB 1100 enforced?

SB 1100 goes into effect July 1, 2023. The bill will be enforced through a mechanism called a civil cause of action. In law, a civil cause of action clause defines a set of facts that justify bringing a lawsuit. In the case of SB1100, the set of facts that justify filing a lawsuit involve restrooms: a student can sue their school if the student claims to have used a restroom that a person of the opposite sex used (with the school's permission).

Under the law created by SB 1100, students can sue as late as four years after the incident. The legal remedy for violations of SB 1100 is \$5,000.00, and students can sue for each instance they encountered a person of the opposite sex in the facility. Students can also seek further damages (so, additional compensation) for psychological or emotional harm they claim to have suffered from such encounters.

What SB 1100 means for you

It is important to remember that SB 1100 applies only to public K-12 restrooms and changing facilities. It does not apply to Idaho colleges, universities, private schools, or other public agencies. It is also important to know that SB 1100 requires public schools in Idaho to provide "reasonable accommodations" for students that do not wish to use the bathroom that corresponds with their sex assigned at birth. That means parents, guardians, and students themselves can make arrangements with their schools to ensure the student has a "reasonable" restroom accommodation. Such arrangements might involve allowing the student to use a private facility (such as those used by staff or faculty) or establishing a single-use (and gender neutral) facility on campus.

Students' Rights and SB 1100

The First Amendment of the U.S. Constitution ensures the rights of students to freely express themselves. Even under SB 1100, Idaho students have a protected right to talk about and write about who they are, including issues related to their gender identity. The right to free speech and expression does have some limitations. That is, students do not have a protected right to express themselves in ways that disrupt class time, in ways that encourage other students to break school rules, or in ways that are obscene, or are dishonest in a way that could damage another person's reputation. Schools may also have their own rules and limits to speech, but these rules must be reasonable and apply to all students equally.

Gender expression is protected by the U.S. Constitution and Title IX. That means that students have the right to express themselves, including through their choice of clothing. As long as students wear clothing that would be appropriate if worn by other students (such as a skirt or a button-down shirt), students should be allowed to wear what they want – even if the choice of clothing is gender nonconforming or aligns with a student's gender identity rather than sex assigned at birth. School dress codes must apply to all students equally.

Sometimes schools claim certain forms of expression are “disruption.” However, the legal standard for disruption is pretty narrow. Disruption only happens when students are prevented from the opportunity to learn – for example, if a student interrupts the teacher to make a political speech or blocks the classroom entrance in protest. Students that choose to wear clothes that affirm and validate who they are not engaging in disruption. In fact, students in Idaho have the right to express themselves at school and during school events, such as proms, school dances, and homecoming.

Navigating SB 1100

Students have the right to be themselves in school, including transgender students, gender nonconforming students, gender diverse students, and students who are transitioning. The more support students have around their gender identity and expression, the better. If possible, transgender and transitioning students should involve their parents or guardians and doctors, as well as supportive teachers and staff to navigate SB 1100. The area of law involving gender and restrooms is rapidly evolving, and there is still more work to be done. Families, students, and schools can reach out to the ACLU for additional guidance and support. We also encourage reaching out to other supportive groups here in Idaho, including:

Lambda Legal <https://lambdalegal.org/>

Legal Voice <https://legalvoice.org/>

Add the Words Idaho <https://www.addthewords.org/>