



## FAQ: Senate File 496

In May 2023, the Iowa Legislature passed [Senate File 496](#). This education omnibus bill covered a wide range of topics impacting public education for Iowa's students. Many questions have arisen as how best to comply with various aspects of this bill. IASB, ISEA and SAI are not regulatory agencies and cannot issue regulatory guidance. However, in an effort to provide additional support to our members, the organizations are releasing this document, which is intended to provide public school board members, administrators and employees with additional considerations and examples of ways to comply with the new legal requirements. As with all changes in the law, districts should consult with their legal counsel prior to adopting new processes to ensure legal compliance. Employees should consult with their administration when questions arise and utilize the assistance of their union advocates when needed.

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## Age-Appropriate, Sexual Orientation and Gender Identity

### **School districts are directed to teach from an age-appropriate approach. What does age-appropriate mean?**

Age-appropriate has been defined as topics, messages and teaching methods suitable to particular ages or age groups of children and adolescents, based on developing cognitive, emotional, and behavioral capacity typical for the age or age group. “Age-appropriate” excludes any material with descriptions or visual depictions of a sex act as defined in section *Iowa Code* [702.17](#). For purposes of human growth and development curriculum, “age-appropriate” means the same as defined in *Iowa Code* [279.50](#).

### **What restrictions exist related to sexual orientation and gender identity?**

Sexual orientation and gender identity are defined in *Iowa Code* [216.2](#). Districts may not provide any program, curriculum, test, survey, questionnaire, promotion, or instruction relating to gender identity or sexual orientation to students in grades kindergarten through sixth grade. By its express language, this prohibition also includes programs, curriculum, tests, surveys, questionnaires, promotion, or instruction relating to heterosexual orientation and cisgendered identity (gender identity consistent with the person’s sex at birth).

The legislature provided no definition of the term “relating to.” School districts have interpreted what constitutes “relating to” sexual orientation or gender identity in different ways. A cautious approach might include removing all materials referencing any type of gender identity and sexual orientation, regardless of how minor the reference may be. A more moderate approach might be to remove materials that educate or inform students about gender identity or sexual orientation or expressly encourage one gender identity or sexual orientation over another, but maintain materials that make incidental or peripheral reference to these topics. Regardless of the approach used, districts are encouraged to consult their legal counsel as they review policies and procedures and take other steps toward compliance to avoid violating other federal and state laws. It is imperative districts develop a uniform approach that is clearly articulated for all employees to follow, and which can be explained to students and parents and guardians who may have questions.

### **Are there new restrictions on teaching human growth and development to students in grades kindergarten through six?**

Yes. Human growth and development for these grades must be age-appropriate as defined in *Iowa Code* [279.50](#), research-based, and subject to the new requirements prohibiting instruction on sexual orientation or gender identity.

### **What information must employees and districts share with parents or guardians related to sexual orientation and gender identity of students?**

Districts and employees may not knowingly provide false or misleading information to a parent or guardian of a student regarding the student’s gender identity or intention to transition to a gender that is different than the sex listed on the student’s official birth certificate or adoption certificate if issued near the time of the student’s birth. This standard does require that an

employee *knowingly* provide false or misleading information in order for a violation to occur. To ensure compliance with state and federal law, districts should discourage reliance on personal assumptions about a student's gender identity or sex-based stereotypes.

Additionally, if a student enrolled in the district requests an accommodation from a licensed practitioner that is intended to affirm the student's gender identity, including that the student requests the employee use a name or pronoun that is different from the name or pronoun assigned to the student in the student's registration records, a cautious approach calls for the employee to report that request to an administrator. The administrator must report the request to the student's parent or guardian. Under a more moderate approach, prior to notifying the administration, the school employee would first inform the student that such a request will require school employees to inform the student's parents or guardians. Upon learning of this requirement, if the student then withdraws the request for accommodation, it is the interpretation of some Iowa school law attorneys that notification of administrators and subsequently parents or guardians is not required. However, even if such notification is not required, notification may nonetheless be made, and school employees must honestly answer questions from parents or guardians regarding the student's gender identity or sexual orientation. For instance, in this scenario, if a parent asked the employee if the student talked to the employee about their gender identity, the employee must answer "yes." If the employee answered "no," they would be in violation of the law because they would be knowingly misleading parents or guardians about a student's gender identity or sexual orientation.

The use of nicknames different from names listed on registration paperwork was specifically identified by [Senate File 496](#) as requiring notification to parents. A student might not express that an accommodation request is intended to affirm their gender identity, and it may not be apparent. There are differing opinions in the education community about whether the use of nicknames requires notification of parents for all nickname requests of students, or only for students who either express their accommodation request is made to affirm their gender identity or for whom this appears to be the reason.

An approach that eliminates the need for employees to determine a student's intent would be to notify parents/guardians any time a student requests to be called by a name different from their registration paperwork. Another approach may be to notify parents/guardians only if the student expresses their request is intended to affirm their gender identity. This same approach can be used to address a change in pronouns which are intended by the student to affirm the student's gender identity, and which are different from those assigned to the student in school records. The use of "they/them" pronouns may not necessarily affirm a gender identity different from the student's biological gender as listed in registration records. Districts should act on actual knowledge that a pronoun change is related to the student's gender identity. Best practice would be to allow parents/guardians to identify in annual registration paperwork all preferred names, nicknames, and pronouns for the student and utilize a notification form or letter and allow the parent/guardian to request to amend the student's registration paperwork to include the use of any and all preferred names/pronouns to show evidence of compliance.

**What if a student discusses with a licensed employee that they are unsure how they feel about their gender identity?**

If no request for accommodation is made by the student, [Senate File 496](#) notification requirements do not apply. It is also apparent that a request for accommodation that is clearly unrelated to the student's gender identity would not trigger the notification requirements, but a district may not mislead parents/guardians if contacted. Because compliance can be very fact-specific, licensed employees should talk with their administrators about what process is most appropriate to address scenarios like this.

**When may gender identity accommodations be made without approval from parents or guardians?**

While educators are well-advised to encourage all students to talk to parents or guardians about such topics as a student's sexual orientation or gender identity, emancipated students, or students of majority age (18) may receive gender identity accommodations without parent or guardian permission.

**What happens if a licensed employee does not notify the parents/guardian of a student who made a request for accommodation?**

The Iowa Department of Education (DE) has been charged with investigation of complaints that this new law has been violated. If the Department determines a school employee has violated the law, the Department will issue a written warning to the board of directors of the district or the employee. For subsequent violations, if the Department determines the school district knowingly violated the law, then the district's Superintendent will be subject to a hearing by the Board of Educational Examiners (BOEE). The Superintendent may be subject to disciplinary action by the BOEE. For the subsequent violation, if the Department determines it was a licensed employee who knowingly violated the law, the licensed employee will be subject to a hearing before the BOEE and may be subject to disciplinary action by the BOEE.

## School Library Materials

**Are there new restrictions on what materials can be in school libraries?**

Yes. School libraries may not exclude religious texts from the school library program. Materials in the school library program must be age-appropriate as defined above and must support the total school curriculum.

**Do school libraries include individual classroom libraries?**

[Senate File 496](#) does not define a kindergarten through grade twelve library program. It is possible that individual classroom libraries comprised entirely of materials not purchased by the school district that are entirely elective reading (not required reading) could be exempt from these restrictions. However, without a clear definition, districts and school employees are best served by ensuring that classroom libraries conform to the same restrictions placed on school library programs.

## **What happens if a classroom library or a licensed employee violates the restrictions on school library programs?**

The DE is tasked with investigating complaints of violations on the school library program restrictions. Beginning January 1, 2024, the district or employee will be subject to the following: A first violation will result in a written warning to the board of directors of the district or employee; for a subsequent violation, if the DE finds a licensed employee knowingly violated the law, the employee will be subject to a hearing conducted by the BOEE, which may result in disciplinary action.

## **Surveys**

### **What new restrictions exist for surveys?**

There are multiple new restrictions, which we will break down into three categories. It is important to review the topics each type of survey covers for each of the categories below:

#### **Surveys not required by state or federal law: Must obtain written consent.**

Districts are prohibited from administering a formal examination or survey of a student that is designed to assess the student's mental, emotional, or physical health that is also not required by state or federal law without first obtaining written consent of the student's parent or guardian. This only applies to minor children in the direct care of a parent or guardian and does not apply to an emancipated minor or a minor not living with a parent or guardian.

#### **Surveys required by state or federal law: Must provide written notice.**

Also, districts must give written notice to the student's parent/guardian of an examination or survey of the student required by state or federal law that is designed to assess the student's mental, emotional, or physical health not less than seven days prior to the examination or survey. The notice must include a copy of the examination or survey or a link to an internet site where the parent/guardian may access the examination or survey.

#### **Surveys required by the district: Must provide written notice and obtain written consent.**

Additionally, prior written consent from a parent or guardian must be obtained before students take surveys, analyses, activities, or evaluations that are required by the district and cover any of the following topics:

- a. The political affiliations or beliefs of the student or the student's parent or guardian;
- b. Mental or psychological problems of the student or of the student's family;
- c. Sexual behavior, orientation, or attitudes;
- d. Illegal, antisocial, self-incrimination, or demeaning behavior;
- e. Critical appraisals of other individuals with whom the student has close familial relationships;
- f. Legally recognized privileged or analogous relationships such as those of attorneys, physicians or clergy;
- g. Religious practices, affiliations, or beliefs of the student or the student's parent or guardian;

- h. Income, except when required by law to determine eligibility for participation in a program or for receiving financial assistance under such a program.

Additionally, district employees and contractors cannot disclose information related to the social or emotional abilities, competencies, or characteristics of the student unless the district obtains written consent of the parent or guardian after providing the parent or guardian of the student all of the following: detailed information related to the survey, including the person who created the survey, the person who sponsors the survey, how information generated by the survey is used, and how information generated by the survey is stored. This paragraph does not apply to employees and contractors answering questions related to developing or implementing a student's Individualized Education Program (IEP).

These restrictions do not apply to hearing or vision examinations, or to health screenings or invasive physical examinations in emergent care situations and/or child abuse assessments.

### **Does this prohibit employees from asking their students how they are feeling?**

Most likely not. It is important for licensed practitioners to form an open communication with students to support the students' academic progress and assure a student is ready to learn. It would be reasonable for districts and employees to conclude that informal, voluntary questions posed to a student that are designed to determine whether the student has any barriers to learning that day would not be subject to these restrictions.

Some examples may include but not be limited to when an elementary teacher checks to see whether their student is okay after falling on their knee; a school counselor checks on a student who is crying in a hallway; a high school teacher checks in with a student who seems distracted by hunger at the start of class.

## **Publication Requirements**

### **Under Senate File 496, what is required to be published on a school district's website?**

Districts must publish their board policies related to reconsideration of instructional and library materials on the district's website. The pathway to these policies must be prominently displayed. For districts using IASB's *Policy Reference Manual* codification, this would include policies **605.3**, **605.3R1**, **605.3E1-5**. A best practice for districts would be to link their entire policy manual on the district's website.

Districts must also publish a detailed explanation of the policies in effect to request a review of the decisions made by the board of directors of the district, including the petition process established pursuant to *Iowa Code* [279.8B](#). For districts using IASB's *Policy Reference Manual* codification, this would include policies **213** and **213.1**.

Districts must make available on their website the district's policies permitting parents or guardians of students to review instructional materials used in the classrooms of the district. The policies must include a process for a student's parent or guardian to request the student not be provided with certain instructional materials. For this purpose, instructional materials



means either printed or electronic textbooks and related core materials that are written and published primarily for use in elementary school and secondary school instruction and are required by a state educational agency or district for use by students under the direction of the teacher of record. Instructional materials do not include lesson plans. When considering how to make this information available, districts should be mindful of respecting the copyrights for all licensed materials in use in the district. While it could be more convenient to post materials linked directly to the district's website, or provide copies of materials, that may violate the copyrights of the original creator's work. For this reason, a best practice is to ensure access for review is available, but not provide copies of licensed work.

Districts must also make available on the district's website a comprehensive list of all books available to students in libraries operated by the district. While this requirement is immediately effective, schools not using an electronic catalog may request a waiver of this requirement from the DE through the 2023-2024 and 2024-2025 school years.

## **Bullying and Harassment of Students**

### **What new requirements exist for allegations of bullying and/or harassment of students?**

Districts are required to include in their policies prohibiting bullying and/or harassment a procedure for reporting allegations of bullying/harassment, and the identification by job title of the employee responsible for receiving reports of allegations. Districts are also required to ensure that parents or guardians of students alleged to have been the victim of bullying/harassment are notified within 24 hours of receiving a complaint. For school districts using IASB's *Policy Reference Manual* codification system, sample policies **104** and **104.R1** have been updated to reflect these new requirements.

After an investigation into an allegation of bullying and/or harassment has begun, the new law expressly permits school employees to notify parents or guardians within 24 hours of the employee witnessing an alleged incident of bullying or harassment.

### **What new flexibilities do families have when bullying/harassment has occurred?**

If, upon viewing a video surveillance recording or report from a district employee, a school district determines that bullying or harassment has occurred, the parent or guardian of the student who was bullied or harassed may elect to enroll the student in another attendance center within the district offering classes at the same grade level. The district must enroll the student at the different attendance center unless insufficient classroom space exists. If the election to transfer to another attendance center is granted, the district must transmit a copy of the form to the parent or guardian within five days after the district's action. The parent or guardian may withdraw the request at any time prior to the district's action.

The transfer request is for a minimum of one year, but the parent or guardian may request in writing at any time that the student be transferred back to the original attendance center.

If the transfer request is for a student receiving special education services, the request will only be granted if the attendance center maintains a special education instructional program appropriate to meet the student's educational needs and the enrollment would not cause the



class size or caseload to exceed the maximum class size or caseload established pursuant to rules adopted by the state board of education. Otherwise, if the student receiving special education services were assigned to a general education classroom, there is sufficient classroom space for the general education class to which the student would be assigned.

**What if the student victim requesting transfer has been suspended or expelled in the district?**

The district is not permitted to allow the transfer until the student has been reinstated. Once the district has reinstated the student, the district will resume the process of considering the transfer request.

**How might this impact the transferring student's eligibility to participate in varsity athletics?**

If the transfer request is granted, the student will be immediately eligible to participate, if otherwise eligible.