

# Intradistrict Communication

DATE: September 1, 2022

TO: District Administrators  
School Administrators

FROM: Michael Anderson, Associate Superintendent  
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SUBJECT: Content-Specific Opt-Out Requests

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The District has noted an increase of parent submissions of forms where stating that the parent is exercising their legal right to withhold consent for their child to participate in or be given access to lessons, activities, assignments, and similar that concern topics such as gender identity, sexual activity, abortion, contraception, divisive theories, or social emotional learning.

At present, there is no mechanism in Utah law for a parent to withhold general consent for their child to be taught a specific subject or from being taught a specific topic in connection with any content area.<sup>1</sup> There is no requirement in code (at present) that schools honor or retain these forms. However, an outright refusal to engage with the parent who presents these concerns may be problematic. As administrators identify how to respond to such requests, the following statements and code citations may be helpful to consider:

- The wording of some opt-out requests is so intentionally vague as to be unenforceable. For example, one request indicates that the parent refuses consent for “mindfulness exercises, meditation, yoga, **or the like**” (emphasis added). Would a teacher asking students to stand and stretch before a test be considered yoga or a mindfulness exercise? Would a request for an unruly child to move to a “think time” desk at the back of the room be considered a mindfulness exercise? Such a request would make the delivery of instruction impossible.
- Utah Code 53G-6-803(1)(a) states that the student’s parent is the primary person responsible for the education of the student, that the state is secondary and supportive, and that the parent has rights to “reasonable academic accommodations”. However, 53G-6-803(1)(d) indicates that those accommodations must be consistent with federal law and consistent with a student’s IEP.

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<sup>1</sup> In actual fact, such a mechanism does *technically* exist: the parent may exercise their right to withdraw and home school the student for portions of the school day.

- Utah Code 53G-6-801(2) indicates that “reasonably accommodate” means that an LEA will make its best effort to enable a parent to exercise a right specified in 53G-6-803 without “substantial impact to staff and resources, including employee working conditions” while also balancing “the parental rights of parents...the academic and behavioral impacts to a classroom...[and] a teacher’s workload”. Student-by-student monitoring of parental consent to receive instructional in general topics would not appear to be in line with the definition of “reasonably accommodate”.
  - Among the accommodations authorized in 53G-6-803 are:
    - A parent’s initial selection of a teacher
    - A parent’s request for a change of teacher
    - A parent’s request to visit and observe any class the student attends
    - Excusal from federally- or state-mandated assessments
- Utah Code 53E-9-203 already requires parent notification and consent prior to examination, test, treatment, survey, analysis, or evaluation that is intended to cause the student to reveal information about their (or their family’s):
  - Political affiliations
  - Mental or psychological problems
  - Sexual behavior, orientation, or attitudes
  - Illegal, anti-social, self-incriminating, or demeaning behavior
  - Critical appraisals of individuals with whom the student or family has close family relationships
  - Religious affiliations or beliefs
  - Legally recognized privileged and analogous relationships, such as those with lawyers, medical personnel, or ministers
  - Income
- Parents are notified of this right annually in the summer “Registration for School” process. Consent is obtained via FERPA release forms or through specific forms for a particular assessment or activity. Parent consent is valid only for the specific activity indicated in the form.
- Utah Code 53G-10-203 ensures that students have the right to “expression of personal beliefs” during participation in school-directed criteria or activities. This expression may not be penalized unless it “unreasonably interferes with order or discipline, threatens the well-being of persons or property, or violates concepts of civility or propriety appropriate to the school setting.” It is not possible for a school or teacher to honor this right for students to express their personal belief while simultaneously honoring a parent request (which is not at present codified in law) to prevent their student’s exposure to the same belief or content.
- Utah Code 53G-6-204(2) allows a local school board to excuse a child from attendance if the parent files an affidavit indicating that the student will participate in a home school and that the parent is assuming “sole responsibility” of the education of the student. Home school participation may be full- or part-time. If a parent is not willing or interested in having their student participate in a particular content area, they may be interested in filing an affidavit with Planning & Enrollment and physically excusing their child from the school property during the day.

- Utah Code 53G-10-103(2) already prohibits the use or distribution of sensitive materials in the public school setting, defined in 76-10-1235 as pornographic or indecent material.
- Utah Code 53G-10-202(1) expressly allows activities examining or learning about religions, political thoughts, and the influence of the same on various elements of culture when undertaken for a secular objective and in accordance with applicable rules.
- Similarly, Utah Code 53G-10-202(2) prohibits exclusion from curriculum of an aspect of “cultural heritage, political theory, moral theory, or societal value” specifically because it “affirms, ignores, or denies” religious beliefs.
- Utah Code 53G-10-202(4) also prohibits school officials and employees from using their position to “endorse, promote, or disparage a particular religious, denominational, sectarian, agnostic, or atheistic belief or viewpoint.”
- Utah Code 53G-10-205 allows a parent or secondary student to opt out of participation in a portion of curriculum that would require the student to “affirm or deny a religious belief or right of conscience” or “engage or refrain from engaging in a practice forbidden or required in the exercise of a religious right” and that in such circumstances, the student may be waived from participation and provided an alternative activity or may be notified that the activity is required.

This list is not to be considered comprehensive. It should, however, clarify that parents do have rights to accommodations in education and to an excusal from participation in portions of curriculum that do not align with religious beliefs. However, “portions of curriculum” should not be construed as to mean “any mention of a particular term or topic.”

School administrators are encouraged to engage in dialogue with parents submitting such opt-out requests in the hopes of resolving concerns and/or identifying specific instructional subjects the parent is concerned about. In attempting to resolve and respond to those concerns, administrators should remember that the code requirements to be cognizant of teacher workload when implementing such accommodations (53G-6-801(2)) means that not all requests for accommodations can be accommodated. In such instances, parents may need to make determinations as to the instructional placements that best align with the values held by the family.

Administrators with additional questions or concerning situations should contact their Administrator of Schools for guidance.