



A Yearbook Guide to  
Names and Pronoun Use  
Decisions in the  
Commonwealth of  
Virginia

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# NOTICE

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Matters surrounding preferred names and pronouns in student media can be very fact-specific. We strongly encourage you to bring your questions to the [SPLC's free legal hotline](#). Content here is purely informational and should not be construed as legal advice.

## Introduction

Over the past couple of years, student journalists and advisers have increasingly reached out to the Student Press Law Center to alert its staff of an issue not regularly encountered before. School officials had begun to prohibit student editors from using students' preferred names in yearbooks and other student media, requiring instead that they only identify students by their so-called "legal name," which was usually the name reported on their birth certificate. Current efforts by the governor are [aimed at changing the law](#) to rewrite the protections for gender nonconforming students. While the prohibition arguably applied to the use of common nicknames (e.g., "Lisa" instead of "Elizabeth"), the bans were specifically meant to prevent student editors from identifying transgender, gender-nonconforming or gender-fluid students by the names they now regularly used and were known by in their communities, a practice commonly known as "deadnaming."

The rights of Virginia transgender students have been litigated for years: Gavin Grimm, a former student in the Gloucester County School Division spent nearly a decade of fighting [first for access to school men's rooms](#) (as he identifies as male), and then to [change his student records](#) to reflect his gender as male instead of female. This span of courtroom activity relied upon sometimes well-established law, other times less so. Unfortunately, Grimm's legal fight provided little clarity surrounding rules about the use of preferred names of students versus given/legal names. This mini guide will attempt to provide some background on the legal lay of the land.

Initial note: there are generally *three models* of editorial control when publishing yearbooks in a public high school setting: 1) **student-edited yearbook**; 2) **school-edited yearbook** (e.g. a district policy indicating that the principal or another designee of the superintendent is content editor); and 3) **a hybrid-edited yearbook** where editing duties may be shared, requiring a deeper dive into the factual basis (the need to look at the full circumstances on the ground) for determining control. At a public high school, the space your yearbook program inhabits among these three models can determine the [First Amendment protection available](#) to student editors who wish to challenge a district's preferred name or pronoun policy. (The legal protections for students at private schools are different and can vary significantly by school. You should contact the SPLC to discuss further.)

For example, in a student-edited yearbook where students have, either by policy or practice, been given editorial control, student editors may be able to push back simply by reassuring school officials that there is, in fact, no legal requirement that students be identified by any particular name as long as the student provides valid consent. If a question comes up in the hybrid context, where there is no district policy speaking to editorial control, it is useful to gather evidence of a past practice of *de facto* giving students editorial control. If your district inhabits this gray area, please contact the Student Press Law Center to have this fact-specific conversation. Whenever possible, the Student

Press Law Center recommends that students - and not advisers or administrators - be the ones to determine the editorial policy of the yearbook or newspaper with regard to name and pronoun use.

## Frequently Asked Questions

### ***Does state or federal law dictate what names and/or pronouns to use for students?***

No. As of October 2022, we are aware of no states or federal law that dictates what name and/or pronouns to use for students in a student-edited yearbook.

### ***Are we violating FERPA by using a student's chosen name or preferred pronoun?***

No. Student-edited yearbooks are not educational records, so nothing in them is covered by FERPA. Further, student yearbook staff are not agents of the school, and therefore cannot violate FERPA. In the situation where your school inhabits the above school-edited yearbook model, even then, yearbooks tend to have only basic "directory information" about students, and therefore, would not be covered by FERPA as "educational records".

### ***Can our school require us to use the name and/or pronoun listed on a student's educational record or birth certificate?***

Your school may have a policy governing the use of a student's names or pronouns. However, that policy may violate federal law, especially if the student has given their consent to be identified by a specific name. If you are told there is such a policy, you should ask for a written copy and contact the Student Press Law Center immediately.

### ***Is the yearbook a legal educational record?***

No. According to the Student Privacy Office with the US Department of Education, yearbooks are not legal educational records (please see below).

### ***Can a student's parents require us to use a specific name or gender?***

Students have the legal right to truthfully tell their own stories even when parents object. And student editors should have the editorial right to tell those students' stories accurately. As mentioned above, however, legal protections against censorship can vary significantly from school to school.

### ***We've previously printed student's nicknames at their request. Can we still do that, even if we're being told to use the name on their educational record?***

As mentioned above, as a student editor, your ability to legally contest administrative censorship will vary depending on the [legal protections](#) in place for student media at your school. In the absence of a state New Voices law, those protections will largely be determined by examining the policies and practices in place in your school or district.

Moreover, if your school or district has a policy that allows for the printing of nicknames but singles out transgender or gender non-conforming students as needing to use the name on their educational record or birth certificate, that could be a violation Title IX and executive administration guidance. If you would like to honor nicknames but have been told not to honor the chosen names of certain students, you should contact the Student Press Law Center immediately.

***If the law changes between now and when our yearbook is printed, can they make us reprint it?***

It depends. If you are concerned about this happening, you should contact the Student Press Law Center immediately.

***Can we be required by the school to use given names even if we want our editorial policy to be chosen names?***

The First Amendment always protects your right not to speak. Even where a student editor has been told they cannot publish a student's preferred name, they can never lawfully be forced to publish something they believe is inaccurate, unlawful or that they feel would cause harm to another student. Ask for the source of the directive: is there a board-passed policy? Is the administrator making this requirement alone, potentially bowing to community pressure? Identifying the source will serve as early grounds for any challenge to this requirement.

***Can we still use nicknames for students (e.g, Lisa for Elisabeth) if we've been told we cannot use the chosen names of transgender/gender-nonconforming kids?***

Obvious or known nicknames for students are not generally subject to the same scrutiny as a preferred name that is significantly different from the given/legal name.: Again, this should be an editorial decision made in consultation with the subject student.

***Can our editorial process allow for parents to approve a name different from what is on the educational record?***

Yes. While it's not legally necessary in most cases, obtaining written parental consent shores up protections for your editorial decision and memorializes their intent. That could come in handy if you or the parent and student challenge any contrary policy issued by the district.

## Sources of Law

### Title IX (20 U.S.C. ch. 38 § 1681 et seq.):

Title IX protects students - including transgender and gender non-conforming students - from discrimination in public schools on the basis of sex. Any situation where transgender or gender non-conforming students are treated differently than other students, including limiting the right to choose the name or pronoun listed in the yearbook to non-transgender students,,may constitute discrimination under Title IX.

Title IX provides that no person “shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance” (20 U.S.C. § 1681(a); 34 C.F.R. § 106.31). A [federal advisory](#) currently implemented in Virginia<sup>1</sup> indicates that, in light of the Supreme Court's findings in [Bostock v. Clayton County](#), Title IX protections are extended to transgender students, prohibiting "discrimination on the basis of sex in any education program or activity offered by a recipient of Federal financial assistance.”

Court interpretations of transgender student rights under Title IX in Virginia are enshrined in the decisions surrounding the Gavin Grimm matter. The most recent federal district court decision in that case held that the school district “treated Mr. Grimm differently than other students on the basis of sex and, as established below, he suffered some measure of harm from that treatment” (*Grimm v. Gloucester Cty. Sch. Bd.*, 400 F. Supp. 3d 444, 458 (E.D.V.A., 2019)). Part of this different treatment was a refusal to update the student’s transcript to reflect “male,” as Gavin identifies, instead of his sex at birth. Importantly, this case is controlling law in Virginia related to these matters, regardless of any Title IX advisory interpretation by the US Department of Education.

Though the *Grimm* matter did not specifically address whether given/legal names were required in yearbooks, the evidentiary hurdle was a steeper one. The court said that the use of bathroom facilities corresponding to one’s gender identity came down to overcoming the notion that physiological or anatomical characteristics were arbitrary in the face of gender identity and the protections it is afforded under Title IX (*id.* at 457). In addressing the issue of changing Grimm’s transcript to reflect his chosen gender, the court reasoned “Other students in the Gloucester County School system with male birth certificates also have male transcripts. Undeniably, the Board discriminates against Mr. Grimm in violation of Title IX in refusing to afford him the same dignity” (*id.* at 458). As a result, **deadnaming in a yearbook against a student’s wishes may constitute an equally discriminatory practice under the controlling *Grimm* decision.**

**FERPA (Family Education Rights and Privacy Act, (20 U.S.C. § 1232g):**

**FERPA does NOT restrict or govern the use of names or pronouns in the yearbook or other student media.**

This federal law is frequently misunderstood and misapplied by school officials. It has little relevance to the issue of preferred names in student media. FERPA protects the privacy of student educational records and places requirements on school districts as gatekeepers of those private records. It only creates rules for agents of the school district: a student-edited work is not bound by the rules of

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<sup>1</sup> As the advisory indicates, its substance and directives are currently enjoined (not applied because of a current debate in court) in a collection of states that do *not* include Virginia, where they are still in effect.

FERPA even if an adviser or administrator makes the final editorial decisions. Yearbooks in particular are considered to be [repositories of “directory information”](#), which is “information that is generally not considered harmful or an invasion of privacy if released, [which] can also be disclosed to outside organizations without a parent’s prior written consent”. Therefore, a **yearbook is not typically an educational record covered by FERPA.**<sup>2</sup> Instead of viewing the yearbook as a legal/educational record, it is useful to think of it as a *historical record*, and that students profiled in the yearbook have the right to determine how they are to be historically recorded.

## Other Sources

### Treatises

The most recent federal court decision that found for Gavin Grimm cited to authoritative text on the subject of gender dysphoria, which may be helpful in discussing this issue with administrators. The court indicated the following:

“The American Psychiatric Association's Diagnostic & Statistical Manual of Mental Disorders ("DSM V") defines ‘gender dysphoria’ as a condition experienced by some transgender people that inflicts clinically significant stress because their gender identity differs from the sex assigned to them at birth. Penn Expert Rep. and Decl. ¶ 21. Dr. Penn's report explains that ‘to be diagnosed with gender dysphoria, the incongruence [between gender identity and assigned sex] must have persisted for at least six months and be accompanied by clinically significant distress or impairment in social, occupational, or other important areas of functioning.’ *Id.*”

[*Grimm, supra* at 449]. There have been many studies documenting the mental illness and other negative long-lasting impacts that can result from discrimination against transgender students. If this discrimination does occur, whether or not via demand by parents (as when parents request that districts only use legal/given names), school districts may be on the line to treat the resulting effects on transgender students’ mental health and wellbeing, whether or not a student decides to sue a school district like Gavin Grimm. The **Individuals with Disabilities Education Act** (IDEA, further enshrined in Virginia under Title 8, Chapter 81 of the Virginia Administrative Code) requires a free and appropriate public education for students with disabilities, even those that arise throughout the course of their education, which includes emotional disability. Districts whose personnel knew or should have known about such an emotional disability or otherwise are on the hook as well through [federal “Child Find” mandate](#). The cost of special education supports and services, or simply the cost of evaluating students for eligibility, is avoidable in the absence of

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<sup>2</sup> A yearbook itself is also not considered a piece of identification used in such contexts as the SAT ([see “Acceptable ID Examples”](#)).

discriminatory practices. While formal research into the issue of dead naming remains limited, mental health experts [have expressed concerns](#) about the lasting harms that can occur.

## AP Style Guide

The Associated Press Stylebook is “the definitive resource for journalists and a must-have reference for writers, editors, students and professionals. It provides fundamental guidelines for spelling, language, punctuation, usage and journalistic style, and helps writers and editors in all fields navigate complex and evolving language questions.” It is the gold standard resource for journalists, students and business writers; familiarity and use of AP Style enables students to succeed not only as student journalists, but in their chosen careers after high school. The Associated Press Style Guides have consistently recommended against deadnaming and have espoused the use of preferred names and pronouns. In particular, [the most recent guide](#) advises journalists “to use a transgender person’s previous name very rarely and only if required to understand the news, or if requested by the person”. The guide also cautions against assuming a person’s pronouns, and using “they/them/their” pronouns when the person uses those pronouns for themselves.

## Consent

The use of a student’s preferred name, when it does not match the given/legal name, should be accompanied by clear, valid consent from that student. Generally, most high school students should be [able to provide valid, legal consent](#) on their own, [preferably in writing](#). Instead of viewing the yearbook as a legal/educational record, it is useful to think of it as a *historical record*. Encouraging your students to talk their decision over with a parent/guardian/trusted adviser is a good strategy, though not required in most cases.