



**STATE OF SOUTH CAROLINA**  
**DEPARTMENT OF EDUCATION**

**MEMORANDUM**

**TO:** District Superintendents  
South Carolina School Board Members  
Public Information Officers

**FROM:** John E. Tyler, Esq.  
Deputy Superintendent and General Counsel

**DATE:** July 23, 2024

**RE:** Guidance on Budget Proviso 1.120

On June 26<sup>th</sup>, 2024, Governor McMaster signed South Carolina’s FY 2024-2025 budget into law. [Budget Proviso 1.120](#) (SDE: Student Physical Privacy) requires that all South Carolina school districts (to include traditional public schools, charter schools, and special schools,<sup>1</sup>) must designate multi-occupancy restrooms and changing facilities for use only by members of one sex *and* prohibits students of the opposite sex from using the same bathrooms, changing facilities, overnight sleeping quarters, shared bathrooms, locker rooms, and shower rooms.

The Proviso requires the State Department of Education (SCDE) to withhold 25% of state funds used to support district operations for violation of this policy.

1. **The Proviso defines sex** as a “person’s biological sex, either male or female as objectively determined by anatomy and genetics existing at the time of birth.” Typically, an original birth certificate will accurately denote an individual’s biological sex.
2. **School facilities and settings covered** by Proviso 1.120 include changing facilities, locker rooms, shower rooms, school bathrooms, overnight sleeping quarters, and shared bathrooms in sleeping quarters. Residential schools are prohibited from housing students

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<sup>1</sup> Special Schools include the Governors School for Science and Math, the Governors School for the Arts and Humanities, Wil Lou Gray Opportunity School, Governors School for Agriculture at John de la Howe, School for the Deaf and the Blind, Felton Lab, Department of Juvenile Justice, and Palmetto Unified School District.

of the opposite biological sex in the same room.

3. **The Proviso permits five exceptions** in which a member of the opposite sex may enter a multi-occupancy sex-designated space or share overnight lodging:
  - a. For the purposes of custodial or maintenance work while the facility is not in use;
  - b. For the purposes of rendering medical assistance;
  - c. For the purposes of sheltering during natural disaster or an emergency;
  - d. For the purposes of accomodating disabled persons or young children who need physical assistance to use the restroom or changing facilities.
  - e. For members of the same family, such as a student's parent, legal guardian, sibling, or grandparent.

Proviso 1.120 does *not* prohibit districts from providing reasonable accommodation to a student when the student's parent has requested on the student's behalf, such as access to a single-occupancy staff restroom. The districts should seek legal counsel on the allowability of any accommodation, but the Proviso under no circumstance permits a student use a restroom other than that designated by biological sex at birth.

To ensure full and technical compliance with this Proviso, the Department recommends that Districts take the following actions prior to the start of the 2024-25 school year:

1. **Update all district and school policies; staff, parent, and student handbooks; and school facilities signage to replace the word "gender" with "sex" or "biological sex."** This will bring school policies into alignment with South Carolina law and ensure that there is no ambiguity in school policy that has the potential to violate the Proviso. The school policy should define "sex" consistent with the Proviso's definition of sex.
2. **Ensure that student records align with the sex indicated on each individual student's original birth certificate.** This will allow the district to provide direction where needed and to make informed, expeditious decisions related to compliance with the Proviso.

With the new school year quickly approaching, the SCDE stands ready to offer technical assistance as your district implements this policy. If you have any questions, please contact Robert Cathcart, Policy & Legal Advisor at (803) 734-2230 or [rdcathcart@ed.sc.gov](mailto:rdcathcart@ed.sc.gov). Please share this memo with your district's legal counsel.