

FREQUENTLY ASKED QUESTIONS—HB348 (2023) PARTICIPATION WAIVER AMENDMENTS
Representative Cheryl Acton

Could you tell me what the process is right now if a child in a classroom wants to assert his right of conscience?

YES.

The process as it currently stands allows a school to require a student to participate in something that violates his or her conscience. **It allows a school to be the final arbiter of a student’s right of conscience**, by giving the school the option to require a student to participate in an aspect of school that violates the student’s religious belief or right of conscience.

Any such requirement by the school is unconstitutional according to the Utah State Constitution in Article I, Section 4. Religious liberty, which states: **“The rights of conscience shall NEVER be infringed.”**

Does the current process differ from district to district?

The process likely varies from district to district, from school to school, and even from teacher to teacher.

The USBE has no rule specifically regarding 53G-10-205, and mentions it only tangentially to sex education and core curriculum. This means that districts and schools are left with little direction on how to proceed on the rule consistently.

Won’t kids just use this bill as an excuse to get out of doing math or other subjects for no good reason?

UNLIKELY.

The reality is that most students comply with expectations. It’s usually something out of the ordinary that would prompt a student to speak up.

“Cancel culture” makes it harder for children to stand out in a classroom.

NO.

Teachers having to contact parents assures a check and balance on any frivolous claims made by the student.

Parental involvement from the outset will assure that the parents’ primary role in the educational decisions of their children is upheld.

Can teachers or schools ask what the violation of conscience is to make sure it’s legitimate?

NO.

“RFRA (The Religious Freedom Restoration Act of 1993) does not permit the federal government to second-guess the reasonableness of a religious belief.

RFRA applies to all sincerely held religious beliefs, whether or not central to, or mandated by, a particular religious organization or tradition. Religious adherents will often be required to draw lines in the application of their religious beliefs, and government is not competent to assess the reasonableness of such lines drawn, nor would it be appropriate for government to do so.”

The Supreme Court reinforced this reasoning in *Hobby Lobby*, saying it is “not for us to say that their religious beliefs are mistaken or insubstantial.”
Attorney General Memo, 2017, Federal Law Protections for Religious Liberty

NO.

If the school chooses to offer an alternative, the student and the student’s parent have the ultimate say of whether that alternative does or does not violate their right of conscience or religious belief.

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Is this an appropriate use of legislative time/effort/powers?

YES.

When an elected official takes an oath of office, **that official is making a promise to uphold the U.S. and Utah Constitutions, which is to say, upholding and defending individual and inalienable rights.**

The right of conscience and religious belief have been consistently upheld by law, and are considered among the most fundamental of inalienable rights.

YES.

A school system doesn't have more rights than a person, and we are given the special obligation of making sure this is true both in word and in practice.

("[Government] follows the best of our traditions . . . [when it] respects the religious nature of our people and accommodates the public service to their spiritual needs.").
343 U.S. 306, 314 (1952)

Will this make more work for teachers if a child refrains from participating due to religious belief or conscience?

NO.

In the rare event that a student experiences a violation of conscience or religious belief and doesn't participate due to that, **a school or a teacher is not required to offer an alternative**, but may do so if one can be found that doesn't violate the student's or parent's religious belief or right of conscience.

It's an opportunity for teachers to build trust by recognizing the rights of conscience in good faith by working with parents and students.

NO.

This bill actually can save teachers from unintentionally causing students burdensome distress.

A parent told me of a time when her Hispanic son was asked to participate in a Privilege Walk. He felt the activity violated his conscience, because deeply personal questions were asked that singled out students by racial, socioeconomic, and other factors beyond the students' control. When the student mentioned his deep discomfort to the teacher after the fact, the teacher expressed shock—she felt embarrassed and was very apologetic that she had unknowingly violated that student's conscience. She said if she had known in the moment, she would never have let that happen.

Reference for Participation Waiver Amendments HB 348 (2023)—Rep. Cheryl Acton

Promotes fair treatment of all students in the classroom	Creates a clear picture of the school’s role in recognizing and upholding a student’s right of conscience	Supports parents’ primary role in the education of their children	Respects important differences of beliefs
Encourages responsiveness from the school to student and parent concerns	Protects teachers who unintentionally violate a student’s conscience by bringing issues promptly to their attention	Builds trust and good will between teachers, parents, and students by promoting positive, open communication	Promotes a learning environment free from discrimination and harassment
1	Our Utah State Constitution in Article I, Section 4. Religious liberty states clearly: <i>“The rights of conscience shall NEVER be infringed.”</i> <i>—Students do not check their consciences at the school doors—</i>		
2	Respecting the rights of conscience and religious belief is a foundational principle of a civilized society.		
3	No one, including children, would want to be forced to do something that violates their deeply held beliefs.		
4	This bill gives the benefit of the doubt to children, to parents, and to teachers, when a genuine issue arises in school regarding religious belief or right of conscience.		
5	In the rare event an alternative cannot be found that’s satisfactory to a student and parent, the schools have flexibility to simply not count a student’s non-participation against him or her.		
6	Teachers are smart. They already differentiate instruction for a variety of reasons—there’s no reason to not differentiate in other ways for rights of conscience and religious belief to foster healthy and positive learning environments for students.		
7	The state cannot second-guess a child’s or parent’s conscience or religious belief. <i>As with claims under the Free Exercise Clause, RFRA does not permit a court to inquire into the reasonableness of a religious belief, including into the adherent’s assessment of the religious connection between a belief asserted and what the between a belief asserted and what the government forbids, requires, or prevents. (Hobby Lobby, 134 S. Ct. at 2778.) If the proffered belief is sincere, it is not the place of the government or a court to second-guess it.</i> <i>—Department of Justice, Federal Law Protections for Religious Liberty, October 18, 2017</i>		
8	This bill simply protects a child’s right, or a parent’s right to act on a child’s behalf, to not participate in an aspect of school that would violate their conscience or religious belief.		
9	“Individuals and organizations do not give up their religious-liberty protections by providing or receiving social services, education, or healthcare; by seeking to earn or earning a living; by employing others to do the same; by receiving government grants or contracts, or by otherwise interacting with federal, state, or local governments.” <i>—Department of Justice, Federal Law Protections for Religious Liberty, October 18, 2017</i>		
10	Children need protection in the very moment their rights of conscience or religious beliefs are infringed.		
11	This bill accounts for the need for good-faith approaches that won’t result in repeat violations of conscience or religious belief, and recognizes the students and parents as the final arbiters of their own consciences.		
12	Teachers can’t possibly know how certain aspects of school may negatively effect conscience or religious belief, so instead of making them second guess their content, it is left to students or parents to inform the teacher of this eventuality so teachers can work with them to find a solution that does not violate the right of conscience or religious belief as determined by a parent or child.		

