

# Policy & Legal News

HELPING SCHOOL DISTRICTS TRANSLATE LAW INTO ACTION

## Navigating a Shifting Policy Landscape

### PLUS:

Model Policy and Procedure Changes  
Related to Title IX in 2025

Synopsis of Model Policy and  
Procedure 2020 and 2021

Other Updates

WSSDA

APRIL 2025

WASHINGTON STATE SCHOOL  
DIRECTORS' ASSOCIATION

## Policy Classifications

### ESSENTIAL

- Policy is required by state or federal law; or
- A specific program requires a policy in order to receive special funding.

### ENCOURAGED

- While not required by law, policy is intended to reflect the spirit of existing state or federal law thus inuring districts to potential litigation;
- While not required by law, policy has potential to benefit the health, safety, and/or welfare of students, employees, directors, and/or the local community.

### DISCRETIONARY

- Policy addresses an action likely deemed important by the board; or
- Policy would likely be deemed appropriate due to special circumstances of the board; or
- Policy communicates district philosophy that a board may want to promote to employees and/or the community.

## Editor's Note

As we navigate through this whirlwind winter, Kelsey and I remain committed to providing you with timely, actionable information to keep your district both legally centered and calmly responsive. The focus of this issue of Policy & Legal News is primarily on the alignment of policies following recent changes in state education law. Additionally, we're pleased to publish an updated policy on instructional materials that reflects the latest requirements.

We understand the challenges you face in this fluctuating regulatory landscape. The constant stream of new information, changing guidelines, and evolving court decisions can feel overwhelming. That's precisely why maintaining your subscription to this magazine is one of the most effective ways to stay informed without becoming inundated.

We will distill complex legal developments into clear, practical guidance that you can implement with confidence. By doing so, our goal is to alleviate some of the pressure on your administrative teams and allow you to focus on what matters most—creating optimal learning environments for your students.

Wishing you a productive and legally compliant spring semester,

**Christine B. Geary, J.D.**  
**Editor-in-Chief**



# Policy & Legal News

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### ★ UPDATES TO MODEL POLICY

WSSDA has developed, revised, or retired the following model policies and procedures. Subscribers can find marked-up and clean versions of these documents (as applicable) in their subscriber portal on the WSSDA website by visiting [wssda.org/login](https://wssda.org/login)

#### ESSENTIAL

- 2020/2020P – Course Design, Selection, and Adoption of Instructional Materials
- 2021/2021P – Library Information and Technology Programs
- 2230 – Transition to Kindergarten
- 3205P – Sexual Harassment of Students Prohibited
- 5011/5011P – Sexual Harassment of District Staff Prohibited
- 6801/6801P – Capital Assets/Theft-Sensitive Assets

#### ENCOURAGED

- (NEW)** 3206/3206P – Pregnant and Parenting Students
- (NEW)** 5012/5012P – Parental, Family, or Marital Status, and Pregnancy or Related Conditions of Staff



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# More Policy and Procedure Changes Related to Title IX in 2025

By Kelli Schmidt, J.D., AWI-CH (she/her)  
Attorney/Investigator

On January 9, 2025, a federal district court issued a vacatur order that vacated the 2024 Final Rule that went into effect on August 1, 2024, under Title IX of the Education Amendments of 1972, the federal law that prohibits discrimination based on sex in education programs or activities receiving federal financial assistance.<sup>1</sup> Effective immediately, that court's decision vacated the entirety of the 2024 Title IX rule nationwide. The United States Department of Justice is responsible for determining whether to appeal that court's vacatur order, but the new presidential administration has not indicated any interest in doing so. So, that decision stands, and no portion of the 2024 Title IX regulations and related resources are in effect in any jurisdiction.

On February 4, 2025, the United States Department of Education's (ED) Office for Civil Rights (OCR)

clarified<sup>2</sup> that it would only enforce Title IX under the provisions of the 2020 Title IX Rule<sup>3</sup> rather than the 2024 Title IX Rule.<sup>3</sup> ED-OCR also clarified that the binding regulatory framework for Title IX enforcement includes the principles and provisions of the 2020 Title IX Rule and the longstanding Title IX regulations outlined in 34 C.F.R. 106 et seq and provided a link to resources pertaining to Title IX and the 2020 Title IX Rule.<sup>4</sup> ED-OCR further clarified that all open Title IX investigations that were initiated under the 2024 Title IX rules should be "immediately reevaluated to ensure consistency with the requirements of the 2020 Title IX Rule and the preexisting regulations at 34 C.F.R. 106 et seq." The 2020 Title IX Rule has a prescriptive process, which includes 10 days for review of evidence and review of reports prior to determinations. While 2024 Title IX rules that applied to all sex-based discrimination complaints no longer apply, there are still Title IX process requirements

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<sup>1</sup> Tennessee v. Cardona, No. 24-0072-DCR, 2025 WL 63795, at \*6 (E.D. Ky. Jan. 9, 2025). <https://adfmlegalfiles.blob.core.windows.net/files/TennesseeAppellateOpinion.pdf>

<sup>2</sup> <https://www.ed.gov/media/document/title-ix-enforcement-directive-dcl-109477.pdf>

<sup>3</sup> 85 Fed. Reg. 30026 (2020).

<sup>4</sup> <https://www.ed.gov/laws-and-policy/civil-rights-laws/title-ix-and-sex-discrimination/sex-discrimination-overview-of-law>

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that apply to any sexual harassment complaint that meets specific jurisdiction requirements and the definition of “sexual harassment” under the 2020 Title IX regulations.

Additionally, on February 7, 2025, the Office of Superintendent of Public Instruction (OSPI) issued a bulletin to clarify the standards and procedures for Washington’s K–12 school districts when responding to sexual harassment in accordance with both Title IX and state law.<sup>5</sup> That bulletin explained the court’s decision and differences between Title IX and Washington state’s laws.

Washington law, at Chapter 28A.640 RCW and 392-190 WAC, also prohibits sex discrimination, including sexual harassment, in schools. Most critically, state law also outlines requirements for Washington school districts in responding to sexual harassment complaints but applies a slightly broader definition of “sexual harassment.” For example, under Washington law, sexual harassment is conduct that creates a hostile environment when it is “sufficiently severe, persistent, OR pervasive.”<sup>6</sup> Washington law has procedural requirements for sexual harassment complaints, but it does not have 10-day periods in its complaint process like Title IX requires.

Additionally, OSPI’s bulletin reminded districts that Washington state law expressly prohibits discrimination based on sexual orientation, gender identity, and gender expression.<sup>7</sup> Thus, the court’s order to vacate the 2024 Title IX rules does not impact Washington schools’ obligations to prohibit discrimination based on these legally protected classes.

Washington school districts must ensure they continue to comply with state requirements while implementing the Title IX complaint process and may be required to proceed under state requirements even when a complaint could be dismissed under Title IX. In effect, this means that Washington school districts are back to implementing two systems

for processing harassment and discrimination complaints: one for sexual harassment under the 2020 Title IX rules and another for all other types of harassment and discrimination, including sexual harassment that is covered by state law, but not the 2020 Title IX rules.



### **Revised Sexual Harassment Policies and Procedures for Students and Staff**

Because of these recent legal changes, Washington school districts need policies that comply with state law and align with the 2020 Title IX rules. One way to immediately accomplish that was to reinstate a previous district policy and procedure that aligned with the 2020 Title IX rules and state law, such as the Washington State School Directors’ Association’s (WSSDA’s) reinstated model Sexual Harassment of Students Prohibited policy (3205) and procedure (3205P).

WSSDA conducted a careful review of the prior model policies and procedures 3205 and 3205P and 5011 and 5011P, which prohibit the sexual harassment of students and staff. To ensure best practices, WSSDA determined that revised and updated policies and procedures were warranted. The prior policies and procedures, while accurate, were difficult for districts,

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<sup>5</sup> <https://ospi.k12.wa.us/sites/default/files/2025-02/bulletin-007-25.pdf>

<sup>6</sup> The court’s order vacating the 2024 Title IX rules does not impact Washington schools’ obligations to prohibit discrimination based on these legally protected classes. Washington law, at Chapter 28A.640 RCW and 392-190 WAC, also prohibits sex discrimination, including sexual harassment, in schools.

<sup>7</sup> RCW 28A.642.010.

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staff, and students to understand. Thus, the newly revised policies and procedures:

- Use an outline format to create greater clarity around different aspects of implementation
- Include sexual harassment definitions rather than references to statutes, and keep a definition of “consent”
- Identify various specific steps in the evaluation, investigation, decision, and appeal processes
- Identify when and how informal dispute resolution can proceed
- Clarify that the Title IX coordinator cannot be the complaint decision-maker, nor can the superintendent be the appellate decision-maker
- Refer Title IX sexual harassment complaints for staff to the same complaint process as the district uses for students, which is required by the 2020 Title IX regulations

To align these changes with other existing WSSDA model policies, WSSDA also adopted and revised the following model policies and procedures:

- Pregnant and Parenting Students (3206 and 3206P)
- Parent, Family, or Marital Status, and Pregnancy or Related Conditions of Staff (5012/5012P)
- Gender Inclusive Schools (3211P), updated January 27, 2025

### **Understanding the Changes: Reverting to Two Types of Complaint Processes**

Because the 2020 Title IX rules only apply to complaints of sexual harassment, WSSDA revised policies and procedures 3205/3205P and 5011/5011P to clarify that complaints that do not fall under the jurisdiction or definition of the Title IX sexual harassment do not fall under those policies and procedures.

If a complaint does not fall under that policy or procedure, it should be referred to the policies and procedures for complaints of discrimination against students (3210 and 3210P) or staff (5010 and 5010P). This includes Title IX formal complaints that are dismissed in accordance with 34 C.F.R. § 106.45(b)(3) but for which a school district may be required to continue its investigation in accordance with the state complaint process outlined in WAC 392-190-065. This is also the case when a complaint alleges discrimination based on pregnancy, sexual orientation, gender identity, or gender expression.

### **Revisions to Policies and Procedures Related to Pregnancy and Parenting**

Because the 2020 Title IX rules only pertain to complaints of sexual harassment and not all sex-based discrimination, WSSDA also reviewed and adopted policy and procedure related to pregnant and parenting students (3206 and 3206P), which it developed in August 2024. Title IX has always prohibited discrimination against pregnant and parenting students. The effect of the vacatur of the 2024 Title IX rules that had provisions related to pregnant and parenting students did not change the underlying law. Therefore, WSSDA kept the provisions in the policy and procedure that ensure districts continue to comply with Title IX requirements. However, WSSDA removed provisions that were specific to the 2024 Title IX rules and not mentioned in any other prior ED-OCR or OSPI guidance. Additionally, WSSDA made a change to note that any grievances or concerns can be brought under the district’s policies and procedures for nondiscrimination (3210 and 3210P) rather than the complaint process for sexual harassment of students.

In August 2024, WSSDA developed a model policy and procedures titled Parent, Family, or Marital Status, and Pregnancy for Staff (5012 and 5012P), which were aligned with the 2024 Title IX rules, as well as other state and federal rules. Therefore,

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WSSDA made a change to procedure 5012P to note that any grievances or concerns can be brought under the district's nondiscrimination policy and procedure for district staff (5010 and 5010P).



### Revisions to Policy and Procedure Related to Gender Identity

On January 27, 2025, WSSDA revised 3211P Gender Inclusive Schools, to refer complaints alleging violations of that policy to the district's nondiscrimination procedure as outlined in 3210P. This revision was made because the 2024 Title IX Rule required all forms of sex-based discrimination that fall under Title IX, including discrimination based on "sexual orientation" and "gender identity," to be addressed in accordance with that rule. In its decision to vacate the 2024 Title IX rules, the court's decision on January 9, 2025, stated that "sexual orientation" and "gender identity" were not included in the Title IX statute. ED-OCR has also taken the position that discrimination against students or staff on those bases is not covered under Title IX. However, under Washington state law, students, staff,

and others are still protected from discrimination based on sexual orientation, gender identity, or gender expression.

The issue of protecting LGBTQ+ students from sexual harassment and what policy and procedures apply has led to confusion that needs clarification—the focus of the Title IX regulations remains prohibited conduct.<sup>8</sup> Any individual—irrespective of their sexual orientation or gender identity—may allege "sexual harassment" and a district must consider it under the 2020 Title IX final regulations to determine how it should be addressed.<sup>9</sup> Put more plainly, LGBTQ+ students and staff are still protected from sexual harassment, and their complaints of sexual harassment may fall under models 3205 and 3205P. If their complaint is dismissed, like with any other student or staff member, a school district may be required to continue its investigation as described in model policy and procedure 3210 and 3210P, which was developed in accordance with the state complaint process outlined in WAC 392-190-065.

### Other Work Related to These Model Policies and Procedures

As boards adopt revised policies and procedures, they must provide notice about them to the school district community. Additionally, Title IX coordinators and other members of the Title IX team should be reviewing them, refreshing their training on the 2020 Title IX rules, and posting their training on district websites. And, of course, districts must continue to engage in recordkeeping, monitoring, and providing support to all students and staff.

<sup>8</sup> <https://www.federalregister.gov/d/2020-10512/page-30178>

<sup>9</sup> The first prong of 2020 Title IX definition of sexual harassment concerns an employee of the recipient conditioning the provision of an educational aid, benefit, or service on an individual's participation in unwelcome sexual conduct, which is commonly referred to as quid pro quo sexual harassment. Any individual may experience quid pro quo sexual harassment. The second prong of the §106.30 definition of sexual harassment involves "unwelcome conduct on the basis of sex determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity." [Emphasis added] Any individual may experience this form of harassment. The third prong of the sexual harassment definition in these final regulations is sexual assault, dating violence, domestic violence, or stalking on the basis of sex as defined in the Clery Act and VAWA, respectively. Again, any individual regardless of sexual orientation or gender identity may be sexually assaulted or experience dating violence, domestic violence, or stalking on the basis of sex.

# Synopsis of Impacts to Model Policy and Procedures 2020 and 2021

**M**odel Policy and Procedure 2020/2020P - Course Design, Selection, and Adoption of Instructional Materials and Model Policy and Procedure 2021/2021P - Library Information and Technology Programs were revised to comply with two engrossed substitute bills:

- ESB 5462 - Promoting inclusive learning standards and instructional materials in public schools
- ESHB 2331 - Modifying requirements for public school instructional and supplemental instructional materials

## **ESB 5462 – Policy Update and Reporting Requirement**

To achieve compliance with the laws enacted by the Legislature, school districts need to adopt new or updated policies. As ever, districts may achieve compliance in various ways, including the adoption of models developed by WSSDA. By June of 2025, WSSDA will make available an updated Model Policy and Procedure 2020/2020P Course Design, Selection, and Adoption of Instructional Materials. The updated models will specifically address two areas:

- School boards, within available materials, must adopt inclusive curricula and select diverse, equitable, inclusive, age-appropriate

instructional materials that include the histories, contributions, and perspectives of historically marginalized and underrepresented groups, including, but not limited to, people from various racial, ethnic, and religious backgrounds, people with differing learning needs, people with disabilities, LGBTQ people as the term is defined in RCW 43.114.010, and people with various socioeconomic and immigration backgrounds.

- In adopting curricula and selecting instructional materials, school boards must seek curricula and instructional materials that are as culturally and experientially diverse as possible, recognizing that the availability of materials that include the histories, contributions, and perspectives of historically marginalized and underrepresented groups may vary.

Within 10 days of completing instructional materials policy revision, districts must provide notice of the completed actions and electronic copies of the applicable policies to the Office of Superintendent of Public Instruction (OSPI). The reporting process will be provided to districts by June 2025. *This reporting applies solely to the two requirements above.*

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## How ESHB 2331 May Impact Policy and Procedure

### ESHB 2331 – Parent Involvement on Instructional Materials Committee (IMC)

IMCs must include at least one parent of enrolled students and develop comprehensive outreach programs for parents. IMCs must report quarterly to the board of directors and the public on recruitment efforts if they lack a parent member, per RCW 28A.320.230 (1)(a)(iii–iv).

### ESHB 2331 – Instructional Material Complaint Process

Includes an updated process for receiving, considering, and acting upon written complaints regarding core instructional materials based on steps outlined in RCW 28A.320.230 (1)(a)(vi).

### ESHB 2331 – Cultural Representation

IMCs must make recommendations for culturally and experientially representative instructional materials, including materials on the study of the role and contributions of individuals or groups that are part of a protected class under RCW 28A.642.010 and 28A.640.010, but approval or disapproval shall be by the local school district's board of directors, per RCW 28A.320.230 (2).

### ESHB 2331 – Supplemental Instructional Material Review and Removal Procedures

Adopt or revise policies and procedures governing requested reviews and removals of supplemental instructional materials, including library books. Procedure detailed in RCW 28A.320.235.

### ESHB 2331 – Non-Discrimination in Student Materials

School boards cannot refuse to approve or prohibit any instructional materials for student instruction on the basis that it relates to or includes the study of the role and contributions of any individual or group who is part of a protected class as established in RCW 28A.642.010 and 28A.640.010. Complaints and violations are managed under the provisions prohibiting discrimination in public schools. RCW 28A.320.233.



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## VISION

All Washington School Directors effectively govern to ensure each and every student has what they need to be successful within our state's public education system.

## MISSION

WSSDA builds leaders by empowering its members with tools, knowledge and skills to govern with excellence and advocate for public education.

## BELIEFS

WSSDA believes:

- Public education is the foundation to the creation of our citizenry, and locally elected school boards are the foundation to the success of public education.
- High-functioning, locally elected school boards are essential to create the foundation for successfully impacting the learning, development and achievement of each and every student.
- Ethical, effective and knowledgeable school directors are essential for quality public schools.
- Focusing on and addressing educational equity is paramount to assure the achievement of each and every student.
- Public school directors are best served through an innovative, responsive, and flexible organization that provides exceptional leadership, professional learning, and services in governance, policy, and advocacy.



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## OTHER UPDATES

### 2230

#### Transition to Kindergarten

Classification: **ESSENTIAL**

Revisions were made to better align this model policy with RCW 28A.300.072 and Chapter 392-425 WAC.

### 6801/6801P

#### Capital Assets/Theft-Sensitive Assets

Classification: **ESSENTIAL**

The revisions to the model policy and procedure are based on the capitalization threshold in the Uniform Guidance ([§200.439](#)) changing from \$5,000 to \$10,000 for assets acquired on or after October 1, 2024.

## ★ SPECIAL THANKS

### The Editor would like to thank the following people for their contributions to this issue:

Special thanks to our law partners at Stevens Clay, P.S. and Kelli Schmidt, JD, AWI-CH, Advance Law Office, PLLC.

## Keeping your board's policies current can be challenging

Reduce your legal vulnerabilities and save your district staff time by contacting WSSDA for help!

Changes in the law and recommended practices occur frequently, so policy-making should be an ongoing task for school boards.

WSSDA's policy review services are tailored to your district's needs. Our review will occur in installments to make it easier for your board to consider revisions on an ongoing basis.

Visit [wssda.org/policyreview](https://wssda.org/policyreview) for more information.

