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Washington Office of Superintendent of  
**PUBLIC INSTRUCTION**  
Chris Reykdal, Superintendent

July 5, 2024

( X ) Action Required  
Due date: **August 1, 2024**  
( ) Informational

## BULLETIN NO. 046-24 LEGAL AFFAIRS

TO: Educational Service District Superintendents  
School District Superintendents  
Charter School Directors  
School District Business Managers  
School District Civil Rights Compliance Coordinators  
School District Title IX Coordinators  
School District Gender-Inclusive Schools Coordinators

FROM: Chris Reykdal, Superintendent of Public Instruction

RE: Guidance on the New Title IX Rules and Responding to Sex-Based  
Discrimination, in Washington K–12 Schools

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## PURPOSE

On August 1, 2024, new U.S. Department of Education rules implementing Title IX of the Education Amendments of 1972 (Title IX) will go into effect. The new Title IX rules outline prohibitions on sex-based harassment and specific requirements for school districts to respond to complaints of sex-based discrimination. These rules represent a shift in federal standards for how schools must respond to sexual harassment and a realignment with existing Washington sexual harassment guidelines. Therefore, for Washington schools, the most noticeable impact of the new Title IX rules will likely be a comparatively more straightforward grievance procedure.

This bulletin clarifies the standards and procedures for responding to sex-based discrimination,

including sexual harassment, in Washington K–12 schools<sup>1</sup> in accordance with both state law and Title IX, and outlines several immediate actions necessary to implement the new requirements. This bulletin is not intended to provide comprehensive guidance about compliance with the Title IX rules.

OSPI is committed to assisting school districts in the important work of ensuring all students have access to education without experiencing sex-based discrimination.<sup>2</sup> In addition to this bulletin, the OSPI Equity and Civil Rights Office will develop additional resources and training opportunities. The Equity and Civil Rights Office is also available to provide technical assistance to school districts regarding the Title IX rules as well as existing state laws, rules, and guidelines prohibiting sex-based discrimination.

## BACKGROUND

Title IX prohibits discrimination on the basis of sex in education programs and activities that receive federal financial assistance.<sup>3</sup> The U.S. Department of Education last updated the Title IX rules in 2020.<sup>4</sup> Compared to existing Washington law, the previous 2020 rules required schools to implement a highly prescriptive complaint process and apply a narrow definition of sexual harassment.

Washington law, at chapters [28A.640](#) Revised Code of Washington (RCW) and [392-190](#) Washington Administrative Code (WAC), prohibits sex discrimination, including sexual harassment, in schools.

Discrimination based on sexual orientation, gender identity, and gender expression is also expressly prohibited in Washington K–12 schools in accordance with chapters [28A.642](#) RCW and [392-190](#) WAC, as well as OSPI's Civil Rights Guidelines, [Prohibiting Discrimination in](#)

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<sup>1</sup> Federal and state nondiscrimination requirements also apply to Washington's public charter schools and tribal compact schools. Where this bulletin refers to schools and school districts, the information also applies to Washington's public charter schools and tribal compact schools.

<sup>2</sup> To learn more about the experience of student survivors of sexual assault in Washington's public K–12 schools, review [OSPI's report to the legislature](#), including a summary of student listening sessions, on survivor-centered and trauma-informed responses to sexual assault and supporting survivors of sexual assault in Washington's K–12 public schools.

<sup>3</sup> [20 U.S.C. 1681](#) ("No person in the United States shall, on the basis of sex, be excluded from participating in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance . . .").

<sup>4</sup> The 2020 rules went into effect on August 14, 2020. OSPI published a bulletin, [Guidance on the New Title IX Rules and Responding to Sexual Harassment in Washington K–12 Schools, Bulletin No. 058-20](#), to clarify how the 2020 rules should be implemented in light of existing state law.

[Washington Public Schools](#).<sup>5</sup> In accordance with Washington law and guidelines, to prevent discrimination, school districts must treat students consistently with their gender identity.<sup>6</sup> Schools must also ensure students are free from discriminatory harassment based on sexual orientation, gender identity, and gender expression.

OSPI's rules at chapter [392-190 WAC](#) define the formal complaint process that all school districts must implement in response to complaints alleging discrimination based on a protected class, including sex, gender identity, gender expression, and sexual orientation.

## OVERVIEW OF NEW TITLE IX RULES

The Title IX rules specify the obligations of K–12 public schools to provide an educational environment free from discrimination on the basis of sex and to respond to notice of sex-based discrimination. OSPI strongly encourages Washington school districts to carefully review the Title IX rules.<sup>7</sup>

Significant changes in the Title IX rules include the following:

- Compared to the previous 2020 rules, the new Title IX rules take a more comprehensive view of sex-based discrimination that schools must prevent and respond to, which aligns with existing Washington law. This includes a broadened scope of what constitutes sex discrimination, such as clarifying schools' obligations not to discriminate based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.<sup>8</sup>
- The Title IX rules establish a definition for sex-based harassment that considers the behavior from both an objective and subjective lens. The definition also includes a list of factors to consider as part of a fact-specific inquiry into whether sex-based harassing behavior creates a hostile environment.

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<sup>5</sup> The Washington Law Against Discrimination also applies to public schools as places of public accommodation. Chapter [49.60 RCW](#) and Title [162 WAC](#).

<sup>6</sup> RCW [28A.642.010](#) and [28A.642.020](#), and OSPI's Civil Rights Guidelines, [Prohibiting Discrimination in Washington Public Schools](#) (2012).

<sup>7</sup> The unofficial version of the final regulations is available [here](#). See additional resources from the Department regarding the major provisions of the Title IX rules, which are included in the Resources section of this bulletin.

<sup>8</sup> While the Title IX rules address nondiscrimination based on gender identity, the rules do not address student participation in athletics based on gender identity. The Department has filed a separate notice of rulemaking regarding athletic participation. [Notice of Proposed Rulemaking, 88 FR 22860](#) (April 13, 2023). Washington's existing civil rights guidelines state that students may participate in athletics in a manner that is consistent with their gender identity. [Prohibiting Discrimination in Washington Public Schools](#).

- The Title IX rules outline a grievance procedure that may be less prescriptive and resource-intensive than the procedure required in the previous 2020 rules.<sup>9</sup> Notably, Title IX grievance procedures now apply to all forms of sex discrimination, which removes the need for a different complaint procedure for a subset of sex discrimination cases, as was necessary with the 2020 rules.
- The Title IX rules include antidiscrimination requirements related to parental, family, and marital status, as well as pregnancy and related conditions. Related to pregnant and parenting students, the rules require schools to provide reasonable modifications to the school's policies, practices, and procedures as necessary to prevent sex discrimination and ensure equal access to the school's education program or activity.<sup>10</sup> Examples of reasonable modifications, as well as other guidelines for supporting pregnant and parenting students, are outlined in the rules.<sup>11</sup>

While ongoing litigation regarding the Title IX rules may be impacting the implementation date for some states, as of the date of this bulletin, Washington is not impacted, and the rules will go into effect for Washington schools on August 1.

## **ACTIONS REQUIRED TO IMPLEMENT NEW TITLE IX RULES**

To implement the Title IX rules in light of the U.S. Department of Education's August 1 effective date, immediate action will be necessary in the following areas:

### **Revise Policies and Procedures Related to Sex-Based Discrimination**

School districts must update their sexual harassment policy and procedure to comply with the new Title IX rules, as well as existing state law. The Washington State School Directors' Association (WSSDA) is currently revising the model policy and procedure for Sex-Based Discrimination (3205/3205P), which will be designed to meet the requirements of the new Title IX rules and existing state law, rules, and guidelines. To assist school districts with implementing the Title IX rules, WSSDA is also developing a model Pregnant and Parenting Students policy and procedure, 3206 and 3206P.

School districts should also ensure they respond to complaints alleging discrimination based

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<sup>9</sup> For example, the most prescriptive grievance procedures in the current regulations are removed, such as the required 10-day evidence review period or the required opportunity for parties to submit written questions each other. See [34 CFR § 106.45](#). Additionally, the rules no longer prohibit the Title IX Coordinator from being the same person as the investigator or decisionmaker in a Title IX investigation. [34 CFR § 106.45\(b\)\(2\)](#).

<sup>10</sup> [34 CFR § 106.40](#) and [§ 106.57](#).

<sup>11</sup> [34 CFR § 106.40\(b\)\(3\)](#).

on gender identity, gender expression, or sexual orientation in accordance with the new procedures.<sup>12</sup>

*Implementation tip:* When adopting revised policies and procedures, school districts should also update any corresponding links to these policies and procedures in student handbooks, posters, staff training materials, and on district websites.

## **Implement Title IX Training**

In addition to training requirements in WAC [392-190-020](#), the Title IX rules require school districts to ensure *all employees* receive training related to their duties under Title IX.<sup>13</sup>

Additionally, the Title IX rules require further training for the following employees:

- TIX Coordinator (and any designees)
- Decisionmakers in the Title IX grievance process (and any designees)
- Investigators of Title IX complaints
- Facilitators of the informal resolution process for Title IX complaints
- Any other persons responsible for implementing the school district's Title IX grievance procedures or have the authority to modify or terminate supportive measures

This training must occur promptly upon hiring or change of position that alters their duties under Title IX, and annually thereafter.

OSPI is currently preparing training materials, including recorded training modules, intended to meet these training requirements. These training materials will be available before the 2024–25 school year.

*Implementation tip:* As school districts review the new requirements of the Title IX rules and roll out training, this is a good opportunity to consider which employee should be designated as the Title IX Coordinator. OSPI recommends districts consider designating an employee who has the capacity in their role to manage Title IX implementation and respond to complaints, as well as be approachable and responsive to students, families, and employees who have questions or concerns.

## **Update Handbooks, Web Notices, and Nondiscrimination Statements**

The Title IX rules require school districts to notify students, families, and employees about the

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<sup>12</sup> Previously, such complaints would be responded to under a school district's nondiscrimination procedure (WSSDA's 3210P).

<sup>13</sup> [34 CFR § 106.8](#).

school district's commitment to nondiscrimination under Title IX, as well as information about the district's Title IX Coordinator and how to report concerns and complaints.<sup>14</sup> OSPI's [model handbook language](#), which must be included in each school district's handbooks and websites, is designed to meet these requirements.<sup>15</sup>

School districts may also need to revise their nondiscrimination statement to include Title IX's notice requirements. OSPI's newly updated [sample nondiscrimination statement](#) is designed to incorporate the Title IX notice language.

## RESOURCES FOR IMPLEMENTING THE NEW TITLE IX RULES

**OSPI resources and technical assistance:** OSPI's Equity and Civil Rights Office is available to provide technical assistance to school districts on implementing the Title IX rules and state law, rules, and guidelines, as well as other topics related to supporting students who experience sex-based discrimination and harassment in schools.<sup>16</sup>

For more information on responding to sexual harassment in Washington schools, visit OSPI's [Discriminatory and Sexual Harassment](#) website. OSPI will continue to update this page with additional resources about implementing the Title IX rules in line with Washington law, rules, and guidelines.

**Public School Employees:** While the information in this bulletin is specific to sex-based discrimination against students, the Title IX rules also apply to sex-based discrimination against employees. OSPI may develop additional guidance for school districts specific to the Title IX rules' impact on employee sex-based discrimination. In the meantime, school districts should contact their legal counsel for advice on what additional changes may be necessary specific to their situation.

**New Title IX Rules Resources:** The U.S. Department of Education, Office for Civil Rights (OCR) has provided the below guidance to assist schools in understanding the requirements and standards in the Title IX rules.

- [Notice of Final Rulemaking \(Unofficial Version\)](#)—This document includes the text of the rules that go into effect on August 1 (See pages 1505–1561) as well as supplementary information that explains OCR's response to public comments and reasoning for the

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<sup>14</sup> [34 CFR § 106.8\(c\)](#).

<sup>15</sup> [RCW 28A.300.286](#) and [OSPI Bulletin No. 018-24: New Requirements for Annual Notices Regarding Discrimination, Harassment, Intimidation, and Bullying \(4/5/2024\)](#).

<sup>16</sup> In 2023, OSPI submitted a [report to the legislature](#) on survivor-centered and trauma-informed responses to sexual assault in Washington's K–12 public schools.

revisions (see pages 1–1504)

- [Brief Overview of Key Provisions of the Department of Education’s 2024 Title IX Final Rule](#)
- [Fact Sheet: U.S. Department of Education’s 2024 Title IX Final Rule Overview](#)

## INFORMATION AND ASSISTANCE

For questions regarding this bulletin, please contact the Equity and Civil Rights Office at 360-725-6162 or email [equity@k12.wa.us](mailto:equity@k12.wa.us). The OSPI TTY number is 360-664-3631.

This bulletin is also available on the [Bulletins](#) page of the OSPI website.

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