

Old Capitol Building
PO Box 47200
Olympia, WA 98504-7200

ospi.k12.wa.us



Washington Office of Superintendent of
PUBLIC INSTRUCTION
Chris Reykdal, Superintendent

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BULLETIN NO. 007-25 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

FROM: Chris Reykdal, Superintendent of Public Instruction

RE: Guidance on Returning to the 2020 Title IX Rules and Responding to Sexual Harassment in Washington K–12 Schools

CONTACT: Sarah Albertson, Managing Attorney, Equity and Civil Rights
360-725-6162, sarah.albertson@k12.wa.us

PURPOSE

Due to recent action taken by the executive and judiciary branches of the federal government related to Title IX of the Education Amendments Act of 1972 (Title IX), the Office of Superintendent of Public Instruction (OSPI) is issuing this bulletin to clarify the standards and procedures for Washington’s K–12 school districts¹ when responding to sexual harassment in accordance with both Title IX and state law. It also outlines some of the immediate actions that schools must take to effectively implement both federal and state law. This bulletin is not intended to provide comprehensive guidance about Title IX or the 2020 Title IX rules that are now in effect. Schools should continue to consult with their legal counsel for guidance on fact-specific legal requirements and issues.²

¹ Federal and state nondiscrimination requirements also apply to Washington’s public charter schools and tribal compact schools. Where this bulletin refers to Washington schools or school districts, it is intended to include all Washington public school districts and schools, public charter schools, and tribal compact schools.

² Note also that while the information in this bulletin is specific to sexual harassment against students, the Title IX Rules also apply to sexual harassment against employees. School districts with questions about sexual harassment against employees should contact their legal counsel for further advice.

BACKGROUND

On January 9, 2025, a federal court issued a decision vacating the U.S. Department of Education's (Department) Title IX rules that went into effect in August 2024.³ Consistent with the court's order, the Department will no longer enforce the 2024 Title IX rules in any U.S. state, including Washington.

[On February 4, 2025, the Department's Office for Civil Rights \(OCR\) issued guidance](#) stating that it will begin enforcing Title IX pursuant to the 2020 Title IX Rules, outlined at [34 C.F.R. Part 106 et seq.](#) In this same guidance, 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." Notably, the 2020 Rule expressly protects people, regardless of gender identity or sexual orientation ([2020 Rule at 30178](#)).

Washington state law expressly prohibits discrimination based on sexual orientation, gender identity, and gender expression.⁴ 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.⁵ OSPI's rules at [Chapter 392-190 WAC](#) define a complaint process that school districts are required to implement in response to complaints of discrimination, including sexual harassment.

For these reasons, the impact of the reversion to the 2020 Title IX Rules on Washington schools is primarily procedural, impacting how school districts respond to complaints of sexual harassment as defined under the Title IX regulations versus sexual harassment as defined under Washington law.

OVERVIEW OF THE 2020 TITLE IX RULES

Title IX prohibits discrimination on the basis of sex—including sexual harassment—in education programs and activities that receive federal financial assistance.⁶ The 2020 Title IX rules specify how recipients of federal financial assistance, including K–12 public schools, must respond to

³ *Tennessee v. Cardona*, 2: 24-072-DCR (E.D. Ky.).

⁴ RCW 28A.642.010.

⁵ See also OSPI guidelines, *Prohibiting Discrimination in Washington Public Schools: Guidelines for school districts to implement chapters 28A.640 and 28A.642 RCW and chapter 392-190 WAC*, and the Washington Law Against Discrimination, Chapter 49.60 RCW and Title 162 WAC.

⁶ 20 U.S.C. §1681 ("No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...").

allegations of sexual harassment consistent with Title IX's prohibition against sex discrimination.⁷ Districts are strongly encouraged to carefully review the 2020 Title IX rules.

While Washington school districts cannot rely on Title IX rules alone to guide their response to sexual harassment, some significant elements of the 2020 Title IX rules include the following:

- The 2020 Title IX rules' definition of hostile environment sexual harassment limits a school district's responsibility to respond only to harassment that is "determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the [school district's] education program or activity."⁸
- Under the 2020 Title IX rules, schools are required to respond to sexual harassment in a manner that is not "deliberately indifferent." A school is deliberately indifferent if its response to sexual harassment is clearly unreasonable in light of the known circumstances.⁹
- The 2020 Title IX rules' grievance process for responding to complaints of sexual harassment includes specific due process requirements. For example, the rules include specific timelines for the various steps of the process, written notices to parties and witnesses, an opportunity for each party to review relevant evidence, and an opportunity for each party to review the investigative report and submit written questions to the other party or witnesses before a final determination is made.¹⁰ Moreover, the 2020 Title IX rules require use of the Title IX grievance process only when a complaint is made by a specific set of individuals, including the student alleged to be the subject of sexual harassment; the student's parent, guardian, or legal representative; or the Title IX Coordinator.¹¹

Washington law provides even broader protections from sexual harassment. For example, under Washington law, sexual harassment is conduct that creates a hostile environment when it is sufficiently severe, persistent, OR pervasive.

Because Washington law also specifies how school districts must respond to sexual harassment, school districts may not rely on the Title IX rules alone to guide their response to sexual harassment. As outlined in this bulletin, Washington schools must also ensure they are meeting state requirements to investigate and respond to allegations of sexual harassment.

⁷ The scope of these rules is limited to sexual harassment. The rules do not impact a school district's obligations regarding other types of sex or gender-based discrimination, such as sex equity in athletic programs or access to courses and programs.

⁸ See definition of sexual harassment at 34 CFR § 106.30(a).

⁹ 34 CFR § 106.44(a).

¹⁰ See 34 CFR § 106.45.

¹¹ 34 CFR 106.45(a)(2).

RESPONDING TO SEXUAL HARASSMENT IN ACCORDANCE WITH BOTH STATE LAW AND TITLE IX

Standards for Responding to Sexual Harassment in WA Schools

While implementing the 2020 Title IX rules, Washington school districts must continue to meet the following requirements for responding to sexual harassment, as established in state law.

Washington law, at [RCW 28A.640.020](#), defines sexual harassment as unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact, or other verbal or physical conduct or communication of a sexual nature if:

- Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining an education or employment;
- Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's education or employment; or
- That conduct or communication has the purpose or effect of substantially interfering with an individual's educational or work performance, or of creating an intimidating, hostile, or offensive educational or work environment.

Harassing conduct creates a "hostile environment" under state law when it is sufficiently severe, persistent, or pervasive that it limits or denies a student's ability to participate in or benefit from a school district's course offerings, including any educational program or activity.¹²

In accordance with [WAC 392-190-0555](#), upon notice of possible sexual harassment, a school district must take prompt and appropriate action to investigate and take prompt and effective steps reasonably calculated to end harassment, eliminate the hostile environment, prevent its recurrence, and as appropriate, remedy its effects.

In Washington, a school district is deemed to have notice of sexual harassment if a reasonable employee knew, or in the exercise of reasonable care should have known, about the harassment.¹³ With the 2020 Title IX rules, this notice standard is expanded so that a school district has notice when any employee of an elementary or secondary school is aware of possible sexual harassment.¹⁴ As such, the standard for when Washington schools have notice of sexual harassment is when *any* employee knew, or in the exercise of reasonable care should have known, about the harassment.

¹² WAC 392-190-0555(1)(b).

¹³ WAC 392-190-0555(2).

¹⁴ 34 CFR § 106.30(a).

Impact of Title IX Rules on Existing Complaint Procedures Under Chapter 392-190 WAC

While the 2020 Title IX rules include a specific complaint process that school districts must follow in response to Title IX sexual harassment complaints, state law also outlines requirements for Washington school districts in responding to sexual harassment complaints. For this reason, Washington school districts must ensure they continue to comply with state requirements while implementing the Title IX complaint process.

OSPI's rules, [WAC 392-190-065](#) through [392-190-0751](#), outline the complaint process Washington school districts must use in response to written complaints of discrimination, including sexual harassment. State complaint procedures must still be followed for complaints of sexual harassment that do not meet the Title IX standards of a formal complaint.¹⁵

School districts must respond to sexual harassment complaints filed under Title IX in accordance with the complaint process outlined in the 2020 federal rule.¹⁶ To ensure compliance with state law while implementing the Title IX complaint process, school districts *must also meet the following requirements from [Chapter 392-190 WAC](#) when a sexual harassment complaint is filed under Title IX:*

- When on notice of possible sexual harassment, a school district must take prompt and appropriate action to investigate and take prompt and effective steps reasonably calculated to end harassment, eliminate the hostile environment, prevent its recurrence, and as appropriate, remedy its effects.¹⁷ This is true whether or not a formal Title IX complaint has been filed.
- When a complaint is filed, a school district must provide parties a copy of the district's sexual harassment complaint procedures.
- A school district must complete its investigation and provide parties a written decision within 30 days unless agreed upon by the parties or if an exceptional circumstance requires an extension.¹⁸ If an extension to this timeline is necessary, the school district must notify the parties in writing of the reasons for the extension and the anticipated response date. For purposes of administrative enforcement, OSPI may consider implementation of the Title IX complaint process as an exceptional circumstance that may require a reasonable timeline extension.

¹⁵ See the definition of a formal complaint at 34 CFR § 106.30(a). A formal complaint must be filed by the victim (the complainant) of the alleged sexual harassment (or their parent or legal guardian) or by the Title IX coordinator. The complaint must request the district investigate allegation(s) of sexual harassment (specifically, conduct that meets the definition of Title IX sexual harassment, as defined in 34 CFR § 106.30(a)) against a named individual (the respondent) who, at the time of the alleged harassment, was under the control of the school district (such as a student, employee, or volunteer). At the time of filing the formal complaint, the complainant must be participating in or attempting to participate in the school district's educational program or activity.

¹⁶ See 34 CFR § 106.45.

¹⁷ WAC 392-190-0555(1)(c).

¹⁸ WAC 392-190-065(5).

- The district's written decision must include all components outlined in [WAC 392-190-065\(6\)](#).
- Any corrective measures must be instituted as expeditiously as possible but no later than 30 days after the school district's written response, unless otherwise agreed to by the complainant.¹⁹
- A school district must provide an option to appeal the determination in accordance with [WAC 392-190-070](#). The right to appeal is not limited to the allowable appeal bases identified in [34 CFR § 106.45\(b\)\(8\)](#). Following an appeal, the school district must also provide an option to file a complaint with OSPI in accordance with [WAC 392-190-075](#). All complaint and appeal options available to complainants must also be available to the individual who is alleged to have engaged in the sexual harassment (the respondent).²⁰
- If a Title IX formal complaint is dismissed in accordance with [34 CFR § 106.45\(b\)\(3\)](#), a school district may be required to continue its investigation in accordance with the state complaint process outlined in WAC 392-190-065.

For purposes of administrative enforcement, OSPI will continue to apply the preponderance of the evidence as the standard of proof in determining whether a school district has complied with [Chapter 392-190 WAC](#) and [OSPI's Civil Rights Guidelines](#).

ACTIONS REQUIRED TO IMPLEMENT 2020 TITLE IX RULES

To implement the 2020 Title IX rules, which are now in effect, school districts must take immediate actions in the following areas:

1. Revise Sexual Harassment Policy and Procedure

Washington school districts must have an adopted sexual harassment policy and procedure that aligns with state law.²¹ School districts must update their sexual harassment policy and procedure to ensure they also align with the 2020 Title IX rules.²² School districts may revert to their previous policy and procedure that aligned with the 2020 Title IX rules and state law, such as the Washington State School Directors' Association's reinstated model Sexual Harassment of Students policy (3205) and procedure (3205P).

¹⁹ WAC 392-190-065(6)(d).

²⁰ 34 CFR § 106.45(8).

²¹ RCW 28A.640.020; WAC 392-190-057.

²² 34 CFR § 106.8(c).

2. Re-Designate Title IX Coordinator (If Currently Superintendent)

The 2020 Title IX rules limit who may be designated as a school district's Title IX Coordinator. Specifically, the Title IX Coordinator may not be the same person as the decision-maker in a Title IX sexual harassment complaint.²³

Because Washington's discrimination complaint process, at [WAC 392-190-065\(5\)](#), designates a school district's Superintendent (or their designee) as the decision-maker in a complaint, including sexual harassment complaints, the 2020 Title IX rules effectively prohibit the Superintendent from serving as the Title IX Coordinator.

Moving forward, Washington school districts that currently have the Superintendent designated as the Title IX Coordinator will need to designate a different employee as Title IX Coordinator, ensure that individual is trained in their role as Title IX Coordinator, and update their contact information in the district's nondiscrimination notices as well as OSPI's [School District and Charter School Compliance Coordinators webpage](#).

3. Implement Training for Title IX Staff

In addition to training requirements in [WAC 390-190-020](#), the 2020 Title IX rules require school districts to ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process receive training on the Title IX definition of sexual harassment; the scope of the district's education program or activity; how to conduct an investigation and complaint process, including hearings, appeals, and informal resolution processes, as applicable; and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.²⁴

School districts must also ensure that decision-makers receive training on issues of relevance of questions and evidence, including when questions and evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant, and any technology to be used at a live hearing.²⁵

Additionally, school districts must ensure any staff who conduct investigations receive training

²³ 34 CFR § 106.45(b)(7)(i). The Title IX rules also clarify that any individual designated as a Title IX Coordinator, investigator, decision-maker, or any person designated to facilitate an informal resolution process, may not have a conflict of interest or bias for or against complainants or respondents generally, or an individual complainant or respondent. 34 CFR § 106.45(b)(1)(iii).

²⁴ 34 CFR § 106.45(b)(3)(iii). If using training resources from national organizations or the U.S. Department of Education, school districts should be aware that such trainings likely will not incorporate the Washington-specific requirements addressed in this bulletin.

²⁵ While the Title IX rules require live hearings for postsecondary institutions, they are not required for K-12 school districts. If a school district chooses to incorporate live hearings into their Title IX complaint process, the above training requirement must be met, along with the requirements outlined in 34 CFR § 106.45(b)(6).

on issues of relevance to create an investigative report that fairly summarizes relevant evidence.²⁶

The 2020 Title IX rules require school districts to make all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process publicly available on its website or, if the district does not maintain a website, the district must make these materials available upon request for inspection by members of the public.²⁷

RESOURCES

OSPI Technical Assistance

For technical assistance on responding to sexual harassment in Washington schools, visit the [OSPI Sexual Harassment in Washington K–12 Public Schools webpage](#). OSPI will update this page with additional technical assistance and resources as they are available.

OCR Technical Assistance

OCR has compiled information and technical assistance regarding the 2020 Title IX rules on its [Sex Discrimination: Overview of the Law webpage](#).

INFORMATION AND ASSISTANCE

For questions regarding this bulletin, please contact Sarah Albertson, Managing Attorney, Equity and Civil Rights, at 360-725-6162 or email sarah.albertson@k12.wa.us. The OSPI TTY number is 360-664-3631.

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

Tennille Jeffries-Simmons
Chief of Staff

Darryl Colman
Deputy Chief Legal Officer
Office of Legal Affairs

Sarah Albertson
Managing Attorney
Equity and Civil Rights

CR: SA

²⁶ 34 CFR § 106.45(b)(3)(iii).

²⁷ 34 CFR § 106.45(b)(10)(i)(D).

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