

Policy & Legal News

HELPING SCHOOL DISTRICTS TRANSLATE LAW INTO ACTION




WSSDA

SEPTEMBER 2013

WASHINGTON STATE SCHOOL
DIRECTORS' ASSOCIATION

This back-to-school edition features the last of the 2013 legislative session updates currently available: Academic Acceleration, CPR/AED, and Computer Science education. You'll also find policy changes required by WAC updates to the Highly Capable Program, an updated Student Conduct policy and procedure and an updated Infectious Disease procedure. We've also included a clarification for Policy and Procedure 3246, Use of Isolation, Restraint, Restraint Devices and Reasonable Force.

Two remaining juggernauts--the "Discipline policy" changes required by ESSB 5946 and "Epi-pen" policy changes --are simply not ready for primetime. The WSSDA discipline policy, 3241, requires significant changes to the Washington Administrative Code (WAC), including the definition of "expulsion." Additionally, the Discipline Task Force that OSPI is required to convene is just getting up and running. Rather than release a revised discipline policy that will need to be updated again next year, we have decided to hold off until at least the WAC is revised. In the meantime, we have updated our Student Conduct policy and procedure in anticipation of the discipline policy changes that will take place.

The new Epi-pen law continues to cause controversy because so many questions remain unanswered. Districts should keep in mind that the entire law is permissive, but if they adopt the process of maintaining and using a supply of Epi-pens, they must comply with certain legal requirements. WSSDA will issue a policy and procedure only after consensus has been reached on the outstanding issues.

Also note that, due to the extended 2013 legislative session, the statutory revisions and additions will not be codified until late October. Therefore, our legal references cite you to the correct statute chapter, if not the specific statute. We will update these cites in December once the new statute numbers are released and available to hyperlink.

As for the remaining new bills, Suicide Prevention and Sexual Education in Curriculum, workgroups are just getting underway and we will be issuing policies when appropriate. The work group on Juvenile Sex Offenders in schools will be finishing their report this fall, so in October we plan to present, with Kathleen Sande of OSPI, a webinar on what schools need to know about juvenile sex offender notification and monitoring.

Here's to a great new school year,
Heidi Maynard, Editor

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★ POLICY REVISIONS

The following WSSDA model policies have been revised. For your convenience, updated Word documents are included with this issue of *Policy and Legal News*.

NEW

CLASSIFICATION: DISCRETIONARY

- **2195/2195P, Academic Acceleration.** New policy satisfies requirements of SSHB 1642, which passed the legislature in the 2013 regular session.

UPDATES

CLASSIFICATION: ESSENTIAL

- **2190/2190P, Highly Capable Programs.** Updated to reflect revisions to Chapter 392-170 WAC.
- **2410/2410P, High School Graduation Requirements**
 - Policy revised to include CPR/AED instruction in one health class required for graduation.
 - Cross references and legal references updated.
- **2413, Equivalency Credit for Career and Technical Education Courses**
 - Policy updated to include revision of RCW 28A.230.097, requiring board to approve AP computer science courses as equivalent to high school math or science and denoting same on a student's transcript.
 - Legal references updated.

CLASSIFICATION: PRIORITY

- **3240/3240P, Student Conduct**
 - Re-titled Student Conduct Expectations and Reasonable Sanctions.
 - Updated language.
 - Legal references added.
- **3412, Automated External Defibrillators (AED)**
 - Policy revised to comply with new graduation requirement for CPR instruction, to include use of AED.
 - Cross references updated.
- **3414P, Infectious Diseases**
 - Procedure's list of reportable conditions replaced with hyperlink to Reportable Conditions page on DOH website for ease of reference.
 - Updates requested by OSPI/DOH/State Board of Health/School Nurse Corps added.

CLARIFICATIONS*

CLASSIFICATION: ESSENTIAL

- **3246P, Use of Isolation, Restraint, Restraint Devices and Reasonable Force**
 - Clarifies that new statutory definitions of "restraint," "restraint device," and "isolation" apply only to students with an IEP or Section 504 plan.

REVISED TABLES OF CONTENTS*

- **2000 Series, Instruction.** Revised to reflect new Policy/Procedure 2195, Academic Acceleration.
- **3000 Series, Students.** Revised to reflect title change to Policy/Procedure 3240, Student Conduct Expectations and Reasonable Sanctions

As stated in WSSDA Policy 1310, "Non-substantive editorial revisions and changes in administrative, legal and/or cross references need not be approved by the board."

POLICY/PROCEDURE 2195

Legislature encourages boards to adopt Academic Acceleration policy

WSSDA has issued a new discretionary policy and procedure: 2195, Academic Acceleration. The policy is generated by SSHB 1642, which passed in the 2013 regular legislative session and went into effect July 28, 2013.

The legislative intent of the bill is to spur district support of dual-credit opportunities for high school students and to “eliminate barriers – real or perceived, that may prevent students from enrolling in rigorous advanced courses, including dual credit courses.” The board is encouraged to adopt an academic acceleration policy, under which students who meet state standards in a particular

area—be it math or reading/writing—are automatically enrolled in the next most rigorous level of advanced courses. The ultimate goal is that these students will eventually be eligible for automatic enrollment in dual-credit courses.

Boards that adopt academic acceleration policies must notify students and parents/guardians regarding the policy and the advanced courses available to students. Districts must also provide parents/guardians with the option for their student to “opt out” of the process.

Section three of the bill establishes specific fund allocation to the Academic Acceleration Incentive

Program, a one-time competitive grant offered to high schools that would allow them to expand their dual-credit courses. To be eligible for the grant, the board must have adopted an academic acceleration policy. OSPI, which will make the awards, is required to give priority to high schools with a high proportion of low income students and high schools seeking to develop new capacity for dual credit courses rather than expanding current capacity. Districts compete for the grant by reporting the number of students enrolled in dual credit programs according to certain criteria.

Student Conduct policy and procedure revised

WSSDA has revised Policy/Procedure 3240, formerly titled Student Conduct, as a prelude to the forthcoming revisions to our “Discipline policy,” 3241, based on ESSB 5946. The new law, which passed the legislature on the final day of the last special session, requires a WAC change to the definition of “Expulsion,” so when that is complete we will proceed with updating Policy/Procedure 3241.

WSSDA’s revision of 3240 includes a name change to Student Conduct Expectations and Reasonable Sanctions. The procedure has undergone a major rewrite based in part on the Kent School District’s recent update of its own procedure.

In particular, we like the way the Kent procedure carefully balances school safety and reasonable sanctions for violations. It provides presumptive guidelines and relevant mitigating and aggravating factors for each offense, yet allows principals plenty of latitude to use their own professional judgment in deciding sanctions. We also like the comprehensive and detailed descriptions of the conduct violations, as well as the definitions of reasonable self-defense. Kent’s procedure is not a “one-size-fits-all” for districts, but is, in our view, an excellent starting point.





POLICY 3412

One health class required for graduation must now include instruction in CPR and use of AED

WSSDA has updated Policy 3412, Automated External Defibrillators (AED) and Policy/Procedure 2410, High School Graduation Requirements, to include a new legal requirement that at least one health class required for graduation include instruction in cardiopulmonary resuscitation (CPR) and use of AED.

SHB 1556 went into effect July 28, 2013. The new law requires the instruction, which must be provided beginning in the 2013/14 school year, be a program developed by the American Heart Association or the American Red Cross or be "nationally recognized and based on the most current national evidence-based emergency cardiovascular care guidelines for [CPR]." The instruction must also include the appropriate use of an AED, which may be taught "by video."

The law allows districts to offer the instruction directly or to use community-based providers such as the local fire department. The instruction is not required to be performed by a certificated teacher. If a certificated teacher does provide instruction, he or she does not have to be a certified CPR trainer. Finally, no student is required to earn certification in CPR to successfully complete the instruction.

POLICY 2413

Legislature requires boards to approve AP computer science courses as equivalent to high school math or science

WSSDA has updated Policy 2413, Equivalency Credit for Career and Technical Education Courses, pursuant to SHB 1472. The new law, which went into effect July 28, 2013, now requires boards to approve Advanced Placement (AP) computer science courses as equivalent to high school math or science. Board approval of such a course as equivalent to high school math requires that the student has successfully completed or is concurrently enrolled in Algebra II. Furthermore, the student's transcript is required to denote that AP computer science qualifies as a math-based quantitative course for students who complete the course in their senior year.

The intent of the law is to treat AP computer science as an academic subject, thereby promoting student enrollment in it and eventually filling technology job vacancies statewide.



POLICY AND PROCEDURE 2190

Highly Capable Program WAC overhauled

WSSDA has revised its Policy and Procedure 2190, Highly Capable Program to comply with recent revisions to the Highly Capable WAC. Perhaps the biggest change is that the Highly Capable Program (HCP) is now part of basic education. “For highly capable students,” now reads WAC 392-170-012, “access to accelerated learning and enhanced instruction is access to basic education.” Districts can now access Basic Ed funding, in addition to HCP categorical funds, to pay for HCP. Another big change involves when students can be identified. Formerly, districts determined grade levels for providing HCP services which could include grades K-12; however, HCP identification and services now must be extended for a grades K-12 continuum. Once identified as Highly Capable, students will continue to receive services for as long as they remain in the district schools.

Significantly, the Legislature has not allocated additional funding to accomplish the additional coverage. Funding remains at approximately 2.3%. Districts have the flexibility, however, to determine their own multiple criteria for selection and to determine how many students satisfy it. There is no single method for identifying highly capable students, and it no longer requires a cognitive assessment, academic achievement and creative abilities. Nor does the HCP need to have its own class. Individual HCP students can receive services in their regular classes and tackle the advanced curriculum they need while remaining with their peer group.

The new WAC contains procedural changes as well. The 2013/14 school year is a transition year in which districts need to develop a grades K-12 HCP including policy, procedure, and program documents compliant with the WAC. Each district

will complete and submit to OSPI a HCP Annual Plan (iGrants form package 217). Second class districts, meanwhile, can submit a scaled-back version of an Annual Plan, consisting of a signed statement of assurances. The Annual Plan must be approved by the board by formal action. Districts will also submit iGrants form package 250, End of Year Report, to OSPI.

Districts should also know that the Gifted values that they input in CEDARS are very important. OSPI will prepopulate the district’s End of Year Report with the gifted values submitted in the district’s Annual Plan. The Gifted values used last year have been retired and four new Gifted values have been added. The new Gifted values are based on services received rather than fund source for program service. For the 2013-14 school year, districts will need to assign each identified HCP student the appropriate new Gifted value or values based on services received.

District Highly Capable Programs will continue to be subject to OSPI Consolidated Program Review (CPR) in the 2013/14 school year. The CPR monitoring for the HCP will include documentation/evidence of transition year activities in addition to review of key program components for compliance. For districts that did not have a HCP last year, monitoring will focus on transition year activities as related to specific program components.



Clarification reduces confusion in student isolation and restraint bill

Last month we issued an updated Policy/Procedure 3246, Use of Isolation, Restraint, Restraint Devices and Reasonable Force pursuant to [ESHB 1688](#), the student restraint and isolations bill which went into effect July 28, 2013. The new law has caused confusion among policymakers because it states that the new definitions of “restraint,” “restraint device,” and “isolation,” will be included in the revised Chapter RCW 28A.600. The problem? Chapter RCW 28A.600 applies to general, not just special, education.

The new law defines “isolation” as: “excluding a student from his or her regular instructional area and restricting the student alone within a room or any other form of enclosure,

from which the student may not leave.” Small districts, that may have only one general education student with in-school suspension on any given day, are asking whether this situation would count as “isolation” under the new law.

As far as WSSDA is concerned, the answer is no. Pursuant to ESHB 1688’s [Synopsis as Enacted](#), the bill “establish[es] a requirement and system for reporting incidents of student restraint and isolation in public schools for students *who have an individualized education program or plan developed under Section 504 of the Rehabilitation Act of 1973.*” The bill summary states: “The restraint or isolation of *students who have an IEP or Section 504 plan* and who are

participating in school-sponsored instruction or activities is subject to certain requirements...” Nowhere in the synopsis is the general education population referenced.

Why the reference to Section RCW 28A.600? We aren’t certain. The legislative process on this bill was contentious, and we know that some legislators wanted the bill to be expanded to general education. For now, anyway, the new law’s definitions and reporting requirement only apply to those students with an IEP or 504 plan. We will of course monitor any new developments. In the meantime, we have attached to this issue a new draft of Procedure 3246 which clarifies that the definitions listed above apply only to students with an IEP or 504 plan.



Ninth Circuit: IDEA compliant-IEP doesn't always equal a Section 504 or ADA-compliant IEP

K.M. v. Tustin Unified Sch. Dist and D.H. v. Poway Unified School District, Nos. 11-56259/12-56224 (9th Cir. Aug. 6, 2013)

The Ninth Circuit Court of Appeals has ruled that even if a school district provides a student with an Independent Education Program compliant with the Individuals with Disabilities Education Act (IDEA), it doesn't preclude a claim the IEP violates Section 504 or the Americans with Disabilities Act. This reverses prior case law holding that the standard for liability under the IDEA, Section 504 and Title II of the ADA is the same.

Two hearing disabled high school students requested their school districts provide them with Communication Access Realtime Translation ("CART") in the classroom. They argued this was required under the ADA so that they could fully understand their teachers and fellow students without undue strain and

stress. The districts rejected the requests and offered other accommodations instead. Both students challenged their denials in state administrative proceedings. They then filed lawsuits in federal court.

In the district court, neither plaintiff disputed that their IEPs satisfied the IDEA. Both plaintiffs, however, claimed that the denial of CART violated both Section 504 and Title II of the ADA. The district courts granted summary judgment in both cases. It held that the district fully complied with the IDEA and that plaintiffs' ADA claim was precluded by the failure of their IDEA claims. On appeal, both plaintiffs argued that Title II of the ADA imposes effective communication obligations upon public schools independent of schools' obligations under IDEA.

The court noted that the IDEA enumerates special factors that must be considered for children who are hearing disabled. An IEP team must, for example, "consider the child's language and communication needs..." Deferring to a Department of Justice amicus brief, however, the court found that the ADA sets different requirements for hearing disabled students than the IDEA. The court said there are even "material differences" between Section 504 and Title II's requirements under the ADA.

The court concluded that failure of a student's IDEA claim does not dictate, as a matter of law, the success or failure of a Section 504 or Title II claim and that courts must analyze each claim separately. Both cases were remanded to district court.



NSBA challenges Kentucky high court's ruling on Mirandizing students prior to questioning by school officials

Commonwealth of Kentucky v. N.C., No. 2011-SC-000271 (Ky. Apr. 25, 2013)

In our August 2012 edition of School Law Digest, we summarized the Washington case of *State v. Meneese* in which the Washington Supreme Court ruled that school resource officers were required to document probable cause and get a search warrant prior to interviewing a student at school on suspicion of violation of a school rule or law. In doing so, Washington joined Georgia as the only other state where SROs are not considered school officials for purposes of the school search exception to the 4th amendment.

Now a Kentucky case seeks to limit the ability of school resource officers to ensure school safety. The National School Boards Association (NSBA) announced in an August 29, 2013 [press release](#) that it had filed an amicus brief with the Kentucky School Boards Association (KSBA) urging the US Supreme Court to review *Commonwealth of Kentucky v. N.C.*, No. 2011-SC-000271 (Ky. Apr. 25, 2013). The Kentucky Supreme Court ruled in the case that all students should be Mirandized when questioned by school officials in the presence of a school resource officer.

The case involved a high school student who was suspected of sharing some prescription medication with another student. An assistant principal questioned the student behind closed doors and in the presence of a

school resource officer (SRO). After the assistant principal told the student that he had recovered the bottle of medication with the student's name on it, the student admitted to giving another student some pills. The assistant principal told the student he would be subject to school discipline and then left. The SRO then told the student he would be charged with a crime and took him into custody. The student was charged and convicted of possessing and dispensing a controlled substance.

The Kentucky Supreme Court's 4-3 majority held that any incriminating statements elicited when a school official is working with police on a case involving a criminal offense and police fail to provide Miranda warnings while the juvenile is in custody, the statements are subject to suppression under the state's juvenile code and the Fifth amendment. The court threw out the confession, thus overturning the student's conviction.

NSBA and KSBA now join 15 other education groups in arguing that the recent ruling is too rigid and restricts school administrators' and SROs' ability to react quickly to dangerous situations. In a press release, NSBA stated that "School boards must be vigilant about protecting all students' safety, and this decision by the Kentucky Supreme Court undermines their abilities."



Policy & Legal News

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MISSION

The Washington State School Directors' Association provides leadership and advocacy, and empowers its members with knowledge and skills to govern with excellence

VISION

All Washington School Directors effectively govern to ensure all students' success.

BELIEFS

WSSDA believes:

- Public education is vital to our country's democratic way of life and local school boards are vital to the success of public education.
- Quality schools require ethical, effective governance and transformational leadership in order to maximize student learning.
- School directors are the Association's primary customers. They are best served through an innovative, professional and flexible organization which provides exceptional training and services in advocacy, governance and leadership.
- The Association is uniquely positioned and empowered by statute to provide training and services that are consistent with the roles and responsibilities of school directors.
- High functioning local school boards have a positive impact on the learning and development for each student.



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★ SPECIAL THANKS

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The Editor would also like to congratulate Katie Johnson on her new position as Director of Health Services with Seattle Schools. Katie's expertise in school health issues has been instrumental to us here at WSSDA as we have forged a closer working relationship with school nurses. Katie -we'll miss you here in Olympia, but trust us, we'll be in touch!