Policy & Legal News

HELPING SCHOOL DISTRICTS TRANSLATE LAW INTO ACTION

WSSDA

OCTOBER 2017

WASHINGTON STATE SCHOOL DIRECTORS' ASSOCIATION

FROM THE EDITOR

Kofi Annan, the former secretary general of the United Nations said, "Knowledge is power. Information is liberating. Education is the premise of progress, in every society, in every family."

In the spirit of Kofi Annan's words, this issue of *Policy & Legal News* focuses on website accessibility, guiding districts through steps to ensure that people with disabilities can perceive, understand, and contribute to district websites. Many districts nationwide continue to receive notice from the Department of Education's Office for Civil Rights (OCR) that it will investigate complaints regarding lack of website accessibility. Based on the conditions and requirements contained in resolution agreements that OCR has made with school districts and other educational agencies, WSSDA is spotlighting its model policy to guide districts toward compliance.

Also in the spirit of Kofi Annan's words, this issue includes WSSDA's statement on Deferred Action for Childhood Arrivals (DACA). The statement highlights WSSDA Standing Legislative Position (SLP) 7.1.16, adopted in 2014. WSSDA believes public education, regardless of race, ethnic background, immigration status, socio-economic status, or gender, is the premise of both hope and progress.

You'll notice several legal updates in this issue, including a guest article by the Employment Security Department about the need for changes to our state unemployment insurance laws for school employees based on new federal guidance. Our goal is to keep you informed and alerted to important case law, rulemaking, and federal changes. Not only do we believe this will assist you in your decision-making, but we also believe that a working knowledge of legal trends can help school board directors and administrators make proactive decisions for issues affecting school districts.

Additionally, this issue introduces a revised version of WSSDA Model Policy 3115 regarding students who are homeless. This revised version distinguishes the required components of the model policy from the optional components to make it easier for districts to customize the policy for their needs. We encourage you to review the revised version and consider your district's unique needs and capabilities regarding students who are homeless.

Speaking of essential and priority, WSSDA's 2017 Law Conference is essential and we encourage you to make registration a priority! This year, WSSDA's Law Conference is on November 16, 2017 in Bellevue. As usual, Law Conference is the day before WSSDA's Annual Conference, but this year, it's an all-day event. Topics include student discipline, threat assessments, keeping students safe from sexual abuse by staff, special education updates, and much more. Admission includes lunch, a keynote presentation on immigration in schools, and a hosted reception at the end of your day-long absorption of essential legal information. You can register here.

I hope to see you at the Law Conference in Bellevue!

Best,

Abigail Westbrook, J.D.,
Editor

IN THIS ISSUE

OCTOBER 2017

POLICY REVISIONS

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

UPDATES

CLASSIFICATION: ESSENTIAL

- **Policy and Procedure 2410, Graduation Requirements.**
- **Policy 3115, Homeless Students – Enrollment Rights and Services**

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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 AND PROCEDURE 4217

Accessibility of district websites for persons with disabilities

In March 2016, WSSDA issued **Policy, Procedure, and form 4217, Effective Communication**, which provides a comprehensive policy for communication, including addressing website accessibility. However, some districts did not realize that 4217, Effective Communication encompassed the issue of website accessibility, and some districts have not understood the importance of compliance.

The issue of website accessibility should not be ignored! Districts are continuing to receive notice from the Department of Education's Office for Civil Rights (OCR) that OCR will investigate complaints regarding the accessibility of district websites for persons with disabilities. To resolve existing complaints and avoid future complaints from arising, it is important that districts take proactive steps to make their websites accessible to all users. These steps are set out in Model Policy 4217, Effective Communication and are based on the conditions and requirements contained in resolution agreements between OCR and school districts or other educational agencies.

Website accessibility means that people with disabilities can perceive, understand, navigate, and contribute to the World Wide Web[1]. An accessible website allows a user with a disability to participate in the website fully, and fosters independence, privacy, and security. In contrast, an inaccessible website requires a user with a disability to seek assistance, and undermines privacy and security. Some websites are less accessible than others, and some websites are notably difficult for persons with disabilities to access.

Many types of disabilities could impede a person's ability to access a website. Potentially, such disabilities include visual disabilities (blindness, low vision, and color blindness); auditory disabilities (deafness, hard of hearing); physical disabilities (limited fine motor control, slow response time, inability to use a mouse); and cognitive disabilities (limited memory, distractibility, and learning disabilities). [2]

Districts should review and, if need be, improve their websites by redesigning them using the Web Content Accessibility Guidelines (WCAG) 2.0, Level AA Standards, which is how OCR measures website accessibility.[3] The WCAG are based on the principles of POUR: Perceivable, Operable, Understandable, and Robust. Perceivable means that web content is available to the senses,

[1]Introduction to Web Accessibility. (2005). Retrieved from https://www.w3.org/WAI/intro/accessibility.php
[2]The Americans with Disabilities Act (ADA) defines a disability as "a physical or mental impairment that substantially limits one or more major life activities of [an] individual. 42 U.S.C. § 12102(1)(A). This definition also applies to Section 504 of the Rehabilitation Act of 1973 (Section 504). 29 U.S.C. §794.
[3]Web Content Accessibility Guidelines (WCAG) Overview. (2017). Retrieved from https://www.w3.org/WAI/intro/wcag.php

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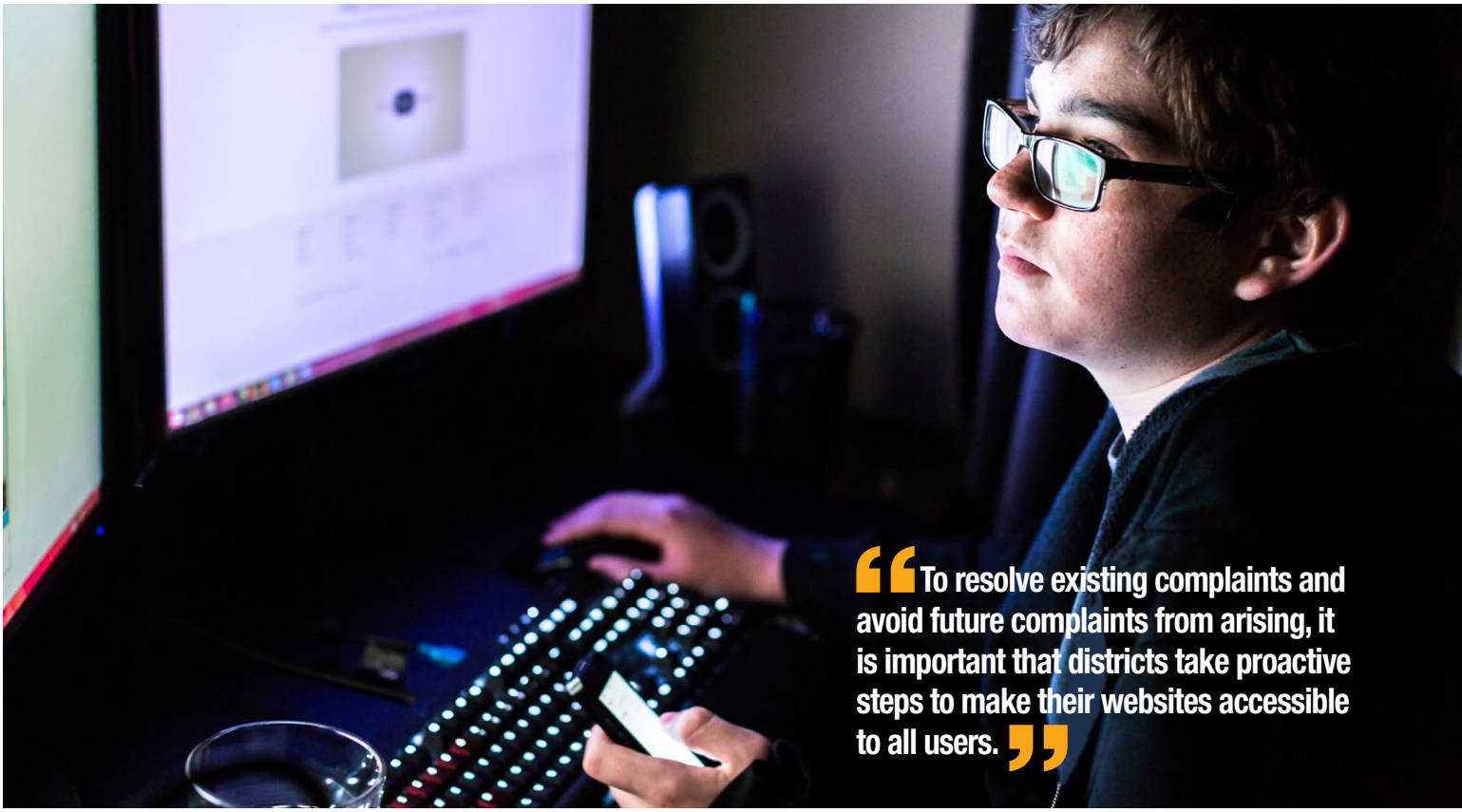

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"As a practical matter, website content needs regular updating; new content should be designed with accessibility in mind, as it is considerably less expensive to make new content accessible than to make existing content accessible."

especially vision and hearing, through either the browser or assistive technology, such as a screen reader. Operable means users can interact with all controls and interactive elements using the mouse, keyboard, or assistive device. Understandable means that content is clear and limits confusion and ambiguity. Robust means that a wide range of technologies can access the content.

It is inadvisable for a district to wait until an inaccessibility complaint has been filed before starting to build an accessible website. As a practical matter, website content needs regular updating; new content should be designed with accessibility in mind, as it is considerably less expensive to make new content accessible than to make existing content accessible. Examples of designing or redesigning with the POUR principles of accessibility in mind include using captioning or alternative text in videos and images to assist users with hearing impairments, or using headings and formatting tools in documents to assists users who are dependent on screen readers. Other examples of designing websites with the POUR principles of accessibility in mind include organizing links and other navigation elements with care to assist users who cannot use a mouse and using plain language to assist users with cognitive disabilities. In addition to benefiting users with disabilities, designing for accessibility often benefits users with other hindrances, such as slow internet speeds, changing abilities due to aging, and users with a temporary disability such as a broken arm.

Designing websites with accessibility in mind is more than just a nice idea; it is a legal requirement. Although there is no law or regulation that specifically states "websites" must be accessible, the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504) require public entities to ensure equal access to all programs, services, and activities for individuals with disabilities. The application of the ADA to websites and activities offered online has taken some time to evolve and crystallize. Nonetheless, it is now clear that based on the language of the statutes, the language of their implementing regulations, and the interpretations of the Department of Justice (DOJ), Civil Rights Division and OCR, these statutes require accessibility whether designing a building or a website.[4]

The ADA and Section 504 are federal civil rights laws that prohibit discrimination because of disability. Title II of the ADA applies to public entities, including public school districts, and requires those entities to provide people with disabilities equal access to programs, services, and activities, unless doing so would impose an undue financial burden or fundamentally alter the program, service, or activity. Section 504 protects people with disabilities from discrimination in programs and activities that receive federal funding.

[4]Title II of the ADA. 42 U.S.C. §12131, et seq., and its implementing regulation at 28 C.F.R. pt. 35; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, and its implementing regulation at 34 C.F.R. pt. 104.

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The ADA became law in 1990, before the internet became an integral component of our society. In 2003, the DOJ first acknowledged the intersection between the ADA and the accessibility of government websites in guidance titled, *Accessibility of State and Local Government Websites to People with Disabilities*. The guidance described steps a public entity could take to ensure that its websites have accessible features for users with disabilities.[5] Next, in June 2010, DOJ and OCR issued a Dear Colleague Letter to college and university presidents, expressing concern over the use of electronic book readers that were not accessible to students with visual impairments. Also in 2010, DOJ initiated the rulemaking process on website accessibility under the ADA, stating that local government websites "must be accessible."[6]

Then, in May 2011, DOJ and OCR sent a second Dear Colleague Letter to public school officials, stating, "[A]ll school programs or activities – whether 'brick and mortar,' online, or other 'virtual' context – must be operated in a manner that complies with Federal disability discrimination laws."[7] The Dear Colleague Letter stated, "Just as a school system would not design a new school without addressing physical accessibility, the implementation of an emerging technology should always include planning for accessibility."[8] This statement clarified that districts needed to carry accessibility planning over from the physical world to the virtual world, thus requiring districts to design websites that meet ADA requirements.

Although the DOJ's rulemaking is now on the inactive list, enforcement efforts have remained active. Additional rulemaking is unnecessary to conclude that the ADA requires government websites to be accessible to users with disabilities.

Several lawsuits have been filed against school districts, educational agencies, and universities around the country, including Washington state, alleging inaccessible websites. Additionally, OCR has increased the number of its investigations of complaints against school districts for inaccessible websites in violation of Section 504 and the ADA.[9] As a result, there has been a wave of settlement agreements reached between districts and OCR requiring districts to take corrective action. [10]

In 2015, Seattle Public Schools settled a lawsuit brought by a parent and the National Federation of the Blind, with an estimated cost to Seattle Public Schools between $665,400 and $815,400.[11] The settlement included that Seattle Public Schools would make its websites accessible to persons who are blind by using existing technology and employing an accessibility coordinator. Additionally, the settlement included that the district would conduct an accessibility audit, develop a remediation plan, add language addressing vendor compliance with accessibility guidelines to procurement requirements and contracts, and train district personnel.[12]

In 2017, the University of California, Berkeley made a different decision in response to a DOJ letter that asked the university to implement procedures making publicly available online audio and video content accessible to people who are deaf, hard of hearing, deaf and blind, and blind. Rather than comply with this request, the university ended public access to over 20,000 audio and video files, thus avoiding the cost of making the materials accessible. University of California, Berkeley Faculty members published a response calling this decision "outrageous," "disheartening," and stating that "the removal of digital access barriers is a crucial endeavor for a society that continues to revise its aspiration of justice for all."[13]

Given the social importance of website accessibility and the threat of an OCR investigation, school boards and district administration should consider adopting WSSDA's Model Policy 4217 and lead their districts in taking proactive steps to make their websites accessible to all users. To begin, school boards can authorize an accessibility audit by an entity with experience and expertise. The audit should include a functionality and content review, including third-party content, under the WCAG 2.0, Level AA standard. District administration should communicate the board's intent to address website accessibility with the district's technology director or webmaster. After conducting an audit, district administration should develop a corrective action plan to address barriers to access identified in the audit. In addition to training all staff responsible for website content, the corrective action plan should include publishing an accessibility notice both in district publications and on district websites that details the process to request access to inaccessible content or functionality. The notice should also include appropriate district contact information and information about how to file a complaint. As always, districts should talk with their district attorney regarding their legal questions and concerns.

[5] U.S. Dep't of Justice, Civil Rights Div., Accessibility of State and Local Government Websites to People with Disabilities (June 2003), https://www.ada.gov/websites2.htm

[6] Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities and Public Accommodations, 75 Fed. Reg. 43460 (July 26, 2010). https://www.gpo.gov/fdsys/pkg/FR-2010-07-26/pdf/2010-18334.pdf

[7] U.S. Dep't of Justice, Office for Civil Rights, Dear Colleague Letter (May 26, 2011), https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201105-ese.html; U.S. Dep't of Educ., Office for Civil Rights, Frequently Asked Questions About the June 29, 2010, Dear Colleague Letter (May 26, 2011), https://www2.ed.gov/about/offices/list/ocr/docs/dcl-ebook-faq-201105.pdf U.S. Dep't of Educ., Office for Civil Rights, Joint "Dear Colleague" Letter: Electronic Book Readers (June 29, 2010), https://www2.ed.gov/about/offices/list/ocr/letters/colleague-20100629.html

[8] *Ibid*.

[9] K-12 Education Web Accessibility Complaint Repository. (2016, August 16). Retrieved from https://www.audioeye.com/k-12-education-web-accessibility-complaint-repository/

[10] See, e.g., U.S. Dep't of Educ., Office for Civil Rights, Resolution Agreement between the Davis School District, Utah, and the U.S. Dep't of Educ., OCR Case No. 08-16-1240 (July 13, 2016), https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/08161240-b.pdf U.S, Dep't of Edu., Office for Civil Right, Settlements Reached in Seven States, One Territory to Ensure Website Accessibility for People with Disabilities (June 29, 2016), https://www.ed.gov/news/press-releases/settlements-reached-seven-states-one-territory-ensure-website-accessibility-people-disabilities

[11] https://www.seattletimes.com/seattle-news/education/blind-parent-wins-battle-to-get-access-to-online-school-resources/

[12] See Molnar, Michele. (Sept. 30, 2015). Ed-Tech Accessibility Lawsuit Settled by Seattle District, Advocates for Blind. Retrieved from https://marketbrief.edweek.org/marketplace-k-12/ed-tech_accessibility_lawsuit_settled_by_seattle_district_advocates_for_blind/

[13] Vogier, Christian. (Apr. 18, 2017). Access Denied. Retrieved from https://www.insidehighered.com/views/2017/04/18/scholars-and-others-strongly-object-berkeleys-response-justice-department

"Given the social importance of website accessibility... school boards and district administration should consider adopting WSSDA's Model Policy 4217 and lead their districts in taking proactive steps to make their websites accessible to all users."

MODEL POLICY 3115

Clarifying what is required and optional in Model Policy 3115, Homeless Students.

This summer, WSSDA revised **Model Policy 3115, Homeless Students – Enrollment Rights and Services** to reflect legislation in 2016 and 2017 that allowed certain school staff to provide informed consent for the provision of nonemergency primary care services to homeless children as defined by the federal McKinney-Vento Homeless Assistance Act (McKinney-Vento).

These provisions, which allow district staff to provide consent, apply only when such children are not under the supervision, control, custody, and/or care of a parent, custodian, legal guardian, or the Department of Social and Health Services, and when the child is not authorized to provide his or her own consent through another legal mechanism. WSSDA revised the model policy after legislation in 2017 added protections for districts against administrative sanctions and civil damages, resulting from the consent or non-consent, or from any care, or payment for care rendered by the caregiver.

With the protections for districts in place, this informed consent provision represented a big win for the approximately 3,000 students in Washington who are homeless as defined by McKinney-Vento. Indeed, our Legislature had taken these actions in direct response to pleas from districts stating that students who were experiencing homelessness as defined by McKinney-Vento were frequently missing school because there was no one to provide consent for nonemergency primary care, and these absences were compounding the significant difficulties these students already faced. WSSDA was pleased to play a role communicating districts' needs to the Legislature, and after it responded, WSSDA revised the model policy accordingly.

However, the new legislation did not require districts to adopt the informed consent provisions in its policy for students qualifying as homeless. This created confusion because portions of Model Policy 3115 are required by law, thus, the model policy continued to be categorized as essential.

To help districts distinguish the required portions from the optional portions, and to support districts as they consider their capabilities to serve the needs of homeless students attending their schools, WSSDA has revised the language of Model Policy 3115 to indicate whether portions are essential or priority. In the revised version of Model Policy 3115, the optional elements of proving informed consent for qualifying students in qualifying circumstances is distinguished using brackets and headings, while the required elements, including portions addressing student enrollment and rights, are presented as required.

WSSDA recommends that school boards consider their unique circumstances and needs related to students who are homeless when they consider whether to incorporate the optional language of the model policy. Such consideration should include the practical implications of allowing school staff to provide informed consent for non-emergency medical care of students, for example, providing designated staff with additional training and guidance. Additionally, each school board should consider the needs of its community, resources, and whether there are concerns that prompt consulting with general counsel.

Our hope at WSSDA, is that by detangling the portions that are not mandated by law, school boards will have the information and tools they need to tailor the policy to meet the unique needs of their community. If you have any questions about WSSDA policies or your district's processes for review of model policies, do not hesitate to contact us.

Classification of Model Policies

ESSENTIAL:

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

PRIORITY:

- Policy is developed to respond to state or federal law at the discretion of a school or district or
- Policy will impact the health, safety, and/or welfare of students, employees or directors, or
- Policy sets forth the action of the board or district in response to a legal mandate and the board believes attention to the mandate is necessary.

DISCRETIONARY:

- Policy expresses an action or calls attention to a required action deemed necessary by the board, district, or community.
- Policy is deemed necessary due to special circumstances of a board, district, and community.
- Policy communicates district philosophy that the board wants to promote to employees and/or the community.

MODEL POLICY 2410/241P

Policy for graduation requirements is revised to reflect recent legislation.

During July 2017, our legislature passed Engrossed Substitute House Bill (ESHB) 2224 to provide flexibility for high school graduation requirements in order to support students during the transition to the accountability system under the Every Student Succeeds Act (ESSA).

The bill modified certain high school graduation requirements, including provisions requiring assessments in science, English Language Arts (ELA), and mathematics, and provisions governing alternative assessment options. Also, the bill established additional requirements for High School and Beyond Plans, which include initiating a plan for each student during the seventh or eighth grade to guide their high school experience. Further, the bill created an appeals process for students in the classes of 2014 – 2018 who have not passed the ELA and/or mathematics tests required to graduate.

Please see the side-by-side comparison of the previous and current graduation requirements on the following pages for detailed information.

Many of the revisions to Model Policy and Procedure 2410 / 2410 P are organizational, moving sections from the policy to the procedure, and deleting redundant or unnecessary language. The objective was to put more of the details guiding implementation into the procedures rather than the policy. This creates a policy that is easier to understand and requires far less future revisions. Additionally, it allows administrators to revise details in the procedures without requiring the school board to go through the adoption process, easing the burden on school districts.

Side-by-Side Comparison of Changes to Graduation Requirements

Prior Law	ESHB 2224 - Entire Act applies retroactively to Class of 2017
Graduation Requirement to earn a Certificate of Academic Achievement (CAA) by meeting the standard on the state English Language Arts (ELA), Mathematics, and beginning with the Class of 2017, Science. Transitioning to an 11th grade assessment in ELA and Mathematics <u>Class of 2017 & 2018:</u> • 10th grade ELA or 11th grade ELA assessment • Algebra EOC or Geometry EOC or 11th grade Mathematics • Biology EOC <u>Class of 2019 & beyond:</u> • 11th grade ELA assessment • 11th grade comprehensive Mathematics assessment • Biology EOC	• Requires the use of the state ELA and Mathematics assessments at the 10th grade beginning with the Class of 2020. • Delays the use of the state Science assessment (Biology EOC) as a graduation requirement until the high school graduating class of 2021. This applies to the 2017 class (retroactively). • Specifies that the science assessment used as the graduation requirement for the class of 2021 onward must be a comprehensive assessment of the science EALRs adopted by OSPI in 2013 (rather than the Biology EOC assessment). <u>Class of 2017 & 2018:</u> • Maintains current law for ELA and Mathematics • Eliminates Biology End-of-Course Assessment as requirement <u>Class of 2019:</u> • Maintains current law for ELA and Mathematics • Eliminates Biology End-of-Course Assessment as requirement <u>Class of 2020:</u> • 10th grade ELA assessment • 10th grade comprehensive Mathematics assessment • Eliminates Biology End-of-Course Assessment as requirement <u>Class of 2021:</u> • 10th grade ELA assessment • 10th grade comprehensive Mathematics assessment • Comprehensive Science assessment (10th? 11th?)

Appeals Process - OSPI directed to have an appeals process:
• To appeal a score on the assessments (OSPI allows a challenge to the technical aspect of a score.)
• For waiving specific requirements for the CAA for students:
  ○ Who transfer to WA in their Jr. or Sr. year; or
  ○ Have special, unavoidable circumstances. (OSPI rule includes death of a parent, sibling or grandparent, unexpected and/or severe medical condition.)
	<u>Classes of 2014 – 2018</u>: Creates an <u>expedited appeals process</u> for students who have not met standard on ELA assessments, Mathematics assessments, or both.
	• Students, families, and/or principals may initiate the appeal to be reviewed by the school district and the OSPI approves or denies.
	
	• Students may access the appeals process if:
	  ○ Have taken but not met standard on ELA and/or Mathematics assessments
	  ○ Have met all other state and local graduation requirements (24 credits, etc.)
	  ○ Demonstrates the skills and knowledge necessary to successfully achieve the career and college-ready goals established in their HSBP
	  ○ For the class of 2018, the student must have met all other graduation requirement *and* attempted at least one alternative assessment option per statute.

2017 Assessment Graduation Requirement Policy Bill Provisions – Session Law
(Compiled by WSSDA and SBE based on Legislative Committee Staff analyses, Updated Aug.2017)

Side-by-Side Comparison of Changes to Graduation Requirements

Prior Law	ESHB 2224 - Entire Act applies retroactively to Class of 2017
	• Pathways for demonstrating necessary skills include: i. Successful completion of a college-level class in the relevant subject area; ii. Admission to a higher education institution or career preparation program; iii. Award of scholarship for higher education; and iv. Enlistment in a branch of the military.
Must take once Students must take state assessment at least once before accessing an alternative	Maintained.
Comparable rigor Current requirement to take state assessment at least once before accessing an alternative	Maintained.
Alternatives to the state assessments for earning a CAA • Collection of Evidence (COE)—a state evaluation of academic work samples prepared by the student with instructional support from a teacher; • Grade Point Average (GPA) comparison—the grades of a student in their 12th-grade year who has an overall GPA of 3.2 but did not meet the state standard on the state assessment are compared with the grades of students who took the same courses and met the state standard on the state assessment; and • College Admission/AP/IB Tests—students may use their English Language Arts and mathematics scores on the SAT; their English Language Arts, mathematics, and science scores on the ACT; scores on specified Advanced Placement (AP) exams; and scores on the International Baccalaureate (IB) exams.	• Eliminates Collection of Evidence alternative after the 2016-17 school year; • Maintains all other alternatives in current law; and • Creates additional alternatives starting with the Class of 2019 for students who have not met standard on the ELA and Mathematics to earn a CAA. • Additional alternatives include: 1. Successful completion of a dual credit course in ELA or mathematics. 2. **A.** Take and pass a **locally determined course** (which may include a qualifying high school transition course as defined in (10) (b) (iv) (C)) - Course must be rigorous & consistent with student's HSBP. - Course may be a high school transition course offered at a high school in ELA, mathematics or science that will ensure the student college-level placement at participating Washington institutions of higher education; and satisfies high school graduation requirements established by the SBE. **AND** **B.** Take a **locally administered assessment** (approved by OSPI) as an objective alternative assessment for demonstrating that the student has met or exceeded the standard. - OSPI must post on its website a compiled list of approved district-administered assessments, including comparable scores necessary to meet standard.

2017 Assessment Graduation Requirement Policy Bill Provisions – Session Law
(Compiled by WSSDA and SBE based on Legislative Committee Staff analyses, Updated Aug.2017)

Side-by-Side Comparison of Changes to Graduation Requirements

Prior Law	ESHB 2224 - Entire Act applies retroactively to Class of 2017

24 credits for High School Graduation. Beginning with the high school graduating class of 2019, school districts must provide students the opportunity to complete 24 credits for high school graduation, unless a district receives a waiver from the SBE to delay the implementation of 24 credits until the graduating class of 2020 or 2021.	• For any 9th grade student who did not pass the 8th grade Mathematics assessment school districts must update the student's HSBP to "ensure" the student takes a mathematics course in 9th and 10th grades. This may include CTE equivalencies.
	• Beginning 2018-19 school year, students not earning a CAA before the beginning of 11th grade must be provided interventions, academic supports, and courses designed to get students to the state standard.
	  ○ Must be rigorous
	  ○ May include CTE equivalencies
	  ○ Must be consistent with student's HSBP

High School and Beyond Plans (HSBP) • Since 2009, the HSBP has been a high school graduation requirement. • Starting in middle schools, students create a HSBP for their high school experience, including what they expect to do the year following graduation. • Each school district determines the guidelines for the HSBP and whether the student has met this graduation requirement. • If a student successfully completes career and technical education (CTE) courses needed for industry certification, college credit, or pre-apprenticeship, then the certificate must be part of the student's HSBP.	• HSBP required for every student beginning in 7th or 8th grade. <u>Minimum components:</u> • A career interest and skills inventory • Career & education goals • A 4-year plan for course-taking • By 12th grade must include a resume or activity log • School district may establish additional requirements <u>Must be reviewed and updated:</u> • By 9th grade for students who did not meet standard on the 8th grade Mathematics assessment "ensure" the student takes a mathematics course in 9th and 10th grades. This may include CTE equivalencies. • To reflect high school assessment results and planned interventions and academic support, courses, or both for students who have not met the standard. • For students' changing interests, goals, and needs
Defining Student Performance Standards (Cut Scores) • The SBE identifies the scores that students must achieve to meet the state standard on the state assessments.	• Maintains current law for the SBE to adopt high school student performance standard scores • Allows for the scores to be different Student performance standard scores will include scores for: • 10th grade students to be "on track to be career and college ready at the end of the student's high school experience" • High school graduation • College and Career ready (as established by the multi-state consortium)

2017 Assessment Graduation Requirement Policy Bill Provisions – Session Law
(Compiled by WSSDA and SBE based on Legislative Committee Staff analyses, Updated Aug.2017)

Statement on Deferred Action for Childhood Arrivals (DACA)

In light of current events and the additional challenges many of our school districts are now faced with, the Washington State School Directors' Association would like to take this opportunity to highlight one of its standing legislative positions. Voted on and approved by association members, it was adopted in 2014 and reads:

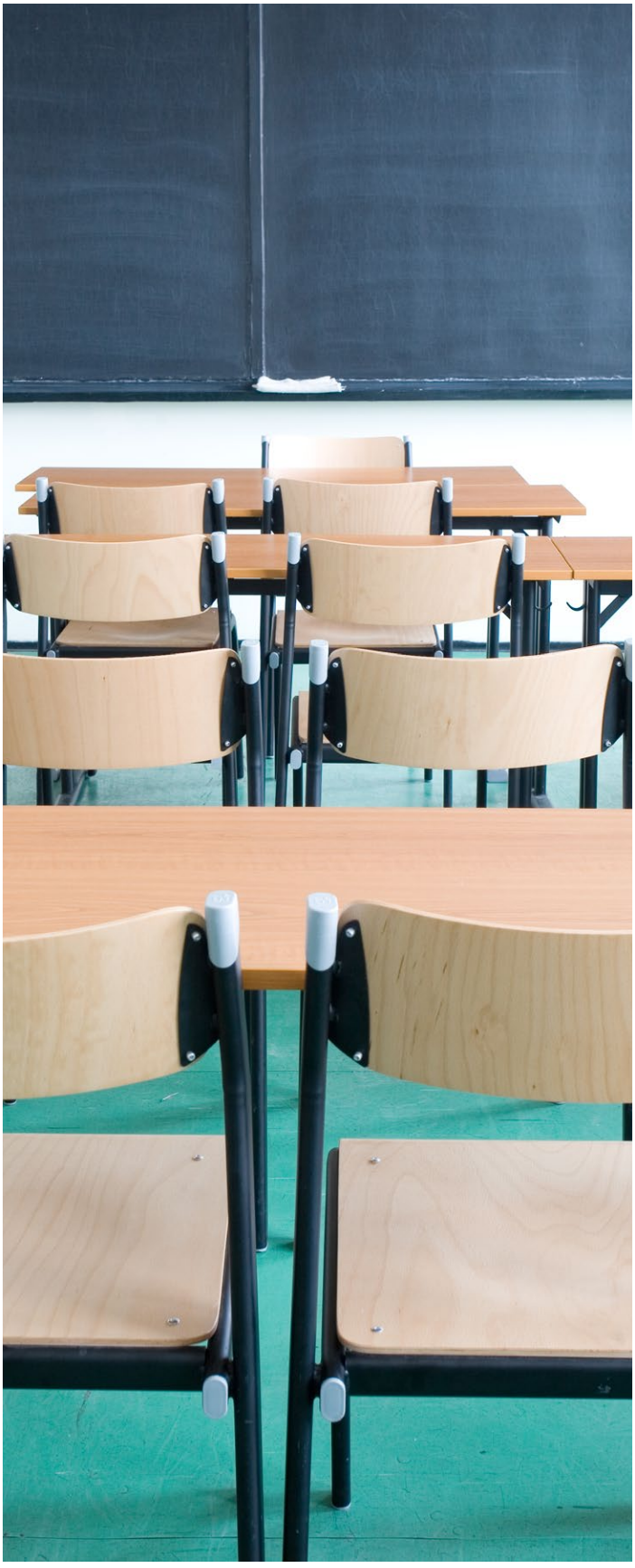
Federal DREAM Act
WSSDA shall initiate and/or support the enactment of a process allowing immigrant students a path toward becoming lawful U.S. residents. — WSSDA Standing Legislative Position (SLP) 7.1.16

This legislative position was born of a democratic process and WSSDA believes public education, itself, forms the cornerstone of our nation's democracy and way of life. Just as America has served for so long as a beacon of hope and opportunity in the eyes of the world, so too are public schools for students and their families.

Our schools are educating the most diverse student population to date, striving to provide equitable access, and ensuring a safe environment where each and every student will attain their full potential *regardless of factors such as race, ethnic background, immigration status, socio-economic status, or gender.*

As you'll see below, several of our member districts and educational partners have also issued statements on this subject. For your reference, we have gathered just a few. Links to the following can be found online at wssda.org/daca2017.

- **National School Board Association statement**
- **The School Superintendents' Association**
- **Washington State Office of Superintendent of Public Instruction**
- **Joint statement by:**
  - **Independent Colleges of Washington**
  - **Washington State Board for Community and Technical Colleges**
  - **Washington State Council of Presidents**
  - **Washington Student Achievement Council**
- **Bellevue School District — Message from Dr. Duran on DACA**
- **Highline Public Schools — Response to DACA from the School Board & Superintendent**
- **Lake Washington School District Statement on DACA**
- **Seattle Public Schools:**
  - **District Response to DACA Decision**
  - **School Board Resolution**
- **Tacoma Public Schools — Statement about DACA by Superintendent Carla Santorno**



Legal Updates

Student discipline rulemaking

The Office of Public Instruction (OSPI) has proposed discipline rules (http://www.k12.wa.us/StudentDiscipline/Rules/ProposedDisciplineRules.pdf) to reflect House Bill 1541, which went into effect in June 2016 and added language intended to minimize disproportionality in student discipline. For revisions to the rules in detail, please see: http://www.k12.wa.us/StudentDiscipline/Rules/ProposedDisciplineRules_RevisionsInDetail.PDF

For a summary of the impact of House Bill 1541, please see: http://educationvoters.org/wp-content/uploads/2016/06/Opportunity-Gap-HB-1541-Summary.pdf

These proposed rules constitute a substantial change to the Washington Administrative Code (WAC), and OSPI is now in the public comment phase of the rulemaking process. WSSDA strongly encourages our members to participate by attending one of the two remaining public hearings:

- November 7, 2017 / 1:00–5:00 p.m.
  Educational Service District (ESD) 121
  Cedar/Duwamish Room
  800 Oakesdale Ave., Renton, WA 98057
- November 13, 2017 / 1:00–4:00 p.m.
  OSPI Brouillet Room
  600 Washington St. SE, Olympia, WA 98504

Additionally, WSSDA members can participate by providing written comments on the proposed rules. Please see information for providing written comments here: http://www.k12.wa.us/StudentDiscipline/Rules/default.aspx

In 2016, WSSDA issued an interim update to **Policy and Procedure 3241, Classroom Management, Discipline and Corrective Action** to provide districts with the required language based on House Bill 1541. After OSPI issues finalized discipline rules, WSSDA will update that policy and procedure.

Executive session confidentiality

The Attorney General's Office (AGO) recently issued AGO 2017 No. 5, which addresses four questions that periodically arise regarding the release of information learned during an executive session. As we frequently receive questions regarding executive session, we've included information from the questions and brief answers section of the AGO opinion. Please see AGO 2017 No. 5 for additional information and analysis.

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1. Are the members of the governing body of a public agency prohibited by the Open Public Meetings Act (OPMA) from disclosing information shared during a properly called executive session?

Brief Answer: *Yes. Participants in an executive session have a duty under the OPMA to hold in confidence information that they obtain in the course of a properly convened executive session, but only if the information at issue is within the scope of the statutorily authorized purpose for which the executive session was called.*

2. Are the members of the governing body of a public agency prohibited by the Code of Ethics for Municipal Officers[1] from disclosing information shared during executive sessions that are properly called under the OPMA?

Brief Answer: *Yes. RCW 42.23.070(4) prohibits a municipal officer from disclosing confidential information learned in an executive session or otherwise using such information for personal gain.*

3. If the law prohibits public officials from disclosing information exchanged during executive sessions, would a violation of that prohibition constitute a misdemeanor under RCW 42.20.100 and/or "official misconduct" under RCW 9A.80.010?

Brief Answer: *It is conceivable that facts could arise under which the disclosure of information learned in an executive session under the OPMA might constitute a misdemeanor under one or the other of the cited statutes. But such cases would be difficult to prove and should rarely arise.*

4. Under what circumstances, if any, may the governing body of a public agency exclude an elected member from executive session because of concerns about confidential information?

Brief Answer: *A governing body may ask a court to enforce the confidentiality of an executive session through a writ of mandamus or injunction, pursuant to RCW 42.30.130. It is unlikely that a governing body would ordinarily have the authority to exclude one of its members from attending an executive session without such an injunction, but we do not rule out the possibility that some governing bodies may be authorized to do so pursuant to the statutes or local charters under which specific governing boards may operate.*

[1] School directors fall within the scope of this Act. RCW 42.23.020(1) (defining "municipality" to include "all counties, cities, towns, districts, and other municipal corporations and quasi-municipal corporations organized under the laws of the state of Washington."

Title IX enforcement: U.S. Department of Education Rescinds 2011, 2014 Title IX Guidance and Issues Interim Q&A

The U.S. Department of Education announced on September 22, 2017 that it was issuing new interim guidance on investigating and adjudicating campus sexual misconduct, in the form of a Q&A document and withdrawing guidance issued in 2011 and 2014. The announcement came after Secretary DeVos had indicated the Department would be looking at the issue, and had held a listening session in July 2017.

According to the Department of Education press release, "The withdrawn documents ignored notice and comment requirements, created a system that lacked basic elements of due process and failed to ensure fundamental fairness." The Department indicated it intends to initiate rulemaking on Title IX responsibilities arising from complaints of sexual misconduct.

Though the Department appears to consider the new Q&A applicable to all "schools," there are questions about how some of the enumerated procedures can be applied in elementary and secondary schools. For example, are K-12 schools expected to provide "written notice to the responding party of the allegations constituting a potential violation of the school's sexual misconduct policy, including sufficient details and with sufficient time to prepare a response before any initial interview"?

For more about changes to Title IX enforcement and other initiatives wending their way through (the other) Washington, don't miss NSBA's Sonja Trainor presenting at the WSSDA Law Conference on November 16, 2017.

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Ninth Circuit Court of Appeals Affirms School District

JOSEPH KENNEDY v. BREMERTON SCHOOL DISTRICT, United States Court of Appeals, Ninth Circuit, Aug. 23, 2017

The Ninth Circuit Court of Appeals affirmed the district court's denial of preliminary injunctive relief in an action brought by a high school coach. The coach alleged that his school district retaliated against him for exercising his First Amendment rights when he was suspended for kneeling and praying on the football field in view of students and parents immediately after every high school football game.

Background

Joseph Kennedy was a football coach at Bremerton High School from 2008 to 2015. Kennedy sometimes led students and coaching staff in prayer in the school locker room. Eventually, Kennedy's religious practice evolved to something more than his original prayer. He began giving short motivational speeches at midfield after the games. Students, coaches, and other attendees from both teams were invited to participate. During the speeches, the participants kneeled around Kennedy, who raised a helmet from each team and delivered a message containing religious content.

Sometime in September of 2015, Bremerton district officials informed Kennedy that he could continue to give inspirational talks, but could not lead or encourage student prayers during football games. Kennedy was also counseled that he was free to pray while on the job as long as it did not interfere with his job responsibilities, and if students were engaged in any religious activity, school staff may not take any action likely to be perceived as an endorsement of that activity. The coach complied for several weeks but later sought an accommodation from the school district to continue his post-game prayers, arguing his job responsibilities as a coach ended when the football game ended.

Coach Kennedy continued to pray at the end of two more football games and the incident generated substantial publicity. The district then placed Kennedy on administrative leave and he did not reapply for his year-to-year contract the next season.

Kennedy later sued the school district in August 2016 seeking reinstatement and a ruling that he had the right to pray on the field after every game. Kennedy argues that his free speech rights under the First Amendment and the Civil Rights Act of 1964 were violated. The District Court denied the requested preliminary injunction and Kennedy appealed.

Appellate Holding

The federal appeals court affirmed the district court's order denying Kennedy's motion for a preliminary injunction. The panel held that the key factor in this case was that Kennedy was speaking as a public employee and not as a private citizen when he prayed on the field. The court said that Kennedy spoke at a school event, on school property, wearing the high school logoed attire, while on duty as a supervisor, and in the most prominent position on the field, where he knew it was inevitable that students, parents, fans, and occasionally the media, would observe his behavior.

The court further ruled that "while we recognize the important role that public worship plays in many communities, as well as the sincere desire to include public prayer as a part of these occasions, such activity can promote disunity along religious lines, and risks alienating valued community members from an environment that must be open and welcoming to all."

Eleventh Circuit Court of Appeals Strikes Down Restrictive Public Comment Policy During Meetings

BARRETT v. WALKER COUNTY SCHOOL DISTRICT, United States Court of Appeals, Eleventh Circuit, Oct. 2, 2017

Background

The Walker County School Board adopted a policy that addressed public comments during their regular board meetings. The policy stated, "Although these meetings are not meetings of the public, the public is invited to attend all meetings and members of the public are invited to address the Board at appropriate times and in accordance with procedures established by the Board or the Superintendent."

Additionally, the policy stated:

Prior to making a request to be heard by the Board, individuals or organizations shall meet with the Superintendent and discuss their concerns. If necessary, the Superintendent shall investigate their concerns, and within ten work days, report back to the individual or organization. After meeting with the Superintendent, individuals or organizations still desiring to be heard by the Board shall make their written request to the Superintendent at least one week prior to the scheduled meeting of the Board stating name, address, purpose of request, and topic of speech.

Any individual having a complaint against any employee of the Board must present the complaint to the Superintendent for investigation. The Board will not hear complaints against employees of the Board except in the manner provided for elsewhere in Board policies, procedures, and Georgia law. All presentations to the Board are to be brief and are intended for the Board to hear comments or concerns without taking action.

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The procedures promulgated by the Superintendent state:
1. Refer to [the Policy] concerning required meeting with Superintendent. 2. After meeting with the Superintendent, individuals or organizations shall make written request to the Superintendent at least one week prior to the scheduled meeting of the Board. Please include name, address, purpose of the request, and topic of speech. 3. Each person whose name is placed on the agenda will be given five minutes to make their comments. 4. Where several citizens wish to address the same topic or issue, the Board reserves the right to limit discussions should they become repetitive. 5. While citizens may use their allotted time to take serious issue with Board decisions, the Board will not permit anyone to become personally abusive of individual Board members or Board employees. 6. When issues arise that stimulate high community interest, the Board may schedule special meetings specifically to invite public comment. In those circumstances, the Board will establish special guidelines for participation. 7. The Board Chair may: a. Interrupt, notify, or terminate a participant's statement when the statement exceeds the prescribed time limit, is abusive or disruptive, is obscene, or is irrelevant to a subject under consideration; . . . if a speaker fails to follow these rules one time during a meeting, he or she loses the opportunity to continue to speak at the meeting. [...] The Board will not respond to comments or questions posed by citizens in their presentations, but will take those comments and questions under advisement.

Barrett sued the school district, claiming that the board policy was an unconstitutional restriction of his First Amendment free speech rights. The district court ruled in favor of Barrett finding that the policy violated the First Amendment since it afforded the superintendent unbridled discretion to approve, deny, or delay any requests to speak before the board. The district's policy also limited the nature of issues that speakers address to the board. The district appealed.

Appellate Holding
The federal appeals court held that the policy and procedure gave "unbridled discretion" to the superintendent in a way that could lead to censorship of potential critics. The court stated the policy and procedure were unconstitutional because they failed to impose a time limit for the superintendent to act after the required initial meeting and because restrictions were content-based thereby creating a risk of chilling speech and/or censoring speech. The court also stated that if the school district wished to continue requiring potential speakers to meet with the superintendent before submitting a request to speak, the school district must impose a reasonable time limit for the superintendent to respond to the request, schedule the initial meeting, and hold the initial meeting. The court noted that the board had the power to close its meetings to public comment if it wished, and the problem here was that the board allowed public comment at its meetings but maintained a policy and procedure that had a significant potential to chill speech based on content and viewpoint.

Changes to state unemployment insurance laws needed due to new federal guidance on school employees

by Employment Security Department

The United States Department of Labor (USDOL) recently published new guidance related to UI claims for certain school employees[1]. Current state law is based on previous federal law and guidance[2] and differs from the new guidelines in several key ways. Because of these changes, Washington state will need to amend its laws or risk the loss of significant federal funds.

"Reasonable assurance"

Most applicants for UI benefits (claimants) can use all wages earned in their base period to establish an unemployment claim. Federal guidance, however, subjects individuals employed by education institutions (both certified and classified) to an additional requirement commonly referred to as the "reasonable assurance" requirement. Under reasonable assurance, school employees cannot use school wages to establish a UI claim while the school is on a scheduled break or between academic years or terms if they worked prior to the break and have reasonable assurance of returning to work in the same capacity after the break. "Reasonable assurance" is defined as a bona fide offer from an educational institution to give that claimant the same or similar work once the break in school has ended[3].

USDOL published new guidance[4] on reasonable assurance in December 2016. This new guidance requires Washington to amend state law to conform to the federal changes; failure to conform could result in the loss of hundreds of millions of dollars in tax credits each year for private employers and the loss of the federal funds necessary to administer the unemployment insurance program in Washington state.

Changes needed

Many requirements and restrictions that in current law only apply to community and technical colleges must now apply to all educational institutions. In addition, the guidance introduces new factors and requirements that must be met to establish that a worker has reasonable assurance of returning to work. A high-level summary of the key changes is as follows:

1. Economic conditions

Under current law, the Employment Security Department must determine that reemployment in the next academic year or term will be under the "same conditions" as the previous employment. The new guidance, however states that the economic conditions of the new job must be at least 90% of the amount earned in the prior year or term. Previous law did not specify how the Employment Security Department was to determine whether the employment met the "same conditions" requirement.

2. Contingent nature

The new guidance requires that when determining if reasonable assurance exists, Employment Security Department must give primary weight to the contingent nature of the reemployment. Current state law included this requirement only for certified staff of community and technical colleges. All educational institutions and types of staff under the new guidance will be subject to this requirement.

3. School's control

Determining if the nature of the reemployment is contingent under the new guidance will depend on whether the factors of the contingency are within the educational institution's control. If an offer of reemployment is contingent on factors within the school's control, the claimant does not have reasonable assurance. Decisions such as course offerings and facility availability are considered to be in the educational institution's control. Enrollment and funding are considered outside of the scope of control. Current law only examines contingencies in relation to certain employees at community and technical colleges.

4. Multiple employers:

Current law provides that all school wages must be "restricted" (i.e., cannot be used to establish a UI claim) when an individual worked prior to the break period for any educational institution, and has reasonable assurance of returning to work after the break for any educational institution in the same or similar capacity. New guidance holds that when a claimant has multiple base period employers, only the wages from the school(s) that provided reasonable assurance are restricted from use on the UI during the break, which could allow workers to qualify for UI claims using the wages from the institutions for which they work that did not provide reasonable assurance.

Next steps

The Employment Security Department is committed to working with the community to implement the new changes in a fair and balanced manner. Legislation will be pursued in the 2018 legislative session to bring Washington into compliance. Rule amendments will be pursued after the statutory changes have been made.

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[1] https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8999

[2] *Pechman v. Employment Security,* 77 Wn. App. 725 (1995) was found to be out of compliance by USDOL. The Washington State Legislature then amended RCW 50.44.050 to conform with USDOL guidance.

[3] RCW 50.44.050, 50.44.053, and WAC 192-210 govern reasonable assurance.

[4] https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8999

Policy & Legal News

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

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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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