Policy & Legal News

HELPING SCHOOL DISTRICTS TRANSLATE LAW INTO ACTION

The final discipline rules

Sharing information about **juvenile offenders**

Surveillance cameras

WSSDA

AUGUST 2018

WASHINGTON STATE SCHOOL DIRECTORS' ASSOCIATION

Policy Classifications

To improve clarity and usefulness, WSSDA has revised our policy classification schema as follows:

ESSENTIAL

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

ENCOURAGED

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

DISCRETIONARY

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

It has been busy. My question is what happened to the "lazy days" of summer spent outside on my bike? Henry David Thoreau had a different question, he said, "It's not enough to be busy, so are the ants. The question is, what are we busy about?" Thoreau's question is one I can answer. We have been busy crafting this edition of *Policy & Legal News* and preparing for the 2018 Law Conference! These are not empty tasks but purpose-driven undertakings to serve you in your service to public education.

Inside this edition, you will find a topic-by-topic examination of the final discipline rules. Although there is a lot of information to unpack, I hope this article will bring a greater understanding of the "sea-change" regarding student discipline that we have been making since 2016. This edition also covers many other significant issues and information you need now. You'll find two charts from the National School Board Association (NSBA). One chart lists federal laws and regulations that require a policy. The other chart lists the notices that federal law requires districts to send.

A thread that runs through many of these articles is constitutional rights and protections. These rights and protections include the right to petition the government for a redress of grievances; the right to freedom of speech, including protection from compelled speech; protection from unreasonable searches and seizures; the right to due process; and the right to a public education. It is too easy to be so focused on our good intentions that we overlook the unintended consequence of constitutional implications. Please see the article about public comment period in board meetings for more about this.

We are so excited for WSSDA's 2018 Law Conference in Spokane on November 14, 2018! You will notice a school safety theme as we address questions like 'What efforts to increase safety are legally sound?' and 'How can you legally respond when a student with a disability poses a threat to self or others?' The new discipline rules will be in focus, including the legal frameworks for addressing disproportionate discipline. Also on the Law Conference docket: how board members can avoid First Amendment violations in social media and at their board meetings; and back by popular demand is NSBA's Managing Director of Legal Advocacy, Sonja Trainor with a national and federal perspective. I truly hope to see you in Spokane this fall!

Finally, summer is not quite over. Let's all get outside and chase those last glorious days, smoke be gone! Be lazy or be adventurous in your play and revitalize yourself, for your work on the school board is vital.

Best,
Abigail Westbrook,
J.D., *Editor*

★ IN THIS ISSUE

AUGUST 2018

★ UPDATES

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

ESSENTIAL

- **1400 Meeting Conduct, Order of Business, and Quorum**
- **2190/2190P Highly Capable Programs**
- **3122/3122P Excused and Unexcused Absences**
- **3144/3144P Release of Information Concerning Student Sexual and Kidnapping Offenders**
- **3413/3413P Student Immunization**
- **3416 Medication at School**
- **3420/3420P Anaphylaxis Prevention and Response**
- **6210 Purchasing: Authorization and Control**
- **6220/6220P Bid Requirements**

ENCOURAGED

- **3143 District Notification of Juvenile Offenders**
- **3241/3241P Classroom Management, Discipline, and Corrective Action**
- **3410 Student Health**
- **3412 Automated External Defibrillators**
- **3414/3414P Infectious Diseases**
- **6500/6500P Risk Management**
- **New 6610 Security Cameras**

DISCRETIONARY

- **4500 Unmanned Aircraft System and Model Aircraft**
- **6230 Relations with Vendors**
- **6630 Driver Training and Responsibility**

TABLE OF CONTENTS

- **1000 Series**
- **2000 Series**
- **3000 Series**
- **4000 Series**
- **6000 Series**

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."

A better response to notification of juvenile offenders

Information that a student is a juvenile offender is important and sensitive. When principals receive information about a student's criminal history, they have several duties, some of which are in tension.

Principals must meet legal requirements to share information with the student's teachers and other personnel who supervise the student. Failure to provide the necessary information to the necessary personnel, might expose students and staff to harm. When principals receive information about a student's criminal history, they may need to establish specific supports to ensure safety and additional supports to encourage academic success. These supports might range from schedule adjustments to continual supervision. If the student changes schools, the principal must also meet legal requirements to share information with the subsequent school.

Additionally, the principal needs to do all of these things while protecting student privacy. All students, including those students with criminal records, have a constitutional right to a public education. Inappropriate disclosure of criminal history information could lead to stigmatization and limit a student's access to education. Further, federal law requires educators to protect student privacy.

In addition to concern for student and staff safety, improper notification could expose a school district to litigation. Washington's media has reported several instances of serious consequences when a notification process failed, including students harmed by other students with known criminal histories, and lawsuits brought against school districts. Recently, the State Auditor's Office (SAO) has been evaluating school response to notifications of student criminal offenses.

This is the second of two audits reviewing notifications to schools and districts of student criminal offenses. The first audit reviewed processes at the agencies that send notifications to districts. This second audit evaluates what happens to notifications after principals and district officials receive them. In May 2018, the SAO conducted site visits and met with principals and district officials. The SAO is currently analyzing the information and expecting to publish its findings in early 2019.

Based on their interviews and site visits, the SAO noticed that many of the principals that were interviewed reported concern and confusion about the scope of their duty to share information about students' criminal offenses. The concern was that principals did not want to violate student confidentiality and the confusion was the extent of their duty to share that information. For example, some principals were confused about whether they needed to share the information with all of the student's teachers. Some principals reported they might tell teachers that a specific student had a safety plan, without providing information on the student's criminal history.

Model Policy
3143
District Notification of Juvenile Offenders

Model Policy and Procedure
3144
Release of Information Concerning Student Sexual and Kidnapping Offenders

As we took a close look at questions and issues connected with the duties to share sensitive and confidential information, we noticed tension between two state statutes that govern to whom a principal shares student criminal history information.

Under RCW 9A.44.138, the student's risk level determines whom a principal notifies with information about a student's status as a sex offender. If the student is classified as a risk-level-two or risk-level-three offender, then the principal must provide information about the student to all of the student's teachers and to any other personnel who, in the judgment of the principal, supervises the student or who should be aware of the student's record for security purposes. If the student is classified as a risk-level-one offender, then the principal must provide information about the student to personnel who, in the judgment of the principal, should be aware of the student's record for security purposes.

Under RCW 13.04.155, if a principal learns about a student's status as a sex offender or a kidnapper, the principal must provide information about the student's status to all of the student's teachers. Additionally, the principal must provide that information to any other personnel who, in the principal's judgment, supervises the offender or who should be aware of the student's record for security purposes. The duty to share information does not vary based on the student's risk-level.

This creates the possibility that a principal could fail to comply with RCW 13.04.155 by complying with RCW 9A.44.138, regarding a student who is classified as a risk-level-one sex offender. However, by complying with RCW 13.04.155, a principal would still be complying with RCW 9A.44.138. Moreover, given case law such as *N.L. v. Bethel*, 156 Wn.2d 422 (2016), which involved lack of notification for a student classified as a risk-level-one sex offender, using the notification requirement under RCW 13.04.155 is the safer and better approach.

Given any confusion about these important duties, WSSDA revised **Model Policy 3143 – District Notification of Juvenile Offenders** and **Model Policy and Procedure 3144 – Release of Information Concerning Student Sexual and Kidnapping Offenders** for clarity, safety, and to ensure full compliance with the law.

Unpacking the final discipline regulations

Following nearly two years of study, stakeholder engagement, and formal rulemaking, the Office of Superintendent of Public Instruction (OSPI) has adopted final rules that comprehensively revise chapter 392-400 WAC.

In 2016, our Legislature passed House Bill (HB) 1541, noting that exclusionary discipline was associated with negative school climate and disconnection to school, even for students who had not been suspended or expelled. The legislation recognized that exclusionary discipline had a strong correlation with reduced graduation rates and increased involvement in the juvenile justice system. The legislation further noted that throughout Washington, students of color and students with disabilities experienced disproportionate rates of exclusionary discipline and felt the negative impacts most harshly. The legislation included provisions protecting students from unnecessary exclusions or exclusions not adequately related to safety. Additionally, the legislation included several new provisions for family participation. Further, HB 1541 required that students receive educational services when they are suspended or expelled.

HB 1541 was sea-change legislation. In addition, the discipline rules in place at the time were decades old and needed a comprehensive rewrite. In response, OSPI began the rulemaking process developing new discipline regulations that improved clarity and making HB 1541 operational. Please see the sidebar for review of the public comment and stakeholder feedback involved in the rulemaking.

OSPI adopted the final student discipline rules on July 30, 2018. Although OSPI plans to revise these rules before the start of the 2019-2020 school year, this is merely to make necessary housekeeping and technical revisions, such as repealing provisions intended exclusively for the 2018-2019 school year. It is also possible that

CONTINUED next page

Model Policy
3241
3241P
Classroom-Management, Discipline, and Corrective Action

CONTINUED FROM previous page

Model Policy
3241
3241P
Classroom-Management, Discipline, and Corrective Action

OSPI will further update the rules in response to legislative enactments. Nonetheless, the final discipline rules are here.

Several portions of the rules become effective on August 30, 2018, with the remainder becoming effective on July 1, 2019. Please see the sidebar listing the effective dates of the rules by section. WSSDA has revised **Model Policy and Procedure 3241 Classroom – Management, Discipline, and Corrective Action** for the 2018-2019 school year, and will revise them again near the end of the this upcoming school year, in preparation for the 2019-2020 school year.

This article unpacks the new rules, using a topic-by-topic approach. The topics include other forms of discipline, classroom exclusion, suspensions, expulsions, emergency expulsions, educational services, and reengagement. This is not and cannot be a complete or exhaustive report on the discipline rules. Instead, it looks at significant new provisions and areas of frequent confusion. As always, you might want to consult with your district attorney on questions and issues specific to your district.

Other forms of discipline

The new rules define "other forms of discipline" as all forms of corrective action used in response to behavioral violations, other than classroom exclusion, suspension, expulsion, or emergency expulsion. These may involve best practices and strategies in the state menu for behavior. It appears that the rules use the phrase "other forms of discipline" as a substitute for the phrase "alternative forms of corrective action" found in statute, with which you may be more familiar. It is helpful to understand the phrase "other forms of discipline" as ways to support students in meeting behavioral expectations that do not involve missing class or school.

"That phrase ('other forms of discipline') is important because it is a precondition for other actions. Starting in the 2018-2019 school year, before a teacher may impose a 'classroom exclusion' the teacher, or other school personnel must first attempt one or more 'other forms of discipline' to support the student in meeting behavioral expectations."

That new phrase is important because it is a precondition for other actions. Starting in the 2018-2019 school year, before a teacher may impose a "classroom exclusion" (more on classroom exclusion just below) the teacher, or other school personnel must first attempt one or more "other forms of discipline" to support the student in meeting behavioral expectations. An exception to this precondition is if the student's presence poses an immediate and continuing danger to others or an immediate and continuing threat to the educational process.

Similarly, but not starting until the 2019–2020 school year, the rules will require school districts to attempt one or more "other forms of discipline" before administering a short-term or in-school suspension (more on short-term and in-school suspensions below). Also starting in the 2019-2020 school year, the rules will require school districts, at a minimum, to consider "other forms of discipline" before administering long-term suspensions and expulsions (more on those below).

You will note that the precondition differs for the less severe forms of exclusion (classroom exclusion, short-term suspension, and in-school suspension) than for the more severe forms of exclusion (long-term suspension or expulsion). Specifically, the different preconditions to exclusion are "one or more attempts at other forms of discipline" compared to "consider other forms of discipline."

Based on these preconditions in the regulations, boards should begin reviewing their board discipline policies to identify any customized language you may have added that calls for mandatory suspension in response to certain behavioral violations or taking a "zero-tolerance" approach. Such language indicating compulsory suspension will be impermissible.

Classroom exclusion

The definition of "classroom exclusion" is the exclusion of a student from a classroom or instructional activity area for behavioral violations. Note that this definition specifies that classroom exclusions must be in response to behavioral violations. This means that sending a student to the office because the student's behavior is disruptive is a classroom exclusion, whereas sending a student to the office to meet with a counselor and resolve a scheduling issue is not a classroom exclusion.

Additionally, classroom exclusion does not include when a student briefly misses instruction so that school personnel can support the student in meeting behavioral expectations

CONTINUED next page

CONTINUED FROM previous page

Model Policy
3241
3241P
Classroom-Management, Discipline, and Corrective Action

and school personnel remain engaged with the student. This means, if the teacher directs the student to the hallway for a brief conversation, attempting to support the student's behavior, the teacher's action constitutes "other forms of discipline," not a classroom exclusion. Similarly, if the teacher calls upon a building administrator to talk briefly with the student about classroom expectations, such an action is "other forms of discipline," not a classroom exclusion. However, if a teacher directs the student to the hallway and leaves the student there (or with a para-professional for safety reasons) for any longer than a brief time, those actions constitute classroom exclusion.

Although the new precondition of attempting "other forms of discipline" applies, after meeting the precondition, teachers retain statutory authority to exclude a student "for all or any portion of the balance of the school day, or up to the following two days, or until the principal or designee and teacher have conferred, whichever occurs first."[1] The rules do not prescribe how the principal and teacher confer regarding a classroom exclusion. Districts may wish to adopt clarifying provisions in their policies and procedures designating how the principal (or designee) and the teacher should confer as established during bargaining agreements.

Importantly, effective for the 2018-2019 school year, the teacher, principal, or designee must notify the student's parents regarding classroom exclusion as soon as reasonably possible. Further, the school district must ensure that this notice is in a language the parents understand.

Suspensions

Effective for the 2018-2019 school year, the rules define suspension as "a denial of attendance in response to a behavioral violation from any subject or class, or from any full schedule of subjects or classes, but not including classroom exclusions, expulsions, or emergency expulsions." Please note that sending a student home early based on a behavioral violation is a suspension. Similarly, telling a parent to keep a student home from school based on a behavioral violation is a suspension. State law, prior to and under the new rules prohibits these or other types of suspension without an informal hearing. The definition in the new rules clarifies that suspensions are categorically different, from classroom exclusion, expulsion, or emergency expulsion.

Starting in the 2019–2020 school year, the definition of suspension includes more information about the three types of suspensions: "in-school," "short-term," and "long-term" suspensions. This information makes it clear that the term suspension includes both "in-school" and "out-of-school" suspensions and further clarifies what due process procedures apply for each type of suspension.

There are behavioral violations listed in statute that specify when districts may (but are not required to) impose a long-term suspension or an expulsion.[2] In other words, districts may impose a long-term suspension or an expulsion for only those behavioral violations listed in statue. The rules reference this list and starting in the 2019-2020 school year, add that in addition to being a violation on the list, districts must also determine that the student would pose an imminent danger to others or an imminent threat of material and substantial disruption of the education process. Additionally, remember the precondition of "consider other forms of discipline," as described above, which will be required in the 2019-2020 school year.

[1]RCW 28A.600.020(2)
[2]See RCW 28A.600.015(6)(a)(b)(c)(d).

Shaped by public comment and feedback

A PLAY-BY-PLAY

In 2016, the legislature passes House Bill (HB) 1541, that includes provisions for educational services while a student is suspended or expelled and provisions allowing families to participate in the development of discipline policies and in resolving discipline-related issues.

In response to HB 1541, OSPI begins first steps of the rulemaking process.

On November 1, 2016, they give official notice of intent to consider revisions to student discipline rules.

On September 6, 2017, after having received considerable public input, OSPI presents its proposed revisions to the discipline rules.

In October and November, 2017 OSPI then holds four public hearings on the proposed rules in Spokane, Yakima, Renton, and Olympia.

On February 21, 2018, after reviewing the numerous written comments and public hearing comments, OSPI presents revised proposed rules and opens a new period of public comment.

OSPI then holds new rounds of public hearings on the revised proposed rules in Olympia, Tukwila, and Spokane, and allows accepted written comments to the revised rules through May 2, 2018.

On June 6, 2018, after reviewing the written comments and public hearing comments, OSPI reopens the proceedings for additional public comment on the revised proposed rules that run through July 18, 2018 and include an additional public hearing in Olympia.

CONTINUED next page

CONTINUED FROM previous page

The rules limit the length of long-term suspension such that it cannot exceed the length of an academic term. This does not mean that a suspension incurred in the middle of a semester must end with that semester. Rather, it means the suspension must end with the cumulative number of school days within the semester. However, the rules specify that districts cannot administer a suspension beyond the school year in which the behavioral violation occurred.

Expulsion

To understand expulsion, it is helpful to compare it with long-term suspension. Let's look at maximum length. Both long-term suspensions and expulsions share a maximum length limited to the length of an academic term. However, as just mentioned, a school district may not administer a long-term suspension beyond the school year in which the behavioral violation occurred; but no such limitation applies to the use of expulsion. Additionally, a school district may extend the length of an expulsion when warranted, based on public health or safety (although the maximum length remains an academic term). In contrast, no such extension process applies to the use of long-term suspension.

Let's look further at the notion of length, this time, focusing on the standard for determining actual length. As discussed above, starting in the 2019–2020 school year, school districts determine long-term suspension length based on whether the student's return to school would pose an imminent danger to others or an imminent threat to the educational process. In contrast, school districts determine an expulsion's length based on whether the student's return to school would pose an imminent danger to others, without reference to the educational process.

Let's look at breadth. A long-term suspension may consist of denied attendance from a single subject or class, multiple subjects or classes, or a full schedule of subjects or classes. In contrast, an expulsion is a denial of admission to the student's current school placement, including the student's full schedule of subjects or classes at that school. In other words, a district could long-term suspend a student from a single class, but if a district imposed an expulsion, the student is excluded from his or her whole placement.

Let's look at an example of expulsion. If a school district administratively transfers a student to another school or program in response to a behavioral violation, that transfer constitutes an expulsion. Note that a transfer for a reason not in response to a behavioral violation is not an expulsion. The new rules, like the prior rules, require school districts to provide notice and due process any time a district refers

There are behavioral violations listed in statute that specify when districts may (but are not required to) impose a long-term suspension or an expulsion.

a student to another school in response to a behavioral violation. The new rules also specify that, if a school district enrolls a student in another program or course of study during a suspension or expulsion, the district may not preclude the student from returning to the student's regular educational setting following the end date of the suspension or expulsion, except in limited cases.

Additionally, remember the precondition associated with "consider other forms of discipline," as described above, which will be required starting in the 2019-2020 school year.

Emergency Expulsions

Under limited circumstances, a school district may immediately remove a student from school without first holding an informal hearing with the student. Consistent with the prior rules, the new rules provide that school districts may use emergency expulsions in situations where a district believes a student's presence in the building poses either an immediate and continuing danger to others or an immediate and continuing threat to the educational process.

Starting in the 2019-2020 school year, the rules clarify the meaning of "an immediate and continuing threat of material and substantial disruption of the educational process." The clarification provides that (1) the student's behavior must create a substantial barrier to learning for other students,

CONTINUED next page

CONTINUED FROM previous page

and (2) the school district must have exhausted reasonable attempts to support the student in meeting behavioral expectations.

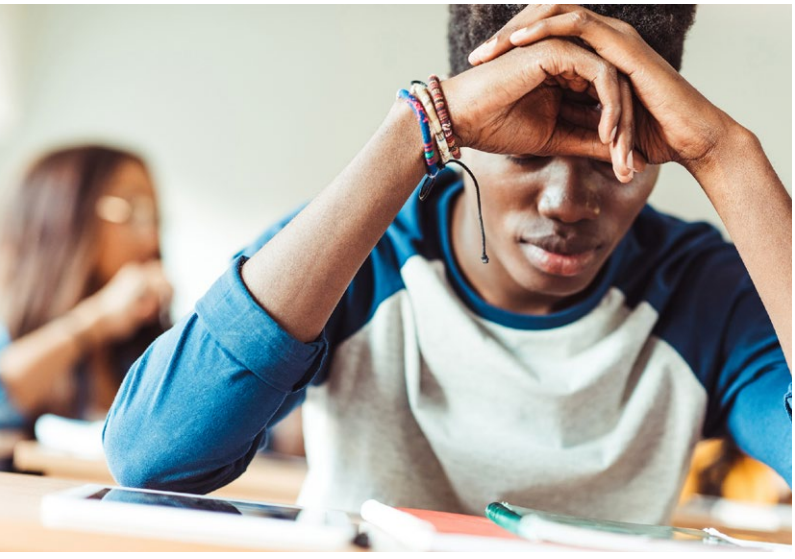
Districts still need to provide notice and due process after administering an emergency expulsion. Emergency expulsions must end or be converted to another discipline action within 10 school days. The rules provide that school districts must notify parents about the emergency expulsion and the right to appeal within 24 hours after the school district removes the student from school. Consistent with statutory requirements, the rules provide that school districts must give additional notice and due process whenever a school district converts the emergency expulsion to a suspension or expulsion. The rules do not include limitations on emergency expulsions based on grade level.

Educational services

Based on provisions in HB 1541, school districts cannot deny a student educational services in response to a behavioral violation. The rules require school districts to provide students the opportunity to receive educational services that enable a student to (1) continue to participate in the general education curriculum; (2) meet the educational standards established within the district; and (3) complete subject, grade-level, and graduation requirements.

The rules do not mandate in-person contact between school personnel and a student who is suspended or expelled. School districts have discretion to determine their methodology for providing the support and coordination required under the rules. However, the rules do require districts to consider meaningful input from the student, parents or guardians, and the student's teachers when providing the student with the opportunity to receive educations services. Additionally, the rules require districts to consider access to any necessary technology, transportation, or resources the student needs to participate in the educational services.

Model Policy
3241
3241P
Classroom-Management, Discipline, and Corrective Action



The rules also provide that, as soon as reasonably possible after administering a suspension or expulsion, school districts must provide written notice to the student and parents about the educational services the district will provide. This notice must include a description of the educational services that will be provided, and the name and contact information for the school personnel who can offer support to keep the student current with assignments and course work.

Starting in the 2019-2020 school year, school districts must adopt policies that, among other things, describe the types of educational services the school district offers to students during a suspension or expulsion and the procedures to follow for the provision of educational services under the new rules. WSSDA will provide language addressing this information when we revise **Model Policy and Procedure 3241 – Classroom Management, Discipline, and Corrective Action** again near the end of the 2018-2019 school year.

School districts can claim state funding for students with long-term suspension or expulsion for whom the district is providing educational services in accordance with program requirements. Additionally, districts can claim state funds for the student's transportation costs during the duration of a suspension or expulsion.

Students with a suspension or expulsion do not trigger involvement with the truancy process, regardless of their participation in educational services. OSPI recently revised the rules governing student absences to clarify that the school district considers a student "present" when he or she is suspended or expelled and receiving educational services aligned with his or her course of study. Further, the district considers the absence of a student with a suspension or expulsion who is not participating in educational services as an excused absence.

Importantly, the fact that a student receives comparable educational services does not negate or diminish that student's right to appeal his or her suspension or expulsion. Due process for students charged with violating a school district discipline policy protects more than a student's

CONTINUED next page

CONTINUED FROM previous page

entitlement to basic education as a property interest. The Fourteenth Amendment's Due Process Clause also forbids arbitrary deprivations of a student's liberty interest in preserving a good name, reputation, honor, or integrity. The minimum due process procedures set forth in the rules protect this important right.

Reengagement

Remember, the reengagement process is different from an appeal of a student's suspension or expulsion and it is different from a possible, but not required, meeting to discuss the provision of educational services.

State law requires school districts to meet with the student and parents/guardians to develop a reengagement plan to support the student's successful return to school. This meeting must be within twenty days and no later than five days before the end date of a long-term suspension or expulsion. Further, the rules provide that the district must hold this meeting sooner if the family requests an early meeting.

The reengagement process must involve the family in the development of a culturally responsive plan "tailored to the student's individual circumstances."[3] The reengagement process involves considering shortening the length of time the student is suspended or expelled. It also involves discussing supportive interventions that facilitate the student's academic success and keep the student engaged and on track to graduate. The reengagement process is an opportunity for school districts to account for whether the educational services the district initially provided the student were sufficient and, if not, develop an appropriate plan.

The rules do not require school districts to convene a reengagement meeting for short-term suspensions.

Model Policy
3241
3241P
Classroom-Management, Discipline, and Corrective Action

Conclusions

Although there was a lot of information to unpack, understanding this sea change in student discipline is worth the time. Again, this article is not an exhaustive report on the final discipline rules, but it is a good start. Please remember to see the sidebars, consult with your district attorney as needed, and come back towards the end of the 2018-2019 school year for the final installment.

[3] The new rules define "culturally responsive" to align with the meaning of "cultural competency" under state laws pertaining to educator performance standards. According to state law, school districts are encouraged to provide opportunities for all school and school district staff to gain knowledge and skills in cultural competence, including in partnership with their local communities. See RCW 28A.415.420; WAC 392-400-023(4); WAC 392-400-025(3).

EFFECTIVE DATES

THE FOLLOWING RULES REMAIN EFFECTIVE, AS AMENDED, FOR THE 2018-19 SCHOOL YEAR ONLY:

- **WAC 392-400-225** (School district rules defining misconduct—Distribution of rules)
- **WAC 392-400-230** (Persons authorized to impose discipline, suspension, or expulsion upon students)
- **WAC 392-400-233** (Absences, tardiness, and school meals)
- **WAC 392-400-235** *through* **392-400-285** (Discipline, short-term and long-term suspensions, and expulsions)
- **WAC 392-400-295** *through* **392-400-305** (Emergency expulsions)
- **WAC 392-400-310** *through* **392-400-320** (Long-term suspension and expulsion appeals)
- **WAC 392-400-410** (Appeal for extension of an expulsion)

THE FOLLOWING RULES ARE EFFECTIVE STARTING IN THE 2018-19 SCHOOL YEAR:

- **WAC 392-400-010** (Purpose)
- **WAC 392-400-015** (Authority)
- **WAC 392-400-020** (Application)

> Continued next column

- **WAC 392-400-023** (Definitions)
- **WAC 392-400-330** *and* **392-400-335** (Classroom exclusions)
- **WAC 392-400-610** (Educational services)
- **WAC 392-400-710** (Reengagement)
- **WAC 392-400-805** (Fundamental rights)
- **WAC 392-400-810** (Exceptions for the purposes of protecting victims)
- **WAC 392-400-815** (Behavior agreements)
- **WAC 392-400-820** (Firearm exceptions)
- **WAC 392-400-825** (Corporal punishment, restraint, and isolation)
- **WAC 392-400-830** (School meals)

THE FOLLOWING RULES WILL BECOME EFFECTIVE STARTING IN THE 2019-20 SCHOOL YEAR:

- **WAC 392-400-025** (Definitions)
- **WAC 392-400-110** (Discipline policies and procedures)
- **WAC 392-400-430** *through* **392-400-480** (Suspensions and expulsions)
- **WAC 392-400-510** *through* **392-400-530** (Emergency expulsions)

Surveillance cameras:

POTENTIALLY BENEFICIAL BUT CONSIDER WITH CARE

Policy 6610 Surveillance Cameras

Given the potential benefits, more and more districts are using surveillance cameras. The National Center for Education Statistics reported that in the 2015–2016 school year, 94% of high schools, 89% of middle schools, and 73% of primary schools used surveillance cameras (at least to some extent) to monitor schools.

Some districts use 24-hour surveillance cameras, and those cameras might be inside, outside, or both. Surveillance cameras allow monitoring of remote spaces, busy corridors, and entrances and exits. Further, although hard numbers are difficult to obtain, some experts credit surveillance cameras with deterring unauthorized intruders, vandalism, and crime.

However, surveillance cameras can be controversial and carry important legal implications. Whether your district already uses surveillance cameras or your board is just considering them, it is wise to review the legal considerations in play. Your board should ask questions and proceed with a purpose and process that is transparent and guided by your board policy.

Legal considerations in play

CONSTITUTIONAL PROTECTIONS. At the federal level, the Fourth Amendment to the U.S. Constitution prohibits the government, including public schools, from conducting unreasonable searches or seizures. At the state level, Article I, Section 7 of Washington's Constitution provides corresponding but more robust protections.

The courts have generally held that video recording of what an individual *knowingly* exposes in plain view to the public does not constitute a search and will not trigger constitutional protections because the individual had no expectation of privacy. An example of a public location in which courts might find that individuals do not have a reasonable expectation of privacy is a parking lot, including school parking lots. In contrast, a court would likely find that restrooms and locker rooms are areas where a student has a reasonable expectation of privacy; therefore, cameras in such areas likely constitute an illegal search.

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA). FERPA requires educational institutions that receive federal funding, including public schools, to protect the confidentiality of student education records and the personally identifiable information contained in them. FERPA also provides parents and eligible students with access to these records. Under some circumstances, images recorded by cameras can constitute education records under FERPA.

LAW ENFORCEMENT UNIT RECORDS. Law enforcement unit records are records created and maintained by a law enforcement unit for a law enforcement purpose. Law enforcement unit records are not "education records" subject to the privacy protections of FERPA. The law enforcement unit may refuse parents from access to its records or may disclose its records to third parties without parents' prior written consent. However, education records, or personally identifiable information from education records that the district shares with the law enforcement unit retain the status and protections of an education record.

CONTINUED next page

CONTINUED FROM previous page

Policy 6610 Surveillance Cameras

WASHINGTON'S PUBLIC RECORDS ACT (PRA). Similar to the federal Freedom of Information Act, but perhaps more robust, the PRA provides individuals access to public records of state and local governmental agencies. The definition of a public record may encompass video images. As a result, the images recorded by surveillance cameras may be subject to public records requests from third parties, such as parents of other students and the media. *Lindeman v. Kelso School Dist.* 162 Wash.2d 196 (2007) (bus video subject to public records disclosure).

STATE RETENTION SCHEDULES. Local Government Common Records Retention Schedule (CORE) & School Districts and Educational Service Districts Records Retention Schedule govern records retention. If video recordings become part of students' records, districts must include those recordings in retention considerations.

FEDERAL AND STATE PRIVACY LAWS. Title I of the federal Electronic Communications Privacy Act of 1986 and RCW 9.73.030, Washington's "wiretapping law," make it a crime to intercept or record a private telephone call, in-person conversation, or electronic communication, unless all parties to the communication provide consent. The recording of *private* audio conversations is likely to violate these laws.

SUBJECT TO BARGAINING. The Public Employment Relations Commission (PERC) has found that where an employer changes the use of a pre-existing surveillance camera in a way that could be used to discipline employees, the employer is obligated to inform the union about the potential change and provide an opportunity for the union to request bargaining. King County, Decision 9495-A (PECB, 2008).

Questions to ask – the where, how, what, who

Where will the district install cameras? How is the footage stored and for how long? For what purpose(s) will the district use the footage (disciplinary proceedings, investigation, staff evaluations)? Who, if anyone, will monitor cameras and who, if anyone, can review the footage without a specific reason? Who else can view or receive a copy of the footage? Can parents or the media get copies?

"WSSDA recommends that boards place cameras only in common areas, like hallways and stairwells, and reject placing cameras in areas where students and staff would have an expectation of privacy..."

Transparent purpose and process, guided by your board policy

To help guide your board's review of the issues and questions, WSSDA has developed a new model policy – **Policy 6610 Surveillance Cameras**. Although you should customize your board policy to reflect your decisions on the questions above, the policy you adopt should set out the purpose for using surveillance cameras and outline the parameters for use. For example, the purpose statement might be for "maintaining the health, welfare, and safety of students, staff, and visitors, and to protect district equipment and facilities." As discussed below, the board should consider whether the cameras' purpose also extends to reviewing incidents that might lead to student discipline or be considered when evaluating staff.

Your board policy should be transparent about the types of locations for surveillance cameras. "Types of locations" refers to the privacy expectation, as discussed above. The decision about the types of locations for cameras is exclusively a board decision, which the board should not delegate. In contrast, the board appropriately delegates the decision of the exact location of cameras within the designated types of locations. Additionally, the board appropriately delegates the decision to install a camera at a particular location in direct response to a specific incident. WSSDA recommends that boards place cameras only in common areas, like hallways and stairwells, and reject placing cameras in areas where students and staff would have an expectation of privacy, such as restrooms and locker rooms. Limiting cameras to common areas addresses considerations for privacy both for audio and video recordings. After you decide the types of areas for cameras, notify the school community, including statements in student handbooks and posting signs stating that surveillance cameras are present and may videotape anyone on school property.

In addition to using surveillance cameras to address and deter student misconduct, some school districts have chosen to use surveillance cameras to monitor and evaluate staff. Again, your board's purpose for using surveillance cameras and its selection of types of locations is important. It is unlikely to be problematic for the district to use surveillance camera footage of staff members fighting in a parking lot for disciplining those staff members. However, the district should consult with its attorney before using cameras to monitor staff members' professional skills. The district will want to establish guidelines for implementation and communicate with staff to provide an opportunity for the union to request bargaining.

CONTINUED next page

CONTINUED FROM previous page

Policy 6610 Surveillance Cameras

Your board policy should consider the permissible uses of the footage from the surveillance camera and how long to retain the footage. Remember, some footage might become part of a student record, and state retention schedules would apply. The usual surveillance camera footage consists of images of students and staff traipsing to and from school buildings and back and forth in the hallway. Districts often program their surveillance cameras to "loop" and re-record over previously recorded images. Such minimal retention of the footage has several benefits, notably, it reduces potential issues involving PRA requests and FERPA, but it does not afford your district administrators much time to realize they should review the footage.

If the footage captures misconduct, such as a student fight or theft, your administrators may seek to maintain the recorded footage as part of an investigation and/or disciplinary proceedings. Using surveillance footage to evaluate an allegation of student wrongdoing might improve the district's ability to protect students from harassment, intimidation, and bullying. However, it is important to remember that the student discipline regulations provide parents and students with access to the evidence used in the student's disciplinary proceedings. Additionally, if the district maintains footage for disciplinary purposes, the footage likely qualifies as an education record under FERPA. As discussed, FERPA grants parents access to their student's records, while protecting the confidentiality of other students' records. This creates a potential need for painstaking (and time-consuming) redaction of footage, for example, blurring the images of other students captured on the footage, before providing it to the parent. Remember, if a law enforcement officer, such as a school resource officer, created and is maintaining footage for a law enforcement purpose, those records are not education records and not subject to FERPA.

Finally, when the district maintains footage from its surveillance cameras, the footage could be a record, subject to requests under the PRA. Depending upon the contents of the footage, it might be an education record, which FERPA exempts from PRA disclosure, as the obligation to protect student confidentiality overrides the obligation to make the record publicly available. Nonetheless, districts should review whether footage qualifies as an education record and to whom it may or must be disclosed on a case-by-case basis in consultation with the district's attorney.

Public comment periods have constitutional protections

Model Policy and Procedure 1400 Meeting Conduct, Order or Business , and Quorum

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

—First Amendment to the U.S. Constitution

One of the hallmarks of the U.S. Constitution is freedom of speech on government property, but understanding how those rights manifest in different spaces is complicated. In the 1980s, the U.S. Supreme Court began using a categorical approach known as the public forum doctrine to analyze restrictions on private speech and other forms of expression on governmental property. There are four types of forums for First Amendment purposes: traditional public, designated public, limited public, and non-public.

A traditional public forum – the most open forum – includes public places traditionally used by the public for assembly, speech, and debate, such as streets, parks, and sidewalks. In a traditional public forum, the government can enforce regulations on the time, place, and manner of speech, but any restrictions on the content of speech must satisfy strict scrutiny. In other words, any restriction must be content-neutral, necessary, and narrowly tailored to serve a compelling government interest.

A designated public forum is public property that is not traditionally open, but which the government has "opened for use by the public" as a place for speech and expressive activity. It is public property that the government makes generally accessible to all speakers for general comment. Although the governmental entity may choose whether to designate a forum as public, once it does so, it is limited in how it can restrict speech there. The government entity's restrictions are subject to the same strict scrutiny as restrictions in a traditional public forum.

A limited public forum is public property that the government allows certain groups to use or is dedicated solely to the discussion of certain subjects. Restrictions on speech in a limited public forum must meet a lower, separate standard than that for an open or a designated public forum. Specifically, restrictions must be reasonable in light of the forum's purpose and be viewpoint neutral, i.e., not discriminate based on the speaker's point of view.

A non-public forum is public property that the public does not traditionally use for public communication, such as sidewalks around post offices, airport terminals, and government office spaces. In addition to time, place, and manner regulations, the government may reserve the forum for its intended purpose if the regulation on speech is reasonable and not a pretense for suppressing views with which the government disagrees.

What type of forum is a school board meeting?

Distinguishing between the public comment period of a school board meeting and the portion of the meeting devoted to agenda items is important. The agenda portion

CONTINUED next page

CONTINUED FROM previous page

of the board meeting fits into the limited public forum category. Boards have more authority to regulate speakers when the meeting turns to agenda items. Taken as a whole, a school board meeting does not fit the category of a traditional public forum. This is because the board sets its agenda for meetings and may confine a meeting to a specified subject matter. Boards can select and invite specific individuals to address specific agenda topics and can reasonably restrict their invitees to limit their comments to the agenda topic(s) at hand.

However, during the public comment period, the board's authority to restrict comments is very limited in scope. There is some debate on the exact boundaries, but the legal consensus, including that of the National School Boards Association (NSBA) is that the public comment period of a school board meeting is a designated public forum.[1]

Although not required under the Open Public Meetings Act (OPMA), Washington's school boards have a long-standing custom of including a public comment period during their board meetings because such periods provide an important channel for feedback from the community. Without a statutory mandate for a public comment period from the OPMA, some boards have felt that they have broad discretion to adopt a policy that limits the topics and types of speech in a public comment session. However, courts have struck down restrictive board policies under the federal constitutional law, noting that even if state law does not prohibit a board's restrictions, the state law must be interpreted to align with the highest law of the land. In other words, school boards may not abridge the freedom of speech during the public comment period of school board meetings by adopting an unduly limiting policy.

It is difficult to specify the precise parameters of allowable restriction, but recent case law indicates a growing trend for courts to find that well-intended board policies are nonetheless impermissible under a constitutional analysis. Two examples are *Spaulding v. Town of Natick Sch. Comm.* No. 18-1115 (Mass. Super. Ct. Jun. 5, 2018) and *Cawiezell-Sojka v. Highland Comm. Sch.* No. 3:17–cv-00020-RGE–SBJ (U.S. Dist. Ct. Feb. 21, 2018).

Some boards would like their policies to require speakers who want to criticize school employees to do so in closed session. However, courts have found that presenting a comment in a closed meeting or on a grievance form is not a sufficient alternative to presenting it in an open meeting because it does not reach the same audience.[2] Therefore, polices that forbid the public, during public comment period, from touching upon personnel issues generally or from criticizing district personnel or board members will likely be impermissible because they restrict the allowable content, viewpoint, or both content and viewpoint of the public's speech.

Similarly, policies that forbid comments during the public comment period because they are repetitive or caustic may be impermissibly restrictive. For example, the New Jersey Supreme Court held in favor of a disgruntled parent who sued after the school board refused to let her present a complaint about school personnel and policy that had already been presented at eight earlier board meetings. Holding for the parent, the court stated, "Our free society must give breathing room for an 'uninhibited' and 'robust' discussion of public issues, even when it includes [...] vehement, caustic and sometimes unpleasantly sharp attacks on government officials.[3]"

Determining what speech is merely caustic and unpleasant and what speech is reasonably restricted requires some

"...courts have struck down restrictive board policies under the federal constitutional law, noting that even if state law does not prohibit a board's restrictions, the state law must be interpreted to align with the highest law of the land."

CONTINUED next page

[1]Thomas Pickrell, School Board Meetings and the First Amendment, INQUIRY AND ANALYSIS (National Sch. Bds. Ass'n), May 2000, at 2. [2]*Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 736 (S.D. Cal. 1996). [3]Bressler v. Board of Educ., 993 A.2d 805 (N.J. 2010) (quoting N.Y. Times Co. v. Sullivan, 376 U.S. 254 (1964).

finesse. Policy may prohibit "fighting words" any time during a board meeting. Fighting words are words that include a call to violence. Additionally, if the board reasonably perceives that speech will disrupt the orderly and fair progress of the discussion or if speech reaches the level of obscenity, board policy can prohibit it. However, it is not yet clear whether policy may forbid simple profanity during the public comment period of board meetings in the interest of preserving meeting decorum. Remember, the board has much more authority to adopt policies that place restrictions on public speech during the agenda portion of the meeting. During the agenda portion of the meeting, the board is justified in limiting its meeting to discussion of specified agenda items and imposing reasonable restrictions to preserve the civility and decorum necessary for a school board to conduct its business.

The OPMA provides authority for boards to limit the time of speakers to a uniform amount (such as three minutes), but what time restrictions pass the constitutional tests? Finally, some good news for boards: the courts have widely viewed time limits on speech to be constitutional restrictions on the time, place, and manner of speech. Courts have upheld time limits as short as two minutes, noting that time limits allow boards to conserve time and give the maximum number of individuals an opportunity to speak.

"... if the board reasonably perceives that speech will disrupt the orderly and fair progress of the discussion or if speech reaches the level of obscenity, board policy can prohibit it."

Importantly, the right to petition government does not create in the government a corresponding duty to act. Nothing in the First Amendment suggests that the rights to speak, associate, and petition require government policymakers to listen or respond to individuals' communication on public issues. Instead, boards will do well to provide permissive public comment within the time limits without comment. If a speaker's comments become questionable, the chair should briefly interrupt the speaker with a reminder or request for decorum, while reserving the act of terminating a speaker's remarks to only those narrow reasons discussed above.

WSSDA has revised **Model Policy and Procedure 1400 – Meeting Conduct, Order of Business, and Quorum** with the overall goal of providing districts with more clarity about the operation of their board meetings and including more language addressing constitutional considerations.

Model Policy and Procedure 1400 Meeting Conduct, Order or Business , and Quorum

the buzz

ABOUT DRONES AND SCHOOLS

Model Policy 4500 Unmanned Aircraft System and Model Aircraft

After receiving several requests, WSSDA has developed a new policy for drones.

Drones are small robotic aircraft that individuals fly via remote control. The Federal Aviation Administration (FAA), which governs the use of drones, also uses the term unmanned aircraft system (UAS). Initially used by the military, drones have captured the world's attention, be it in education, for entertainment, or for commercial use. Across the state and the nation, personal drones have become increasingly popular and students and educators are eager to get drones into extracurricular activities and into the classroom.

According to enthusiasts, drones make new technology accessible, encouraging students to study subjects they might otherwise not consider. Academic uses of drones include programming, software coding, and 3-D printing. According to a recent New York Times article, not only are colleges offering drone classes, several colleges are also offering degrees in drones. Whether or not your district is incorporating drones into the classroom, for policy purposes, boards need a policy governing unauthorized use of drones on district property or at district events, such as athletic competitions.

WSSDA's new **Model Policy 4500 - Unmanned Aircraft System and Model Aircraft** provides a clear statement, prohibiting unauthorized use of drones and reserving all the district's rights to remove or refuse entry to anyone engaged in unauthorized drone use. The model policy also includes the necessary definitions, sets out the approval process, and reflects the laws set forth by the FAA.

[1]For other examples see Wolpert-Gawron, Heather, "Drones Can Be Fun—and Educational." Edutopia, https://www.edutopia.org/blog/7-ways-use-drones-classroom-heather-wolpert-gawron

[2]https://www.nytimes.com/2018/04/05/education/learning/schools-drone-programs.html

REVISITING student absence

When students miss instruction, they are much more likely to fall behind, making the support of regular attendance and addressing chronic absence a priority. There are several components to chronic absence, such as negative school experiences, competing commitments, and health or emotional barriers. Further, chronic absence has a strikingly disproportional impact on low-income students and certain ethnic groups.

Recent shifts in law, both at the national and state levels, have focused on prevention and intervention as ways to close the achievement and opportunity gaps and have also required increased data collection. Given all of these factors, misunderstanding and confusion about absences have been problematic. Questions such as, "Can we excuse a student's absence because of bullying?" and "Is a student really absent from school if the district has excluded the student for disciplinary reasons?" are common. The Office of the Superintendent of Public Instruction (OSPI) has recently revised the regulations, providing definitions and more clarity.

Absence defined

The revised rules define absence as when a student is not physically present on school grounds and not participating in instruction or an instruction related activity or in a school-approved activity regulated by an instructional/academic accountability system, such as participation in district-sponsored sports.

This last provision, exempting participation in district-sponsored sports from the definition of absence, is based on feedback from WSSDA, WASA, AWSP, and WIAA. (Public Comment) The feedback pointed out that an underlying purpose for tracking attendance is ensuring students are on track to graduate and participation in district-sponsored sports is already contingent on meeting a high standard of academic eligibility.

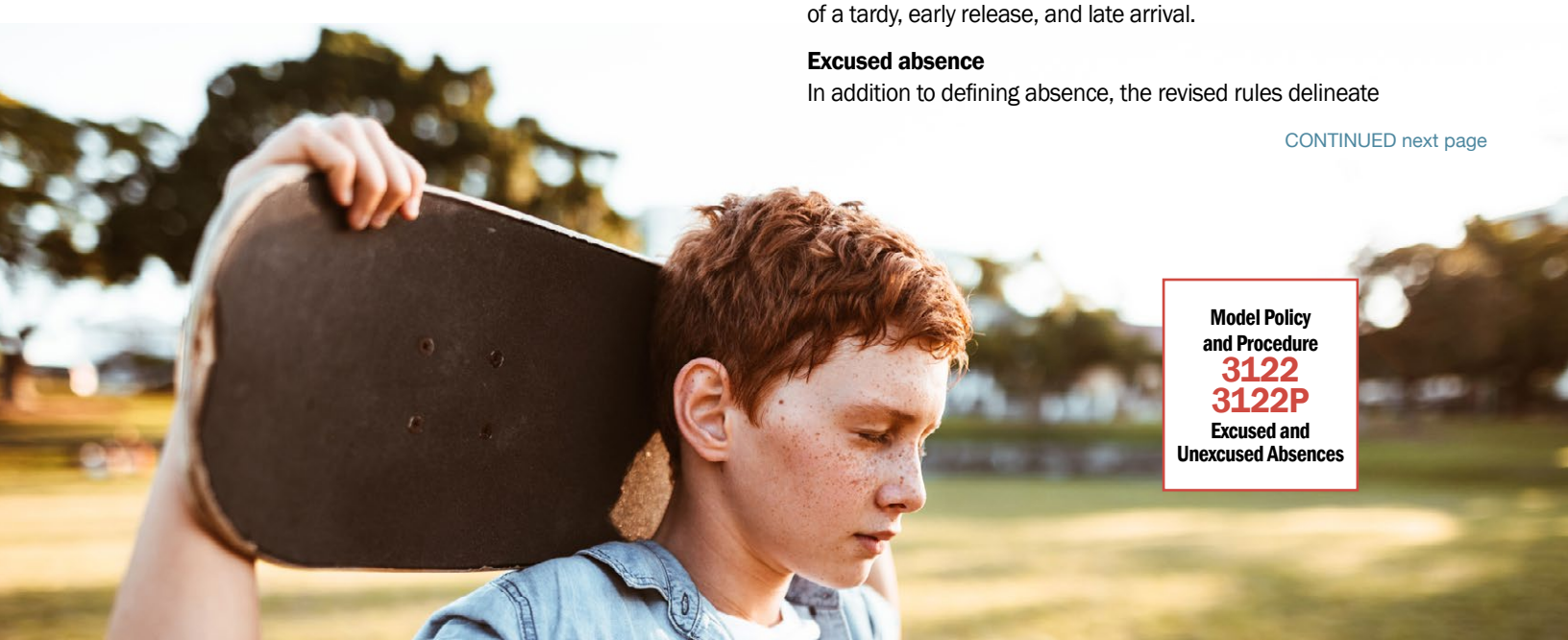
During the rulemaking process, some commenters raised concerns that the revised definition of absence would not encompass a student who was skipping class but still on school grounds. OSPI responded that districts should construe the language of students being "not physically present on school grounds" as students not being present in their assigned or expected setting. Therefore, a student who skips class is absent, but a student who has left class with permission to participate in a school-related activity or to go to the nurse's office is still in his or her assigned or expected setting for school-related purposes, and not absent.

The definition of absence also sets out that a student who is not attending school because of exclusionary discipline (i.e. the district has suspended, expelled, or emergency expelled the student), but who is receiving services aligned with his or her course of study, is not absent. Additionally, the definition prohibits districts from converting or combining instances of tardiness into absences that contribute to a truancy petition. Removing tardiness from the calculation of truancy limits a truancy petition to the main issue of significant unexcused absences. However, this change to the rules does not preclude districts from tracking tardiness, engaging with families to understand its root cause, and providing supports or interventions. WSSDA will continue to collaborate with OSPI to explore providing sample language in model policy and procedure, which could include suggested definitions of a tardy, early release, and late arrival.

Excused absence

In addition to defining absence, the revised rules delineate

CONTINUED next page



Model Policy and Procedure
3122
3122P
Excused and Unexcused Absences

additional circumstances when a district must excuse a student's absence. Specifically, the following are additional excused absences:

- Illness, health condition, or medical appointment, including but not limited to medical, dental, optometry, pregnancy, treatment for chemical dependency, mental health, and counseling, whether for the student or a person for whom the student is legally responsible
- Safety concerns, including threats, assaults, or bullying
- Court or judicial proceeding, court-ordered activity, or jury service
- Suspensions, expulsions or emergency expulsions where the district is not providing the student with educational services and a qualifying course of study
- The student's homeless or foster care/dependency status
- The student's migrant status

The expanded list of excused absences provides safeguards for vulnerable student groups. One of these safeguards relates to student pregnancy and parenting. This is consistent with other laws, including Title IX and the McKinney-Vento Education of Homeless Children and Youth Assistance Act, which afford several protections for pregnant and parenting teens.

Another safeguard relates to students with migrant status. This does not mean districts must excuse all absences of a student who is a migrant. Rather, this provision excuses absences caused by migrant status. Additionally, although not required, OSPI's Title I Part C Migrant Education Program strongly encourages districts to create an Extended Absence Agreement with the families of students with migrant status to decrease the risk of adverse effects on the student's educational progress and to avoid unnecessary engagement with the court system for truancy driven by economic need.

Model Policy and Procedure
3122
3122P
Excused and Unexcused Absences

Importantly, the revised rules provide boards with authority to create additional categories of excused absences in their policy. For example, the board's policy could add non-district-sponsored sports to the list of excused absences and establish how students' participation would be contingent on academic eligibility. Additionally, the revised rules provide boards with authority to establish the criteria for meeting excused absences. For example, the board's policy could require medical documentation, such as a doctor's note, to excuse an absence for medical reasons after a certain number of absences.

WSSDA has revised **Model Policy and Procedure 3122** and **3122P – Excused and Unexcused Absences** to reflect the revisions to WAC 392-401-020 and for more explicit alignment with the RCW 28A.225.

Access to Highly Capable programs is an equity issue

Model Policy and Procedure
2190
2190P
Highly Capable Programs

Recent studies show that children living in low-income areas or who are from racial, ethnic, and language minorities are less likely to be selected for advanced programs, even when their test scores and grades are similar to white or middle-class students. For example, a report from the Thomas B. Fordham Institute showed that students at schools serving low-income areas participate in "gifted programs" at half the rate of students in high-income schools. Thanks to these reports, people are starting to understand that access to instruction and services for highly capable students is a social justice issue.

These reports have not gone unnoticed by our legislature, which this year passed Engrossed Second Substitute Senate Bill (ESSSB) 6362. Section 105 of ESSSB 6362 adds language to RCW 28A.300 requiring districts to have clearly stated identification procedures for their highly capable programs and to implement those procedures. Additionally, the legislation establishes that school districts' identification policy and procedure for highly capable programs include the following four criteria:

- Districts must use multiple pathways for qualification and no single criterion may disqualify a student.
- Districts must base their selection of students on benchmarked local norms, but local norms may not be used if they are more restrictive criteria than national norms at the same percentile.
- Districts may not use subjective measures, such as teacher recommendations or report card grades to screen out or disqualify a student. However, districts may use these data points alongside other criteria during selection to support identification.
- To the extent practicable, districts must screen and assess students in the native language of the student. If native language screening and assessments are not available, the district must use a nonverbal screening and assessment.

The new criteria go into effect starting in the 2018-2019 school year. WSSDA has revised **Model Policy and Procedure 2190** and **2190P – Highly Capable Programs** to comply with the legislation and reflect the fact that school district practices for identifying highly capable students must prioritize equitable identification of low-income students.

School nurses: assuring a safe and healthy school environment

School nurses play an imperative role in education. Their formidable responsibilities include infection control, administering medications to students at school, emergency interventions, and much more. School nurses must have the knowledge and professional skills associated with health conditions from (at least) A to V – asthma to vision screening, all the while being mindful of the laws and regulations associated with health. Those laws include state and federal laws and regulations, the board's policies, the scope of an individual's professional license, and nursing or other professional health standards.

Professional nursing standards are often embedded in guidelines, bulletins, and memos, from the Office of the Superintendent of Public Instruction (OSPI), Washington Interscholastic Activities Association (WIAA), and other agencies or groups, such as task forces established by our Legislature.

The "standard of care" established by these nursing standards and other professional guidelines is a key component of the legal framework for school nursing. Some board members or district administrators can overlook or undervalue the importance of the nursing standards, misconstruing the standards as lacking authority or not being legally binding. However, a review of pertinent case law shows that underestimating the importance of meeting nursing standards is legally costly and a potentially fatal mistake. (School Nurses and Case Law)

Recently, we reached out to OSPI's Health Services office for feedback on some of the model policies related to school nurses and student health. We had had some questions from our members, asking for the sources of some information in the policies that are not evident in our state laws and regulations. The response we received from OSPI was immensely helpful and resulted in WSSDA revising some policies. Please note that these revisions are not substantive. Rather, the revisions add clarity, specificity, and correctly use the specialized terms. For example, instead of using a generic term like "health specialist," which did not adequately express the professional license necessary to perform specific actions, we used more precise references like "Licensed Healthcare Provider" or "Registered Nurse."

Other revisions included moving information from a policy to the procedure, or vice versa, to ensure that both policy and procedure played their best role.

WSSDA has revised the following policies and procedures related to student health policy:

Model Policy 3410
Student Health

Model Policy 3412
Automated External Defibrillators

Model Policy and Procedure 3413
Student Immunization

Model Policy and Procedure 3414
Infectious Diseases

Model Policy 3416
Medication at School

Model Policy and Procedure 3420
Anaphylaxis Prevention and Response

OTHER UPDATES

Policy 6210 – Purchasing: Authorization and Control

Category: **ESSENTIAL**

WSSDA has revised this policy to reflect the requirement of board approval for purchase of capital outlay items when the aggregate total of a requisition exceeds $5,000.

Policy and Procedure 6220 – Bid Requirements

Category: **ESSENTIAL**

WSSDA revised the policy and procedure to be inclusive of both bid and proposal processes. Additionally, WSSDA has revised the policy and procedure to reflect that the Office of Federal Financial Management has raised the threshold for micro-purchases under federal financial assistance awards to $10,000, and raised the threshold for simplified acquisitions to $250,000 for all recipients.

Policy 6630 – Driver Training and Responsibility

Category: **DISCRETIONARY**

WSSDA has revised this policy for clarity and for better alignment with the governing regulations. Additionally, WSSDA deleted a section of the policy to increase consistency with other policies, procedures, guidelines, and practices regarding employees transporting students in district or private vehicles.

Policy 6230 – Relations with Vendors

Category: **DISCRETIONARY**

WSSDA has revised this policy to add that board members, administrators, and staff are prohibited from soliciting a gift or favor from vendors, prospective vendors, other firms, or individuals who have had or hope to have transactions with the district. This revision will help districts in an audit or program review. The original prohibitions against accepting a gift remain unchanged. Additionally, we revised the policy for clarity.

Policy and Procedure 6500 – Risk Management

Category: **ENCOURAGED**

WSSDA has revised this policy and procedure for clarity and housekeeping. Additionally, WSSDA has added a notation to indicate that a portion of the policy is applicable only to first class districts. Further, the revisions reflect that first class districts may purchase and pay for surety bonds, but they are not required to do so.

BARGAINING CONFUSION: how we got here

The collective bargaining environment facing school districts right now is unprecedented. To take stock of how we got here, it might be useful to review some of the events, issues, and statements that have contributed to the current state of affairs:

In 2017, the Washington Legislature passed legislation that originally read:

RCW 41.59.800

***School district collective bargaining agreements – Certificated instructional staff – Restrictions during the 2018-19 school year.* (Expires August 31, 2019.)**

(1) A school district collective bargaining agreement that is executed or modified after July 6, 2017, and that is in effect for the 2018-19 school year may not provide school district certificated instructional staff with a percentage increase to total salary for the 2018-19 school year, including supplemental contracts, that exceeds the previous calendar year's annual average consumer price index, using the official current based complied by the bureau of labor statistics, United States department of labor, for the city of Seattle. However, if a district's average certificated instructional staff salary is less than the average certificated instructional staff salary allocated by the state for that year, the district may increase salaries not to exceed the point where the district's average certificated instructional staff salary allocated by the state.
(2) This section expires August 31, 2019.

In 2018, the United States Bureau of Labor and Statistics determined that the annual average consumer price index (CPI) for 2017 in the city of Seattle was 3.1%.

During the 2018 legislative session, our Legislature amended RCW 41.59.800 with Engrossed Second Substitute Senate Bill (E2SSB) 6362, Section 208, so that the law read:

RCW 41.59.800

***School district collective bargaining agreements—Certificated instructional staff—Restrictions during the 2018-19 school year.* (Expires August 31, 2019.)**

(1) A school district collective bargaining agreement for certificated instructional staff that is executed or modified after July 6, 2017, and that is in effect for the 2018-19 school year may not increase average total salary for the 2018-19 school year, including supplemental contracts, in excess of the following:
(a) Annual salary inflationary adjustments based on the rate of the yearly increase of the previous calendar year's annual average consumer price index, using the official current base compiled by the bureau of labor statistics, United States department of labor, for the city of Seattle;
(b) Annual experience and education salary step increases according to the salary schedule specified in the agreement;
*(c) Salary changes for staffing increases due to enrollment growth or state-funded increases under **RCW 28A.150.260**;*
*(d) Salary changes to provide professional learning under **RCW 28A.415.430**;*
(e) Increases related to bonuses for attaining certification from the national board for professional teaching standards;
(f) School districts with an average total certificated instructional staff salary less than the statewide average certificated instructional staff salary allocation used to distribute funds for basic education as estimated by the office of the superintendent of public instruction for the 2018-19 school year may provide salary increases up to the statewide average allocation; or
(g) Salaries for new certificated instructional staff hired in the 2018-19 school year.
(2) Changes to any terms of an employment contract for non-represented employees must comply with the same requirements established in this section.
(3) This section expires August 31, 2019.

On April 30, 2018, Senator Hans Zeiger of the 25th Legislative District, Senator Lisa Wellman of the 41st Legislative District, Representative Paul Harris of the 17th District, and Representative Pat Sullivan of the 47th Legislative District sent a letter to State Superintendent Chris Reykdal. The letter asked Superintendent Reykdal to clarify that supplemental contracts for certificated instructional staff can only be for enrichment of basic education, beginning in the 2018-2019 school year, rather than the 2019-2020 school year.

Additionally, the letter asked that districts report the actual salary paid to each certificated instructional staff for services rendered as part of the state's basic education program in

CONTINUED next page

CONTINUED FROM previous page

the 2018-2019 school year, rather than 2019-2020 school year. Further, the letter recommended that districts provide the Office of the Superintendent of Public Instruction (OSPI) a report on all salary increases provided to staff in the 2018-2019 school year. Finally, the letter asked that the Superintendent direct districts to adopt a four-year budget plan, beginning in the 2018-2019 school year.

On June 29, 2018, attorneys representing several public school districts in collective bargaining, petitioned the Public Employment Relations Commission (PERC) for a declaratory order providing interpretation and guidance on RCW 41.59.800. The petition asked:

> Whether RCW 41.59.800(1)(a) limits increases generally to the total average certificated instructional staff salaries consistent with the 3.1% CPI [consumer price index] cap, or whether subsection (1)(b) of that law was intended by the Legislature to remove any restrictions on increases to the average total salary for certificated instructional staff in the 2018-19 school year otherwise required by subsection (1)(a), provided that such increases are imbedded in a newly-developed salary schedule?

On July 3, 2018, PERC acknowledged receipt of the request for a declaratory order, noting that it could not issue a declaratory order if a necessary party whose rights would be substantially prejudiced did not consent. In the same document, PERC also provided notice of the petition to the Washington Education Association (WEA). The WEA responded to the notice on July 9, 2018, stating that neither the WEA nor its affiliates consented to a declaratory order on the issue.

On July 20, 2018, Senator John Braun, of the 20th District sent a letter to Superintendent Reykdal, asking him to provide guidance to individual school districts and local bargaining units as they pursued their 2018 contract negotiations. Senator Braun noted that E2SSB 6362 had led to additional confusion and a variety of unique interpretations and guidance would be of great value.

On July 26, 2018, Superintendent Reykdal sent a letter to the Legislature responding to the requests for guidance. Superintendent Reykdal reviewed OSPI's current guidance, noting it appeared the Legislature did not agree on what they passed or what it meant, but his office had taken "a very plain-language approach" to interpreting the legislative action. Superintendent Reykdal then stated he believed the legislature adopted a "wide open collective bargaining framework," even for the 2018-2019 school year.

On July 30, 2018, OSPI updated its "Frequently Asked Questions" regarding its intent not to provide guidance on the legal framework of legislative intent regarding collective bargaining for the 2018-2019 school year.

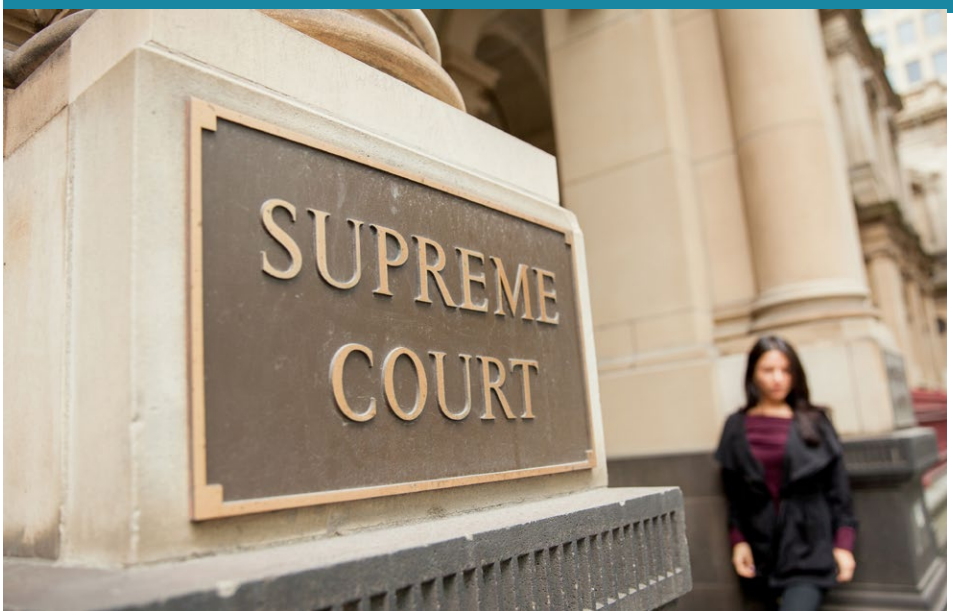
On July 31, 2018, WEA blogged, "Schools chief Reykdal says, there's no cap on educator pay raises this year."

On August 2, 2018, PERC denied the petition, requesting a declaratory order based on WEA's lack of consent.

On August 8, 2018, State Senator John Braun issued a letter, stating that districts should not negotiate away money that the Legislature specifically intended to reduce class sizes in early grades for pay raises. Additionally, the letter cautioned against granting salary raises that depend upon the Legislature increasing the local property tax limit.

On August 22, 2018, Superintendent Reykdal sent a letter to superintendents providing a district-by-district "Risk Factor Analysis" and accompanying letter in which he states "Your practical limitation on collective bargaining is your ability to fund compensation increases in the short-term AND your ability to sustain those increases. Not every district will have an equal opportunity to provide compensation increases with double-digit percentages."

There has likely been much more, but it is unlikely that you have seen anything that resolves the issues. Unfortunately, WSSDA is unable to provide a ready solution or simple answer for the difficulties around collective bargaining. However, we recently provided the resource titled Surviving Difficult Bargaining and Strikes, which we hope will be helpful. We will continue to monitor this, and all other significant issues for boards and their districts while looking for opportunities to provide support.



"Calling the precedent 'poorly reasoned' and concluding it 'violated the right of free speech rights of nonmembers,' the *Janus* decision stated that unions cannot deduct fees from employees' paychecks without their express consent."

U.S. SUPREME COURT
LEGAL UPDATES

***Janus v. AFSCME:* teachers and other public-sector employees cannot be compelled to pay agency fees for union representation in collective bargaining**

Janus v. AFSCME, Council 31,
No. 1466 (U.S. Jun. 27, 2018)

In a decision that is expected to cost public-sector unions in both dollars and membership, the U.S. Supreme Court overruled precedent from 1977 that allowed teachers' unions and other public-sector labor organizations to collect fees for representation in collective bargaining from workers who declined to join the union. Calling the precedent "poorly reasoned" and concluding it "violated the right of free speech rights of nonmembers," the *Janus* decision stated that unions cannot deduct fees from employees' paychecks without their express consent.

In the 1977 precedent, *Abood v. Detroit Bd. of Ed.*, the court upheld a Michigan law authorizing public employers to require non-union member employees to pay agency fees to the union that represented them. The *Abood* court noted that unions were legally required to represent all employees in collective bargaining, not just union members, and distinguished "fair share fees" used to pay for bargaining from the portion of union dues used to express the union's political views or advance other ideological union positions.

In 2015, the governor of Illinois challenged the "fair share" fees provisions in the Illinois Public Labor Relations Act (IPLRA) on First Amendment grounds. The Illinois governor claimed that the mandatory fees forced employees who do not support the union to contribute to it, thereby violating their First Amendment rights. Two non-union member public employees, one of whom was Mark Janus, joined the governor's challenge. Later, lower courts dismissed the governor and the other employee as plaintiffs, but Janus' challenge found its way to the U. S. Supreme Court.[1]

The 5-4 majority of the U.S. Supreme Court agreed with Janus. Writing for the majority, Justice Samuel Alito stated that just as the First Amendment protects the freedom to speak, it also protects against individuals being compelled to speak. The court stated that unions take many positions during collective bargaining and have powerful political and civic consequences; therefore, requiring public employees to provide a union with financial support was a significant impingement on First Amendment rights.

For school districts with collective bargaining agreements (CBA) that included provisions to collect agency fees, the district and local union will need to renegotiate the CBA so that it is consistent with the holding in Janus. However, the Janus decision narrowly focuses on the question of dues and fees, and it is unlikely to affect other aspects of a district's negotiations with its local union.

CONTINUED next page

[1]The court dismissed the governor for lack of legal standing, which means lack of connection to or harm from the issue and dismissed the other employee because he had previously challenged the IPLRA provisions at issue.

LEGAL UPDATES CONTINUED FROM previous page

South Dakota v. Wayfair clears the way for states to collect taxes from out-of-state retailers

South Dakota v. Wayfair (Case No. 17-494)

In a decision that could provide important revenue to school districts, the U.S. Supreme Court overruled two precedents from 1967 and 1992 calling them constitutionally unsound. The decision clears the way for the enforcement of sales taxes on internet purchases from retailers that do not have a physical presence in a state. According to legal briefing materials provided to the court, the former precedent caused states to lose between $8 billion and $33 billion each year.

In the 1967 precedent *National Bellas Hess Inc. v. Department of Revenue of Illinois*, the court held that under its commerce clause jurisprudence, states could not collect sales or use taxes from out-of-state retailers unless the retailer had a physical presence such as facilities or sales representatives. By 1992, when it issued *Quill Corp. v. North Dakota*, the court seemed less convinced, but upheld the rule from *Bellas Hess* under the doctrine of stare decisis or the principal of standing by things decided.

Then in 2016, South Dakota passed a sales-tax law, requiring retailers to collect sales tax if it had $100,000 in sales or 200 transactions within the state. The South Dakota Supreme Court ruled against the law, saying that the physical-presence rule of *Bellas Hess* and *Quill* still prevailed.

At the U.S. Supreme Court, three retailers Wayfair Inc., Overstock.com Inc., and Newegg Inc.—defended the physical-presence requirement by saying that retailers and consumers had come to rely on the arrangement. However, four education groups, including the National School Boards Association (NSBA), AASA, the School Superintendents Association, the National Association of Elementary School Principals, and the Association of School Business Officials International, joined with the National Governors Association in an amicus brief on the side of South Dakota. The amicus brief pointed out that the physical nexus requirement resulted in a loss of crucial revenue from owed taxes that local governments such as school districts depend upon to fund basic functions.

The 5-4 majority of the U.S. Supreme Court agreed. Writing for the majority, Justice Anthony Kennedy stated, "The Internet's prevalence and power have changed the dynamics of the national economy," and "This court should not prevent states from collecting lawful taxes through a physical-presence rule that can be satisfied only if there is an employee or a building in the state."

Kennedy cited figures from court filings suggesting that the physical-presence rule was causing states to lose between $8 billion and $33 billion each year on internet purchases. Kennedy said internet retailers now have "substantial virtual connections" to a state and "there is nothing unfair about requiring companies that avail themselves of the states' benefits to bear an equal share of the burden of tax collection."

"Writing for the majority, Justice Anthony Kennedy stated, 'The Internet's prevalence and power have changed the dynamics of the national economy,' and 'This court should not prevent states from collecting lawful taxes through a physical-presence rule that can be satisfied only if there is an employee or a building in the state.' "

National School Boards Association
cosa
Council of School Attorneys

Policies Required By Federal Law*
August 2018

By: Jordan Cooper, NSBA Senior Staff Attorney

Note: This chart lists federal laws and regulations that require a policy, written procedure, or form. School districts may need to adopt additional policies that are not included in this chart as required by state law. *Links may break as statutes and regulations are updated.*

Statute	Regulation	Summary of Requirements	Sample Policies and Forms (if available)
Age Discrimination Act, 42 U.S.C. §§ 6101-6107, generally	Grievance procedures, 34 C.F.R. § 110.25	Recipients of federal funds shall notify their beneficiaries of information regarding the Act, adopt and publish a **grievance procedure**, and designate at least one employee to coordinate investigative and compliance efforts.	Notice of Non-Discrimination
Asbestos Hazard Emergency Response Act, 15 U.S.C. §§ 2641-2656, generally; 15 U.S.C. § 2643(i)(1), (i)(5), Asbestos Management Plans	Asbestos management plans, 40 C.F.R § 763.93; 40 C.F.R. § 763.92 (training)	School districts are required to have an **asbestos management plan** for each school, including all buildings that they lease, own, or otherwise use as school buildings, and to maintain and update the plan to keep it current with ongoing operations and maintenance, periodic surveillance, inspection, re-inspection, and response action activities. At least once each school year, school districts must notify parents, teachers, and employee organizations of the availability of management plans. All members of the custodial staff who may work in a building with asbestos-containing building materials must have awareness **training**. All new custodial staff must be trained within 60 days of hire.	EPA Model AHERA Asbestos Management Plan for Local Education Agencies AHERA Asbestos Management Plan Self-Audit Checklist
Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101-12213, generally	Designation of coordinator, grievance procedures, 28 C.F.R. § 35.107	A public entity that employs 50 or more persons shall designate at least one employee to coordinate its compliance efforts and carry out its responsibilities under the ADA. These responsibilities include investigating any complaint communicated to the public entity alleging noncompliance or actions that would be prohibited by Title II of the	Notice of Non-Discrimination

* *See also* National School Boards Association, *Annual Notices* (August 2018), available to COSA members.

1680 Duke Street, 2nd Floor, Alexandria, VA 22314
Phone : (703) 838-6722 **Fax :** (703) 683-7590 **E-mail :** cosainfo@nsba.org

National School Boards Association
cosa
Council of School Attorneys

Annual Notices[1]
August 2018

By: Jordan Cooper, NSBA Senior Staff Attorney

Numerous federal laws require school districts to provide students, parents, and/or the public with notices, many of which must be provided at the beginning of the school year. Fortunately, federal agencies or other entities oftentimes have created "model" notices (or provide information useful to creating notices) that can easily be tailored to meet individual district needs. Here, we describe some of the notices required by federal law, including the methods required to give notice where it is specified in the statutes and/or regulations. Where available, we provide links to model notices or guidance documents that may be of assistance in writing such notices. Not included here are employment-related notices required by federal or state law.

Elementary and Secondary Education Act

The Elementary and Secondary Education Act (ESEA), most recently reauthorized under the *Every Student Succeeds Act of 2015* (ESSA), requires state education agencies, school districts, and individual schools to provide numerous notices to parents, the public, and others. Because ESSA is still fairly new, and several regulatory actions to implement ESSA have yet to be written or are in the proposed rule process, some documents issued under No Child Left Behind Act (NCLB) remain in effect as current guidance until the Department puts out new agency information. Where applicable, NSBA will continue to reference the existing documents until new guidance is published.

For example, Appendix B (pages 34-39 therein) of the U.S. Department of Education's non-regulatory guidance document, *Parental Involvement Title I, Part A* (April 2004), contains a chart of the key parental notice requirements under Title I, Part A of the ESEA (as amended by NCLB), and identifies who should issue the notices, and when they must be issued. Some of these notice requirements no longer remain accurate after ESSA. For example, notices regarding schools identified for "improvement," "corrective action" or "restructuring" may no longer apply in your state, as ESSA sets up a different intervention model.

ESSA requires that states and school districts engage families and parents in the work of ensuring positive outcomes for all students. School districts that receive Title I funds must have written family and parent engagement policies with expectations and objectives for implementing meaningful family

[1] *See also* National School Boards Association, *Policies Required by Federal Law* (August 2018).

1680 Duke Street, Alexandria, VA 22314
Phone: (703) 838-6722 **Fax:** (703) 548-5613 **E-mail:** cosainfo@nsba.org

and parent involvement strategies. They are required to involve family members and parents and in developing district plans and to provide technical assistance to schools on planning and implementing effective family and parent involvement activities to improve student academic achievement and school performance. There is also a new provision added by ESSA requiring that all school districts that receive Title I funds implement an effective means of outreach to parents of English learners, including holding regular meetings for those parents. See the U.S. Department of Education's *Policy Statement on Family Engagement* (May 5, 2016) at:
https://www2.ed.gov/about/inits/ed/earlylearning/files/policy-statement-on-family-engagement.pdf.

- The description of each notice in the Department's 2004 chart contains references to the relevant statutory sections and guidance documents, some of which also contain model policies. Download this document at: http://www.ed.gov/programs/titleiparta/parentinvguid.doc.
- Also, see the Department of Education's *ESSA Assessments under Title 1, Part A and Title I, Part B: Summary of Final Regulations* at:
  https://www2.ed.gov/policy/elsec/leg/essa/essaassessmentfactsheet1207.pdf.

Several new ESSA provisions are summarized in *Transitioning to the Every Student Succeeds Act Frequently Asked Questions* (January 2017), which also has information about updates to notice requirements. It is available at: https://www2.ed.gov/policy/elsec/leg/essa/essatransitionfaqs11817.pdf.

- States no longer must require LEAs with schools identified as "in need for improvement, corrective action, or restructuring" to provide supplemental education services, public school choice, and notice tied to those, but a state may still require it (pg. 18).
- Schools are no longer required to provide "notice to parents related to the highly qualified status of their child's teacher" (pg. 26).
- States and LEAs are not required to comply with 3302(b) of the ESEA parental notification requirements, mandating that parents must be notified when LEAs fail to meet one or more of the Annual Measurable Achievement Objectives. They must still comply with the requirements of 3302(a) of the ESEA which requires notice, within the first 30 days of school, to parents whose student have been identified as English learners (pg. 29).

The Department of Education provided guidance for the annual report cards (2017) that LEAs must disseminate. Appendix D (pages 69-77) provides a checklist that (1) identifies the components of the report card, and (2) indicates when "disaggregated reporting by student subgroup is required." Checklist 4 also highlights other public reporting requirements under ESEA (as amended by ESSA) that an LEA can, but is not required to, address through the report cards. Annual report card guidance is available at: https://www2.ed.gov/policy/elsec/leg/essa/essastatereportcard.pdf.

Certain notices are now required to the public when a school has been identified for "comprehensive support and improvement" or "targeted support and improvement." When the LEA receives notice from the State that it has been identified for comprehensive support and improvement, the LEA must "promptly notify the parents" of every enrolled student in the school

- (1) that the school has been identified as such, 34 C.F.R. § 200.21(b);
- (2) the reasons for the identification, 34 C.F.R. § 200.21(b); and

1680 Duke Street, 2nd Floor, Alexandria, VA 22314
Phone: (703) 838-6722 **Fax:** (703) 683-7590 **E-mail:** cosainfo@nsba.org

- (3) how parents can become involved in the needs assessment under 34 C.F.R. § 200.21(c), and developing and implementing a comprehensive support and improvement plan as described in 34 C.F.R. § 200.21(d); 34 C.F.R. § 200.21(b).

An LEA may provide all students enrolled in a school identified for "comprehensive support and improvement" the option to transfer their child to another public school, including information about transportation to the new school and information on the academic achievement of the new school. 34 C.F.R. § 200.21(h). For further information on the content of the notice, see Section D in the U.S. Department of Education's *Public School Choice Non-Regulatory Guidance* (2009) available at: http://www2.ed.gov/policy/elsec/guid/schoolchoiceguid.doc. (No update yet since the passage of ESSA).

Additionally, when an LEA receives notice from the State that it has been identified for "targeted support or improvement," it must "promptly notify the parents" with:

- (1) the reasons for identification: a list of groups and subgroups that are underperforming under 34 C.F.R. § 200.19(b)(1) and low-performing under 34 C.F.R. § 200.19(b)(2). 34 C.F.R. § 200.22(b)(2)(i); and
- (2) how the parents can become involved in developing and implementing the targeted support and improvement plan in 34 C.F.R. § 200.22(c) and 34 C.F.R. § 200.22(b)(2)(ii).

For both classifications, the notice must be given in an understandable and uniform format, and, "to the extent practicable," written in a language that the parents can understand, or be orally translated. 34 C.F.R. § 200.21(b)(1)-(2); 34 C.F.R. § 200.22(b) (consistent with requirements under § 200.21(b)(1) through (3)). In general, the notice must be provided to parents directly, through regular mail or e-mail, or "other direct means of distribution" and "in a timely manner." 34 C.F.R. § 200.31(d)(3)(i). The notice must also be provided in an "alternative format accessible to that parent" for a parent who is an individual with a disability as defined by the Americans with Disabilities Act. 34 C.F.R. § 200.21(b)(3).

Family Educational Rights and Privacy Act

Pursuant to the Family Educational Rights and Privacy Act (FERPA), school districts must provide parents/guardians and eligible students (students at least 18 years of age) with annual notice of their rights to inspect and review education records, amend education records, consent to disclose personally identifiable information in education records, and file a complaint with the U.S. Department of Education. 34 C.F.R. § 99.7(a)(2). The notice must include the procedure to request and review education records, as well as a statement that records may be disclosed to school officials without prior written consent. This statement should define a school official and what constitutes a legitimate educational interest when it comes to accessing a student's educational records. 34 C.F.R. § 99.7(a)(3). Notice may be provided in any way that is reasonably likely to inform parents of their rights, and must effectively notify parents who have a primary or home language other than English and parents/guardians or eligible students who are disabled. 34 C.F.R. § 99.7(b). The annual notification may be published by various means, including any of the following: in a schedule of classes; in a student handbook; in a calendar of school events; on the school's website (though this should not be

Protection of Pupil Rights Amendment

The Protection of Pupil Rights Amendment (PPRA) requires school districts to adopt several policies regarding surveys of students, instructional materials, physical examinations, personal information used for marketing, and the like related to students. Parents must be notified of these policies at least annually at the beginning of the school year and within a reasonable time period after any substantial change is made to the policies. 20 U.S.C. § 1232h(c)(2)(A).

- Download the U.S. Department of Education's *Model Notification of Rights Under the Protection of Pupil Rights Amendment* at: https://www2.ed.gov/policy/gen/guid/fpco/ppra/modelnotification.html.

If districts plan to (1) use students' personal information for selling or marketing purposes; (2) administer any survey about any of the eight topics listed in the statute (political beliefs, income, sex behavior or attitudes, etc.); or (3) administer certain non-emergency, invasive physical examinations, districts must directly notify parents at least annually at the beginning of the school year of the specific or approximate dates when these activities are scheduled or expected to be scheduled. 20 U.S.C. § 1232h(c)(2)(B), (c)(2)(C).

- Download the U.S. Department of Education's *PPRA Model Notice and Consent/Opt-Out for Specific Activities* at: https://www2.ed.gov/policy/gen/guid/fpco/pdf/ppraconsent.pdf.

The Department of Education lists policies that PPRA requires LEAs to develop, with the consultation of parents. These policies concern privacy, parental access to information, and administration of physical examinations of minors. See more at: https://www2.ed.gov/policy/gen/guid/fpco/pdf/cover-letter.pdf.

The U.S. Department of Education recommends that districts post all FERPA and PPRA notices on their websites.

- Download the U.S. Department of Education's *Transparency Best Practices for Schools and Districts* at: https://studentprivacy.ed.gov/sites/default/files/resource_document/file/LEA%20Transparency%20Best%20Practices%20final.pdf (p. 5).

Child Nutrition Programs

If school districts participate in the National School Lunch Program, the School Breakfast Program, or the Special Milk Program, they must provide both parents and the public with information about free and reduced-price meals and/or free milk near the beginning of each school year. 7 C.F.R. § 245.5. Districts also must provide parents with an application form. Districts may not disclose children's free and reduced eligibility status, unless the requestor of such information falls into one of the categories specified in the National School Lunch Act. 42 U.S.C. § 1758(b)(6)(A)(i)-(v).

1680 Duke Street, 2nd Floor, Alexandria, VA 22314
Phone: (703) 838-6722 **Fax:** (703) 683-7590 **E-mail:** cosainfo@nsba.org

The USDA's document entitled *Eligibility Manual for School Meals* contains information on federal requirements regarding the determination and verification of eligibility for free and reduced-price meals in the National School Lunch Program and the School Breakfast Program. The document contains information about what the application for these programs is to contain, including a link to an online application. The document also contains information describing to whom (pp. 83-84), and under what conditions, information regarding free and reduced eligibility status may be disclosed (pp. 83-93).

- Download the *Eligibility Manual for School Meals*, which contains relevant notices in the appendices, at: https://fns-prod.azureedge.net/sites/default/files/cn/SP36_CACFP15_SFSP11-2017a1.pdf.

Striving to reduce paperwork, Congress has incorporated three alternative provisions into the standard requirements for annual determinations of eligibility for free- and reduced-price school meals. These alternative provisions are available at: https://www.fns.usda.gov/school-meals/provisions-1-2-and-3.

- In schools where at least 80 percent of enrolled students have free or reduced-price meal eligibility, annual notification of program availability and certification only needs to occur once every 2 consecutive school years.

The amended Healthy, Hunger-Free Kids Act of 2010 requires school districts to inform and update the public (including parents, students, and others in the community) about the content and implementation of their local school wellness policies. 42 U.S.C. § 1758b(b)(4). School districts also must periodically measure and report on implementation of their local school wellness policies, including: (1) the extent to which schools under the jurisdiction of the local school district are in compliance with its local school wellness policy; (2) the extent to which the local school wellness policy of the local district compares to model local school wellness policies; and (3) a description of the progress made in attaining the goals of the local school wellness policy. 42 U.S.C. § 1758b(b)(5)(A). The USDA final rules for local school wellness policies, which became effective on August 29, 2016, appear at 7 CFR Parts 210 and 220. See the USDA's Local School Wellness Policy and other child nutrition-related information at: https://www.fns.usda.gov/tn/local-school-wellness-policy.

The USDA published a guide on July 25, 2017 that highlights requirements for accommodating children with disabilities who participate in School Meal Programs. That guide is available at: https://fns-prod.azureedge.net/sites/default/files/cn/SP40-2017a1.pdf

With the help of school food service staff, LEAs must implement procedures to enable parents and guardians to request modifications to meal services for their children with disabilities. 7 C.F.R. §§ 15b.25, 15b.6 (b). LEAs must notify parents and guardians of both the process to (1) request meal modifications that accommodate the child's needs and (2) for resolving disputes. The hearing process must follow the necessary procedural requirements: notice, right to counsel, opportunity to participate, examination of the record. https://fns-prod.azureedge.net/sites/default/files/cn/SP26-2017os.pdf

According to "Local School Wellness Policy: Guidance and Q&As" (2017), the USDA does not specify a specific timeline for updates to the wellness policies. Ideally, however, the policy should be updated

1680 Duke Street, 2nd Floor, Alexandria, VA 22314
Phone: (703) 838-6722 **Fax:** (703) 683-7590 **E-mail:** cosainfo@nsba.org

after conducting a triennial assessment. 7 C.F.R. § 210.31(e)(3). The updates are dependent on the structure of the LEA's policy. The LEAs are required to notify the public about the content of the policies annually and discuss any updates. 7 C.F.R. § 210.31(d)(2). They must also inform the public about the progress made towards meeting the goals of the local school wellness policy. 7 C.F.R. § 210.31(d)(3).

For model and sample policy language endorsed by the USDA, see below:

- https://healthymeals.fns.usda.gov/local-wellness-policy-resources/local-school-wellness-policy-process/model-and-sample-policy,
- http://uconnruddcenter.org/files/Pdfs/Model_Wellness_Policy_rev%203-3-16.pdf,
- Download *School District Wellness Policies: Where do they Stand and What do you Need to Know?*, a presentation by the CDC at: http://www.cdc.gov/healthyyouth/npao/pdf/PowerPoint_for_CDC_BTG_Local_School_Wellness_Policy_Briefs_School_Year_12_13.pdf,
- Guidance for school authorities: https://www.fns.usda.gov/sites/default/files/cn/FSMCguidance-sfa.pdf, and
- https://www.fns.usda.gov/school-meals/guidance-and-resources.

Asbestos Hazard Emergency Response Act

The Asbestos Hazard Emergency Response Act (AHERA) requires school districts to inspect their buildings for asbestos-containing building materials, and develop, maintain, and update an asbestos management plan. School districts must annually notify parents, teachers, and employee organizations in writing of the availability of the management plan and planned or in-progress inspections, re-inspections, response actions, and post-response actions, including periodic re-inspection and surveillance activities. 40 C.F.R. §§ 763.84(c), (f), 763.93(g)(2).

McKinney-Vento Homeless Assistance Act

The McKinney-Vento Homeless Assistance Act requires school districts, through their homeless student liaisons, to provide public notice of the education rights of the homeless students enrolled in their districts. 42 U.S.C. § 11432(e)(3)(C)(i). Such notice is to be disseminated in places where homeless students receive services under this Act, including schools, family shelters, and soup kitchens. 42 U.S.C. § 11432 (g)(6)(A)(vi). The notice must be in a "manner and form" understandable to homeless students and their parents/guardians, "including, if necessary and to the extent feasible," in their native language. 42 U.S.C. § 11432(e)(3)(C)(iii).

- The U.S. Department of Education has issued guidelines for States, which address ways a State may (1) assist LEAs to implement McKinney-Vento, as amended by ESSA, and (2) review and revise policies and procedures, along with LEAs, that may present barriers to the identification, enrollment, attendance, and success of homeless children and youths in school. Download the guidelines at: https://www.gpo.gov/fdsys/pkg/FR-2016-03-17/pdf/2016-06073.pdf.

1680 Duke Street, 2nd Floor, Alexandria, VA 22314
Phone: (703) 838-6722 **Fax:** (703) 683-7590 **E-mail:** cosainfo@nsba.org

Individuals with Disabilities Education Act

Under the Individuals with Disabilities Education Act (IDEA), school districts must give parents of a child with a disability a copy of its procedural safeguards one time per year, and upon initial referral or parental request for an evaluation, the filing of a first request for a due process hearing, a disciplinary action constituting a change in placement, and at the request of a parent. 20 U.S.C. § 1415(d)(1)(a); 34 C.F.R. § 300.504(a). A school district may post a copy of the procedural safeguards on its website. 20 U.S.C. § 1415(d)(1)(b); 34 C.F.R. § 300.504(b). The notice must fully explain the IDEA's procedural safeguards in an easily understandable manner, and in the native language of the parents unless it is clearly not feasible to do so. 20 U.S.C. § 1415(d)(2); 34 C.F.R. § 300.504(c), (d).
Parents may choose to receive the procedural safeguards notice and other notices under the IDEA by email, if the LEA makes this option available. 20 U.S.C. § 1415(n); 34 C.F.R. § 300.505.

- Download the U.S. Department of Education's *Model Form: Procedural Safeguards Notice* at: http://idea.ed.gov/download/modelform_Procedural_Safeguards_June_2009.pdf.

- NOTE: The procedural safeguards notice requirements in the IDEA also apply to parents of homeless children with disabilities. For more information, see Question B-2 in *Questions and Answers on Special Education and Homelessness* by the Office of Special Education and Rehabilitative Services and the Office of Elementary and Secondary Education at: http://www2.ed.gov/policy/speced/guid/spec-ed-homelessness-q-a.pdf.

The U.S. Department of Education analyzed when and how parents must be notified before "records containing personally identifiable information are destroyed under Part B of IDEA." The question considered was whether "under 34 C.F.R. § 300.624, a school district must specifically notify parents at the time the district intends to destroy [a student's] records or whether such notice must be provided at the time the records are no longer needed." The Department's letter responds that under the IDEA, parents must be informed when the personally identifiable information is no longer needed to provide services. https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/osep-letter-to-zacchini-2-27-17.pdf.

1680 Duke Street, 2nd Floor, Alexandria, VA 22314
Phone: (703) 838-6722 **Fax:** (703) 683-7590 **E-mail:** cosainfo@nsba.org

Policy & Legal News

Policy & Legal News is published quarterly by the Washington State School Directors' Association to provide information of interest to school directors and the education community. The views expressed in opinion articles appearing in *Policy & Legal News* are those of the writers and do not necessarily represent WSSDA policies or positions.

WSSDA DIRECTORY

General Information. 360-493-9231
Association Services 360-252-3002
Leadership Development 360-252-3009
Governmental Relations 360-252-3011
Communications 360-252-3013
Policy and Legal Services 360-252-3018
Toll Free (In-State) 800-562-8927
E-Mail . . . . . mail@wssda.org

VISION

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

MISSION

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

BELIEFS

WSSDA believes:

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

WSSDA
WASHINGTON STATE SCHOOL DIRECTORS' ASSOCIATION
(800) 562-8927
221 College St. NE, Olympia, WA 98516
wssda.org

The Editor would like to thank the following people for their contributions to this issue: Anthony Anselmo, J.D. of Stevens Clay, P.S.; Charles Lund, J.D. of Patterson Buchanan Fobes & Leitch, Inc. P.S.; Nicole Klein, PhD, RN-BC, NCSN, AE-C of OSPI; Barbara Lloyd, RDN, SNS, CD of OSPI; Lori Reimann Garretson of the Washington State Auditor's Office; Gayle Pauley and Jody Hess of OSPI; Krissy Johnson of OSPI, and Dierk Meierbachtol, J.D. of OSPI.