

Policy & Legal News

HELPING SCHOOL DISTRICTS TRANSLATE LAW INTO ACTION

Searches of Students

UNDERSTANDING THE MEANING OF
“REASONABLE SUSPICION” ON CAMPUS

ALSO IN THIS ISSUE:

REPORTING SUSPECTED CHILD ABUSE

EARTHQUAKES – ARE YOUR DISTRICT FINANCES READY?

AMPLIFYING THE VOICE OF STUDENT REPRESENTATIVES



DECEMBER 2022

WASHINGTON STATE SCHOOL
DIRECTORS' ASSOCIATION

Policy Classifications

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.

Beverly Cleary wrote several books featuring the plucky young heroine Ramona Quimby, including *Ramona the Pest* (1968), which describes Ramona’s first day of kindergarten. In the story, the kindergarten teacher brings Ramona to her seat and tells her, “Sit here for the present.” Not knowing that the word “present” could also mean “for the time being,” Ramona spends the day refusing to budge from the seat while her classmates play games and do group activities.

Ramona is certain that if she can persist at occupying her seat, she’ll receive a gift. When her misunderstanding is finally clarified, Ramona feels foolish and anguished at having lost out on so much fun. It turns out that although the teacher meant “the time being,” there was a “gift” available by fully engaging in what was happening in the classroom. For kindergarteners, a key challenge is understanding the multiple meanings of words. **But for those of us who are competent with the meaning of words, the key challenge is having the wisdom to live in the now while still trying to learn from the past and prepare for the future.**

This edition of Policy & Legal News looks back at this past year to glean what we can learn from the 2022 audits of school districts (**see page 10**). It also looks to a future time, asking if your district’s finances are ready to respond to an earthquake that we disconcertingly know must occur one day (**see page 8**). And last but not least, this edition of Policy & Legal News looks at today and what school boards can do now to support students. This includes amplifying student voice on your board (**see page 12**) and much more.

2023 will be an interesting year. The 2023 legislative session, which is a long session (105 days), is right around the corner! Our state Supreme Court has accepted direct review of *Wahkiakum v. State*, and WSSDA is submitting an amicus brief on behalf of the school district. It’s exciting but can feel stressful. Focusing on the now can ease the tension of an uncertain future.

A friend of mine has this stanza at his sink, where he can view it often. “Yesterday is history, tomorrow is a mystery, today is a gift – maybe that’s why they call it the present.” As we move into a new year, let’s focus on the gifts all around us – our families, communities, and the opportunity to serve the students in K-12 public education. Thank you, school directors, for your work on your school board.

Wishing you Happy
Holidays and a present
New Year,

Abigail Westbrook, J.D.,
Editor



Policy & Legal News

HELPING SCHOOL DISTRICTS TRANSLATE LAW INTO ACTION

Editor's Note	1
Searches of Students	3
Reporting Suspected Child Abuse	6
Earthquakes – Are Your District Finances Ready?	8
Review of 2022 Audits of School Districts	10
Amplifying the Voice of Student School Board Representatives	12
Other Updates	14
Special Thanks	15

★ UPDATES TO MODEL POLICY

WSSDA has developed, revised, or retired the following model policies and procedures. Subscribers can find marked-up and clean versions of these documents (as applicable) in their subscriber portal on the WSSDA website by visiting wssda.org/login.

ESSENTIAL

2411 – High School Equivalency Certificate

3231 – Student Records

3421/3421P – Child Abuse and Neglect

ENCOURAGED

3230/3230P – Searches of Students and Student Privacy

5004/5004P – Infection Control Program

DISCRETIONARY

1250/1250P – Students on Governing Boards

5410 – Holidays

LIST OF SERIES INCLUDED IN UPDATES

1000 Series – Board of Directors

2000 Series – Instruction

3000 Series – Students

5000 Series – Personnel



p.3



p.6



p.12



DECEMBER 2022

WASHINGTON STATE SCHOOL
DIRECTORS' ASSOCIATION

Searches of Students

UNDERSTANDING THE MEANING OF “REASONABLE SUSPICION” ON CAMPUS

When it comes to the legal parameters governing the searches of students and/or their property, the stakes can be high, the subject is complex, and as you’ll see, there are layers of definitions to unpack. Let’s take a look at some of the key concepts, starting with constitutionality.

Protection against unreasonable searches stems from the Fourth Amendment to the U.S. Constitution, which guarantees “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” and requires that “no warrants shall issue, but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched, and the persons or things to be seized.” To summarize, to be constitutional, any search must be “reasonable,” but when speaking legally, what is reasonable?

Reasonableness

Importantly, the legal standard of reasonableness differs for searches conducted by law enforcement and searches conducted by school officials in the school environment. For law enforcement, a reasonable search must be based on the “probable cause” referenced in the Fourth Amendment that a violation of law has occurred. Probable cause is defined as when known facts and circumstances of a reasonably trustworthy nature are sufficient for someone of reasonable caution or prudence to believe that a crime has or is being committed.

Instead of probable cause, for school officials in the school environment, a reasonable search must be based



on “reasonable suspicion.” There are two prongs to this standard. First, there must be reasonable grounds for suspecting that the search will reveal evidence that the student has or is violating the law or school rules. This requires more than a hunch. Second, the scope of the search must not be excessively intrusive considering the student’s age, sex, and the nature of the offense. Comparing the two reasonableness standards (probable cause and reasonable suspicion), the reasonable suspicion required when a school official conducts a search in the school environment is a lessened or easier standard.

School officials should be careful about searching at the request of law enforcement or asking law enforcement to search on the school’s behalf. If law enforcement is present during a search or seem to be directing it, it runs the risk of intensifying the standard of reasonableness necessary to search a student.

Expectation of Privacy

Not every inspection is considered a “search” under the

CONTINUED on next page

CONTINUED from previous page

law. A search occurs only when the government infringes upon an individual's legitimate expectation of privacy.¹ In other words, for an inspection of someone's person or property to qualify as a search, the person must have a reasonable expectation of privacy in the area or item being inspected. Without the key element of privacy, it's not a search. Before 1985, doubt existed about whether students in public schools even had a legitimate expectation of privacy given that school administrators acted *in loco parentis*—in the place of the parent—while students were at school. But in 1985, the U.S. Supreme Court determined that schoolchildren do have legitimate privacy expectations in public schools.²

It is now well established that students have reasonable privacy expectations not only in their own person, but also regarding their clothing, purse, backpack, vehicle, and cell phone (more on cell phones later). When a student has a reasonable privacy expectation, any search carried out by school officials must meet the reasonableness standard of reasonable suspicion described above.

However, the law does not recognize a student's expectation of privacy when using school district property, such as desks, lockers,³ and district-issued technology. Because students do not own but are merely permitted to use district-owned property, school officials may generally inspect these items without violating a student's Fourth Amendment rights. But note that school officials cannot proceed to search student owned property inside of the district-owned property (i.e. a student's bag inside a locker) without reasonable suspicion. School districts should provide appropriate notice regarding its right to inspect district-owned property via board-adopted policies and the annual district handbook. This helps establish and retain that students have no expectation of privacy for district-owned property.

Consent

When school officials conclude that a search is reasonable and necessary, they should begin by asking the student for consent. If the student voluntarily consents to a school official's search, "reasonableness" is not required. Voluntariness is determined based on the circumstances—including the student's age, education



level, and mental capacity—and the context of the search. When a student grants consent, the school official must limit their search to the boundaries of the consent. For example, if a student consents to the search of her gym bag, the school official may not also search her purse unless the search of the gym bag provides reasonable suspicion to search her purse. School officials are not required to advise students that they have a right to refuse to give consent to search. If a student refuses to consent or cooperate, school officials should contact the parent. If the parent cannot be reached in a reasonable time, the school official (usually the principal) may conduct the search without the student's consent. In sum, obtaining the student's consent is not mandatory before searching, but it is best practice.

Smartphones

As discussed above, if there is reasonable suspicion to do

CONTINUED on next page

¹ See *U.S. v. Katz*. (1967)

² See *New Jersey v. T.L.O.* (1985)

³ RCW 28A.600.210 School locker searches – Findings; RCW 28A.600.220 School locker searches – No expectation of privacy.

CONTINUED from previous page

so, school officials can search a student's property, even without consent. But school officials should be aware of the unique privacy concerns related to digital information on cell phones and use caution. Searching a student's cell phone can rapidly change from a surface-level inspection to a deeper inquiry of a student's private communications. Because of the amount and type of information smartphones can hold, students potentially have greater privacy interests and, therefore, greater constitutional protections regarding that information. The U.S. Supreme Court has described smartphones as holding "the privacies of life."⁴ Additionally, the Stored Wire and Electronic Communications and Transactional Records Access Act applies when school officials search a device capable of storing electronic communications.⁵ Unless consent is obtained, the school official should access only that information on a student's smartphone that is available in airplane mode. This information includes non-electronic communications, such as a photograph and electronic communications stored on the device, such as a saved message.

Administrative Sweeps

An individual search occurs when a school official searches an individual or small group of students based on reasonable suspicion. An administrative sweep is when school officials conduct blanket or widespread inspections not because of individualized reasonable suspicion, but as a broad preventive measure. For schools, the most common concerns prompting sweeps involve possible weapons and illegal drugs.

As discussed above, school districts have broad latitude to inspect their own property, including administrative sweeps of all lockers, desks, or storage areas to ensure that they are clean and free from potential health or safety hazards, including weapons or drugs. School officials also act within their established rights to use trained dogs to sniff school lockers or vacant classrooms. The courts have concluded that students have no privacy expectation for what they expose to public observation, including observation by sight, sound, and smell.⁶ When used to sniff district property, not to sniff students, using trained dogs is not considered a search for Fourth Amendment purposes. If a trained dog alerts a school official to a

substance in a student's bag or vehicle, the alert might be sufficient to provide reasonable suspicion that additional search will reveal contraband, thereby allowing school officials to search an individual student's property.

Revisions

Good policies can guide school officials' actions, but remember, what constitutes a legal student search depends upon the context. Whether reasonable suspicion exists is a case-by-case determination. This determination can be complicated. School officials should balance the student's expectation of privacy with the school's unique need to create and preserve a safe learning and working environment.

To support you, WSSDA has revised and renamed **Model Policy and Procedure 3230/3230P – Searches of Students and Student Privacy**. This is an Encouraged policy. The revisions update, clarify, and reorganize the language. The revisions also confine detailed information about conducting searches to the procedure. This not only maintains the proper distinction between policy and procedure, but it also eliminates the risk that the policy and procedure might conflict. The revisions also move information about students' privacy rights to the end of the policy as the main thrust of the policy relates to searches of students with students' privacy rights being secondary.

These revisions also prompted updating the legal references in **Model Policy 3231 – Student Records**, which is classified as an Essential policy. However, because these revisions are limited to legal references, the school board need not vote to approve the changes to this policy.

⁴ See *Riley v. California*, 134 S. Ct. 2473, 2495 (2014).

⁵ 18 U.S.C. ch. 121 – Stored Wire and Electronic Communications and Transactional Records Access.

⁶ See *Jones v. Latexo Indep. Sch. Dist.*, 499 F. Supp. 223 (E.D. Tex. 1980) (mem.).

Reporting Suspected Abuse

MODEL POLICY & PROCEDURE
3421/3421P
 Child Abuse and Neglect



Because of their close contact with students, school staff are well-situated to be aware of information that might indicate that a student is experiencing child abuse or neglect. Sometimes, the question of whether to report is clear. For example, if a crime has been committed, law enforcement must be notified. Other times, whether to report is less clear. Importantly, school staff might be hesitant to report for a variety of reasons, including not wanting to get someone in trouble. Understanding when to report is crucial. Not only are professional school personnel mandatory reporters,¹ but a student's well-being might be at stake.

Definitions

The first step is for everyone to have a solid understanding of the legal definitions of the terms involved. Child abuse or neglect mean:

- Injury of a child by any person under circumstances that cause harm to the child's health, welfare, or safety;
- Sexual abuse or sexual exploitation by any person under circumstances that cause harm to the child's health, welfare, or safety; or
- The negligent treatment or maltreatment of a child by a person responsible for or providing care to the child.

Physical discipline of a child, including the reasonable use of corporal punishment, is not considered abuse when it is reasonable and moderate and is inflicted by a parent or

guardian to restrain or correct the child.

Note that the above definition stated, "Injury of a child by *any person* [...]" (italics added)." There are two important takeaways in that verbiage. First, the obligation to report suspected abuse or neglect applies to all children regardless of their status as students. For example, staff could suspect that a sibling of a student is being abused. Second, the perpetrator might be any person, including a member of school or district staff, a volunteer, or another student in a student-on-student incident. These circumstances might seem to be materially different from suspecting parents of abusing their own child, but such incidents should also be reported as discussed below. In the case of a student-on-student incident, the fact that the incident is subject to mandatory reporting does not mean that the offending student is subject to mandatory exclusion from school (suspension or expulsion). Instead, district and school staff should adhere to the process established in the district's student discipline policy and procedure.

Staff need not verify a report that a child has been abused or neglected and should not investigate the circumstances themselves. Similarly, staff should not try to determine whether a suspected perpetrator's mental status should be taken into consideration. Legal authorities have the responsibility for investigating each case and taking

CONTINUED on next page

¹ RCW 26.44.030(1) identifies professional school personnel as mandatory reporters. Professional school personnel include, but not limited to, teachers, counselors, administrators, childcare facility personnel and school nurses.

CONTINUED from previous page

appropriate action under the circumstances.

Making a Report – Oral and Written

When there is reasonable cause to believe that a child has suffered abuse or neglect, staff or the principal need to report it orally either to the local police or the nearest office of Child Protective Services (CPS) of the Department of Children, Youth and Families (DCYF). The oral report must occur at the first opportunity, but in no case longer than 48 hours after there is reasonable cause to believe that the child has suffered abuse or neglect.

If a school staff member has already reported to CPS or the local police, they should advise the principal as well. If the principal is absent, staff should advise the nurse or counselor. District administration should never interfere with or discourage a staff member from contacting CPS, whether to make a report or to determine whether they should report. Instead, the district should consistently communicate that when there is any doubt about whether it is legally necessary to make a report, its best to err on the side of reporting.

In addition to an oral report, the principal or staff must promptly provide a written report to the same agency (law enforcement or CPS) that they reported to orally. The written report should include the following information, if known:

- The name, address, and age of the child;
- The name and address of the child’s parents, stepparents, guardians, or other persons having custody of the child;
- The nature and extent of the suspected abuse or neglect;
- Any evidence of previous abuse or neglect, including the nature and extent;
- Any other information that may relate to the cause or extent of the abuse or neglect; and
- The identity of the person suspected of inflicting the abuse.

When a district receives a report that a school employee is suspected of committing an act of sexual misconduct, the district must also notify the alleged victim’s parents of the report within 48 hours.

Although any person can make a report without giving their name, to satisfy mandatory reporting requirements, mandated reporters such as professional school personnel, must provide their name. In addition to satisfying mandatory reporter requirements, providing the reporter’s name helps CPS more readily contact the reporter if CPS later wants or needs other information. District staff should be aware that after CPS receives a report of alleged child abuse or neglect, it has legal access to all relevant records about the child in the possession of the school district and/or the professional school personnel.²

Penalties and Protections Related to Reporting

It is important to be aware of a few penalties and protections associated with reporting. Mandated reporters who knowingly fail to make a report or fail to prompt the school principal to make a report, could be found guilty of a gross misdemeanor.³ However, any person who in good faith makes a report or gives testimony about possible child abuse or neglect is immune from civil or criminal liability.⁴ As noted above, when there is any doubt about whether it is legally necessary to make a report, the question should be resolved in favor of making the report.

On the flip side, a person who knowingly makes a false report of alleged abuse or neglect could be found guilty of a misdemeanor punishable under Washington’s criminal code.⁵ Knowingly making a false report refers to circumstances such as filing a report based on a personal dispute or as a mechanism for retaliation, despite the lack of any supporting facts.

School district staff should be mindful of students’ privacy rights and not disclose information indiscriminately. If the child’s parent is the person suspected of the abuse, the law does not require school schools to notify the parents of a report. Indeed, there are some circumstances where schools should not notify the parent that the school has reported to CPS. For example, if a parent’s knowing that their child disclosed information to a trusted adult at school would jeopardize the child’s safety or when the person reporting believes the parent might run away with the child.

To support your district and to clarify the requirements of mandatory reporting, WSSDA has revised Model Policy and Procedure **3421 – Child Abuse and Neglect**. This is an Encouraged policy.

² See RCW 26.44.030 (15) (a) (ii).

³ See RCW 26.44.080 – Violation—Penalty.

⁴ See RCW 26.44.060

⁵ RCW 9A.20.021

Are Your Finances Ready for an Earthquake?

By the Office of the Washington State Auditor

The Cascadia Subduction Zone (sometimes referred to as CSZ) is a large fault line stretching from northern California to southern Canada that is capable of producing the strongest of earthquakes. Stresses have been building along this zone for more than 300 years; experts believe that a giant earthquake, including one as high as a magnitude 9.0, followed by a large tsunami, has a 15 to 25 percent chance of occurring in the next 50 years. However, this is only one of many earthquake risks in our state.

As a school district leader, you need to be aware of your earthquake risks and take steps to ensure that your district is in a position to minimize losses and continue operating after a disaster. A major earthquake is going to be very costly if your area is directly affected, and even more so if your district is unprepared.

The Washington State Department of Natural Resources has information that can help school districts assess their risk. The Department of Natural Resources reports on earthquake risk for the Cascadia Subduction Zone and 19 other potential scenarios in our state that could affect counties like Yakima, Douglas, Chelan, and Walla Walla. The agency also recently evaluated 561 public school buildings across the state and found that nearly all of them are at risk of partial or total collapse during an earthquake.

Here are some steps you can take to financially prepare your school district:

Address infrastructure risks now

- Assess capital asset vulnerabilities. You should know each of your buildings' risk and the estimated cost

Quakes of Legend

It was a dark and stormy night when the land shook, the waters receded, and the mountainsides tumbled down. Then came the great flood, destroying everything in its path. The epic battle between Thunderbird and Whale, creatures from the air and sea, was underway.

This is one of several passed-down stories from Native Americans who experienced the last Cascadia Subduction Zone earthquake and tsunami on Jan. 26, 1700. As we approach the anniversary of that disaster, it is a good time to focus on how we can prepare for future ones.

to make them safe, and then establish priorities and timelines for any needed construction projects. The Office of Superintendent of Public Instruction (OSPI) offers natural hazard assessment grants to help you gather building information (such as a structural assessment). Contact your OSPI regional coordinator for more information. You can also learn more about your district's buildings by viewing the pre-disaster mitigation section in the Information Condition of School Inventory System (ICOS). This system tracks information about each school district's buildings, including potential natural hazards for each site and historical building hazard assessment results.

- Learn about state funding programs. In 2022, the Washington State Legislature formally established the school seismic safety grant program with Senate Bill 5933, and approved \$91 million in funding to begin this program. OSPI oversees these funds and is prioritizing schools along the coastal region that face a dual risk of an earthquake and tsunami. Schools can use funds for planning and construction for a retrofit, relocation, or tsunami evacuation structure. OSPI is working directly with at-risk coastal districts to coordinate projects. Once the coastal region has been served, there will be a funding opportunity for other high-risk buildings in districts across the state.
- Explore federal grants for preparedness and mitigation. Federal grants are available to help you prepare before disaster strikes, such as the Emergency Management Performance Grant, the program for infrastructure

CONTINUED on next page

CONTINUED from previous page

preparedness called Building Resilient Infrastructure and Communities, and the Hazard Mitigation Grant Program. These opportunities are available to local jurisdictions as subrecipients to the state. You can find more information at <https://mil.wa.gov/grants>.

Improve your post-disaster financial resiliency

- Ensure that you have a business continuity plan. As part of your continuity of operations planning, your district should be prepared for your financial services to function after an earthquake emergency. This plan needs to work even if you have no Internet, power, or phone service. Staff should be trained on how to access the plan in case of an emergency. This plan should be a component of your statutorily required comprehensive school safety plan, sometimes referred to as an emergency operations plan.
- Form your financial risk management strategy. Know your insurance options and coverage details, as well as your insurer's size and financial standing. For those participating in a risk pool, this would include the pool and all excess insurers. One thing to consider is an emerging tool called parametric risk insurance. This type of product provides a set payout based on the earthquake's magnitude rather than the extent of damage. It also can pay out within days, whereas traditional earthquake policies may take months or even one to two years.
- Consider the adequacy of your emergency cash reserves. Depending on the size of the earthquake, an event of this nature could be costlier than you ever imagined, and your emergency cash reserves should reflect your estimated need. Consider the extra costs to support the school community, the potentially high costs for materials and supplies to carry out repairs, the additional costs to resume operations after the disaster, and the overall estimated length of recovery.

Act now to ensure recovery funding later

- Make sure your district has a current hazard mitigation plan. Each school district must have a plan in place before a disaster occurs to access Federal Emergency Management Agency (FEMA) funding after a disaster. School districts can choose to annex to their county's plan or adopt their own. If you want to learn more about creating a hazard mitigation plan, read FEMA's guidance. If you are looking for funding to help you

develop a plan, two grant programs are available: the Building Resilient Infrastructure and Communities and the Hazard Mitigation Grant Program.

- Qualify your school district for recovery-based grants now. Learn about recovery-based grants and the steps you need to take now to qualify for grant funding after a disaster. Recovery-based grants can have prequalifying conditions or requirements for maintaining eligibility. Talk with your local emergency management department, the Washington State Department of Commerce, and the Washington State Military Department to help identify potential programs.
- Prepare to manage federal grant(s). You will need people with special skills to apply for and manage federal grant money. They should be familiar with local and federal procurement rules, as well as grant regulations and local grant policies. Evaluate your capacity to manage an influx of grant funds and what steps you will need to take if the need exceeds the capability of your resources. You'll want to think about how you would meet those financial management obligations and what that process may entail (e.g., expedited hiring). If you do not manage these grants properly and maintain the appropriate documentation, you may have to repay grant funds years after receiving them.

Given the potentially hefty price tag of an earthquake disaster and the risk to student safety, you should be informed about the extent of risk facing your school district and actively help shape the path forward.

Learn more about the earthquake risks in Washington

- What to Expect When you are Expecting an Earthquake (1 hour 30 minutes; video provides detailed information about earthquake risk in Washington)
- Dr. Erin Wirth – Understanding Cascadia's next Great Earthquake (1 hour)
- Tsunami Escape – Washington's Uphill Battle, a TVW documentary (20 minutes)

If you have questions or comments, email us at center@sao.wa.gov or contact Team School Programs at (509) 726-1874.

Note: Earthquake probability statistics were obtained from the Pacific Northwest Seismic Network, which were adapted from the United States Geological Survey. Read more in the School Seismic Safety Project 2019-2021 Legislative Report (see Figure 1, page 11).

Review of 2022 Audits of School Districts

By WSSDA Chief Financial Officer Josh Collette

Since November 1, 2021, the Washington State Auditor's Office (SAO) has issued 370 audit reports for school districts within the state and these audits resulted in 55 findings. Although this is an increase of six findings from the previous year, it is still fewer findings than those issued in all other years since 2015. Last year's slight increase in findings was due to findings connected to federal compliance audits. Federal compliance audits accounted for 42 out of the 55 findings. These 42 findings communicated 48 issues.

Types of Federal Compliance Audits

In response to the impact of the COVID-19 pandemic, the federal government invested additional funding to school districts through the Education Stabilization Fund (ESF). This program is managed by the U.S. Department of Education to prevent, prepare for, and respond to the coronavirus impacts on education for students. The ESF is composed of four primary emergency relief funds:

- (1) the Elementary and Secondary School Emergency Relief (ESSER) Fund,
- (2) the Governor's Emergency Education Relief (GEER) Fund,
- (3) the Emergency Assistance to non-Public Schools (EANS) Fund, and
- (4) the Higher Education Emergency Relief (HEER) Fund

Federal regulations require school districts to establish and follow internal controls that ensure compliance with program requirements. This includes understanding program requirements and monitoring the effectiveness of these internal controls. When these audits include new federal programs, such as last year, the audits often produce a significant number of findings. It appears that the ESF program was not an exception as the SAO reported 21 findings, communicating 23 issues, during its audits of the ESF program. The most prevalent issues identified during the ESF program audits were related

to requirements for cash management, time and effort documentation, and payment of prevailing wages.

The Davis-Bacon Act requires contractors and subcontractors to pay prevailing wages to laborers for work on contracts that are funded with federal funds in excess of \$2,000. Prevailing wage rates are rates that are considered to be similar to what local workers have been paid for similar projects as determined by the U.S. Department of Labor. To ensure compliance with these requirements the contract between a school district and the prime contractor needs to include specific language to ensure contractors and subcontractors are paid at prevailing wage rates. In addition, the school district is required to collect weekly certified payroll reports from contractors and subcontractors and confirm compliance with federal prevailing wage requirements. The audits found that internal controls were inadequate to demonstrate compliance with these requirements. The audits further found that school district staff's insufficient understanding of these administrative requirements lay at the root of the issue.

The ESSER subprogram allowed school districts to submit a claim for lost revenue due to unrealized enrollment. The Office of Superintendent of Public Instruction (OSPI) provided guidance on how to quantify unrealized enrollment. That guidance stated that to make a successful claim for unrealized enrollment, school districts must use costs deemed allowable in accordance with the Coronavirus Aid, Relief, and Economic Security (CARES) Act. These costs include expenses necessary for maintaining operations and continuing public school services during the pandemic, providing mental health services, and purchasing educational technology.

Both OSPI's grant system (iGrants) and its claims system operate on a reimbursement basis. This means that school

CONTINUED on next page

CONTINUED from previous page

districts must first incur and pay for allowable program expenses before they request reimbursement. In other words, school districts are not permitted to receive cash advances to cover the cost of these expenses. Additionally, school districts must maintain documentation that supports their reimbursement requests and demonstrates compliance with program requirements, including cash management requirements.

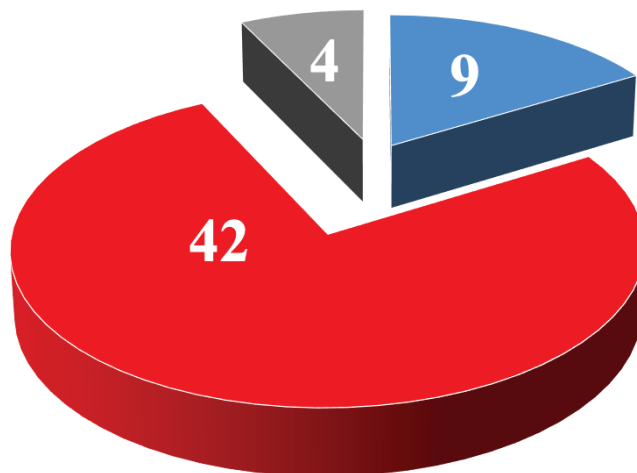
The audits of the program found that school districts' internal controls were inadequate for ensuring that allowable costs were incurred and paid prior to submission reimbursement requests. Because the awarding agency must reimburse, not provide advance payment for qualifying expenses, these requests were denied. As noted above, district staff were unaware that these cash management requirements were applicable to ESSER funds.

School districts are responsible for ensuring that adequate time-and-effort records support all payroll charged to federal grants. This can be done through maintaining semi-annual certifications or a monthly personnel activity report, such as a detailed timesheet. The type of documentation a district needs to maintain depends on the number and types of activities that district employees perform. The audits found that school districts either did not retain the appropriate type of documentation or they retained inadequate documentation to demonstrate compliance with federal time-and-effort requirements.

A lack of understanding of time-and-effort documentation requirements was the most identified issue during SAO audits. The ESF program had four findings reported on the issue, Title I program had three instances, and three other federal programs had one instance each. For some audits, district staff were unaware that the requirements were applicable to the program. For other audits, staff did not fully reconcile the time-and-effort documentation to the time actually charged to the program.

Another trend during this past audit cycle were issues connected to suspension and debarment as it relates to compliance with federal requirements for procurement. We explored these issues in the December 2019 edition of *Policy and Legal News*, and you might want to review that article if it applies to your district. Again, these issues are connected to school district staff's inadequate knowledge of federal program requirements. Often this problem is exacerbated by staff turnover in key positions. Unfortunately, staff turnover is inevitable. This means that

2022 Audits Issued by the State Auditor's Office



- Accountability
- Federal Compliance
- Financial Reporting

your district should carefully evaluate turnover as part of its risk assessment.

It is important to remember the separate but complementary roles of the school board and school district staff. Administrative staff are responsible to implement recommendations made by SAO. The school board is responsible for the oversight of this process through discussions and periodic reports from administrative staff. The school board should ensure that district administrative staff are periodically analyzing the district's internal controls and has a process for identifying and evaluating potential risks for noncompliance. The school board should also ensure that the school district's relevant policies are updated to reflect current best practices.

The most commonly needed resources to help your district address these risks include the board's allotting sufficient funding and time for key district staff to attend training and become more proficient in their duties. Your local education services district (ESD) is a great resource for training at minimal cost. The Washington Association of School Business Officials (WASBO) is another great resource. Access to trainings, webinars, workshops, manuals and other resources is included with the membership to WASBO. The State Auditor's Office also has resources available through its Center for Government Innovation. And OSPI provides training and other resources to help school districts' compliance with federal program requirements.

Amplifying the Voice of Student School Board Representatives

MODEL POLICY & PROCEDURE
1250/1250P
Students on Governing Boards



Above: Student representative Tejasvini Vijay (Riverview School District) speaks during a panel at WSSDA's 2022 Annual Conference, accompanied by fellow student representatives (from left to right) Andrew Howison (Mercer Island School District), Elise Garza (Othello School District) and Ameiya Brown (Tumwater School District).

In Washington, there is no requirement for school boards to have a student representative, but almost half of Washington's school districts have them. At their 2022 General Assembly, WSSDA members amended and strengthened their permanent position titled Student Voice in Governance. The position now states:

WSSDA believes that authentic student engagement with school boards and policy development is a powerful tool in leading educational change. Students deserve a meaningful role in providing input and guidance in the direction of their district and with decisions made on their behalf. WSSDA recommends and supports the establishment of formalized structures and policies with students to integrate ongoing, effective K-12 student voice.

Currently, many school boards are either instituting a

student board representative program or looking to amplify the role of student representatives. This might be related to the increase of youth at risk as communities recover from the pandemic. Many students have fallen behind academically, some are experiencing poverty or mental health issues, and communities are realizing that student input is essential to solving these problems.

A 2019 Center for American Progress report notes that "students have the greatest stake in their education but little to no say in how it is delivered. This lack of agency represents a lost opportunity to accelerate learning and prepare students for a world in which taking initiative and learning new skills are increasingly paramount to success." The report stated that many students feel as though they are unempowered bystanders in their education without

CONTINUED on next page

CONTINUED from previous page

either the voice or the ability to change the trajectory of the future.

Nationally, some areas have passed legislation granting full or near-equal voting privileges to student board representatives as their adult members. This approach is touted for teaching community engagement, civic problem-solving, and providing real student input. But some worry that students lack the maturity and time to deal with acrimonious public comments, sort through budget line items, understand an endless supply of education buzzwords, and serve as voting members. Proponents of full voting privileges include Adam Fletcher, the founder of a youth-engagement program called SoundOut.¹ Fletcher notes, “Some adults talk to me about the ‘inmates running the asylum.’ It’s this fear, this concern that kids don’t know what’s best for themselves, and as adults, we have the best experience and knowledge.” Student board representatives with full voting privileges report that their sense of responsibility and accountability has grown with the privilege. They report that while democracy can be messy, slow-moving, and sometimes dull, it’s also consequential.

Most often, student board members serve in an advisory-only capacity. While there is disagreement about whether student representatives should have full voting privileges, there is broad agreement that students are well situated, if not the best situated, to know the impact of school board decisions and their input is important.

A middle ground between an opportunity for general input and an opportunity to exercise full voting privileges is to institute advisory voting by student representatives. Advisory voting creates a process whereby immediately before the board votes on an agenda item, the student board representative(s) provide their advisory vote – whether pro, con, or abstain.

Some Washington school districts have already implemented this process, intentionally creating a space that amplifies the voice of students. Student representatives whose boards have the advisory vote report feeling truly heard and respected.

Andrew Howison, student representative for Mercer Island School District said, “Advisory voting gives students more ability to represent their peers than ever before. From my experience, advisory voting supports directors and students to work together and create policy that is truly



Above: WSSDA Advocacy Specialist Logan Endres and educator Erin Jones facilitate the Student Representatives Dinner at WSSDA's Annual Conference.

beneficial for all students and schools.”

Asha Woerner, also a student representative from Mercer Island School District, noted that advisory voting “broadcasts student voices and allows school board members to break down barriers and connect with students.”

Enabling your student board representative to provide advisory voting benefits not only that student but also the board and larger community. Lori Oviatt, school director from Riverview School District commented, “Advisory voting is a great way to gather deeper student perspective as our ultimate goal as school directors is to do what’s best for students in every decision we make.”

To support school boards, WSSDA has revised Model Policy and Procedure **1250/1250P – Students on Governing Boards**. This is a Discretionary policy. The revisions provide language to guide you in creating space for advisory voting by student board representatives, thereby strengthening opportunities for authentic student engagement.

For more information and resources on this topic, visit wssda.org/studentreps or contact Logan Endres, WSSDA's strategic advocacy specialist. Logan supports the Student Board Representatives Network and can be reached at l.endres@wssda.org.

¹ <https://soundout.org/>

OTHER UPDATES

Policy 2411–High School Equivalency Certificate

Category: **ESSENTIAL**

WSSDA updated and re-titled this policy to reflect House Bill (HB) 1686 (2013), which included replacing the term “certificate of educational competence” with “high school equivalency certificate.” The policy was also updated to better reflect current regulations. For instance, the policy now includes the eligibility requirements to take the high school equivalency test found in WAC 131-48-100 and clarifying the application and decision process for determining whether an individual has a substantial and warranted reason for leaving the regular high school program found as prescribed in WAC 180-96-045-048.

Policy and Procedure 5004/5004P–Infection Control Program Procedure

Category: **ENCOURAGED**

WSSDA removed the language from the procedure regarding a COVID -19 vaccine requirement for staff and added language to the policy affirming that the district will follow lawful regulations pertaining to infectious diseases.

Policy 5410–Holidays

Category: **DISCRETIONARY**

In 2021, our Legislature passed House Bill (HB) 1016 – Juneteenth – Legal Holiday, which made Juneteenth a state legal holiday in Washington. In December 2021, WSSDA revised this policy to add Juneteenth. However, we then realized that our Legislature added Juneteenth to only the list of state legal holidays found at RCW 1.16.050 but did not add Juneteenth to the list of school holidays found at RCW 28A.150.050. This meant that the legislation did not apply to school holidays, so we reverted the model policy back to its former language.

Meanwhile, our Legislature came to the same realization, that HB 1016 did not encompass school holidays, and passed HB 1617 – Aligning State and School Holidays. HB 1617 deleted the listing of school holidays found at RCW 28A.150.050(1) and replaced it with a reference to the listing of state holidays found at RCW 1.16.050(1). This made it so any future additions to the listing of state holidays automatically become school holidays.

The postponed effective date of HB 1617 meant that Juneteenth did not become a legal/school holiday

until July 1, 2022. This delay gave school districts an opportunity to address any collective bargaining agreements that might have been impacted had the holiday become effective in the 2021-2022 school year. We are now happy to re-introduce Juneteenth into the model policy, reflecting its status as both a legal and school holiday.



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. © 2020-2025 Washington State School Directors' Association. All rights reserved.

- Ron Mabry**, President
- Sandy Hayes**, President-Elect
- Derek Sarley**, Vice President
- Danny Edwards**, Immediate Past President
- Abigail Westbrook, J.D.**, Director, Policy and Legal Services
- Kelsey Winters**, Policy and Legal Specialist

WSSDA DIRECTORY

General Information 360-890-5781
Leadership Development 360-890-5868
Strategic Advocacy 360-481-5842
Communications 564-229-3193
Policy and Legal Services 360-252-3018
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 through an innovative, responsive, and flexible organization that provides exceptional leadership, professional learning, and services in governance, policy, and advocacy.



WASHINGTON STATE SCHOOL
DIRECTORS' ASSOCIATION
(800) 562-8927
P.O. Box 5248, Lacey, WA 98509 USA
wssda.org

The Editor would like to thank the following people for their contributions to this issue: The Editor would like to thank the following people for their contributions to this issue: Anthony Anselmo, J.D., Stevens Clay, P.S.; Josh Collette, WSSDA; Sam Chalfant, J.D., Pacifica Law Group LLP; Logan Endres, WSSDA; Kristen Harris, CPA, MBA, Office of the Washington State Auditor (SAO) and Daniel Lunghofer, MPA, WSSDA.

Keeping your board's policies current can be challenging

Reduce your legal vulnerabilities and save your district staff time by contacting WSSDA for help!

Changes in the law and recommended practices occur frequently, so policy-making should be an ongoing task for school boards.

WSSDA's policy review services are tailored to your district's needs. Our review will occur in installments to make it easier for your board to consider revisions on an ongoing basis.

Visit wssda.org/policyreview for more information.

