



## Legal Landscape Update

In light of recent events, our Policy & Legal branch is providing updates on three key topics:

- Recent reversal of 2024 Title IX Regulations
- Executive order on federal immigration enforcement in schools
- Executive orders delimiting genders as only male and female

## States' Rights & Executive Orders

A state's legal framework remains valid unless explicitly preempted by federal law, which generally requires Congressional action rather than an executive order. Courts have historically upheld states' rights to exceed federal standards in protecting marginalized groups.

## Title IX

2024 Title IX legislation is no longer in effect anywhere in the country. To comply with current law, all school districts should revert to their prior 2020 Title IX policies and procedures that were in effect until the start of the current school year. School districts should:

- Follow both 2020 Title IX as well as Washington state's own discrimination laws (RCW 28A.640 and WAC 392-190)
- Maintain a Title IX Coordinator position and make their contact information readily available
- Have a clear process for handling discrimination complaints
- Provide equal opportunities in athletics and educational programs
- Address sexual harassment and discrimination promptly and effectively
- Conduct regular self-evaluations of their compliance

Additionally, for the most current guidance regarding recent Title IX changes, it is strongly recommended that districts continue to:

- Consult with the school district's legal counsel
- Monitor the Washington Office of the Superintendent of Public Instruction (OSPI) website
- Review the current U.S. Department of Education guidance
- Remain connected to WSSDA as we navigate these matters together



## **Updated Model Policy**

WSSDA has already updated its model policies on Title IX to reflect the current law, and we will be reissuing all related policies that are affected in as timely a manner as possible. Completed updates to model policies and procedures that comply with state laws include:

### **Reinstated**

- 3205/3205P – Sexual Harassment of Students
- 3211P – Gender-Inclusive Schools
- 5011/5011P – Sexual Harassment of District Staff Prohibited

### **Retired**

- 3205/3205P1/3205P2 – Sex Discrimination and Sex-Based Harassment of Students Prohibited
- 3206/3206P – Pregnant and Parenting Students
- 5011/5011P – Sex Discrimination and Sex-Based Harassment of District Staff Prohibited
- 5012/5012P – Parental, Family, or Marital Status, and Pregnancy or Related Conditions of Staffs

## **Executive Order on Federal Immigration Enforcement in Schools**

The president's recent executive order has rescinded prior federal guidelines that designated schools as "sensitive locations," thereby permitting federal immigration authorities to conduct enforcement activities, including arrests, on school premises.

### **Background Information**

In Washington state, the legal framework aims to protect the rights of all students, regardless of immigration status. The U.S. Supreme Court's decision in *Plyler v. Doe* (457 U.S. 202 (1982)) ensures that undocumented children have the same right to attend public primary and secondary schools as U.S. citizens and permanent residents. Consequently, public schools are prohibited from denying access to education based on a student's immigration status.

Furthermore, Washington has significant legal protections for students. RCW 10.02.045 prohibits state and local law enforcement from using resources to enforce federal immigration laws unless specifically required by federal or state law.

Washington state law further delineates the role of school resource officers and local law enforcement concerning immigration enforcement. According to RCW 10.93.160, it is not the primary purpose of state and local law enforcement agencies or school resource officers to enforce civil federal immigration laws. Specifically, when acting in their official capacity, school resource officers are prohibited from inquiring into or

collecting information about an individual's immigration or citizenship status and from providing information to federal immigration authorities for civil immigration enforcement, except as required by law.

## **School-Specific Protections**

Washington state law, specifically RCW 28A.320.145, requires that public schools:

1. Protect student privacy
2. Not collect or record information about citizenship/immigration status
3. Ensure equal educational access regardless of immigration status

What does this look like:

In response to these directives, it is important for school districts in Washington to adopt specific policies and procedures in case of attempted immigration enforcement on school grounds. Districts should:

1. Develop a clear protocol for handling potential federal immigration officer visits
2. Train staff on these protocols

While federal executive orders can potentially supersede state law, the specific details and implementation matter significantly. In the event that a federal immigration enforcement officer shows up at your school, you may, consistent with your policies, choose to do the following:

1. Require federal immigration officers to present a judicial warrant signed by a judge (not an administrative warrant)
2. Consult with the school district's legal counsel immediately
3. Notify students/parents of their rights
4. Document all interactions with federal immigration officers
5. Refuse entry without proper judicial documentation

## **WSSDA Model policies and procedures that could support your district:**

- 3226/3226P – Interviews and Interrogations of Students on School Premises
- 4300/4300P – Limiting Immigration Enforcement in Schools
- 4310 – District Relationships with Law Enforcement and Other Government Agencies
- 4311/4311P – School Safety and Security Services Programs

## **Executive Order on Delimiting Genders as only Male and Female**

Any state can continue to have laws and policies that recognize more than two genders, including transgender and nonbinary individuals, even if a federal executive order defines gender narrowly. Here's why:

**State Authority:** Education is largely governed at the state and local levels. Washington state has the authority to establish its own policies for schools, including those that affirm and support transgender and nonbinary students, as long as these policies do not conflict with federal law.

**State Nondiscrimination Laws:** Washington is one of several states with robust anti-discrimination protections, including for LGBTQ+ individuals. These laws apply to schools, workplaces, and other areas, and they include protections based on gender identity and expression. The state's legal framework remains valid unless explicitly preempted by federal law, which generally requires Congressional action rather than an executive order.

**Limits of Executive Orders:** An executive order is a directive for federal agencies and does not automatically override state laws. Unless accompanied by new federal legislation or court rulings, states retain significant control over policies related to education and gender recognition.

**Conflict Resolution:** If a federal executive order conflicts with Washington state's laws, disputes may arise, but courts typically resolve these issues. Historically, courts have supported states' rights to go beyond federal minimums in offering protections to marginalized groups.