WSR 26-09-064
PROPOSED RULES
WASHINGTON STATE
SCHOOL FOR THE BLIND
[Filed April 13, 2026, 11:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 26-05-007.

Title of Rule and Other Identifying Information: Supplemental student conduct procedures for cases involving allegations of violation of Title IX, chapter 72-120 WAC.

Hearing Location(s): On June 11, 2026, at 3:00 p.m., at the Administration Building Board Room, 2214 East 13th Street, Vancouver, WA 98661; or via Zoom at https://wssb.zoom.us/j/8511152842?omn=93043894363, Meeting ID 851 115 2842; or One-tap mobile, +12532050468,,8511152842# US, +12532158782,,8511152842# US (Tacoma).

Date of Intended Adoption: June 11, 2026.

Submit Written Comments to: Janet Kurz, 2214 East 13th Street, Vancouver, WA 98661, email Janet.Kurz@wssb.wa.gov, fax 360-737-2120, phone 360-947-3302, beginning May 6, 2026, at 8:00 a.m., by June 10, 2026, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Janet Kurz, phone 360-947-3302, fax 360-737-2120, email Janet.Kurz@wssb.wa.gov, by June 10, 2026, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New rules that comply with federal regulations for Title IX of the Education Amendments of 1972 (Title IX) by adding new sections for supplemental Title IX student conduct procedures.

Reasons Supporting Proposal: Washington state school for the blind (WSSB) must adopt new rules to meet the federal regulations for Title IX that specify how recipients of federal financial assistance covered by Title IX must respond to allegations of sexual harassment.

Statutory Authority for Adoption: RCW 34.05.010(16) and 72.40.022(15); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Statute Being Implemented: RCW 72.40.022(15); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Rule is necessary because of federal law, Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Name of Proponent: WSSB, governmental.

Name of Agency Personnel Responsible for Drafting: Shelley Williams, Assistant Attorney General, 1220 Main Street, Suite 510, Vancouver, WA 98660, 360-619-4412; Implementation: Jennifer Langley, 2214 East 13th Street, Vancouver, WA 98661, 360-947-3353; and Enforcement: Sean McCormick, 2214 East 13th Street, Vancouver, WA 98661, 360-947-3308.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.05.328 (5)(a)(i), WSSB is not mandated to comply with RCW 34.05.328. Further, WSSB does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(ii), and to date the joint administrative rules [review] committee has not made that section applicable to the adoption of this rule.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. Failure to comply with Title IX regulations could result in corrective action by the United States Department of Education, including possible loss of federal funding.

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule adopts revisions to WSSB's student conduct code, which describes student rights and responsibilities. It does not impact rights or responsibilities of small businesses. Moreover, the proposed rule is necessary to comply with the federal Title IX regulations and to ensure the protection of individual students' constitutional and procedural rights.

Scope of exemption for rule proposal:

Is fully exempt.

April 13, 2026
Pam Parker
Interim Superintendent

RDS-7085.1

SUPPLEMENTAL STUDENT CONDUCT PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF VIOLATION OF TITLE IX

NEW SECTION

WAC 72-120-900 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. § 106. To the extent these supplemental hearing procedures conflict with Washington state school for the blind's standard disciplinary procedures, WAC 72-120-001 through 72-120-825, these supplemental procedures shall take precedence.

NEW SECTION

WAC 72-120-905 Definitions. The following definitions shall apply for the purposes of this supplemental procedure:

(1) "Agency" means the Washington state school for the blind.

(2) "Complainant" means an individual who is alleged to be the subject of conduct that could constitute sexual harassment.

(3) "Decision maker" means an administrator who is not the same person who serves at the Title IX coordinator or the investigator of the Title IX complaint.

(4) "Appeal decision maker" means the superintendent or designee. A designee is an administrator who is not the same decision maker who reached the determination regarding responsibility or dismissal, the investigator, or the Title IX coordinator.

(5) "Respondent" means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

NEW SECTION

WAC 72-120-910 Prohibited conduct under Title IX. Pursuant to chapter 392-400 WAC and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the agency may impose disciplinary sanctions up to and including expulsion against a student who has been found responsible for committing, attempting to commit, aiding, abetting, inciting, encouraging, or assisting another person to commit or engage in acts of "sexual harassment."

For the purposes of this supplemental procedure, "sexual harassment" means conduct on the basis of sex that satisfies one or more of the following:

(1) Quid pro quo harassment. An agency employee conditioning the provision of an aid, benefit, or service of the agency on an individual's participation in unwelcome sexual conduct.

(2) Hostile environment. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the agency's education programs or activities.

(3) Sexual assault. Sexual assault includes the following conduct:

(a) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(b) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.

(d) Statutory rape. Nonforcible sexual intercourse between someone who is 18 years of age or older and someone who is under the age of 16.

(4) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, stalking, or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington.

(5) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

(6) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

NEW SECTION

WAC 72-120-915 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during an agency education program or activity; and

(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "education program or activity" is defined as locations, events, or circumstances over which the agency exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the agency.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the agency from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the agency's student conduct code, chapter 72-120 WAC.

(4) If the decision maker determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the decision maker will issue a no-

tice of dismissal in whole or in part to both parties explaining why some or all of the Title IX claims have been dismissed.

NEW SECTION

WAC 72-120-920 Initiation of discipline. (1) Upon receiving a Title IX investigation report from the Title IX coordinator, the decision maker will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the decision maker determines that there are sufficient grounds to proceed under these supplemental procedures, the decision maker will initiate a Title IX disciplinary proceeding by serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

(a) Set forth the basis for Title IX jurisdiction;

(b) Identify the alleged Title IX violation(s);

(c) Set forth the facts underlying the allegation(s);

(d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s);

(e) Explain that the parties are entitled to be accompanied by their chosen advisors during a hearing, and that:

(i) An advisor may be an attorney; and

(ii) The agency will appoint an advisor of the agency's choosing at no cost to the party, if the party failed to do so; and

(f) Explain that if a party fails to appear at a hearing, a decision of responsibility may be made in their absence.

NEW SECTION

WAC 72-120-925 Rights of parties. (1) The agency's student conduct procedures, chapter 72-120 WAC, and this supplemental procedure shall apply equally to all parties.

(2) The agency bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

NEW SECTION

WAC 72-120-930 Evidence. The introduction and consideration of evidence by the decision maker is subject to the following procedures and restrictions:

(1) Relevance: The decision maker shall review all questions for relevance and shall explain to the party proposing the questions any decision to exclude a question as not relevant.

(2) Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(4) No negative inference: The decision maker may not make an inference regarding responsibility solely on a witness's or party's absence from a hearing or refusal to answer questions.

(5) Privileged evidence: The decision maker shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

NEW SECTION

WAC 72-120-935 Determination regarding responsibility. (1) At least 10 days prior to a determination regarding responsibility, the investigator must create an investigative report that fairly summarizes relevant evidence, and send the investigative report in an electronic or hard copy format to each party and each party's advisor for their review and written response.

(2) After transmitting the investigative report to the parties, but before reaching a final determination regarding responsibility, the decision maker must give each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.

(3) The decision maker must issue a written determination of responsibility regarding the alleged sexual harassment. The decision maker will apply a preponderance of the evidence standard.

(4) The decision maker's written determination must be issued to the parties simultaneously and must include the following:

(a) Identification of the allegations potentially constituting sexual harassment under Title IX regulations;

(b) A description of the procedural steps taken from the time of the agency's receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and any hearings held;

(c) Findings supporting the determination;

(d) Conclusions regarding the application of the agency's student conduct code policies to the facts;

(e) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any dis-

ciplinary sanctions imposed on the respondent, and whether remedies designed to restore or preserve equal access to the education program or activity will be provided to the complainant; and

(f) The procedures and basis for appealing the decision maker's determination.

NEW SECTION

WAC 72-120-940 Appeals. (1) All parties have the right to appeal from the decision maker's determination regarding responsibility or from the agency's dismissal of any allegations contained in a formal complaint. The right to appeal is in addition to the complainant's right to appeal under state requirements and the respondent's potential appeal rights under the agency's student code of conduct.

(2) Appeals must be in writing and filed with the superintendent's office within 21 calendar days of service of the decision maker's written decision. Appeals must identify the specific findings of fact and/or conclusions in the written decision or notice of dismissal that the appealing party is challenging and must contain argument as to why the appeal should be granted. Failure to file a timely appeal constitutes a waiver of the right to appeal and the written decision or notice of dismissal shall be deemed final.

(3) A party may appeal the decision maker's determination regarding responsibility on the following basis:

(a) Procedural irregularity affecting the outcome of the matter;

(b) New evidence that was not reasonably available at the time the determination regarding responsibility was made that could affect the outcome of the matter;

(c) The Title IX coordinator, investigator(s), or decision maker(s) had a conflict of interest or bias for or against complainants or respondents generally or individually that affected the outcome of the matter; or

(d) Additional basis as determined by the agency.

(4) Upon receiving a timely appeal, the superintendent's office will serve a copy of the appeal on all parties, who will have 10 calendar days from the date of service to submit written responses to the superintendent's office addressing issues raised in the appeal. Failure to file a timely response constitutes a waiver of the right to participate in the appeal. Upon receipt of written responses, the superintendent's office shall serve copies of the responses to the other parties.

(5) Parties receiving a copy of the responses shall have five calendar days in which to submit a written reply addressing issues raised in the responses to the superintendent's office.

(6) The appeal decision maker must not be the same decision maker who reached the determination regarding responsibility or dismissal, the investigator, or the Title IX coordinator.

(7) The appeal decision maker, based on their review of the parties' submissions and the hearing or investigative record, will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal is affirmed or denied, or if the disciplinary sanctions and conditions imposed in the written decision are affirmed, vacated, or amended, and, if amended, set forth the new disciplinary sanctions and conditions. The appeal decision maker must issue a written decision describing the result of

the appeal and the rationale for the result. The written decision will include notice of the complainant's right to file a complaint with the office of the superintendent of public instruction under WAC 392-190-075.

(8) The superintendent's office shall serve the appeal decision on the parties simultaneously.

(9) All administrative decisions reached through this process may be judicially appealed pursuant to the applicable provisions of chapter 34.05 RCW including, but not limited to, the timelines set forth in RCW 34.05.542.

NEW SECTION

WAC 72-120-945 Emergency removals. This supplemental procedure does not preclude the agency from removing a student from school on an emergency basis consistent with WAC 72-120-510 through 72-120-530.

NEW SECTION

WAC 72-120-950 Disciplinary sanctions and remedies. (1) Following a determination that sexual harassment occurred, the agency may impose disciplinary sanctions. "Disciplinary sanctions" means consequences imposed on a respondent following a determination of responsibility under WAC 72-120-935. The agency will administer any disciplinary sanctions in accordance with this chapter.

(2) Any discipline imposed under this section is subject to the requirements in WAC 72-120-201, and 392-172A-05140 through 392-172A-05175.