



Connecticut Association of Boards of Education

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PRESENTS POLICY HIGHLIGHTS

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More Smartphone Bans in Schools The Policy Concerns That Keep Teachers Up at Night What to Expect from the Updated Title IX Regulations

More Smartphone Bans in Schools

California Governor Gavin Newsom said he will be working with state lawmakers to “dramatically restrict” smartphone use during the school day. According to the New York Times (June 18, Hubler, Shawn), “his directive came hours before board members at the Los Angeles Unified School District, the country’s second-largest school district, voted to pursue their own smartphone ban that could begin January.

Citing efforts to curb cyberbullying and classroom distractions as reasons for his efforts, Governor Newsom emphasized in a statement, “When children and teens are in school, they should be focused on their studies, not their screens.” Prior to his pursuit of a statewide ban that would prohibit smartphone use during all parts of the school day, efforts to limit use had been implemented incrementally over the years ranging from allowing access during non-instructional times to “authorizing” but not “requiring” districts to adopt cellphone bans.

According to the Times article, “Smartphone use in schools, typically adopted on a local level, has increasingly drawn the attention of officials in various states as teachers have complained about the academic costs of distraction and experts have raised alarms about the impact of social media on adolescent mental health.” (Hubler, 2024) Of note, even as States have imposed policies related to cellphone use in school, they’ve ranged from total school-day bans to classroom bans. Indiana, having approved a ban on portable devices in classrooms, allows for exceptions for emergencies. That should be interesting in its application.

In Connecticut, Governor Lamont proposed a statewide ban on cell phones in all K-12 schools, urging state lawmakers to pass legislation that would limit the disruptions caused by students using cell phones in schools. While this last legislative session did not result in such action, many local districts across the state continue to determine the appropriate policy language that balances the appropriate use of technology in schools while limiting the wide range of distractions personal devices often bring.

As one opinion contributor for Education Week, in a piece titled “Let’s Not Oversimplify Students’ Cellphone Use,” frames the question, “How can we build a society with structures in place to support the safety and resilience of young people while also preparing them for a highly technological society that values the ability to communicate across many different modalities to solve the complex and existential issues we face?” (Education Week, Larry Ferlazzo, May 28, 2024)

For now, it appears that rather than deliberating over such complex and important questions, the trend for statewide bans will continue into the 2024-25 school year and beyond.

The Policy Concerns That Keep Teachers Up at Night

In a recent article in Education Week, Larry Ferlazzo, an English and social studies teacher in California, notes, “We teachers have our hands full with our day-to-day classrooms, but policies can have a major impact on our working lives. (“The Policy Concerns That Keep Teachers Up at Night, Ferlazzo, Larry, Education Week, May 30, 2024) While specifically identifying policy matters related to restriction on what can be taught, professional learning, and civics education, this opinion piece serves as an important reminder that students, teachers, and parents are impacted by board policies; there needs to be space for their voices to be heard.

Even with the trend toward federal and state laws requiring boards to adopt prescriptive policy language and the board’s need to comply, policy development and adoption benefit from board deliberation through their regularly scheduled meetings. Policy committee meetings provide boards a great opportunity to invite administration, teachers and staff to share their insights and discuss concerns, for example, with implementing policies up for discussion. When students and parents know when policies are being discussed, their awareness and the opportunities to provide input will likely ensure a more effective rollout when a policy is adopted. The most impactful policies aren’t drafted in a laboratory and hidden in the recesses of a manual. Their importance requires a deliberative process, which includes board review and discussion in public and opportunities for input.

What to Expect from the Updated Title IX Regulations

As CAGE’s policy department and others eager to support districts in complying with the newly updated Title IX Regulations continue to review and understand the extensive updates, the following offers a glimpse into what you can expect.

Sex-Based Discrimination

The “Final Rule” Title IX Regulations broaden the definition of sex discrimination to include along with sexual harassment, sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. The term “sex-based harassment” is defined more broadly to include harassment based on sexual orientation and gender identity. “Hostile environment” is also more broadly defined to include “unwelcome sex-based conduct that is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the District’s education program or activity.”

Although more possible conduct may constitute sex-based discrimination or harassment under the updated regulations, they do provide greater flexibility and informality in the procedures schools must use to address it “to account for variations in school size, student populations, and administrative structures.”

The Grievance Process

Components of the grievance process each school must establish to address complaints of sex discrimination have been simplified, allowing schools to use a single-investigator model. Schools may choose to use this model in some, but not all, cases as long as it is clear in their grievance procedures when they will use this model. Schools may also offer an informal resolution process for sex discrimination complaints unless the complaint includes allegations that an employee engaged in sex-based harassment of a student or such a process would conflict with federal, state, or local law.

Separation by Sex

The 2020 regulations allow schools to provide separate toilets, locker rooms, and shower facilities on the basis of sex as long as the facilities are comparable. The updated 2024 “final” regulations clarify that such otherwise permissible separation on the basis of sex is consistent with Title IX as long as it is carried out in a manner that does not impose more than “de minimis” harm on affected students. The new regulations clarify that preventing someone from participating in school (including in sex-separate activities) consistent with their gender identity causes that person more than de minimis harm. The new regulations do not address the eligibility criteria for athletic teams. Nonetheless, it’s likely this provision will receive a lot of attention from board attorneys as they attempt to guide superintendents and boards through legal challenges.

Privacy Protections

The updated regulations expand privacy protections for students and others involved in sex discrimination claims and investigations. Schools may not disclose personally identifiable information obtained, with limited exceptions, while complying with Title IX. Such exceptions include prior written consent or disclosure to a minor's parent.

Schools’ grievance procedures must require reasonable steps to protect the privacy of the parties and witnesses while they are implemented, provided the steps do not restrict the parties' ability to obtain evidence and participate in the grievance procedures.

Pregnant Students and Employees

The updated regulations provide more explicit and broader requirements for schools to support students and employees based on pregnancy or related conditions. Schools must provide reasonable modifications for students based on pregnancy-related conditions, allow for reasonable break time for lactation for employees, and allow access to a clean, private lactation space for students and employees. When a student (or parents of a minor student) informs an employee of a student’s pregnancy or related condition, the employee must provide the individual with information about the school’s obligations to prevent discrimination. Schools cannot disclose personally identifiable information about reasonable modifications for pregnancy or related conditions, with limited exceptions.

Students with Disabilities

Schools must consult with one or more members of a student's IEP or Section 504 team when a student with a documented disability is a complainant or respondent in a Title IX matter. If the complainant or respondent is a student with a disability, the school must require the Title IX Coordinator to consult with one or more members of the student's IEP or Section 504 team to determine how to comply with the requirements of the IDEA and Section 504 throughout the grievance procedure process.

Title IX Coordinator Duties

The updated regulations have expanded the Title IX Coordinator's duties and training requirements. Title IX Coordinators and others responsible for implementing schools' grievance procedures must receive training related to their responsibilities. They must receive training promptly upon hiring or change of positions and annually thereafter. Additionally, Title IX Coordinators may be decision-makers under the single-investigator model. Non-confidential employees are required to notify the Title IX Coordinator of conduct that may constitute sex discrimination under Title IX.

Standard of Proof

The "final" regulations direct schools to use a *preponderance of evidence* as a standard of proof to determine whether sex discrimination occurred unless the school uses *clear and convincing* evidence in other comparable proceedings.

CABE will update its Nondiscrimination and Anti-Harassment model policies and related policies to comply with the updated Title IX Regulations, which take effect August 1, 2024.

(Thank you to Lexie Bergstrom, North Dakota School Board Association Staff Attorney, for providing the material for this analysis.)