



## Washington School Law Update

*A brief summary of legal developments relevant to Washington public school districts from the previous calendar month.*

### United States District Court

#### Title IX

*Tennessee v. Cardona*

No. 2: 24-072 (1/9/25)

A federal district court judge vacated the Final Rule and its corresponding regulations implementing Title IX issued in 2024, which had clarified that discrimination for purposes of Title IX also includes discrimination on the basis of sex stereotypes, pregnancy or related conditions, sexual orientation, and gender identity. In April 2024, the Department of Education (Department) issued a Final Rule entitled “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” which clarified that discrimination under Title IX includes any discrimination that depends in part on consideration of a person’s sex, including gender identity. The Final Rule also included a “de minimis harm” standard, which provided that disparate treatment on the basis of sex may not be carried out in a manner that subjects someone to more than de minimis harm, absent certain exceptions. The Final Rule further redefined the term “sex-based harassment” to include other harassment on the basis

of sex, including gender identity, and unwelcome sexual conduct that is subjectively and objectively offensive and limits or denies a person’s ability to participate in or benefit from the education program or activity. The Final Rule and corresponding regulations became effective in August 2024. A group of states filed a lawsuit in the Eastern District of Kentucky, arguing that the Final Rule and its corresponding regulations were invalid because the Department exceeded its rulemaking authority in implementing them. District court judge Danny Reaves agreed with the states, holding that nothing in the statutory design of Title IX suggests that discrimination “on the basis of sex” means anything other than disparate treatment as male or female, and therefore, does not include gender identity. The judge further held that the Final Rule violated the First Amendment of the U.S. Constitution because it required teachers to use names and pronouns associated with a student’s asserted gender identity, and therefore, compelled teachers to express a viewpoint that they do not necessarily agree with in violation of their free speech rights. As a remedy, the judge issued a vacatur order, which takes the agency action deemed unlawful—the 2024 Title IX regulations—entirely “off the books,” and applies nationwide, not just to the plaintiffs in the lawsuit.

*The Department of Education subsequently issued a Dear Colleague Letter on February 4, 2025, stating its position that the binding regulatory framework for Title IX*

*enforcement is the provisions of the 2020 Title IX Rule and the longstanding Title IX regulations, excluding the vacated 2024 regulations, and that open Title IX investigations should be “reevaluated to ensure consistency with the requirements of the 2020 Title IX Rule.”*

*If you have any questions about the impact of the Tennessee v. Cardona decision or subsequent Dear Colleague Letter on your school district’s policies and procedures, or on any active Title IX investigations, please contact any Porter Foster Rorick attorney or your school district’s legal counsel.*

## King County Superior Court

### Parents’ Bill of Rights

*Legal Counsel for Youth and Children v. State of Washington*

No. 24-2-11540-4 SEA

On January 27, 2025, King County Superior Court Judge Michael Scott dismissed a lawsuit challenging Initiative 2081 (I-2081), codified in RCW 28A.605.005, and commonly known as the “Parents’ Bill of Rights.” The Washington State Legislature passed I-2081 in March 2024, and the state has maintained that the law does not alter or reduce student privacy rights protected by existing law. Before the law went into effect, the ACLU of Washington, Legal Voice, and QLaw filed a lawsuit challenging its implementation. In June 2024, Judge Scott issued a preliminary injunction temporarily pausing two provisions of I-2081 from going into effect: the requirements that schools provide parents with their child’s records within 10 business days upon request, and that schools provide parents with various health records upon request. However, following further briefing and argument of the parties, on January 27, 2025, Judge Scott granted summary judgment in favor of the State, and he dismissed the lawsuit challenging I-2081 in its entirety. As a result, all provisions of the Parents’ Bill of Rights, RCW 28A.605.005, are now in effect.

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### February Masthead Photo Credit



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