

NCSBA Special PLS Update July 2020

Introduction to This Update

This update was prompted by new federal regulations released in May that add unique demands to schools' compliance obligations under Title IX of the Education Amendments Act of 1972, which prohibits sex discrimination and sexual harassment in the board's education program and activities. The new requirements do not apply to other federal laws that prohibit discrimination on the basis of other protected classes, such as race, disability, or religion. Moreover, the definition of "sexual harassment" in the new regulations differs from the definition used in the federal law that prohibits sex discrimination in employment. To accommodate these changes under Title IX, we are removing two policies from the PLS manual and adding six new ones and providing a complimentary administrative regulation. We have also updated several related policies. Three of the new policies implement Title IX obligations; two others address the board's obligations under other federal nondiscrimination laws; and one policy addresses the board's obligation to prohibit bullying and harassment under state law. The administrative regulation provides definitions for certain forms of prohibited sexual harassment.

Previously, all forms of discrimination, harassment, and bullying under state and federal laws were compiled into a single policy and a companion complaint process. Together, they provided a uniform process for reporting, investigating, and decision-making. That approach is not feasible under the new regulations, which reserve the Title IX grievance process for addressing formal complaints of sexual harassment under Title IX. Accordingly, new policies in this update are individualized to the relevant laws to provide for a more tailored and streamlined approach to addressing conduct that is not sexual harassment under Title IX, while providing processes sufficient to comply with the newly-heightened Title IX procedural requirements for incidents of sexual harassment that fall under that law. **These policies should be reviewed with the assistance of the board attorney and should be changed only with input from the board attorney.**

The new Title IX regulations are effective on August 14, 2020.

The policies listed below should be rescinded. They have been superseded by policies included with this update.

Updated Policy	Policy Title	Description of Update	Legal Authority Involved	Notes
1710/4021/7230	Prohibition Against Discrimination, Harassment, and Bullying	<ul style="list-style-type: none"> This policy has been superseded by new policies 1710/4020/7230, 1720/4030/7235, 1725/4035/7236, 4329/7311, and 7232. (Required) 	.	
1720/4015/7225	Discrimination, Harassment, and Bullying Complaint Procedure	<ul style="list-style-type: none"> This policy has been superseded by new policies 1710/4020/7230, 1726/4036/7237, 4329/7311, and 7232. (Required) 		

* *Required* means either (1) the provisions are required by law to be addressed in policy or (2) the modifications must be made to ensure the policy reflects current law (ex. adding new statutory language or updates to legal citations).

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Policy Updates and New Policies

Updated Policy	Policy Title	Description of Update	Legal Authority Involved	Notes
1710/4020/7230 (New)	Discrimination and Harassment Prohibited by Federal Law	This new policy supersedes, in part, existing policies 1710/4021/7230 and 1720/4015/7225, as described above. (Required)	Title IV of the Civil Rights Act of 1964; Title VI of the Civil rights Act of 1964; Section 504 of the Rehabilitation Act; Americans with Disabilities Act	This policy prohibits discrimination and harassment based on certain characteristics protected by federal law, including race, color, national origin, religion, and disability, but excluding sex. It provides a reporting and investigative process for complaints of policy violations.
1720/4030/7235 (New)	Title IX Nondiscrimination on the Basis of Sex	<ul style="list-style-type: none"> • This policy is intended to meet the board’s obligation to provide notice of nondiscrimination on the basis of sex. (Required) • Please add the email address of your Title IX coordinator in Section A. 	Title IX of the Education Amendments Act of 1972; 34 C.F.R Part 106	This policy declares the board’s policy of nondiscrimination on the basis of sex in the programs and activities of the school system. Certain elements of the policy must be posted online and included in student and employee handbooks. Information about those requirements is provided in the footnotes.
1725/4035/7236 (New)	Title IX Sexual Harassment – Prohibited Conduct and Reporting Process	<ul style="list-style-type: none"> • This new policy supersedes policy 1710/4021/7230, Prohibition Against Discrimination, Harassment, and Bullying, in part. It specifically prohibits sexual harassment as defined by Title IX. (Required) 	Title IX of the Education Amendments Act of 1972; 34 C.F.R Part 106	This policy is required to comply with the board’s obligation not to discriminate on the basis of sex. It specifically prohibits sexual harassment and provides a reporting process and mandatory response protocol to meet the requirements of federal law as set out in the new Title IX regulations.
1725/4035/7236-R	Title IX Sexual Harassment – Definitions	<ul style="list-style-type: none"> • This is a complimentary administrative regulation needed to provide definitions for certain forms of sexual harassment prohibited by 	Title IX of the Education Amendments Act of 1972; 34 C.F.R Part 106	<p>Alternatively, the definitions in this administrative regulation could be moved to the body of the policy itself.</p> <p>The information in red italic font is informational only and should be removed prior to use by the school system.</p>

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		policy 1725/4035/7236. (optional – see note)		
1726/4036/7237 (New)	Title IX Sexual Harassment Grievance Process	<ul style="list-style-type: none"> This new policy supersedes policy 1720/4015/7225, Discrimination, Harassment, and Bullying Complaint Procedure, in part. (Required) 	Title IX of the Education Amendments Act of 1972; 34 C.F.R Part 106	This policy provides a grievance process for resolving formal complaints of sexual harassment in a manner that complies with the requirements of federal law as set out in the new Title IX regulations.
1730/4022/7231	Nondiscrimination on the Basis of Disabilities	<ul style="list-style-type: none"> Updates the policy referenced in paragraph #5 to refer to the appropriate new policy. (Required) Updates the cross references. (Required) 	Section 504 of the Rehabilitation Act; Americans with Disabilities Act	
4040/7310	Staff-Student Relations	<ul style="list-style-type: none"> Updates the policy referenced in subsection C.2 to refer to the appropriate new policy. (Required) Updates the cross references. (Required) 		
4329/7311 (New)	Bullying and Harassing Behavior Prohibited	<ul style="list-style-type: none"> This new policy supersedes policy 1710/4021/7230, Prohibition Against Discrimination, Harassment, and Bullying, in part; and policy 1720/4015/7225, Discrimination, Harassment, and Bullying Complaint Procedure, in part. (Required) 	G.S. 115C-407.15-407.18	This policy satisfies the board’s obligation under G.S. 115C-407.16 to have a policy prohibiting bullying and harassing behavior. Some conduct under this policy overlaps with conduct prohibited by federal law. In such circumstances, school officials must first evaluate the conduct under the more specific policies that address federal law before applying this policy.
4331	Assaults, <u>and Threats</u> , and Harassment	<ul style="list-style-type: none"> This policy has been updated to remove harassment and cyberbullying provisions because those topics are more thoroughly addressed in new board policies. (Recommended) 		

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		<ul style="list-style-type: none"> • Updates the legal references. (Required) • Updates the cross references. (Required) 		
4340	School-Level Investigations	<p>This policy has been updated to make changes necessary to be consistent with new Title IX policies, including:</p> <ul style="list-style-type: none"> • Modifies the first paragraph to be consistent with policies that assign the senior human resources official or others to investigate certain matters. (Recommended) • Adds possibility of disciplinary consequences for making false statements during an investigation. (Recommended) • Provides an exception to the investigative process steps where other policies require a more specific response. (Recommended) 		
7232 (New)	Discrimination and Harassment in the Workplace	<ul style="list-style-type: none"> • This new policy addresses the board’s obligations to provide a workplace free of harassment and discrimination. Previously this information was addressed by policies 1710/4021/7230 and 1720/4015/7225. (Required) 	Age discrimination in Employment Act; Americans with Disabilities Act; Section 504 of the Rehabilitation Act; Title II of the Genetic Information Nondiscrimination Act; Title VII of the Civil Rights Act of 1964; Uniformed Services Employment and Reemployment Rights Act	This policy addresses federal laws that prohibit discrimination in employment, including Title VII. Because the Title IX regulations adopted a different definition of “sexual harassment” than is used in Title VII, some conduct that does not violate Title IX and policy 1720/4030/7235, may nevertheless violate Title VII and this policy.

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