

## Policy Amend: Policy 411.4 - Nondiscrimination on the Basis of Sex in Education Programs or Activities

AASD Board of Education  
Mon, Feb 24, 2025 6:00PM

**Kay Eggert (Board President) 2:53:37**

Okay, we're gonna move to 10 F. Mr. Hernandez.

**Michael Hernandez (Assistant Superintendent - Secondary Level) 2:53:41**

Yes, good evening. I'm here to speak about 411-4. As many of you are aware, on January 10, we were notified by the Department of Education that Title IX 2024 was no longer in place, and that all schools would need to enact Title IX 2020 as of further notice. After consulting with [unclear] our—the legal firm that our district consults with, we were advised to pause 411-4 until further notice.

**Kay Eggert (Board President) 2:54:18**

Are you—okay, I didn't want to interrupt what you're saying, but we will keep the policy. A lot of work went into creating this policy and making sure that it was really accurate in reflecting the 2024 guidelines, and so we don't want to just get rid of the policy, but we won't be able to follow the—a lot of it had to do with reporting and the processing and the investigation of concerns. But we will still have a non discrimin policy because we had those previously. We're just going to pause, 411.4—

**Michael Hernandez (Assistant Superintendent - Secondary Level) 2:55:03**

Yes.

**Kay Eggert (Board President) 2:55:03**

—use the guidelines from our 411.2 and one

**Michael Hernandez (Assistant Superintendent - Secondary Level) 2:55:10**

411.1

**Kay Eggert (Board President) 2:55:10**

411.1.

**Michael Hernandez (Assistant Superintendent - Secondary Level) 2:55:10**

Yes. So, what the guidance was, is that we would enact—we would fall back to 2020 Title IX, um, which is covered under our 411-1 and 411-2. Um, within that we still have state statutes in which we would still be able to provide supports as well for bullying and harassment.

**Michael Hernandez (Assistant Superintendent - Secondary Level) 2:55:33**

I will just say if we—I know we don't have it up, but if we think of 411-1, and you look at the first sentence, um, it says, students—we will protect our students in our district. And so, any student that is in our district will be protected from bullying and harassment.

**Jason Kolpack (Board Member) 2:55:58**

I don't know if you're in a position to be able to answer this or not, but are there provisions within the 2024 policy that we're legally prohibited from enforcing because of these legal outcomes? Like, I'm trying to determine if the 2024 the policy is more restrictive than the existing policy, we're prevented from doing that.

**Michael Hernandez (Assistant Superintendent - Secondary Level) 2:56:31**

Yeah, that's a great question. I believe I can answer it, and I believe that I'm right when I answer this. I think that there are major—three major differences between '20 and '24 The major difference, the primary one, is the definition of sex and which 2024 was more broad. I think the second biggest difference is the grievance process in which going in and having a protocol of how it's reported, as opposed to hearing and then searching out to provide supports. I think the third biggest difference is the jurisdiction of whether it's not in our four walls, but whether it is anywhere that could then be brought into our four walls. Those are the three major differences that we're seeing here. We work through 2020 until 2023 and a half. We are working again just to ensure that our team is back up to point on the 2020 guidelines, so that we're still able to provide those supports for our staff and students.

**Jason Kolpack (Board Member) 2:57:43**

I guess maybe, if I rephrase it, if we wanted to continue doing those things, we can't.

**Michael Hernandez (Assistant Superintendent - Secondary Level) 2:57:51**

Well, I guess the different question would be is, would we be willing to face litigation? I can speed if I want to, but if the speed limit says 75, I stay below 75. At this point we have guidance from the Department of Ed that's saying we will follow 2020. We do depend on federal funds as well. So, at this point we're looking at, again, I remind you of 411-1, just "all students". If you're a student or an employee of our district, we're obligated to protect you.

**Nick Ross (Board Member) 2:58:29**

Okay, I would just like to speak a little bit on this topic. So, I am a non binary individual. I ran as an openly LGBTQ individual. I work for an LGBTQ nonprofit. I work with other LGBTQ individuals every day who are very concerned about decisions that are being made at the federal level. And I've sought out many perspectives, many, anything I could find about this issue, and I firmly believe that a no vote against this in protest would send the wrong message and be the wrong idea, because a no vote in protest would imply that trans and non-binary students in our district no longer are protected from discrimination, and that is not true.

**Nick Ross (Board Member) 2:59:38**

Legal precedent in our district as of this moment, still says that the older version of Title IX protects students based on gender identity, and that's from Ash versus Whitaker in 2017 and then that was reaffirmed again in a case in 2023. So, our students who are trans or non-binary are still protected from discrimination even if this amendment passes and we're no longer practicing the 411.4 Title IX rules.

**Nick Ross (Board Member) 3:00:19**

I personally think, you know, if I were in charge of everything, I would love to keep the 2024 version of Title IX for a variety of reasons because of the explicit expansion of the definition of sex at the federal level, because of the additional protections for survivors of sexual violence, which, you know, procedures for reporting were enhanced in order to improve that process for survivors, and unfortunately, now we have to go back to a less best reporting mechanism. And also, you know, I would prefer to have a Title IX that explicitly talked about the rights of pregnant students. However, we can't. And voting against this would imply that our students have no protections or staff have no protection, and that's not true, not only because of the court cases. Also, guidance

from DPI currently still says that we have to follow state law which explicitly calls out sexual orientation and implies gender identity and gender expression through the interpretation of the courts of appeals and potentially even decisions that were made at the Supreme Court level.

**Nick Ross (Board Member) 3:01:48**

There's still a lot of confusion. Anyone who's LGBTQ+ in our area or in the country, if you are concerned about things that are happening, if you are concerned about losing your rights, that's valid, and it is scary. But this decision right now that we're about to make it has nothing to do with that, with what's going on at the federal level. This decision that we are going to take has nothing, is not connected to any of the executive orders that have been issued by the federal government.

**Nick Ross (Board Member) 3:02:19**

And I guess the last point for now is that none of the executive orders, as far as I understand, have the force of law. In fact, the one that directly talks about ending, quote, radical indoctrination in public schools only directs federal departments to create a strategy. It does not—it's not law. It doesn't have the force of law. So, we have to follow our laws, which are the seventh Court of Appeal precedent, the State student non discrimination law, and the interpretations of that law through time that are in the Wisconsin Administrative Code and in decisions from courts.

**Nick Ross (Board Member) 3:03:07**

So, you know, for any trans student who is listening, you still have the right to be protected from bullying and from discrimination. You have the right to access the restroom that aligns with your gender identity. You cannot be told to use a gender-neutral restroom. You have the right to do that in Appleton Area Schools, and this decision is not going to change that.

**Kay Eggert (Board President) 3:03:41**

Is there—so we are going to need to act on this amendment to amend—this is awkward language, because, yes,

**Michael Hernandez (Assistant Superintendent - Secondary Level) 3:03:55**

At the top, there is some language that we were we were advised to use “As a result of the Federal Court decision in Tennessee v. Cardona, 24-cv-00072 (E.D. Ky. 2025), which vacated the 2024 Title IX regulations, please note that the 2024 Title IX regulations below are NOT in effect. Accordingly, the 2020 Title IX regulations are in effect until further notice, which is located in Policy 411.1 and 411.2.”

**Kay Eggert (Board President) 3:04:31**

Okay, so is there a motion to approve this amendment?

**Kay Eggert (Board President) 3:04:37**

Is there a second? I'll second that. So, any other discussion, comments, questions?

**Jason Kolpack (Board Member) 3:04:37**

I'll make that motion.

**Kris Sauter (Board Member) 3:05:01**

I just like to thank you, Nick, for sharing your thoughts and really highlighting the fact that all of our students will continue to have protection in the AASD.

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**Kay Eggert (Board President) 3:05:17**

Okay. Anything else? Roll call, please.

**Unknown 3:05:25**

Pheng Thao.

**Pheng Thao (Board Member) 3:05:27**

Aye.

**Unknown 3:05:28**

Kay Eggert.

**Kay Eggert (Board President) 3:05:30**

Aye.

**Unknown 3:05:32**

Ed Ruffalo

**Ed Ruffolo (Board Member) 3:05:33**

Aye.

**Unknown 3:05:36**

James Bacon

**James Bacon (Board Member) 3:05:39**

Aye.

**Unknown 3:05:39**

Nick Ross.

**Nick Ross (Board Member) 3:05:40**

Aye.

**Unknown 3:05:42**

Jason Kolpack.

**Jason Kolpack (Board Member) 3:05:44**

Aye.

**Unknown 3:05:45**

And Kris Sauter.

**Kris Sauter (Board Member) 3:05:46**

Aye.