

January 30, 2023

Attorney General Raúl Labrador  
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Delivered via Email



Re: Letter dated January 25, 2023

Dear Attorney General Labrador,

Thank you for reaching out and for your interest in the service and work of the Idaho School Boards Association (ISBA).

ISBA was founded in 1942 to serve school boards and school board members throughout the state of Idaho. For 81 years, ISBA has worked to meet the needs of school governance in Idaho communities large and small, rural and more densely populated. We help school board members carry out their school governance role in ever-changing environments. We are confident that we all share the goal of quality schools and quality education that prepare Idaho students to excel and meet the challenges that they will face as they become adults and leaders in our communities and our state.

One of the services we provide to locally elected school board leaders is our model school policy services. Like other school board associations across the country, it is an optional but widely used service that we offer.

School leaders in Idaho have been dealt the responsibility of handling LGBT issues in their schools without explicit state or federal statutes to guide them. Rather they must navigate inconsistent court rulings, or guidance and rules issued through federal agencies, some of which can and has changed overnight depending on who is elected to serve as President of the United States. Current interpretation of Title IX – and likewise for Title VII – does protect discrimination on the basis of sex to include a person's gender identity and sexual orientation.

All of ISBA's model policies are drafted in-house and go through an extensive legal review process. None of ISBA's current employees are attorneys, and any legal questions are referred to our outside legal counsel whose lawyers practice education law and represent education clients throughout the state. ISBA does not write any model policy based on any special interest group or entity, and our business partners and affiliates have not played a role in writing any model policy. Our model policies are developed to assist school communities address practical issues that arise in their schools on a daily basis and require a clear, uniform and workable solution.

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As you noted in your letter, policies adopted at the local level vary, and are tailored to fit the individual community. That is precisely how ISBA's model policies service works. Like any action of a public agency, when a school board adopts a policy, it can do so only in a properly noticed public board meeting. The policy you inquired about was initially released in July 2015 based on *Dear Colleague* guidance issued by the U.S. Department of Education Office for Civil Rights. ISBA provides a model version of this policy upon request, or if a district or charter school chooses to purchase the complete manual that includes all our model policies, this is one of the policies that is included. ISBA's manual that includes all of its model policies is over 1,000 pages long, and it would be simply impossible for every policy to be adopted by a particular school board. Instead, individual boards choose the policies they need to govern their schools effectively. We have not, and do not, indicate to our members this policy is required by law. Rather, the policy serves as framework for each local board to determine – alongside their community – what is best for their students and helps them understand the various legal complexities and rights guaranteed to students under the United States Constitution. Those who have done so have done it with compassion, as they work with students and their families who may have an individual personal need. No matter what a school district or charter school does, they are subjecting themselves either to litigation from non-accommodated LGBT students or upset a group of parents who disagree with those accommodations.

ISBA has respected and upheld – and always will respect and uphold -- the authority of local school boards who have worked through these policies with their community. We have maintained that our job is to provide schools with a framework on sensitive topics that navigates the layers of legal complexities, all to avoid costly litigation, intense investigations from the U.S. Department Office for Civil Rights, or the loss of federal funding. As someone who was elected to uphold the law, I am sure you can appreciate while some people in Idaho would prefer to relinquish funding from and oversight by the federal government, the reality is that federal funding serves as a precious resource for public schools particularly for our most vulnerable students, such as students who receive special education services, free and reduced lunch, and more.

We agree that Idaho schools should be a safe environment, where all students acquire the basic skills, knowledge, and character that they need to thrive in life. It should be noted that in places where these policies have been adopted and operating for many years, there have been no reported incidents of unlawful behavior. We have worked diligently to ensure that schools can accommodate children or parents who may disagree or are uncomfortable with this type of policy.

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We have traditionally had an excellent working relationship with the Office of the Attorney General in Idaho, partnering to inform school board members on Idaho's openness in government laws. I would welcome an opportunity to meet with you or your staff directly or provide you my direct contact information where you can reach me by phone if you have any questions regarding the work and mission of ISBA.

Our members and their needs are our number one priority. We are proud of our mission to advocate for Idaho students and public education and will continue to support and empower local school boards for student success.

Thank you again for your interest. I would be happy to meet with you or one of your colleagues to discuss further if you would like.

Best Regards,

A handwritten signature in black ink that reads "Misty Swanson". The signature is written in a cursive, flowing style.

Misty Swanson  
Executive Director

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