

CSBA UPDATE CHECKLIST – July 2024

District Name: _____

Contact Name: _____ Phone: _____ Email: _____

POLICY	TITLE	OPTIONS/BLANKS	ADOPT DATE
BP 0410	Nondiscrimination in District Programs and Activities	Fill in Blanks _____ _____ _____	
BP 1312.3	Uniform Complaint Procedures		
AR 1312.3	Uniform Complaint Procedures	Fill in Blanks _____ _____ _____ OPTION 1: <input type="checkbox"/> OPTION 2: <input type="checkbox"/>	
BP 4030	Nondiscrimination in Employment		
AR 4030	Nondiscrimination in Employment	Fill in Blanks _____ _____ _____	
BP 4033	Lactation Accommodation		
BP 4119.11	Sex Discrimination and Sex-Based Harassment		
AR 4119.11	Sex Discrimination and Sex-Based Harassment	Fill in Blanks _____ _____ _____	
BP 4219.11	Sex Discrimination and Sex-Based Harassment		

CSBA UPDATE CHECKLIST – July 2024

District Name: _____

POLICY	TITLE	OPTIONS/BLANKS	ADOPT DATE
AR 5145.3	Nondiscrimination/Harassment	Fill in Blanks 	
BP 5145.7	Sex Discrimination and Sex-Based Harassment		
AR 5145.7	Sex Discrimination and Sex-Based Harassment	Fill in Blanks 	
AR 5145.71	Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures		
E(1) 5145.71	Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures	Fill in Blanks 	
BP 5146	Married/Pregnant/Parenting Students		

Original regulations
Relish, Set
and related. Gender
discipline
CSBA POLICY GUIDE SHEET
July 2024
CB is Title IX
(Lund Training needs
Record keep.
Effective 8-1-24

see #44
on p. 6

Note: Descriptions below identify revisions made to CSBA's sample board policies, administrative regulations, board bylaws, and/or exhibits. Editorial changes have also been made. Districts and county offices of education should review the sample materials and modify their own policies accordingly.

Board Policy 0410 - Nondiscrimination in District Programs and Activities

Policy updated to reflect **NEW FEDERAL REGULATIONS (89 Fed. Reg. 33474)** which (1) clarify that discrimination on the basis of sex, including sex-based harassment, for the purpose of Title IX includes sex stereotypes; sex characteristics; gender identity; sexual orientation; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions or recovery; and parental, marital, and family status, and (2) require a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct. Additionally, policy updated to reflect **NEW LAW (SB 153, 2024)** which prohibits the Governing Board from adopting or approving the use of any textbook, instructional material, supplemental instructional material, or curriculum for classroom instruction if the use would subject a student to unlawful discrimination in accordance with specified state law. In addition, policy updated to reflect **NEW FEDERAL REGULATIONS (89 Fed. Reg. 31320)** which include specified technical standards to ensure that content available through a district's web and mobile applications are accessible to individuals with disabilities.

new laws -
uncertainty
still to be
legally tested

Former
complaints
looked at
legally
counsel

Revised training
for all
staff
1 hr / yr
non-discrim
Harassment

Board Policy 1312.3 - Uniform Complaint Procedures

Policy updated to reflect **NEW FEDERAL REGULATIONS (89 Fed. Reg. 33474)** which (1) require a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct, and (2) clarify that discrimination on the basis of sex, including sex-based harassment, for the purpose of Title IX includes sex stereotypes; sex characteristics; gender identity; sexual orientation; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions or recovery; and parental, marital, and family status. Additionally, policy updated to reflect **NEW LAW (SB 153, 2024)** which prohibits the Governing Board from adopting or approving the use of any textbook, instructional material, supplemental instructional material, or curriculum for classroom instruction if the use would subject a student to unlawful discrimination in accordance with specified state law. In addition, policy updated to clarify that the uniform complaint procedures should not be used to investigate and resolve employment discrimination complaints, and reflect **NEW LAW (AB 714, 2023)** which exempts "newcomer students" from district adopted graduation requirements, transfer of coursework and credit requirements, and specified consultation and notice requirements, formerly applicable to students in the third or fourth year of high school participating in a newcomer program.

Administrative Regulation 1312.3 - Uniform Complaint Procedures

Regulation updated to reflect **NEW LAW (AB 714, 2023)** which exempts "newcomer students" from district adopted graduation requirements, transfer of coursework and credit requirements, and specified consultation and notice requirements, formerly applicable to students in the third or fourth year of high school participating in a newcomer program. Additionally, regulation updated to reflect **NEW FEDERAL REGULATIONS (89 Fed. Reg. 33474)** which (1) require a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct, (2) require the Title IX notice of nondiscrimination on the basis of sex to be posted on the district's website and published in district handbooks, catalogs, announcements, bulletins, and application forms, and (3) provide that a complaint alleging sex discrimination, including sex-based harassment, may be oral or written.

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MISSING pp 53-
27-74
Numbers added?

Board Policy 4030 - Nondiscrimination in Employment

Policy updated to reflect **NEW FEDERAL REGULATIONS (89 Fed. Reg. 33474)** which (1) clarify that discrimination on the basis of sex, including sex-based harassment, for the purpose of Title IX includes sex stereotypes; sex characteristics; gender identity; sexual orientation; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions or recovery; and parental, marital, and family status, and (2) require a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct. Additionally, policy updated to reflect **NEW LAW (SB 700, 2023)** which prohibits the district from discriminating against an employee in termination, or any term or condition of employment, or otherwise penalizing a person, based on the person's use of cannabis when off the job or away from the workplace. In addition, policy updated to move material related to sex discrimination to Board Policy and Administrative Regulation 4119.11/4219.11/4319.11 - Sex Discrimination and Sex-Based Harassment in order to keep material related to sex discrimination and sex-based harassment together. Policy also updated to provide that employees are required to report incidents of prohibited discrimination within one workday, which may be modified to reflect the district's timeline, in order to maintain consistency of such reporting requirements across the policy manual.

Administrative Regulation 4030 - Nondiscrimination in Employment

Regulation updated to reflect **NEW FEDERAL REGULATIONS (89 Fed. Reg. 33474)** which (1) require a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct, (2) require districts to provide a notice of nondiscrimination on the basis of sex, and (3) require specified training related to sex discrimination for all district employees, as well as additional training for investigators, decisionmakers, and other persons who are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures; facilitators of an informal resolution process; and the Title IX Coordinator(s) and designees. Additionally, regulation updated to reflect remedies available for violation of the Providing Urgent Maternal Protections (PUMP) for Nursing Mothers Act, the Pregnant Workers Fairness Act, and other provisions of state law.

Board Policy 4033 - Lactation Accommodation

Policy updated to reflect **NEW FEDERAL REGULATIONS (89 Fed. Reg. 33474)** which (1) require districts to provide reasonable break time for employees to express breast milk or breastfeed, and to ensure that employees have access to a lactation space, as specified, (2) provide that "sex" for purposes of sex discrimination under Title IX includes lactation and related medical conditions or recovery, and (3) require a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct. Additionally, policy updated to reflect the Providing Urgent Maternal Protections (PUMP) for Nursing Mother Act which (1) requires employers to provide reasonable break time for nursing employees to express breast milk for one year after the child's birth, and to ensure that employees have access to a lactation space, as specified, and (2) authorizes an employee to file a complaint with the Wage and Hour Division of the U.S. Department of Labor for violation of such act. In addition, policy updated to reflect the Pregnant Workers Fairness Act which (1) requires employers to provide reasonable accommodation to employees due to pregnancy, childbirth, or related medical conditions, including lactation, as specified, and (2) authorizes an employee to file a complaint with the Equal Employment Opportunity Commission for failure to provide reasonable accommodations pursuant to the act.

Board Policy 4119.11/4219.11/4319.11 - Sex Discrimination and Sex-Based Harassment

Policy updated to include material related to sex discrimination, in addition to sex-based harassment. Additionally, policy updated to reflect **NEW LAW (AB 1955, 2024)** which prohibits a district, including a Governing Board member, from retaliating or otherwise taking adverse action against an employee, including by placing the employee on administrative leave, on the basis that the employee supported a student exercising rights specified in certain Education Code provisions, performed work in a manner consistent with

the district's legal obligations related to educational equity, or provided instruction to students consistent with current content standards, curriculum frameworks, instructional materials adopted by the state board, and state law. In addition, policy updated to reflect **NEW FEDERAL REGULATIONS (89 Fed. Reg. 33474)** which (1) require districts to provide a notice of nondiscrimination on the basis of sex, (2) require employees with knowledge of conduct that reasonably may constitute sex discrimination or sex-based harassment in a district education program or activity to notify the Title IX Coordinator, (3) require a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct, and (4) require the Title IX Coordinator to offer and coordinate supportive measures when notified of conduct that reasonably may constitute sex discrimination, including sex-based harassment.

Administrative Regulation 4119.11/4219.11/4319.11 - Sex Discrimination and Sex-Based Harassment

Regulation updated to include material related to sex discrimination, in addition to sex-based harassment. Additionally, regulation updated to emphasize that the district does not discriminate on the basis of sex in any of its programs or activities, prohibits such conduct, and complies with Title IX. In addition, regulation updated to include definitions of sex discrimination and sex-based harassment, and reflect **NEW FEDERAL REGULATIONS (89 Fed. Reg. 33474)** which (1) clarify that discrimination on the basis of sex, including sex-based harassment, for the purpose of Title IX includes sex stereotypes; sex characteristics; gender identity; sexual orientation; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions or recovery; and parental, marital, and family status, (2) require specified training related to sex discrimination for all district employees, as well as additional training for investigators, decisionmakers, and other persons who are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures; facilitators of an informal resolution process; and the Title IX Coordinator(s) and designees, (3) require the district to retain for at least seven years the materials used to provide training required by Title IX and make the materials available to members of the public upon request, (4) require districts to provide a notice of nondiscrimination on the basis of sex, (5) require districts to take specified actions to prevent sex discrimination and sex-based harassment, and (6) require a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct.

Administrative Regulation 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures

Regulation updated to reflect **NEW FEDERAL REGULATIONS (89 Fed. Reg. 33474)** which make extensive and significant changes to the title IX grievance procedures including that they (1) require a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct, (2) require district's to follow "basic requirements" when implementing the Title IX grievance procedures, (3) modify the definition of a "complaint" and who may bring a complaint, (4) modify the Title IX Coordinator's responsibilities related to the initiation of a complaint when the alleged victim chooses to not bring a complaint, (5) modify the requirements related to the offering and coordination of supportive measures, (6) expand the requirements related to the dismissal of complaints, including the appeal of dismissals, (7) expand the requirements related to the informal resolution process, (8) amend requirements related to notice of allegations when a formal investigation is initiated by the district, (9) expand requirements related to the investigation procedures, (10) modify requirements related to the written decision, (11) alter the process for the appeal of the decision, (12) provide for extension of timelines, and (13) amend requirements for remedies, disciplinary actions, and record-keeping. Additionally, regulation updated to delete material defining sex-based harassment as the definitions for sex discrimination and sex-based harassment are contained within Administrative Regulation 4119.11 – Sex Discrimination and Sex-Based Harassment, and to delete material in regard to reporting of sex-based harassment as such material is contained within other related policies. Regulation also updated to add a section on Consolidation of Complaints, and material related to record-keeping requirements for complaints containing allegations of childhood sexual assault.

③ KD "Coordinator" - CRO Title IX
Training
mandated

Exhibit(1) 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures

Exhibit updated to reflect **NEW FEDERAL REGULATIONS (89 Fed. Reg. 33474)** which amend the Title IX notice of nondiscrimination on the basis of sex.

Board Policy 5145.3 - Nondiscrimination/Harassment

Policy updated to reflect **NEW FEDERAL REGULATIONS (89 Fed. Reg. 33474)** which (1) clarify that discrimination on the basis of sex, including sex-based harassment, for the purpose of Title IX includes sex stereotypes; sex characteristics; gender identity; sexual orientation; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions or recovery; and parental, marital, and family status, and (2) require a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct. Additionally, policy updated to reflect **NEW LAW (AB 1165, 2023)** which encourages districts to have a student who has been suspended, or for whom other means of correction have been implemented pursuant to Education Code 48900.5 for an incident of racist bullying, harassment, or intimidation, as well as the victim, to engage in a restorative justice practice suitable to address the needs of both the victim and the perpetrator.

Administrative Regulation 5145.3 - Nondiscrimination/Harassment

Regulation updated to provide that the individual identified as the Compliance Officer for coordinating the district's efforts to comply with applicable state and federal laws and to answer inquiries regarding the district's nondiscrimination policies be the same as the Compliance Officer specified in Administrative Regulation 1312.3 - Uniform Complaint Procedures as the responsible employee to handle complaints alleging unlawful discrimination of a student, and the Title IX Coordinator specified in Administrative Regulation 5145.7 - Sex Discrimination and Sex-Based Harassment as the responsible employee to handle complaints alleging unlawful sex discrimination and sex-based harassment. Additionally, regulation updated to reflect **NEW FEDERAL REGULATIONS (89 Fed. Reg. 33474)** which (1) clarify that discrimination on the basis of sex, including sex-based harassment, for the purpose of Title IX includes sex stereotypes; sex characteristics; gender identity; sexual orientation; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions or recovery; and parental, marital, and family status, (2) require the Title IX notice of nondiscrimination on the basis of sex to be posted on the district's website and published in district handbooks, catalogs, announcements, bulletins, and application forms, and (3) require a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct. In addition, regulation updated to reflect **NEW LAW (AB 1327, 2023)** which requires a district that participates in the California Interscholastic Federation to post on its website the California Department of Education's (CDE) standardized incident form to track racial discrimination, harassment, or hazing that occurs at high school sporting games or events, including information on how to submit a completed incident form to the district. Regulation also updated to reflect **NEW LAW (SB 153, 2024)** which requires a district that serves students in any of grades 7-12 to provide certificated school employees information on existing school and community resources related to the support of lesbian, gay, bisexual, transgender, queer, and questioning (LGBTQ+) students, or related to the support of students who may face bias or bullying, and **NEW LAW (AB 5, 2023)** which requires a district that serves students in any of grades 7-12, starting in the 2025-26 school year, to provide at least one hour of training annually to all teachers and certificated employees which incorporates CDE's online training curriculum to support LGBTQ+ cultural competency. Additionally, regulation updated to provide that employees are required to report incidents of prohibited discrimination within one workday, which may be modified to reflect the district's timeline, in order to maintain consistency of such reporting requirements across the policy manual, and to move the section "Issues Unique to Intersex, Nonbinary, Transgender and Gender-Nonconforming Students," to Administrative Regulation 5145.7 - Sex Discrimination and Sex-Based Harassment in order to keep related material together.



Board Policy 5145.7 - Sex Discrimination and Sex-Based Harassment

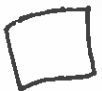
Policy updated to include material related to sex discrimination, in addition to sex-based harassment. Additionally, policy updated to reflect **NEW FEDERAL REGULATIONS (89 Fed. Reg. 33474)** which (1) clarify that discrimination on the basis of sex, including sex-based harassment, for the purpose of Title IX includes sex stereotypes; sex characteristics; gender identity; sexual orientation; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions or recovery; and parental, marital, and family status, (2) require employees with knowledge of conduct that reasonably may constitute sex discrimination or sex-based harassment in a district education program or activity to notify the Title IX Coordinator, (3) require a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct, (4) require the Title IX Coordinator to offer and coordinate supportive measures when notified of conduct that reasonably may constitute sex discrimination, including sex-based harassment (5) require specified training related to sex discrimination for all district employees, as well as additional training for investigators, decisionmakers, and other persons who are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures; facilitators of an informal resolution process; and the Title IX Coordinator(s) and designees, and (6) require specified records to be maintained for seven years. In addition, policy updated to reflect **NEW LAW (AB 1955, 2024)** which prohibits a district, including a Governing Board member from retaliating or otherwise taking adverse action against an employee, including by placing the employee on administrative leave, on the basis that the employee supported a student exercising rights specified in certain Education Code provisions, performed work in a manner consistent with the district's legal obligations related to educational equity, or provided instruction to students consistent with current content standards, curriculum frameworks, instructional materials adopted by the state board, and state law. Policy also updated to (1) provide that employees are required to report incidents of prohibited discrimination within one workday, which may be modified to reflect the district's timeline, in order to maintain consistency of such reporting requirements across the policy manual, and (2) delete material related to requirements for posting and publishing the district's sexual harassment policy which are located in Administrative Regulation 5145.3 - Nondiscrimination/Harassment, and the accompanying administrative regulation by reference.

Administrative Regulation 5145.7 - Sex Discrimination and Sex-Based Harassment

Regulation updated to include material related to sex discrimination, in addition to sex-based harassment. Additionally, regulation updated to emphasize that the district does not discriminate on the basis of sex in any of its programs or activities, prohibits such conduct, and complies with Title IX. In addition, regulation updated to include definitions of sex discrimination and sex-based harassment, and reflect **NEW FEDERAL REGULATIONS (89 Fed. Reg. 33474)** which (1) clarify that discrimination on the basis of sex, including sex-based harassment, for the purpose of Title IX includes sex stereotypes; sex characteristics; gender identity; sexual orientation; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions or recovery; and parental, marital, and family status, (2) require a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct, and (3) provide that a district (a) may not exclude a student from participation in, deny a student the benefits of, or otherwise subject a student to discrimination on the basis of sex in any education program or activity, (b) that in the limited circumstances in which different treatment or separation on the basis of sex is permitted, a district may not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a student to more than de minimis harm, and (c) that preventing a student from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex. Regulation also updated to provide that employees are required to report incidents of prohibited discrimination within one workday, which may be modified to reflect the district's timeline, in order to maintain consistency of such reporting requirements across the policy manual. Additionally, regulation updated to (1) include material formerly in Administrative Regulation 5145.3 - Nondiscrimination/Harassment related to issues that are unique to intersex, nonbinary, transgender,

Must perform & control
Ed code but...

Parental
Disclosure
Prohibited



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and gender nonconforming students, (2) reflect **NEW LAW (AB 1955, 2024)** which clarifies that under existing law a district, including a Governing Board member, may not require an employee or contractor to disclose any information related to a student's sexual orientation, gender identity, or gender expression to any other person, or enact or enforce any policy, rule, or administrative regulation that would require the same, without the student's consent unless otherwise required by state or federal law, and (3) reflect **NEW LAW (SB 760, 2023)** which requires, beginning July 1, 2026, each school with more than one female student restroom and more than one male student restroom to provide and maintain at least one all-gender restroom for student use that meets the requirements of law.

Administrative Regulation 5145.71 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures

Regulation updated to reflect **NEW FEDERAL REGULATIONS (89 Fed. Reg. 33474)** which make extensive and significant changes to the title IX grievance procedures including that they (1) require a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct, (2) require district's to follow "basic requirements" when implementing the Title IX grievance procedures, (3) modify the definition of a "complaint" and who may bring a complaint, (4) modify the Title IX Coordinator's responsibilities related to the initiation of a complaint when the alleged victim chooses to not bring a complaint, (5) modify the requirements related to the offering and coordination of supportive measures, (6) expand the requirements related to the dismissal of complaints, including the appeal of dismissals, (7) expand the requirements related to the informal resolution process, (8) amend requirements related to notice of allegations when a formal investigation is initiated by the district, (9) expand requirements related to the investigation procedures, (10) modify requirements related to the written decision, (11) alter the process for the appeal of the decision, (12) provide for extension of timelines, and (13) amend requirements for remedies, disciplinary actions, and record-keeping. Additionally, regulation updated to delete material defining sex-based harassment as the definitions for sex discrimination and sex-based harassment are contained within Administrative Regulation 5145.7 - Sex Discrimination and Sex-Based Harassment, and to delete material in regard to reporting of sex-based harassment as such material is contained within other related policies. Regulation also updated to add a section on Consolidation of Complaints, and material related to record-keeping requirements for complaints containing allegations of childhood sexual assault.

Exhibit(1) 5145.71 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures

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Exhibit updated to reflect **NEW FEDERAL REGULATIONS (89 Fed. Reg. 33474)** which amend the Title IX notice of nondiscrimination on the basis of sex.

Board Policy 5146 - Married/Pregnant/Parenting Students

Delete
N/A

Policy updated to reflect **NEW FEDERAL REGULATIONS (89 Fed. Reg. 33474)** which (1) provide that a student's current, potential, or past pregnancy, childbirth, termination of pregnancy or lactation, and related medical conditions and recovery, as well as a student's current, potential, or past parental, family, or marital status are protected from discrimination pursuant to Title IX and its implementing regulations, (2) require an employee, when a student or a person who has a legal right to act on behalf of a student informs any employee of the student's pregnancy or related conditions, to provide that person with the Title IX Coordinator's contact information and inform that person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination, including sex-based harassment, and ensure the student's equal access to the district's education program or activity, (3) require the district to provide the district's notice of nondiscrimination on the basis of sex and take specified actions once notified of a student's pregnancy or related conditions, (4) prohibit the district from requiring a student who is pregnant or has related conditions to provide certification from a healthcare provider or any other person verifying that the student is physically able to participate in the district's class, program, or extracurricular activity unless the certified level of physical ability of health is (a) necessary for participation in the class, program, or extracurricular activity, (b) the district requires such certification of all participating students, and (c) the information obtained is not used as a basis for sex discrimination, (5) require the district to allow a student who is pregnant or who has related conditions to voluntarily take a leave of absence to cover, at a minimum, the period of time deemed medically necessary by the student's licensed healthcare provider, and, if the district has a leave policy that allows for a greater

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period of time than the medically necessary period and the student qualifies for leave under such policy, to permit the student to take leave under that policy, (6) require the district to reinstate a student who has returned to school after taking parental leave to the academic status and, as practicable, to the extracurricular status that the student held when the voluntary leave began, (7) require the district to provide reasonable accommodations for students who are pregnant or parenting, or have related conditions, as specified, (8) require the district to provide a student who is lactating with access to a lactation space, as specified, and (9) require a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct.

Policy 0410: Nondiscrimination In District Programs And Activities

Status: ADOPTED

Original Adopted Date: 02/01/2014 | **Last Revised Date:** 1007/01/2023 **2024** | **Last Reviewed**
Date: 1007/01/2023 **2024**

CSBA NOTE: Education Code 234.1 mandates districts to adopt policy as well as a process to ensure that district programs and activities are free from unlawful discrimination. Education Code 234.1 requires that the district's nondiscrimination policy include a statement that the policy applies to all acts related to a school activity or school attendance and, as amended by AB 1078 (Ch. 229, Statutes of 2023), to all acts of the Governing Board and the Superintendent in enacting policies and procedures that govern the district. Education Code 234.1, as amended by AB 1078, contains similar language regarding the County Board of Education and the County Superintendent of Schools.

In accordance with various provisions of state and federal law, discrimination in education programs and activities is unlawful when it is based on certain actual or perceived characteristics of an individual. Education Code 220 prohibits discrimination based on race or ethnicity, nationality, immigration status, sex, sexual orientation, gender, gender identity, gender expression, religion, disability, or any other characteristic contained in the definition of hate crimes in Penal Code 422.55. Education Code 260 prohibits discrimination based on age. Government Code 11135 prohibits discrimination based on many of the foregoing characteristics and on an individual's genetic information and medical condition. Title VI of the Civil Rights Act of 1964 (42 USC 2000d-2000d-7) prohibits discrimination on the basis of race, color, and national origin. Title IX (20 USC 1681-1688; 34 CFR 106.1-106.82, as amended by 89 Fed. Reg. 33474) prohibits discrimination on the basis of sex, including sex stereotypes; sex characteristics; gender; gender identity; sexual orientation; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions or recovery; and parental, marital, and family status. The Americans with Disabilities Act (ADA) (42 USC 12101-12213) and Section 504 of the Rehabilitation Act of 1973 (29 USC 794) prohibit discrimination on the basis of disability. For policy language protecting students against discrimination and harassment, see BP/AR 5145.3 -

Nondiscrimination/Harassment and BP/AR 5145.7 - Sexual Harassment- Sex Discrimination and Sex-Based Harassment, and for language regarding Title IX complaint procedures, see AR 5145.71 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

Education Code 260 and 5 CCR 4900-4965 require the Board to monitor district compliance with these state and federal laws. The federal laws are enforced by the Office for Civil Rights (OCR) of the U.S. Department of Education; (USDOE), and the California Department of Education (CDE) may investigate complaints regarding discrimination pursuant to 5 CCR 4600-4670.

OCR's May 2024 Dear Colleague Letter, "Protecting Students from Discrimination, such as Harassment, Based on Race, Color, or National Origin, Including Shared Ancestry or Ethnic

Characteristics," which expands and clarifies USDOE's 2023, "Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools," provides that Title VI's protections from race, color, and national origin discrimination extends to students who experience discrimination based on actual or perceived (1) shared ancestry or ethnic characteristics, or (2) citizenship or residency in a country with a dominant religion or distinct religious identity. While Title VI does not protect individuals based solely on religious discrimination, it does apply to antisemitism and other forms of discrimination when based on shared ancestry or ethnic characteristics. The guidance includes clarifying examples regarding existing legal requirements under Title VI.

Additionally, OCR's November 2023 Dear Colleague Letter, "Discrimination, Including Harassment, Based on Shared Ancestry or Ethnic Characteristics," states that all students, including students who are or are perceived to be Jewish, Israeli, Muslim, Arab, or Palestinian, as well as students who come from, or are perceived to come from, all regions of the world, are entitled to a school environment free from discrimination based on race, color, or national origin. The Dear Colleague Letter provides that Title VI also protects students from discrimination which is based on (1) actual or perceived citizenship or residency in a country with a dominant religion or distinct religious identity, including Jewish, Muslim, Sikh, Hindu, Christian, and Buddhist students, when the discrimination involves racial, ethnic, or ancestral slurs or stereotypes, (2) a student's skin color, physical features, or style of dress that reflects both ethnic and religious traditions, and (3) where a student came from or is perceived to have come from. Discrimination based on a student's foreign accent, foreign name, or a student speaking a foreign language may also violate Title VI's prohibitions against discrimination.

OCR's August 2023 Dear Colleague Letter, "Race and School Programming," states that a district may not separate students based on race, but may include group discussions or activities that focus on race as part of the curriculum, courses, or programs so long as access or participation is not permitted or limited based on race. OCR's guidance also provides that a school-sponsored program with emphasis on race, such as a student club, that is open to all students, typically would not violate Title VI solely because of its race-related theme.

Additionally, OCR's May 2023 Dear Colleague Letter, "Resource on Confronting Racial Discrimination in Student Discipline," published in conjunction with the U.S. Department of Justice (DOJ), states that a district's responsibility not to discriminate against students applies to any of its programs or activities, whether directly or through contractual or other arrangements.

Similarly, In addition to the prohibitions to discrimination described above, Government Code 12940 provides protections for employees, job applicants, unpaid interns, and volunteers against unlawful discrimination and harassment on the basis of actual or perceived race, color, ancestry, national origin, age, religious creed, marital status, reproductive health decisionmaking, pregnancy, physical or mental disability, medical condition, genetic information, veteran or military status, sex, sexual orientation, gender, gender identity, or gender expression; and, as amended by SB 523 (Ch. 630, Statutes of 2022), includes reproductive health decisionmaking.

For policy language regarding Title IX complaint procedures for employees, see AR 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures, for language addressing protections against discrimination as they relate to volunteers, see BP 1240 - Volunteer Assistance, and in relation to employees, unpaid interns, and job applicants, see BP 4030 - Nondiscrimination in Employment and BP 4119.11/4219.11/4319.11 - Sex Discrimination and Sex-Based Harassment, and as they relate to volunteers, see BP 1240 - Volunteer Assistance.

This policy shall apply to all acts related to a school activity or school attendance and to all acts of the Governing Board and the Superintendent in enacting policies and procedures that govern the district.

The Board is committed to providing equal opportunity for all individuals in district programs and activities. District programs, activities, and practices shall be free from unlawful discrimination, including discrimination against an individual or group based on race, color, ancestry, nationality, national origin, immigration status, ethnic group identification, ethnicity, age, religion, marital status, pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions and recovery, parental, family, or marital status, reproductive health decisionmaking, physical or mental disability, medical condition, sex, sex stereotypes, sex characteristics, sexual orientation, gender, gender identity, gender expression, veteran or military status, or genetic information; a perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics.

CSBA NOTE: Education Code 234.7 mandates that districts adopt policy consistent with the California Attorney General's model policy contained in the Office of the Attorney General's publication, "Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues." That model policy includes statements regarding the equitable provision of services and a prohibition against the use of school resources or data for creating a registry based on specific characteristics. In addition, Government Code 8310.3 prohibits districts from disclosing information about immigration status or religion to federal government authorities for use in the compilation of a registry for immigration enforcement or otherwise assisting in the creation of such a registry. For more information regarding this mandate and appropriate responses to citizenship and immigration concerns, see BP/AR 5145.13 - Response to Immigration Enforcement.

All individuals shall be treated equitably in the receipt of district and school services. Personally identifiable information collected in the implementation of any district program, including, but not limited to, student and family information for the free and reduced-price lunch program, transportation, or any other educational program, shall be used only for the purposes of the program, except when the Superintendent or designee authorizes its use for another purpose in accordance with law. Resources and data collected by the district shall not be used, directly or by others, to compile a list, registry, or database of individuals based on race, gender, sexual orientation, religion, ethnicity, national origin, or immigration status or any other category any of the categories identified above.

CSBA NOTE: Education Code 243, as added by AB 1078, clarifies when it is unlawful discrimination for the Board to (1) refuse to approve the use of any textbook, instructional material, supplemental instructional material, or other curriculum for classroom instruction, or any book or resource in a school library, or (2) prohibit the use of any textbook, instructional material, supplemental instructional material, or other curriculum for classroom instruction, or any book or resource in a school library. The Board may not refuse to approve such use on the basis that the material includes a study of the role and contributions of specified individuals or groups, unless the study of the role and contributions reflects adversely upon legally protected groups. Additionally, the Board may not prohibit such use on the basis that the study of the role and contributions contain inclusive or diverse perspectives. Any Board action to ban or censor a textbook, instructional material, supplemental instructional material, or other curriculum for classroom instruction on any of the bases described above may constitute unlawful discrimination under Education Code 220. In addition, pursuant to Education Code 244, as added by SB 153 (Ch. 38, Statutes of 2024), the Board is prohibited from adopting or approving the use of any textbook, instructional material, supplemental instructional material, or curriculum for classroom instruction if the use would subject a student to unlawful discrimination pursuant to Education Code 220.

Education Code 242, as added by AB 1078, requires CDE to develop, by July 1, 2025, guidance and public educational materials to ensure that all Californians can access information about educational laws and policies that safeguard the right to an accurate and inclusive curriculum.

For more information regarding instructional materials adoption see BP/AR/E(1) 6161.1 – Selection and Evaluation of Instructional materials, CSBA's publication, "Instructional Materials Adoptions: State and local governing board processes, roles, and responsibilities," and corresponding Fact Sheet and Reference, and the California Attorney General's, "Guidance to School Officials re: Legal Requirements for Providing Inclusive Curricula and Books."

District programs and activities shall be free of any discriminatory use, selection, or rejection of textbooks, instructional materials, library books, or similar educational resources.

The use of any textbook, instructional material, supplemental instructional material, or other curriculum for classroom instruction, or any book or other resource in a school library shall not be rejected or prohibited by the Board or district on the basis that it includes a study of the role and contributions of any individual or group consistent with the requirements of Education Code 51204.5 and 60040, unless such study would violate Education Code 51501 or 60044. (Education Code 243)

Additionally, the use of any textbook, instructional material, supplemental instructional material, or other curriculum for classroom instruction, or any book or other resource in a school library shall not be adopted by the Board or district if the use would subject a student to unlawful discrimination as specified in Education Code 220. (Education Code 244)

CSBA NOTE: Education Code 221.2-221.3, the California Racial Mascot Act, declare the use of racially derogatory or discriminatory school or athletic team names, mascots, or nicknames to be contrary to an equal education and specifically prohibit public schools from using the term "Redskins" as a school or athletic team name, mascot, or nickname. The following paragraph

expands this prohibition to include any racially derogatory or discriminatory athletic team name, mascot, or nickname and may be revised to reflect district practice.

District programs and activities shall be free of any racially derogatory or discriminatory school or athletic team names, mascots, or nicknames.

CSBA NOTE: Pursuant to Education Code 221.5, a district is required to permit a student to participate in sex-segregated school programs and activities, including athletic teams and competitions, and to use facilities consistent with the student's gender identity, regardless of the student's gender as listed on the student's educational records. See [BP/AR 5145.3 - Nondiscrimination/Harassment](#).

Additionally, Title IX, 34 CFR 106.31, as amended by 89 Fed. Reg. 33474, provides that a district (1) may not exclude a student from participation in, deny a student the benefits of, or otherwise subject a student to discrimination on the basis of sex in any education program or activity, (2) that in the limited circumstances in which different treatment or separation on the basis of sex is permitted, a district may not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a student to more than de minimis harm, and (3) that preventing a student from participating in an education program or activity consistent with the student's gender identity would subject the student to more than de minimis harm on the basis of sex. In commentary accompanying the Final Rule, USDOE clarifies that Title IX protects students from sex discrimination, including sex-based harassment, when they access sex-separate facilities. This protection applies with equal force to all students, including transgender and nonbinary students, requiring districts to provide access to sex-separate facilities, including bathrooms, in a manner that does not cause more than de minimis harm. USDOE intends to issue a separate final rule to address Title IX's application to sex-separate athletic teams which is governed by 34 CFR 106.41, rather than 34 CFR 106.31 as described above. See [BP/AR 5145.7 - Sex-Discrimination and Sex-Based Harassment](#).

For further information, see CSBA's, "Legal Guidance on Rights of Transgender and Gender Nonconforming Students in Schools," and CSBA's Recently Asked Questions, "Parental and Student Rights in Relation to Transgender and Gender Nonconforming Students."

The Superintendent or designee shall annually review district programs and activities to ensure the removal of any derogatory or discriminatory name, image, practice, or other barrier that may unlawfully prevent an individual or group in any of the protected categories stated above from accessing district programs and activities. The Superintendent or designee shall take prompt, reasonable actions to remove any identified barrier. The Superintendent or designee shall report the findings and recommendations to the Board after each review.

CSBA NOTE: Complaints alleging discrimination based on a violation of Education Code 243, as added by AB 1078, or Education Code 244, as added by SB 153, related to the use or prohibited use of any textbook, instructional material, supplemental instructional material, or other curriculum for classroom instruction, or any book or resource in a school library, as described above, may be brought under the district's uniform complaint procedures (UCP) or may be filed directly with the Superintendent of Public Instruction (SPI). Complaints that are filed directly with

the SPI are required to identify the basis for doing so, and present evidence that supports the basis for the direct filing. In such cases, the SPI may directly intervene without waiting for an investigation by the district. See BP/AR 1312.3 - Uniform Complaint Procedures.

Pursuant to 34 CFR 106.11 and 106.44, as amended by 89 Fed. Reg. 33474, a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, is required to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct. As such a complaint may also fall within the complaint process as specified in BP/AR 1312.3 - Uniform Complaint Procedures, for students, and AR 4030 - Nondiscrimination in Employment, for employees, it is unclear whether districts would additionally be required to follow the procedures specified in BP/AR 1312.3 - Uniform Complaint Procedures or AR 4030 - Nondiscrimination in Employment, as applicable. Due to this uncertainty, it is recommended that districts consult CSBA's District and County Office of Education Legal Services or district legal counsel prior to utilizing such a complaint process for this purpose. For more information regarding the Title IX grievance procedures, see AR 5145.71 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures, for students, and AR 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures, for employees.

All Except for allegations of sex discrimination or sex-based harassment, allegations of unlawful discrimination in district programs and activities shall be brought, investigated, and resolved in accordance with Board Policy and Administrative Regulation 1312.3 - Uniform Complaint Procedures, for students, and Administrative Regulation 4030 - Nondiscrimination in Employment, for employees. Complaints alleging sex discrimination, including sex-based harassment, shall be investigated and resolved in accordance with 34 CFR 106.44 and 106.45 and as specified in Administrative Regulation 5145.71 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures, for students, and Administrative Regulation 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures, for employees.

CSBA NOTE: Many nondiscrimination laws and regulations contain a notification requirement. For example, pursuant to 34 CFR 104.8 and 106.8, a district that receives federal aid is required to take "continuing steps" to notify students, parents/guardians, employees, employee organizations, and applicants for admission and employment that it does not discriminate on the basis of disability or sex in its ~~educational~~ education programs or activities. In addition, Education Code 221.61 requires districts to post specified information relating to Title IX on their websites. To ensure consistent implementation of the laws, the same notification requirement should be adopted for all the protected categories as provided in the following paragraph.

Pursuant to 34 CFR 104.8 and 34 CFR 106.8, the Superintendent or designee shall notify students, parents/guardians, employees, employee organizations, applicants for admission and employment, and sources of referral for applicants about the district's policy on nondiscrimination and related complaint procedures. Such notification shall be included in the annual parental notification distributed pursuant to Education Code 48980 and, as applicable, in announcements, bulletins, catalogs, handbooks, application forms, or other materials distributed by the district. The notification shall also be posted on the district's website and social media and in district schools and

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offices, including staff lounges, student government meeting rooms, and other prominent locations as appropriate.

CSBA NOTE: Education Code 234.7 requires the following notification. Information about the educational rights of all students is contained in the appendix of the Office of the Attorney General's publication, "Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues."

In addition, the annual parental notification shall inform parents/guardians of their children's right to a free public education regardless of immigration status or religious beliefs, including information on educational rights issued by the California Attorney General. Alternatively, such information may be provided through any other cost-effective means determined by the Superintendent or designee. (Education Code 234.7)

CSBA NOTE: Pursuant to Education Code 48985, when 15 percent or more of students enrolled in a school speak a single primary language other than English, all notices and reports sent to the parents/guardians of these students must also be written in the primary language and may be answered by the parent/guardian in English or the primary language. In addition, 20 USC 6311 and 6312 require that districts receiving Title I funds provide parent/guardian notices in an understandable and uniform format and, to the extent practicable, in a language that parents/guardians understand.

The district's nondiscrimination policy and related informational materials shall be published in a format that parents/guardians can understand. In addition, when 15 percent or more of a school's students speak a single primary language other than English, those materials shall be translated into that other language. (Education Code 48985; 20 USC 6312)

Access for Individuals with Disabilities

CSBA NOTE: Pursuant to the ADA and its implementing regulations, 28 CFR 35.150 and 35.151, district facilities must be accessible to and usable by individuals with disabilities. Compliance methods may include equipment redesign, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, and alteration of existing facilities and construction of new facilities. In achieving compliance, a district need not make structural changes to existing facilities if other methods are effective and the district can demonstrate that the structural change would result in a fundamental alteration in the nature of the activity or an undue financial or administrative burden. However, pursuant to 28 CFR 35.151, all newly constructed facilities must comply with the 2010 ADA Standards for Accessible Designs issued by the DOJ.

In addition, pursuant to 28 CFR 35.136, a district must permit an individual with a disability to be accompanied by a service animal on district premises when, without the animal's assistance, the individual with a disability will not be able to access or participate in a district program or activity. For language addressing this mandate, see AR 6163.2 - Animals at School. Districts with questions about compliance with the ADA should consult with CSBA's District and County Office of Education Legal Services or district legal counsel as appropriate.

District programs and facilities, viewed in their entirety, shall be in compliance with the Americans with Disabilities Act (ADA) and any implementing standards and/or regulations. When structural changes to existing district facilities are needed to provide individuals with disabilities access to programs, services, activities, or facilities, the Superintendent or designee shall develop a transition plan that sets forth the steps for completing the changes.

CSBA NOTE: Pursuant to 28 CFR 35.130 and 35.160, the ADA requires districts to provide services and aids to ensure that a disabled individual is not excluded from participation or denied a benefit, service, or program on the basis of a disability. However, if the district can show that providing such aids and services would fundamentally alter the nature of the function, program, or meeting or would be an undue burden, then the district need not provide them.

The requirement to provide services and aids extends to qualified individuals with speech, hearing, or vision disabilities who participate in Medi-Cal, and, in accordance with the Department of Health Care Services Policy and Procedure Letters No. 21-017R and No. 23-004, districts are required to have a plan to meet these alternative format requirements; see AR 5141.6 - School Health Services.

In addition, Government Code 54953.2 requires that all Board meetings meet the protections of the ADA and implementing regulations (28 CFR 35.160 and 36.303). The district must ensure that such meetings are accessible to persons with disabilities and that, upon the request of any person with a disability, disability-related accommodations, such as auxiliary aids and services, are made available. Additionally, Government Code 54953, as amended by AB 2449 (Ch. 285, Statutes of 2022), requires boards to maintain and implement a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, consistent with the ADA, and to resolve any doubt in favor of accessibility. See BB 9320 - Meetings and Notices and BB 9322 - Agenda/Meeting Materials.

OCR has interpreted the ADA and Section 504 of the Rehabilitation Act of 1973 to include the requirement that district websites be accessible to individuals with disabilities. See [In April 2024, the DOJ published updated regulations which include specific technical standards to ensure that content available through a district's web and mobile applications are accessible to individuals with disabilities by April 26, 2027. For more information on website accessibility, see OCR's June 2010 and May 2011 Dear Colleague Letters, DOJ's April 2024, "Fact Sheet: New Rule on the Accessibility of Web Content and Mobile Apps Provided by State and Local Governments," and BP 1113 -- District and School Websites.](#)

The Superintendent or designee shall ensure that the ~~district provides~~ [district's web and mobile applications comply with technical standards prescribed by law, and as necessary, shall provide](#) appropriate auxiliary aids and services ~~when necessary~~ to afford individuals with disabilities equal opportunity to participate in or enjoy the benefits of a ~~service, program~~ [district services, programs, or activity activities](#). These aids and services may include, but are not limited to, qualified interpreters or readers, assistive listening devices, assistive technologies or other modifications to increase accessibility to district and school websites, notetakers, written materials, taped text, and Braille or large-print materials. Individuals with disabilities shall notify the Superintendent or

designee if they have a disability that requires special assistance or services. Reasonable notification should be given prior to a school-sponsored function, program, or meeting.

CSBA NOTE: Pursuant to 28 CFR 35.107, a district that has 50 or more employees is required to designate at least one employee to coordinate the district's efforts to comply with the ADA. The designated employee could be the same individual or position responsible for the district's compliance with state and federal laws and regulations governing educational programs as identified in the district's UCP procedures. The following paragraph, which identifies the person or position identified in the AR 1312.3 -- Uniform Complaint Procedures as the responsible employee, may be modified if the district chooses to designate another person or position.

The individual identified in Administrative Regulation 1312.3 -- Uniform Complaint Procedures as the employee responsible for coordinating the district's response to complaints and for complying with state federal civil rights laws is hereby designated as the district's ADA coordinator. The compliance officer shall receive and address requests for accommodation submitted by individuals with disabilities, and shall investigate and resolve complaints regarding their access to district programs, services, activities, or facilities.

[Handwritten signature]

(title or position)

(address)

(telephone number)

(email)

CBO or Designee
15305 Rockwood Rd, Escondido CA 9202
760.745.4931
spusd e sanpaulunion.net

Policy Reference UPDATE Service

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Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State

5 CCR 4600-4670

5 CCR 4900-4965

Ed. Code 200-262.4

Ed. Code 48980

Ed. Code 48985

Ed. Code 51007

Description

Uniform complaint procedures

Nondiscrimination in elementary and secondary educational programs receiving state or federal financial assistance

Prohibition of discrimination

Parent/Guardian notifications

Notices to parents in language other than English

Legislative intent: ; state policy

Ed. Code 51204.5	Social sciences instruction; contributions of specified groups
Ed. Code 51501	Nondiscriminatory subject matter
Ed. Code 60010	Instructional materials; definition
Ed. Code 60040-60052	Requirements for instructional materials
Gov. Code 11000	Definitions
Gov. Code 11135	Prohibition of discrimination
Gov. Code 12900-12996	Fair Employment and Housing Act
Gov. Code 54953	Meetings; Americans with Disabilities Act accessibility
Gov. Code 54953.2	Brown Act compliance with Americans with Disabilities Act
Gov. Code 8310.3	California Religious Freedom Act
Pen. Code 422.55	Definition of hate crime
Pen. Code 422.6	Crimes; harassment
Federal	Description
20 USC 1400-1482	Individuals with Disabilities Education Act
20 USC 1681-1688	Title IX of the Education Amendments of 1972; discrimination based on sex
20 USC 2301-2414	Strengthening Career and Technical Education for the 21 st Century Act
20 USC 6311	State plan
20 USC 6312	Local educational agency plan
28 CFR 35.101-35.190	Americans with Disabilities Act
28 CFR 36.303	Nondiscrimination on the basis of disability, public accommodations, auxiliary aids, and services
29 USC 794	Rehabilitation Act of 1973; Section 504
34 CFR 100.1-100.13	Nondiscrimination in federal programs; effectuating Title VI
34 CFR 104.1-104.39	Section 504 of the Rehabilitation Act of 1973
34 CFR 106.1-106.82	Discrimination on the basis of sex; effectuating Title IX
42 USC 12101-12213	Americans with Disabilities Act
42 USC 2000d-2000d-7	Title VI, Civil Rights Act of 1964
42 USC 2000e-2000e-17	Title VII, Civil Rights Act of 1964, as amended
Management Resources	Description

CA Civil Rights Department Publication	California Law Prohibits Workplace Discrimination and Harassment
CA Department of Health Care Services Publication	Policy and Procedures Letter No. 21-017R, December 2021 (https://www.dhcs.ca.gov/formsandpubs/Documents/PPL-21-017R-Alternative-Format-Request-Requirements.pdf)
CA Department of Health Care Services Publication	Policy and Procedures Letter No. 23-004, February 2023 (https://www.dhcs.ca.gov/formsandpubs/Documents/MMCDAPLsandPolicyLetters/APL2023/APL23-004.pdf)
CA Office of the Attorney General Publication	Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues, April 2018
<u>CA Office of the Attorney General Publication</u>	<u>Guidance to School Officials re: Legal Requirements for Providing Inclusive Curricula and Books, January 2024</u> (https://oag.ca.gov/system/files/attachments/press-docs/Legal%20Alert%20Re%20Inclusive%20Curricula.1.9.24.1157CLEAN.pdf)
<u>CSBA Publication</u>	<u>Instructional Materials Adoptions: State and local governing board processes, roles, and responsibilities, February 2024</u> (https://www.csba.org/-/media/CSBA/Files/GovernanceResources/GovernanceBriefs/2024-REPD-instructional-materials-brief.ashx?la=en&rev=9880900e6d334c81a7f64d637e40dc56)
<u>CSBA Publication</u>	<u>Fact Sheet: Instructional Materials Adoption: Local governing board responsibilities, February 2024</u> (https://www.csba.org/-/media/CSBA/Files/GovernanceResources/GovernanceBriefs/2024-REPD-IM-LocalRoles.ashx?la=en&rev=94453dc92df043379995b07589a4d558)
<u>CSBA Publication</u>	<u>Reference: State Roles, Responsibilities, and Process for Instructional Materials Adoption, February 2024</u> (https://www.csba.org/-/media/CSBA/Files/GovernanceResources/GovernanceBriefs/2024-REPD-IM-StateRoles.ashx?la=en&rev=f00baf9bd1af4844b94f99135ca65588)
CSBA Publication	Parental and Student Rights in Relation to Transgender and Gender Nonconforming Students, Recently Asked Questions, August 2023 (https://www.csba.org/-/media/CSBA/Files/Advocacy/LegalAdvocacy/RAQ-Parental-

	Student-Rights-Gender-08222023.ashx?la=en&rev=a6da323ebca540e6a3a0e65790aef544)
CSBA Publication	Legal Guidance on Rights of Transgender and Gender Nonconforming Students in Schools, October 2022
Federal Register	Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, April 29, 2024, Vol. 89, No. 83, pages 33474-33896 (https://www.federalregister.gov/documents/2024/04/29/2024-07915/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal)
U.S. DOE Publication	Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools, May 2023 (https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html)
U.S. DOE, Office for Civil Rights Publication	Dear Colleague Letter: Protecting Students from Discrimination, such as Harassment, Based on Race, Color, or National Origin, Including Shared Ancestry or Ethnic Characteristics, May 2024 (https://www2.ed.gov/about/offices/list/ocr/letters/colleague-202405-shared-ancestry.pdf)
U.S. DOE, Office for Civil Rights Publication	Dear Colleague Letter: Discrimination, Including Harassment, Based on Shared Ancestry or Ethnic Characteristics, November 2023 (https://www2.ed.gov/about/offices/list/ocr/letters/colleague-202311-discrimination-harassment-shared-ancestry.pdf)
U.S. DOE & U.S. DOJ Civil Rights Divisions Pub	Dear Colleague Letter: Resource on Confronting Racial Discrimination in Student Discipline, May 2023
U.S. DOE, Office for Civil Rights Publication	Supporting Transgender Youth in School, June 2021
U.S. DOE, Office for Civil Rights Publication	Dear Colleague Letter: Frequently Asked Questions About the June 29, 2010, Dear Colleague Letter, May 26, 2011
U.S. DOE, Office for Civil Rights Publication	Nondiscrimination in Employment Practices in Education, August 1991
U.S. DOE, Office for Civil Rights Publication	Dear Colleague Letter: Race and School Programming, August 2023

U.S. DOE, Office for Civil Rights
Publication

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U.S. DOJ, Civil Rights Division
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World Wide Web Consortium Publication Web Content Accessibility Guidelines, September 2023
(<https://www.w3.org/TR/WCAG21/>)

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World Wide Web Consortium
Publication

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Dear Colleague Letter: Electronic Book Readers, June 29,
2010

Dear Colleague Letter: Harassment and Bullying, October
2010

Fact Sheet: New Rule on the Accessibility of Web Content
and Mobile Apps Provided by State and Local Governments,
April 2024 (<https://www.ada.gov/notices/2024/03/08/web-rule/>)

Guidance on Web Accessibility and the ADA, March 2022
(<https://www.ada.gov/resources/web-guidance/>)

Accessibility of State and Local Government Websites to
People with Disabilities, February 2020

2010 ADA Standards for Accessible Design, September 2010

CSBA District and County Office of Education Legal Services

California Office of the Attorney General

World Wide Web Consortium, Web Accessibility Initiative

Pacific ADA Center

U.S. Department of Justice, Civil Rights Division, Disability
Rights Section

California Safe Schools Coalition

CSBA

California Department of Education

California Civil Rights Department

U.S. Equal Employment Opportunity Commission

U.S. Department of Education, Office for Civil Rights

California Department of Health Care Services

Web Content Accessibility Guidelines, December 2008

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3260	Fees And Charges
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Policy 1312.3: Uniform Complaint Procedures

Status: ADOPTED

Original Adopted Date: 05/01/2017 | Last Revised Date: ~~1007~~/01/2023~~2023~~2024 | Last Reviewed
Date: ~~1007~~/01/2023~~2023~~2024

CSBA NOTE: To address prohibited discrimination and violations of state and federal laws governing educational programs, 5 CCR 4621 mandates districts to adopt uniform complaint procedures (UCP) consistent with the state's complaint procedures specified in 5 CCR 4600-4670. Additionally, Education Code 52075 mandates districts to adopt policies and procedures implementing the use of UCP to investigate and resolve complaints alleging noncompliance with requirements related to the local control and accountability plan, and Education Code 8212 mandates districts to adopt policies and procedures for resolving complaints regarding specified health and safety issues in license-exempt California State Preschool Programs (CSPP). Furthermore, a number of federal civil rights statutes and their implementing regulations mandate districts to adopt policies and procedures for the prompt and equitable resolution of complaints of unlawful discrimination (such as discriminatory harassment, intimidation, or bullying). For example, districts are mandated pursuant to 28 CFR 35.107 to adopt policy and procedures to address discrimination on the basis of disability, while districts that receive federal financial assistance are mandated pursuant to 34 CFR ~~106.8~~ and 34 CFR 110.25 to adopt policies and procedures to address discrimination on the basis of sex and age. The following policy contains a list of programs and activities subject to these procedures pursuant to state law; see the section "Complaints Subject to UCP", below.

The California Department of Education (CDE) monitors district programs and operations for compliance with these requirements through its Federal Program Monitoring (FPM) process. The FPM consists of a review of (1) written district policies and procedures for required statements, including prohibition of discrimination (such as discriminatory harassment, intimidation, and bullying) against students pursuant to Education Code 234.1; and (2) records of required activities, such as annual notification provided to students, parents/guardians, employees, and other school community members.

The U.S. Department of Education's Office for Civil Rights (OCR) enforces federal anti-discrimination laws, including Title II of the Americans with Disabilities Act (42 USC 12101-12213), Title VI of the Civil Rights Act of 1964 (42 USC 2000d-2000d-7), Title IX of the Education Amendments Act of 1972 (20 USC 1681-1688), Section 504 of the Rehabilitation Act of 1973 (29 USC 794), and the Age Discrimination Act of 1975 (42 USC 6101-6107). Whether a complaint of sexual harassment is addressed through the UCP or the federal Title IX complaint procedures adopted pursuant to 34 CFR 106.44-106.45, is dependent on whether the alleged conduct meets the more stringent federal definition or the state definition of sexual harassment. See the section "Non-UCP Complaints" below, the accompanying administrative regulation, BP/AR 5145.7 - Sexual Harassment, and AR 5145.71 - Title IX Sexual Harassment Complaint Procedures.

The following policy and accompanying administrative regulation reflect all components required by law, 5 CCR 4600-4670, and the 2023-24 FPM instrument. Additional details provided herein may help districts during a compliance check by CDE or in the event that a CDE or OCR investigation occurs. Pursuant to 34 CFR 106.1-106.82, as amended by the 89 Fed. Reg. 33474, districts are required to follow the Title IX grievance procedures when investigating and resolving Title IX sex discrimination complaints based on conduct that occurred on or after August 1, 2024. See BP/AR 5145.7 – Sex Discrimination and Sex-Based Harassment and AR/E(1) 5145.71 – Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures. As such a complaint may also fall within the scope of the UCP, it is unclear whether districts would additionally be required to follow the UCP. Due to this uncertainty, it is recommended that districts consult CSBA's District and County Office of Education Legal Services or district legal counsel prior to utilizing the UCP for this purpose.

The Governing Board recognizes that the district has the primary responsibility to ensure compliance with applicable state and federal laws and regulations governing educational programs. The Board encourages the early resolution of complaints whenever possible. To resolve complaints which may require a more formal process, the Board adopts the uniform system of complaint processes specified in 5 CCR 4600-4670 and the accompanying administrative regulation.

Complaints Subject to UCP

CSBA NOTE: The FPM process includes a review of a district's policies and procedures to determine whether all district programs and activities that are subject to the UCP, as listed in the FPM instrument, are addressed. ~~The 2023-24 FPM instrument does not include school safety plans, as was provided for in the 2022-23 instrument. Items #1-22 list all programs and activities identified in the FPM instrument.~~ According to CDE, the district's policy must list all such programs and activities and, at the district's discretion, may add a paragraph below the list stating the UCP programs and activities that are implemented in the district.

For further information regarding requirements for the following programs and activities, see the law cited and/or related CSBA policy and/or administrative regulation.

The district's uniform complaint procedures (UCP) shall be used to investigate and resolve complaints regarding the following programs and activities:

1. Accommodations for pregnant and parenting students (Education Code 46015)
2. Adult education programs (Education Code 8500-8538, 52334.7, 52500-52617)
3. After School Education and Safety programs (Education Code 8482-8484.65)
4. Agricultural career technical education (Education Code 52460-52462)

5. Career technical and technical education and career technical and technical training programs (Education Code 52300-52462)
6. Child care and development programs (Education Code 8200-8488)
7. Compensatory education (Education Code 54400)
8. Consolidated categorical aid programs (Education Code 33315; 34 CFR 299.10-299.12)
9. Course periods without educational content (Education Code 51228.1-51228.3)

CSBA NOTE: As noted above, it is unclear whether districts are required to follow the UCP in addition to the Title IX grievance procedures when investigating and resolving a Title IX sex discrimination complaint based on conduct that occurred on or after August 1, 2024. As a result, Item #10 below does not list discrimination, harassment, intimidation, or bullying in district programs and activities based on sex. It is recommended that districts consult CSBA's District and County Office of Education Legal Services or district legal counsel prior to including discrimination, harassment, intimidation, or bullying in district programs and activities based on sex in Item #10. See Item #3 in the Non-UCP Complaint section.

10. Discrimination, harassment, intimidation, or bullying in district programs and activities, including in those programs or activities funded directly by or that receive or benefit from any state financial assistance, based on a person's actual or perceived characteristics of race or ethnicity, color, ancestry, nationality, national origin, immigration status, ethnic group identification, age, religion, ~~marital status, pregnancy, parental status,~~ physical or mental disability, medical condition, sex, ~~sexual orientation, gender, gender identity, gender expression,~~ or genetic information, ~~or~~ any other characteristic identified in Education Code 200 or 220, Government Code 11135, or Penal Code 422.55, or based on the person's association with a person or group with one or more of these actual or perceived characteristics (5 CCR 4610)

CSBA NOTE: Education Code 243, as added by AB 1078 (Ch. 229, Statutes of 2023), clarifies when it is unlawful discrimination for the Governing Board to (1) refuse to approve the use of any textbook, instructional material, supplemental instructional material, or other curriculum for classroom instruction, or any book or resource in a school library or (2) prohibit the use of any textbook, instructional material, supplemental instructional material, or other curriculum for classroom instruction, or any book or resource in a school library. The Board may not refuse to approve such use on the basis that the material includes a study of the role and contributions of specified individuals or groups, unless the study of the role and contributions reflects adversely upon legally protected groups. Additionally, the Board may not prohibit such use on the basis that the study of the role and contributions contain inclusive or diverse perspectives.

Any Board action to ban or censor a textbook, instructional material, supplemental instructional material, or other curriculum for classroom instruction on any of the bases described above may

also constitute unlawful discrimination under Education Code 220. In addition, pursuant to Education Code 244, as added by SB 153 (Ch. 38, Statutes of 2024), the Board is prohibited from adopting or approving the use of any textbook, instructional material, supplemental instructional material, or curriculum for classroom instruction if the use would subject a student to unlawful discrimination pursuant to Education Code 220.

Complaints alleging discrimination based on a violation of Education Code 243, as added by AB 1078, or Education Code 244, as added by SB 153, may be brought under the district's UCP or may be filed directly with the Superintendent of Public Instruction (SPI). Complaints that are filed directly with the SPI are required to identify the basis for doing so, and present evidence that supports the basis for the direct filing. In such cases, the SPI may directly intervene without waiting for an investigation by the district. For more information regarding complaints concerning instructional materials, see BP/AR 1312.2 - Complaints Concerning Instructional Materials and AR 1312.4 - Williams Uniform Complaint Procedures.

Education Code 242, as added by AB 1078, requires CDE to develop, by July 1, 2025, guidance and public educational materials to ensure that all Californians can access information about educational laws and policies that safeguard the right to an accurate and inclusive curriculum.

For more information regarding instructional materials adoption, see BP/AR/E(1) 6161.1 – Selection and Evaluation of Instructional materials, CSBA's publication, "Instructional Materials Adoptions: State and local governing board processes, roles, and responsibilities," and corresponding Fact Sheet and Reference, and the California Attorney General's, "Guidance to School Officials re: Legal Requirements for Providing Inclusive Curricula and Books."

Discrimination includes, but is not limited to, the Board's refusal to approve the use or prohibit the use of any textbook, instructional material, supplemental instructional material, or other curriculum for classroom instruction, or any book or other resource in a school library, on the basis that it includes a study of the role and contributions of any individual or group consistent with the requirements of Education Code 51204.5 and 60040, unless such study would violate Education Code 51501 or 60044. Additionally, discrimination includes, but is not limited to, the Board's adoption or approval of use of any textbook, instructional material, supplemental instructional material, or other curriculum for classroom instruction, or any book or other resource in a school library if the use would subject a student to unlawful discrimination pursuant to Education Code 220. A complaint alleging such unlawful discrimination may, in addition to or in lieu of being filed with the district, be directly filed with the Superintendent of Public Instruction (SPI). (Education Code 243), 244)

The UCP shall not be used to investigate and resolve employment discrimination complaints. (5 CCR 4611)

CSBA NOTE: Pursuant to Education Code 51225.1 and 51225.2, as amended by AB 714 (Ch. 342, Statutes of 2023), exemptions from district adopted graduation requirements, transfer of coursework and credit requirements, and specified consultation and notice requirements, formerly applicable to students in the third or fourth year of high school participating in a newcomer program, are applicable to "newcomer students," as defined in Education Code 51225.2, who are in the third or fourth year of high school.

~~12.~~ 11. Educational and graduation requirements for students in foster care, students experiencing homelessness, students from military families, students formerly in a juvenile court school, students who are migratory, and **newcomer** students participating in a **newcomer** program (Education Code 48645.7, 48853, 48853.5, 49069.5, 51225.1, 51225.2)

~~13.~~ 12. Every Student Succeeds Act (Education Code 52059.5; 20 USC 6301 et seq.)

~~14.~~ 13. Local control and accountability plan (Education Code 52075)

~~15.~~ 14. Migrant education (Education Code 54440-54445)

~~16.~~ 15. Physical education instructional minutes (Education Code 51210, 51222, 51223)

~~17.~~ 16. Student fees (Education Code 49010-49013)

~~18.~~ 17. Reasonable accommodations to a lactating student (Education Code 222)

~~19.~~ 18. Regional occupational centers and programs (Education Code 52300-52334.7)

~~20.~~ 19. School plans for student achievement as required for the consolidated application for specified federal and/or state categorical funding (Education Code 64001)

~~21.~~ 20. School site councils as required for the consolidated application for specified federal and/or state categorical funding (Education Code 65000)

~~22.~~ 21. State preschool programs (Education Code 8207-8225)

CSBA NOTE: Pursuant to Education Code 8212, and CDE's 2023-24 FPM instrument, **which is subject to change as the 2024-25 FPM instrument has not yet been released**, the district must use the UCP, with modifications as necessary, to resolve complaints alleging deficiencies related to health and safety issues in license-exempt CSPPs. Pursuant to 5 CCR 4610, such complaints must be addressed through the procedures described in 5 CCR 4690-4694. See the section "Health and Safety Complaints in License-Exempt Preschool Programs" in the accompanying administrative regulations.

~~23.~~ 22. State preschool health and safety issues in license-exempt programs (Education Code 8212)

CSBA NOTE: 5 CCR 4621 mandates that district policy ensure that complainants are protected from retaliation as specified in item #23 below.

24. ~~23.~~ Any complaint alleging retaliation against a complainant or other participant in the complaint process or anyone who has acted to uncover or report a violation subject to this policy

~~25.~~ 24. Any other state or federal educational program the SPI or designee deems appropriate

CSBA NOTE: 5 CCR 4631 authorizes the district to utilize alternative dispute resolution (ADR) methods, including mediation, to resolve complaints before initiating a formal investigation. However, the district should ensure that any ADR it uses, particularly "in-person ADR," is appropriate for the particular situation. For example, in some instances (e.g., sexual assault), face-to-face mediation should not be used, even if all parties voluntarily agree, given the risk that a student might feel pressured to "voluntarily" agree to it. ~~Districts may not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student; see AR 5145.71 - Title IX Sexual Harassment Complaint Procedures.~~

The following optional paragraph provides for a neutral mediator and should be revised to reflect district practice.

The Board recognizes that alternative dispute resolution (ADR) can, depending on the nature of the allegations, offer a process for resolving a complaint in a manner that is acceptable to all parties. An ADR process such as mediation may be offered to resolve complaints that involve more than one student and no adult. However, mediation shall not be offered or used to resolve any complaint involving sexual assault or where there is a reasonable risk that a party to the mediation would feel compelled to participate. The Superintendent or designee shall ensure that the use of ADR is consistent with federal, state, and ~~federal~~local laws and regulations.

CSBA NOTE: The following paragraph is mandated pursuant to 5 CCR 4621. ~~Appropriate~~Since appropriate disclosure will vary in each case depending on the facts and circumstances, it is recommended that districts consult CSBA's District and County Office of Education Legal Services or district legal counsel.

The district shall protect all complainants from retaliation. In investigating complaints, the confidentiality of the parties involved shall be protected as required by law. For any complaint alleging retaliation or unlawful discrimination (such as discriminatory harassment, intimidation, or bullying), the Superintendent or designee shall keep the identity of the complainant, and/or the subject of the complaint if different from the complainant, confidential when appropriate and as long as the integrity of the complaint process is maintained.

When an allegation that is not subject to UCP is included in a UCP complaint, the district shall refer the non-UCP allegation to the appropriate staff or agency and shall investigate and, if appropriate, resolve the UCP-related allegation(s) through the district's UCP.

The Superintendent or designee shall provide training to district staff to ensure awareness and knowledge of current law and requirements related to UCP, including the steps and timelines specified in this policy and the accompanying administrative regulation.

CSBA NOTE: It is important to maintain records of all UCP complaints and the investigations of those complaints. If the district is investigated by OCR or CDE, these are important documents in demonstrating that the district has complied with federal law, state law, and its own policies and regulations.

The Superintendent or designee shall maintain a record of each complaint and subsequent related actions, including steps taken during the investigation and all information required for compliance with 5 CCR 4631 and 4633.

Non-UCP Complaints

The following complaints shall not be subject to the district's UCP but shall be investigated and resolved by the specified agency or through an alternative process:

1. Any complaint alleging child abuse or neglect shall be referred to the County Department of Social Services Protective Services Division or the appropriate law enforcement agency: (5 CCR 4611)
2. Any complaint alleging health and safety violations by a child development program shall, for licensed facilities, be referred to Department of Social Services: (5 CCR 4611)

CSBA NOTE: 34 CFR 106.2 and 106.10, as amended by 89 Fed. Reg. 33474, clarify that discrimination on the basis of sex for the purpose of Title IX includes discrimination on the basis of sex stereotypes; sex characteristics; sexual orientation; gender identity; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions or recovery; and parental, marital, and family status. While the phrases "gender" and "gender expression" are not explicitly included, they are implied by the definitions of those terms that are explicitly included.

3. Any complaint alleging that a student, while in an education program or activity in which the district exercises substantial control over the context and respondent, was subjected to sexual conduct known to the district that may reasonably constitute sex discrimination under Title IX, including sex-based harassment, as defined in 34 CFR 106.302

Discrimination on the basis of sex includes sex stereotypes; sex characteristics; sexual orientation; gender; gender identity; gender expression; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions or recovery; and parental, marital, and family status. Such a complaint shall be addressed through the federal Title IX complaint procedures adopted pursuant to 34 CFR 106.44-106.45, as specified in Administrative Regulation 5145.71 - Title IX SexualSex Discrimination and Sex-Based Harassment Complaint Procedures. (34 CFR 106.2, 106.10, 106.11, 106.44)

CSBA NOTE: Complaints of employment discrimination are not subject to the UCP. Instead, pursuant to 2 CCR 11023, the district must establish an impartial and prompt process for addressing such complaints. In addition, 5 CCR 4611 requires that employment discrimination complaints be referred to the Civil Rights Department. See AR 4030 - Nondiscrimination in Employment for applicable complaint procedures.

However, pursuant to 34 CFR 106.1-106.82, as amended by 89 Fed. Reg. 33474, districts are required to follow the Title IX grievance procedures when investigating and resolving employment complaints alleging sex discrimination based on conduct that occurred on or after August 1, 2024. See BP/AR 4119.11/4219.11/4319.11 - Sex Discrimination and Sex-Based Harassment and AR/E(1) 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures. As such a complaint may also fall within the process specified in AR 4030 - Nondiscrimination in Employment, it is unclear whether districts would additionally be required to follow the complaint procedures specified in AR 4030 - Nondiscrimination in Employment. Due to this uncertainty, it is recommended that districts consult CSBA's District and County Office of Education Legal Services or district legal counsel prior to utilizing the procedures specified in AR 4030 - Nondiscrimination in Employment for this purpose. See AR 4030 - Nondiscrimination in Employment for applicable complaint procedures.

4. Any Except for complaints alleging sex discrimination, including sex-based harassment, any complaint alleging employment discrimination or harassment shall be investigated and resolved by the district in accordance with the procedures specified in Administrative Regulation 4030 - Nondiscrimination in Employment, including the right to file the complaint with the California Civil Rights Department:

Employment complaints alleging sex discrimination, including sex-based harassment, shall be investigated and resolved as specified in 34 CFR 106.44 and 106.45 and Administrative Regulation 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

CSBA NOTE: 5 CCR 4610 limits the applicability of the UCP for complaints regarding special education and child nutrition, as provided in Items #5-7 below.

5. Any complaint alleging a violation of a state or federal law or regulation related to special education, a settlement agreement related to the provision of a free appropriate public education (FAPE), failure or refusal to implement a due process hearing order to which the district is subject, or a physical safety concern that interferes with the district's provision of FAPE shall be submitted to the California Department of Education (CDE) in accordance with Administrative Regulation 6159.1 - Procedural Safeguards and Complaints for Special Education: (5 CCR 3200-3205)
6. Any complaint alleging noncompliance of the district's food service program with laws regarding meal counting and claiming, reimbursable meals, eligibility of children or adults, or use of cafeteria funds and allowable expenses shall be filed with or referred to CDE in accordance with Board Policy 3555 - Nutrition Program Compliance: (5 CCR 15580-15584)

7. Any allegation of discrimination based on race, color, national origin, sex, age, or disability in the district's food service program shall be filed with or referred to the U.S. Department of Agriculture in accordance with Board Policy 3555 - Nutrition Program Compliance: (5 CCR 15582)

CSBA NOTE: Education Code 35186 requires the district to use UCP, with modifications, to investigate and resolve complaints related to the issues stated in the following paragraph (i.e., "Williams complaints"). Because Education Code 35186 sets forth different timelines for investigation and resolution of these kinds of complaints than the timelines specified in law for other uniform complaints, CDE has created a separate uniform complaint process for the Williams complaints. See AR 1312.4 - Williams Uniform Complaint Procedures for the separate procedure.

8. Any complaint related to sufficiency of textbooks or instructional materials, emergency or urgent facilities conditions that pose a threat to the health or safety of students or staff, or teacher vacancies and misassignments shall be investigated and resolved in accordance with Administrative Regulation 1312.4 - Williams Uniform Complaint Procedures: (Education Code 35186)

Policy Reference UPDATE Service

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Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State	Description
2 CCR 11023	Harassment and discrimination prevention and correction
5 CCR 15580-15584	Child nutrition programs complaint procedures
5 CCR 3200-3205	Special education compliance complaints
5 CCR 4600-4670	Uniform complaint procedures
5 CCR 4600-4687	Uniform complaint procedures and Williams complaints
5 CCR 4690-4694	Complaints regarding health and safety issues in license-exempt preschool programs
5 CCR 4900-4965	Nondiscrimination in elementary and secondary educational programs receiving state or federal financial assistance
Ed. Code 18100-18203	School libraries
Ed. Code 200-262.4	Prohibition of discrimination
Ed. Code 32280-32289.5	School safety plans
Ed. Code 35186	Williams uniform complaint procedures
Ed. Code 46015	Parental leave for students

Ed. Code 48645.7	Juvenile court schools
Ed. Code 48853-48853.5	Foster youth
<u>Ed. Code 48900.5</u>	<u>Suspension; other means of correction</u>
Ed. Code 48985	Notices to parents in language other than English
Ed. Code 49010-49013	Student fees
Ed. Code 49060-49079	Student records
Ed. Code 49069.5	Records of foster youth
Ed. Code 49490-49590	Child nutrition programs
Ed. Code 49701	Provisions of the Interstate Compact on Educational Opportunities for Military Children
Ed. Code 51204.5	Social sciences instruction; contributions of specified groups
Ed. Code 51210	Course of study for grades 1-6
Ed. Code 51222	Physical education
Ed. Code 51223	Physical education; elementary schools
Ed. Code 51225.1-51225.2	Foster youth, homeless children, former juvenile court school students; course credits; graduation requirements
Ed. Code 51226-51226.1	Career technical education
Ed. Code 51228.1-51228.3	Course periods without educational content
Ed. Code 51501	Nondiscriminatory subject matter
Ed. Code 52059.5	Statewide system of support
Ed. Code 52060-52077	Local control and accountability plan
Ed. Code 52075	Complaint for lack of compliance with local control and accountability plan requirements
Ed. Code 52300-52462	Career technical education
Ed. Code 52500-52617	Adult schools
Ed. Code 54400-54425	Compensatory education programs
Ed. Code 54440-54445	Migrant education
Ed. Code 54460-54529	Compensatory education programs
Ed. Code 59000-59300	Special schools and centers
Ed. Code 60010	Instructional materials; definition

Ed. Code 60040-60052	Requirements for instructional materials
Ed. Code 64000-64001	Consolidated application process; school plan for student achievement
Ed. Code 65000-65001	School site councils
Ed. Code 8200-8488	Child care and development programs
Ed. Code 8500-8538	Adult basic education
Gov. Code 11135	Prohibition of discrimination
Gov. Code 12900-12996	Fair Employment and Housing Act
H&S Code 1596.792	California Child Day Care Act; general provisions and definitions
H&S Code 1596.7925	California Child Day Care Act; health and safety regulations
Pen. Code 422.55	Definition of hate crime
Pen. Code 422.6	Crimes; harassment
Federal	Description
20 USC 1221	Application of laws
20 USC 1232g	Family Educational Rights and Privacy Act (FERPA) of 1974
20 USC 1681-1688	Title IX of the Education Amendments of 1972; discrimination based on sex
20 USC 6301-6576	Title I Improving the Academic Achievement of the Disadvantaged
20 USC 6801-7014	Title III language instruction for limited English proficient and immigrant students
28 CFR 35.107	Nondiscrimination on basis of disability; complaints
29 USC 794	Rehabilitation Act of 1973; Section 504
34 CFR 100.3	Prohibition of discrimination on basis of race, color or national origin
34 CFR 104.7	Section 504; Designation of responsible employee and adoption of grievances procedures
34 CFR 106.1-106.82	Nondiscrimination on the basis of sex in education programs
34 CFR 106.30	Discrimination on the basis of sex in education programs and activities; definitions
34 CFR 106.44	Recipient's response to sexual harassment

34 CFR 106.45	Grievance process for formal complaints of sexual harassment
34 CFR 106.8	Designation of coordinator; dissemination of policy, and adoption of grievance procedures
34 CFR 110.25	Notification of nondiscrimination on the basis of age
34 CFR 99.1-99.67	Family Educational Rights and Privacy
42 USC 11431-11435	McKinney-Vento Homeless Assistance Act
42 USC 12101-12213	Americans with Disabilities Act
42 USC 2000d-2000d-7	Title VI, Civil Rights Act of 1964
42 USC 2000h-2-2000h-6	Title IX of the Civil Rights Act of 1964
42 USC 6101-6107	Age Discrimination Act of 1975
Management Resources	Description
<u>CSBA Publication</u>	<u>Instructional Materials Adoptions: State and local governing board processes, roles, and responsibilities, February 2024</u> (https://www.csba.org/-/media/CSBA/Files/GovernanceResources/GovernanceBriefs/2024-REPD-instructional-materials-brief.ashx?la=en&rev=9880900e6d334c81a7f64d637e40dc56)
<u>CSBA Publication</u>	<u>Fact Sheet: Instructional Materials Adoption: Local governing board responsibilities, February 2024</u> (https://www.csba.org/-/media/CSBA/Files/GovernanceResources/GovernanceBriefs/2024-REPD-IM-LocalRoles.ashx?la=en&rev=94453dc92df043379995b07589a4d558)
<u>CSBA Publication</u>	<u>Reference: State Roles, Responsibilities, and Process for Instructional Materials Adoption, February 2024</u> (https://www.csba.org/-/media/CSBA/Files/GovernanceResources/GovernanceBriefs/2024-REPD-IM-StateRoles.ashx?la=en&rev=f00baf9bd1af4844b94f99135ca65588)
California Department of Education Publication	Uniform Complaint Procedure 2021–22 Program Instrument
California Department of Education Publication	Sample UCP Board Policies and Procedures
U.S. DOE, Office for Civil Rights <u>California Department of Justice</u> Publication	Part 1: Questions and Answers Regarding the Department's Title IX Regulations, January 2021 <u>Guidance to School</u>

U.S. DOE, Office for Civil Rights
Publication [Federal Register](#)

[Officials re: Legal Requirements for Providing Inclusive Curricula and Books, January 2024](#)

<https://oag.ca.gov/system/files/attachments/press-docs/Legal%20Alert%20Re%20Inclusive%20Curricula.1.9.24.1157CLEAN.pdf>

Questions and Answers on the Title IX Regulations on Sexual Harassment, July 2021 [Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, April 29, 2024, Vol. 89, No. 83, pages 33474-33896](#)

<https://www.federalregister.gov/documents/2024/04/29/2024-07915/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>

U.S. DOE, Office for Civil Rights
Publication

Dear Colleague Letter: Responding to Bullying of Students with Disabilities, October 2014

U.S. DOJ Publication

Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 2007

Website

CSBA District and County Office of Education Legal Services

Website

Student Privacy Policy Office

Website

U.S. Department of Agriculture

Website

California Department of Social Services

Website

U.S. Department of Justice

Website

California Department of Education

Website

CSBA

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U.S. Department of Education, Office for Civil Rights

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California Civil Rights Department

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School Plans/Site Councils

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Regulation 1312.3: Uniform Complaint Procedures

Status: ADOPTED

Original Adopted Date: 05/01/2017 | Last Revised Date: ~~10/07/01/2023~~ 2024 | Last Reviewed
Date: ~~10/07/01/2023~~ 2024

CSBA NOTE: 5 CCR 4621 mandates that the district's uniform complaint procedures (UCP) be consistent with the procedures of 5 CCR 4600-4670. Additionally, Education Code 52075 mandates districts to adopt policies and procedures implementing the use of UCP to investigate and resolve complaints alleging noncompliance with requirements related to the local control and accountability plan (LCAP), and Education Code 8212 mandates districts to adopt policies and procedures for resolving complaints regarding specified health and safety issues in license-exempt California State Preschool Programs (CSPP). Furthermore, a number of federal civil rights statutes and their implementing regulations mandate districts to adopt policies and procedures for the prompt and equitable resolution of complaints of unlawful discrimination, harassment, intimidation, or bullying. For example, all districts are mandated pursuant to 28 CFR 35.107 to adopt policy and procedures to address discrimination on the basis of disability, while districts that receive federal financial assistance are mandated pursuant to 34 CFR 106.8 and 34 CFR 110.25 to adopt policies and procedures to address discrimination on the basis of sex and age. Some of the factors considered by the U.S. Department of Education's Office for Civil Rights (OCR) when determining whether a district's procedures are "prompt and equitable" are addressed throughout the following administrative regulation.

Education Code 243, as added by AB 1078 (Ch. 229, Statutes of 2023), clarifies when it is unlawful discrimination for the Governing Board to (1) refuse to approve the use any textbook, instructional material, supplemental instructional material, or other curriculum for classroom instruction, or any book or resource in a school library or (2) prohibit the use of any textbook, instructional material, supplemental instructional material, or other curriculum for classroom instruction, or any book or resource in a school library. The Board may not refuse to approve such use on the basis that the material includes a study of the role and contributions of specified individuals or groups, unless the study of the role and contributions reflects adversely upon legally protected groups. Additionally, the Board may not prohibit such use on the basis that the study of the role and contributions contain inclusive or diverse perspectives. Any Board action to ban or censor a textbook, instructional material, supplemental instructional material, or other curriculum for classroom instruction on any of the bases described above may also constitute unlawful discrimination under Education Code 220. In addition, pursuant to Education Code 244, as added by SB 153 (Ch. 38, Statutes of 2024), the Board is prohibited from adopting or approving the use of any textbook, instructional material, supplemental instructional material, or curriculum for classroom instruction if the use would subject a student to unlawful discrimination pursuant to Education Code 220.

Complaints alleging discrimination based on a violation of Education Code 243, as added by AB 1078, or Education Code 244, as added by SB 153, may be brought under the district's UCP or

may be filed directly with the Superintendent of Public Instruction (SPI). Complaints that are filed directly with the SPI are required to identify the basis for doing so, and present evidence that supports the basis for the direct filing. In such cases, the SPI may directly intervene without waiting for an investigation by the district. For more information regarding complaints concerning instructional materials, see BP/AR 1312.2 - Complaints Concerning Instructional Materials and AR 1312.4 - Williams Uniform Complaint Procedures.

Education Code 242, as added by AB 1078, requires the California Department of Education (CDE) to develop, by July 1, 2025, guidance and public educational materials to ensure that all Californians can access information about educational laws and policies that safeguard the right to an accurate and inclusive curriculum.

Apart from these mandates, state law authorizes the use of UCP to resolve complaints of noncompliance with laws related to the development of a school plan for student achievement and the establishment of school site councils; accommodations for pregnant and parenting students; prohibition against the charging of student fees; educational rights of foster youth, students experiencing homelessness, former juvenile court school students, children of military families, students who are migratory, and ~~students participating in a newcomer program for newly arrived immigrants~~, as amended by AB 714 (Ch. 342, Statutes of 2023), newcomer students as defined in Education Code 51225.2 who are in the third or fourth year of high school; assignment of students to courses without educational content; and physical education instructional minutes. See the section "Complaints Subject to UCP" in the accompanying Board policy.

For a complaint which is based on allegations part of which fall under UCP and part of which fall outside of UCP, districts may need to initiate two separate investigations: one to investigate the allegations that fall under UCP and the other to investigate the allegations that fall outside of UCP.

Except as may otherwise be specifically provided in other district policies, these uniform complaint procedures (UCP) shall be used to investigate and resolve only the complaints specified in the accompanying Board policy.

Compliance Officers

CSBA NOTE: 5 CCR 4621 **mandates** the district to identify in its policies and procedures the person(s), position(s), or unit(s) responsible for ensuring compliance with applicable state and federal laws and regulations governing educational programs, including the receiving and investigating of complaints alleging unlawful discrimination, harassment, intimidation, or bullying and retaliation. During its Federal Program Monitoring (FPM) process, CDE staff will check to ensure that the district's procedures list the specific title(s) of the employee(s) responsible for receiving and investigating complaints. Districts should identify the specific title(s) of the compliance officer(s) in the space provided below. If a district identifies multiple compliance officers, it is recommended that one be designated the lead compliance officer.

The following paragraph specifies that the compliance officer will be the same person designated

to serve as the Title IX Coordinator for addressing complaints of ~~sexual~~ sex discrimination and sex-based harassment pursuant to AR 5145.7 - ~~Sexual~~ Sex Discrimination and Sex-Based Harassment and AR 5145.71 - Title IX ~~Sexual~~ Sex Discrimination and Sex-Based Harassment Complaint Procedures. Districts may modify this regulation to designate different district employees to serve these functions.

The district designates the individual(s), position(s), or unit(s) identified below as responsible for receiving, coordinating, and investigating complaints and for complying with state and federal civil rights laws. The individual(s), position(s), or unit(s) also serve as the compliance officer(s) specified in Administrative Regulation 5145.3 - Nondiscrimination/Harassment responsible for handling complaints regarding unlawful discrimination, harassment, intimidation, or bullying and in Administrative Regulation 5145.7 - ~~Sexual~~ Sex Discrimination and Sex-Based Harassment for handling complaints regarding ~~sexual~~ sex discrimination and sex-based harassment.

~~Assistant Principal~~ *MB*

< BO or Designee

(title or position)

(unit or office)

(address)

(telephone number)

(email)

*San Pasqual Union School
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spusd@sanpasqualunion.net*

CSBA NOTE: The following paragraph is for use by districts that have designated more than one compliance officer.

NO The compliance officer who receives a complaint may assign another compliance officer to investigate and resolve the complaint. The compliance officer shall promptly notify the complainant and respondent if another compliance officer is assigned to the complaint.

In no instance shall a compliance officer be assigned to a complaint in which the compliance officer has a bias or conflict of interest that would prohibit the fair investigation or resolution of the complaint. Any complaint against a compliance officer or that raises a concern about the compliance officer's ability to investigate the complaint fairly and without bias shall be filed with the Superintendent or designee who shall determine how the complaint will be investigated.

CSBA NOTE: 5 CCR 4621 mandates that the district's policy requires employees responsible for compliance and/or for investigating and resolving complaints to be knowledgeable about the laws and programs at issue in the complaints they are assigned. Compliance officers must also have training or experience in handling discrimination complaints, including appropriate investigative techniques and understanding of the applicable legal standards.

The Superintendent or designee shall ensure that employees assigned to investigate and resolve complaints receive training and are knowledgeable about the laws and programs at issue in the complaints to which they are assigned. Training provided to such employees shall cover current state and federal laws and regulations governing the program; applicable processes for investigating

and resolving complaints, including those alleging unlawful discrimination, harassment, intimidation, or bullying; applicable standards for reaching decisions on complaints; and appropriate corrective measures. Assigned employees may have access to legal counsel as determined by the Superintendent or designee.

The compliance officer or, if necessary, an appropriate administrator shall determine whether interim measures are necessary during an investigation and while the result is pending. If interim measures are determined to be necessary, the compliance officer or the administrator shall consult with the Superintendent, the Superintendent's designee, or, if appropriate, the site principal to implement one or more interim measures. The interim measures shall remain in place until the compliance officer determines that they are no longer necessary or until the district issues its final written decision, whichever occurs first.

Notifications

The district's UCP policy and administrative regulation shall be posted in all district schools and offices, including staff lounges and student government meeting rooms. (Education Code 234.1)

CSBA NOTE: During the FPM process, CDE staff will check to ensure that the district's policy contains a statement ensuring annual dissemination of notice of the district's UCP to the persons specified below.

In addition, the Superintendent or designee shall annually provide written notification of the district's UCP to students, employees, parents/guardians of district students, district advisory committee members, school advisory committee members, appropriate private school officials or representatives, and other interested parties. (5 CCR 4622)

CSBA NOTE: 5 CCR 4622 requires the district to include specified information in its annual UCP notice to students, parents/guardians, employees, and others. The following list reflects those required components and additional content of the notice listed in CDE's FPM instrument.

A sample of the annual notice is available through CDE's website. It is the district's responsibility to update the notice as necessary to reflect new law.

The notice shall include:

1. A statement that the district is primarily responsible for compliance with federal and state laws and regulations, including those related to prohibition of unlawful discrimination, harassment, intimidation, or bullying against any protected group, and a list of all programs and activities that are subject to UCP as identified in the section "Complaints Subject to UCP" in the accompanying Board policy
2. The title of the position responsible for processing complaints, the identity of the person(s) currently occupying that position if known, and a statement that such persons will be knowledgeable about the laws and programs that they are assigned to investigate

3. A statement that a UCP complaint, except a complaint alleging unlawful discrimination, harassment, intimidation, or bullying, must be filed no later than one year from the date the alleged violation occurred
4. A statement that a UCP complaint alleging unlawful discrimination, harassment, intimidation, or bullying must be filed no later than six months from the date of the alleged conduct or the date the complainant first obtained knowledge of the facts of the alleged conduct
5. A statement that a student enrolled in a public school shall not be required to pay a fee for participation in an educational activity that constitutes an integral fundamental part of the district's educational program, including curricular and extracurricular activities
6. A statement that a complaint regarding student fees or the local control and accountability plan (LCAP) may be filed anonymously if the complainant provides evidence or information leading to evidence to support the complaint
7. A statement that the district will post a standardized notice of the educational and graduation requirements of foster youth, students experiencing homelessness, children of military families, former juvenile court school students now enrolled in the district, students who are migratory, and ~~students participating in a newcomer program~~ students as specified in Education Code 48645.7, 48853, 48853.5, 49069.5, 51225.1, and 51225.2, and the complaint process
8. A statement that complaints will be investigated in accordance with the district's UCP and a written decision will be sent to the complainant within 60 days from the receipt of the complaint, unless this time period is extended by written agreement of the complainant
9. A statement that, for programs within the scope of the UCP as specified in the accompanying Board policy, the complainant has a right to appeal the district's investigation report to the California Department of Education (CDE) by filing a written appeal, including a copy of the original complaint and the district's decision, within 30 calendar days of receiving the district's decision
10. A statement advising the complainant of any civil law remedies, including, but not limited to, injunctions, restraining orders, or other remedies or orders that may be available under state or federal laws prohibiting discrimination, harassment, intimidation, or bullying, if applicable
11. A statement that copies of the district's UCP are available free of charge

CSBA NOTE: The following paragraph may be modified to reflect district practice. Pursuant to Education Code 221.61, a district and district school are required to post information related to Title IX on their websites, including specified information about complaint procedures under Title

IX. See; see AR 5145.3 - Nondiscrimination/Harassment. A school or district that does not maintain a website may comply by posting the information on the website of its district or county office of education (COE), however a school, district, or COE is not required to establish a website if it does not maintain one. A comprehensive list of rights based on the provisions of the federal regulations implementing Title IX can be found in Education Code 221.8

The annual notification, complete contact information of the compliance officer(s), and information related to Title IX as required pursuant to Education Code 221.661 and 34 CFR 106.8 shall be posted on the district and district school websites, published in handbooks, catalogs, announcements, bulletins, and application forms, and may be provided through district-supported social media, if available.

CSBA NOTE: Both federal and state laws contain requirements for translation of certain information and documents. Title VI of the Civil Rights Act of 1964 requires districts to ensure meaningful access to their programs and activities by persons with limited English proficiency. OCR has interpreted this to require that, whenever information is provided to parents/guardians, districts must notify limited-English-proficient (LEP) parents/guardians in a language other than English in order to be adequate. OCR enforces this requirement consistent with the Department of Justice's, "2007 Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons." Under the Guidance, a recipient of federal funds has an obligation to provide language assistance to LEP individuals based on the balancing of four factors: (1) the number or proportion of LEP individuals likely to encounter the program, (2) the frequency with which LEP individuals come in contact with the program, (3) the nature and importance of the services provided by the program, and (4) the resources available to the recipient. State law is more specific than federal law. Education Code 48985 requires translation of certain information and documents if 15 percent or more of students enrolled in the school speak a single primary language other than English.

The Superintendent or designee shall ensure that all students and parents/guardians, including students and parents/guardians with limited English proficiency, have access to the relevant information provided in the district's policy, regulation, forms, and notices concerning the UCP.

If 15 percent or more of students enrolled in a particular district school speak a single primary language other than English, the district's UCP policy, regulation, forms, and notices shall be translated into that language, in accordance with Education Code 234.1 and 48985. In all other instances, the district shall ensure meaningful access to all relevant UCP information for parents/guardians with limited English proficiency.

Filing of Complaints

CSBA NOTE: Complaints filed under UCP may be filed directly with a compliance officer or with any site administrator not designated as a compliance officer. For example, acts of unlawful discrimination, harassment, intimidation, or bullying may initially be reported to a principal. See AR 5145.3 - Nondiscrimination/Harassment and AR 5145.7 - ~~Sexual~~ Sex Discrimination and Sex-Based Harassment. If a site administrator not designated as a compliance officer receives a UCP complaint, the site administrator must notify a compliance officer. A district may also establish a

site-level process for receiving informal reports about incidents for which a UCP complaint may be filed and notifying students and parents/guardians of their right to file a UCP complaint. Any site-level process established by a district should be in writing and distributed in the same manner as the grievance procedures listed herein with an explanation of how it interacts with the UCP complaint process.

The complaint shall be presented to the compliance officer who shall maintain a log of complaints received, providing each with a code number and a date stamp. If a site administrator not designated as a compliance officer receives a complaint, the site administrator shall notify the compliance officer.

All complaints, except for those that allege sex discrimination, including sex-based harassment, shall be filed in writing and signed by the complainant. If a complainant is unable to put a complaint in writing due to conditions such as a disability or illiteracy, district staff shall assist in the filing of the complaint. (5 CCR 4600; 34 CFR 106.2)

Complaints shall also be filed in accordance with the following rules, as applicable:

1. A complaint alleging district violation of applicable state or federal law or regulations governing the programs specified in the accompanying Board policy may be filed by any individual, public agency, or organization: (5 CCR 4600)

CSBA NOTE: Education Code 49013 and 52075 mandate districts to adopt procedures that allow for anonymous complaints to be filed when a district allegedly violates the prohibition against the charging of student fees or violates any requirement related to the LCAP.

2. Any complaint alleging noncompliance with law regarding the prohibition against student fees, deposits, and charges or any requirement related to the LCAP may be filed anonymously if the complaint provides evidence, or information leading to evidence, to support an allegation of noncompliance:

A complaint about a violation of the prohibition against the charging of unlawful student fees may be filed with the principal of the school or with the Superintendent or designee.

CSBA NOTE: Pursuant to 5 CCR 4630, complaints related to the LCAP must be filed within a year of the date that the County Superintendent of Schools, the reviewing authority for districts, approves the district's LCAP.

3. A UCP complaint, except for a UCP complaint alleging unlawful discrimination, harassment, intimidation, or bullying, shall be filed no later than one year from the date the alleged violation occurred: (5 CCR 4630)

For complaints related to the LCAP, the date of the alleged violation is the date when the County Superintendent of Schools approves the LCAP that was adopted by the Governing Board. (5 CCR 4630)

4. A complaint alleging unlawful discrimination, harassment, intimidation, or bullying may be filed only by a person who alleges having personally suffered unlawful discrimination, a person who believes that any specific class of individuals has been subjected to unlawful discrimination, or a duly authorized representative who alleges that an individual student has been subjected to discrimination, harassment, intimidation, or bullying. (5 CCR 4630)
5. A complaint alleging unlawful discrimination, harassment, intimidation, or bullying shall be initiated no later than six months from the date that the alleged unlawful discrimination occurred, or six months from the date that the complainant first obtained knowledge of the facts of the alleged unlawful discrimination. (5 CCR 4630)

The time for filing may be extended for up to 90 days by the Superintendent or designee for good cause upon written request by the complainant setting forth the reasons for the extension. (5 CCR 4630)

6. When a complaint alleging unlawful discrimination, harassment, intimidation, or bullying is filed anonymously, the compliance officer shall pursue an investigation or other response as appropriate, depending on the specificity and reliability of the information provided and the seriousness of the allegation.

CSBA NOTE: Districts should consult CSBA's District and County Office of Education Legal Services or district legal counsel before honoring a confidentiality request to withhold the victim's name from the alleged perpetrator, especially in the case of alleged sexual assault, as this may affect the district's ability to conduct a thorough investigation or provide supportive measures to the victim. In OCR's, "Part 1: Questions and Answers Regarding the Department's Title IX Regulations," it is stated that, "Title IX regulations balance a complainant's desire for confidentiality (in terms of, for instance, the complainant's identity not being disclosed to the respondent) with a school's discretion to pursue an investigation where factual circumstances warrant an investigation even though the complainant does not desire to file a formal complaint or participate in a grievance process."

These guiding principles would also apply to harassment on the basis of race, gender, disability, or other protected characteristic.

7. When a complainant of unlawful discrimination, harassment, intimidation, or bullying or the alleged victim, when not the complainant, requests confidentiality, the compliance officer shall inform the complainant or victim that the request may limit the district's ability to investigate the conduct or take other necessary action:

When honoring a request for confidentiality, the district shall nevertheless take all reasonable steps to investigate and resolve/respond to the complaint consistent with the request.

Mediation

CSBA NOTE: The following section should be used only by those districts that have decided to establish procedures for attempting to resolve complaints through alternative dispute resolution

(ADR) procedures such as mediation; see the accompanying Board policy. The following section may be modified to specify the ADR method and timelines used within the district.

~~Districts may not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student; see AR 5145.71 - Title IX Sexual Harassment Complaint Procedures.~~

Within three business days after receiving the complaint, the compliance officer may informally discuss with all the parties the possibility of using mediation to resolve the complaint. Mediation shall be offered to resolve complaints that involve more than one student and no adult. However, mediation shall not be offered or used to resolve any complaint involving an allegation of sexual assault or where there is a reasonable risk that a party to the mediation would feel compelled to participate. If the parties agree to mediation, the compliance officer shall make all arrangements for this process.

Before initiating the mediation of a complaint alleging retaliation or unlawful discrimination, harassment, intimidation, or bullying, the compliance officer shall ensure that all parties agree to permit the mediator access to all relevant confidential information. The compliance officer shall also notify all parties of the right to end the informal process at any time.

If the mediation process does not resolve the problem within the parameters of law, the compliance officer shall proceed with an investigation of the complaint.

The use of mediation shall not extend the district's timelines for investigating and resolving the complaint unless the complainant agrees in writing to such an extension of time. If mediation is successful and the complaint is withdrawn, then the district shall take only the actions agreed upon through the mediation. If mediation is unsuccessful, the district shall then continue with subsequent steps specified in this administrative regulation.

Investigation of Complaint

CSBA NOTE: 5 CCR 4631, which requires the district to provide the complainant with the opportunity to present relevant information, does not provide any timeline. Thus, the timeline specified below may be modified to reflect district practice.

The compliance officer shall begin an investigation into the complaint within 10 business days of receiving the complaint.

Within one business day of initiating the investigation, the compliance officer shall provide the complainant and/or the complainant's representative with the opportunity to present the information contained in the complaint to the compliance officer and shall notify the complainant and/or representative of the opportunity to present the compliance officer with any evidence, or information leading to evidence, to support the allegations in the complaint. Such evidence or information may be presented at any time during the investigation.

CSBA NOTE: During the investigation, the compliance officer should consider all relevant circumstances, such as how the alleged misconduct affected one or more students' education; the type, frequency, and duration of the misconduct; the identity, age, and sex of the individuals involved in and impacted by the conduct and the relationship between them; the number of persons engaged in the conduct and at whom the conduct was directed; the size of the school, location of the incidents, and context in which they occurred; and other incidents at the school involving different individuals.

In conducting the investigation, the compliance officer shall collect all available documents and review all available records, notes, or statements related to the complaint, including any additional evidence or information received from the parties during the course of the investigation. The compliance officer shall individually interview all available witnesses with information pertinent to the complaint, and may visit any reasonably accessible location where the relevant actions are alleged to have taken place. At appropriate intervals, the compliance officer shall inform the parties of the status of the investigation.

To investigate a complaint alleging retaliation or unlawful discrimination, harassment, intimidation, or bullying, the compliance officer shall interview the alleged victim(s), any alleged offender(s), and other relevant witnesses privately, separately, and in a confidential manner. As necessary, additional staff or legal counsel may conduct or support the investigation.

CSBA NOTE: 5 CCR 4631 allows the district to dismiss a complaint when the complainant refuses to provide the investigator with relevant documents or otherwise obstructs the investigation. 5 CCR 4631 also provides that, if the district refuses to provide the investigator with access to records or other documents, the investigator may issue a finding in favor of the complainant. During the FPM process, CDE staff will check to ensure that both of these statements regarding the provision of access to information are included in the district's policy or procedures, as specified below.

A complainant's refusal to provide the district's investigator with documents or other evidence related to the allegations in the complaint, failure or refusal to cooperate in the investigation, or any other obstruction of the investigation may result in the dismissal of the complaint because of a lack of evidence to support the allegation. Refusal by the district to provide the investigator with access to records and/or information related to the allegations in the complaint, failure or refusal to cooperate in the investigation, or any other obstruction of the investigation may result in a finding based on evidence collected that a violation has occurred and in the imposition of a remedy in favor of the complainant. (5 CCR 4631)

Timeline for Investigation Report

CSBA NOTE: Pursuant to 5 CCR 4631, the district's investigation report must be sent to the complainant within 60 calendar days of receiving the complaint. Option 1 below is for districts that do not allow complainants to appeal the compliance officer's decision to the Board. Option 2 is for districts that allow appeals to the Board, and it requires the compliance officer's decision within 30 calendar days so that the Board's decision can still be given within the 60-day time limit.

Pursuant to 5 CCR 4631, only a complainant has the right to receive the investigation report and to file a complaint with the Board if dissatisfied with the compliance officer's decision. However, under certain circumstances, some of the same rights should be extended to a respondent in order to make the process equitable. For example, since the respondent to a complaint alleging unlawful discrimination, harassment, intimidation, or bullying is usually an individual, the respondent should be notified when the complainant has agreed to an extension of timelines. Options 1 and 2 reflect these recommendations and may be modified to reflect district practice. When questions arise as to what rights to provide to a respondent, the district should consult CSBA's District and County Office of Education Legal Services or district legal counsel accordingly.

Pursuant to 5 CCR 4640, when a UCP complaint is erroneously sent to CDE without first being filed with the district, the 60-day period specified in 5 CCR 4631 begins when the district receives the complaint.

OPTION 1: (Districts that do not allow complainants to appeal to the Board)

Unless extended by written agreement with the complainant, the compliance officer shall prepare and send to the complainant a written investigation report, as described in the section "Investigation Report" below, within 60 calendar days of the district's receipt of the complaint. (5 CCR 4631)

For any complaint alleging unlawful discrimination, harassment, intimidation, or bullying, the respondent shall be informed of any extension of the timeline agreed to by the complainant.

END OF OPTION 1

OPTION 2: (Districts that allow complainants to appeal to the Board)

CSBA NOTE: The remainder of this section is for use by districts that select Option 2.

Unless extended by written agreement with the complainant, the investigation report shall be sent to the complainant within 60 calendar days of the district's receipt of the complaint.

Within 30 calendar days of receiving the complaint, the compliance officer shall prepare and send to the complainant a written report, as described in the section "Investigation Report" below. If the complainant is dissatisfied with the compliance officer's decision, the complainant may, within five business days, file the complaint in writing with the Board.

The Board may consider the matter at its next regular Board meeting or at a special Board meeting convened in order to meet the 60-day time limit within which the complaint must be answered. When required by law, the matter shall be considered in closed session. The Board may decide not to hear the complaint, in which case the compliance officer's decision shall be final.

If the Board hears the complaint, the compliance officer shall send the Board's decision to the complainant within 60 calendar days of the district's initial receipt of the complaint or within the time period that has been specified in a written agreement with the complainant. (5 CCR 4631)

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For any complaint alleging unlawful discrimination, harassment, intimidation, or bullying, the respondent shall be informed of any extension of the timeline agreed to by the complainant, and, in the same manner as the complainant, may file a complaint with the Board if dissatisfied with the decision.

END OF OPTION 2

Investigation Report

CSBA NOTE: 5 CCR 4631 specifies components that are required to be part of the district's investigation report. Inclusion of these items will help protect the district's position in case of an appeal to CDE, a complaint submitted to OCR, or if litigation is filed.

For all complaints, the district's investigation report shall include: (5 CCR 4631)

1. The findings of fact based on the evidence gathered
2. A conclusion providing a clear determination for each allegation as to whether the district is in compliance with the relevant law
3. Corrective action(s) whenever the district finds merit in the complaint, including, when required by law, a remedy to all affected students and parents/guardians and, for a student fees complaint, a remedy that complies with Education Code 49013 and 5 CCR 4600
4. Notice of the complainant's right to appeal the district's investigation report to CDE, except when the district has used the UCP to address a complaint not specified in 5 CCR 4610
5. Procedures to be followed for initiating an appeal to CDE

The investigation report may also include follow-up procedures to prevent recurrence or retaliation and for reporting any subsequent problems.

CSBA NOTE: The Family Educational Rights and Privacy Act (FERPA) (20 USC 1232g; 34 CFR 99.1-99.67) protects student privacy, including student records containing details of the actions taken in response to a UCP complaint. However, pursuant to 20 USC 1221, FERPA may not "be construed to affect the applicability of Title VI of the Civil Rights Act of 1964, Title IX of Education Amendments of 1972, Title V of the Rehabilitation Act of 1973, the Age Discrimination Act, or other statutes prohibiting discrimination, to any applicable program." In February 2015, the Family Policy Compliance Office (FPCO), now the Student Privacy Policy Office, released a letter concluding that FERPA permits a district to disclose to a student who was subjected to unlawful discrimination certain information about the sanctions imposed upon the respondent when the sanctions directly relate to that student. Thus, if properly remedying the impact of discrimination would require disclosing to the alleged victim certain information on how the district disciplined the respondent (e.g., an order that the respondent stay away from the alleged victim), FPCO interprets FERPA as allowing the district to disclose that information.

Given the potential liability from improperly disclosing such information, districts are advised to

consult with CSBA's District and County Office of Education Legal Services or district legal counsel when presented with a situation where a victim of unlawful discrimination requests information about sanctions imposed upon the respondent.

In consultation with district legal counsel, information about the relevant part of an investigation report may be communicated to a victim who is not the complainant and to other parties who may be involved in implementing the investigation report or are affected by the complaint, as so long as the privacy of the parties is protected. In a complaint alleging unlawful discrimination, harassment, intimidation, or bullying, notice of the investigation report to the alleged victim shall include information about any sanction to be imposed upon the respondent that relates directly to the alleged victim.

CSBA NOTE: Education Code 48985 requires that reports sent to parents/guardians be written in their primary language when 15 percent or more of a school's enrolled students speak a single primary language other than English. During the FPM process, CDE staff will check to ensure that UCP complaint procedures pertaining to CSPP health and safety issues include a statement that the district response and the investigation report must, whenever Education Code 48985 is applicable, be written in English and the primary language in which the complaint was filed; see the section "Health and Safety Complaints in License-Exempt Preschool Programs" below. The following paragraph extends this provision to all types of complaints to ensure compliance with Education Code 48985. In addition, based on Title VI of the Civil Rights Act of 1964, OCR requires districts to ensure meaningful access to all relevant UCP information for parents/guardians with limited English proficiency.

If the complaint involves a limited-English-proficient (LEP) student or parent/guardian, then the district's response, if requested by the complainant, and the investigation report shall be written in English and the primary language in which the complaint was filed.

CSBA NOTE: During the FPM process, CDE staff will expect to see a statement detailing a complainant's right to pursue civil law remedies (i.e., action in a court of law) in addition to or in conjunction with the right to pursue administrative remedies from CDE.

For complaints alleging unlawful discrimination, harassment, intimidation, or bullying based on state law, the investigation report shall also include a notice to the complainant that:

1. The complainant may pursue available civil law remedies outside of the district's complaint procedures, including, but not limited to, injunctions, restraining orders or other remedies or orders, 60 calendar days after the filing of an appeal with CDE (Education Code 262.3)
2. The 60 days moratorium does not apply to complaints seeking injunctive relief in state courts or to discrimination complaints based on federal law (Education Code 262.3)
3. Complaints alleging discrimination based on race, color, national origin, sex, gender, disability, or age may also be filed with the U.S. Department of Education, Office for Civil Rights at www.ed.gov/ocr within 180 days of the alleged discrimination

Corrective Actions

CSBA NOTE: The following section may be revised to reflect district practice.

When a complaint is found to have merit, the compliance officer shall adopt any appropriate corrective action permitted by law. Appropriate corrective actions that focus on the larger school or district environment may include, but are not limited to, actions to reinforce district policies; training for faculty, staff, and students; updates to school policies; or school climate surveys.

CSBA NOTE: Pursuant to Education Code 48900.5, as amended by AB 1165 (Ch. 22, Statutes of 2023), the district is encouraged to have a student who has been suspended, or for whom other means of correction have been implemented pursuant to Education Code 48900.5 for an incident of racist bullying, harassment, or intimidation, as well as the victim, to engage in a restorative justice practice suitable to address the needs of both the victim and the perpetrator; to have the perpetrator engage in a culturally sensitive program that promotes racial justice and equity and combats racism and ignorance; and to regularly check on the victim to ensure that the victim is not in danger of suffering from any long-lasting mental health issues; see AR 5131.2 – Bullying.

For complaints involving retaliation or unlawful discrimination, harassment, intimidation, or bullying, appropriate remedies that may be offered to the victim but not communicated to the respondent may include, but are not limited to, the following:

1. Counseling
2. Academic support
3. Health services
4. Assignment of an escort to allow the victim to move safely about campus
5. Information regarding available resources and how to report similar incidents or retaliation
6. Separation of the victim from any other individuals involved, provided the separation does not penalize the victim
7. Restorative justice
8. Follow-up inquiries to ensure that the conduct has stopped and there has been no retaliation

For complaints of retaliation or unlawful discrimination, harassment, intimidation, or bullying involving a student as the respondent, appropriate corrective actions that may be provided to the student include, but are not limited to, the following:

1. Transfer from a class or school as permitted by law
2. Parent/guardian conference
3. Education regarding the impact of the conduct on others
4. Positive behavior support

5. Referral to a student success team
6. Denial of participation in extracurricular or cocurricular activities or other privileges as permitted by law
7. Disciplinary action, such as suspension or expulsion, as permitted by law

When an employee is found to have committed retaliation or unlawful discrimination, harassment, intimidation, or bullying, the district shall take appropriate disciplinary action, up to and including dismissal, in accordance with applicable law and collective bargaining agreement.

The district may also consider training and other interventions for the larger school community to ensure that students, staff, and parents/guardians understand the types of behavior that constitute unlawful discrimination, harassment, intimidation, or bullying, that the district does not tolerate it, and how to report and respond to it.

CSBA NOTE: Generally, when a complaint is found to have merit, an appropriate remedy is provided to the complainant or other affected person. However, in certain instances, the law may require a remedy to be provided to all affected persons, not just the complainant or subject of the complaint. For example, pursuant to Education Code 49013 and 5 CCR 4600, if the district, or CDE on appeal, finds merit in the complaint alleging noncompliance with the law regarding student fees and charges, the district is required to provide a remedy to all affected students and parents/guardians, as specified below. The same requirement applies to allegations of noncompliance with required instructional minutes for physical education pursuant to Education Code 51222 and 51223, course periods without educational content pursuant to Education Code 51228.3, and the LCAP requirements pursuant to Education Code 52075. Districts that do not maintain elementary schools should delete the reference to physical education below.

When a complaint is found to have merit, an appropriate remedy shall be provided to the complainant or other affected person.

However, if a complaint alleging noncompliance with the law regarding student fees, deposits, and other charges, physical education instructional minutes, courses without educational content, or any requirement related to the LCAP is found to have merit, the district shall provide a remedy to all affected students and parents/guardians subject to procedures established by regulation of the State Board of Education. (Education Code 49013, 51222, 51223, 51228.3, 52075)

For complaints alleging noncompliance with the law regarding student fees, the district, by engaging in reasonable efforts, shall attempt in good faith to identify and fully reimburse all affected students and parents/guardians who paid the unlawful student fees within one year prior to the filing of the complaint. (Education Code 49013; 5 CCR 4600)

Appeals to the California Department of Education

Any complainant who is dissatisfied with the district's investigation report on a complaint regarding any specified federal or state educational program subject to UCP may file an appeal in writing with

CDE within 30 calendar days of receiving the district's investigation report. (5 CCR 4632)

The appeal shall be sent to CDE with a copy of the original locally filed complaint and a copy of the district's investigation report for that complaint. The complainant shall specify and explain the basis for the appeal, including at least one of the following: (5 CCR 4632)

1. The district failed to follow its complaint procedures
2. Relative to the allegations of the complaint, the district's investigation report lacks material findings of fact necessary to reach a conclusion of law
3. The material findings of fact in the district's investigation report are not supported by substantial evidence
4. The legal conclusion in the district's investigation report is inconsistent with the law
5. In a case in which the district found noncompliance, the corrective actions fail to provide a proper remedy

CSBA NOTE: 5 CCR 4633 requires the district to submit the following documents to CDE within 10 days after the district has been notified that an appeal has been filed. The district's failure to provide a timely and complete response may result in CDE ruling on the appeal without considering information from the district.

Upon notification by CDE that the district's investigation report has been appealed, the Superintendent or designee shall forward the following documents to CDE within 10 days of the date of notification: (5 CCR 4633)

1. A copy of the original complaint
2. A copy of the district's investigation report
3. A copy of the investigation file including, but not limited to, all notes, interviews, and documents submitted by the parties and gathered by the investigator
4. A report of any action taken to resolve the complaint
5. A copy of the district's UCP
6. Other relevant information requested by CDE

If notified by CDE that the district's investigation report failed to address allegation(s) raised by the complaint, the district shall, within 20 days of the notification, provide CDE and the appellant with an amended investigation report that addresses the allegation(s) that were not addressed in the original investigation report. The amended report shall also inform the appellant of the right to separately appeal the amended report with respect to the allegation(s) that were not addressed in the original report. (5 CCR 4632)

CSBA NOTE: Pursuant to 5 CCR 4633, CDE is required to issue a written decision regarding the appeal within 60 days of CDE's receipt of the appeal, unless extended by written agreement with the appellant or documentation by CDE of exceptional circumstances. Pursuant to 5 CCR 4635, if CDE's decision was issued based on evidence in the investigation file CDE received from the district or evidence uncovered after further investigation of the allegations that were the basis of the appeal, either party may request reconsideration by the SPI or designee within 30 days of the appeal decision.

Pursuant to 5 CCR 4650, CDE may directly intervene in a complaint without waiting for action by the district when certain conditions exist, including the following: (1) the complaint alleges failure to comply with the UCP, including failure to follow the required timelines and failure to implement the final investigation report; (2) the complainant requests anonymity due to the possibility of retaliation and would suffer immediate and irreparable harm if a complaint was filed and the complainant was named; or (3) the complainant would suffer immediate and irreparable harm as a result of an application of a districtwide policy that is in conflict with state or federal law and that filing a complaint would be futile.

Health and Safety Complaints in License-Exempt Preschool Programs

CSBA NOTE: The following section is for use by districts that operate any license-exempt CSPP program. Education Code 8212 **mandates** districts to adopt policies and procedures for resolving complaints regarding specified health and safety issues in a license-exempt CSPP program. Pursuant to Education Code 8212, the district must use the UCP, with modifications as necessary, to resolve such complaints. Pursuant to 5 CCR 4610, such complaints must be addressed through the procedures described in 5 CCR 4690-4694.

See the accompanying exhibits for a sample classroom notice and complaint form.

Any complaint regarding health or safety issues in a license-exempt California State Preschool Program (CSPP) shall be addressed through the procedures described in 5 CCR 4690-4694.

In order to identify appropriate subjects of CSPP health and safety issues pursuant to Health and Safety Code 1596.7925, a notice shall be posted in each license-exempt CSPP classroom in the district notifying parents/guardians, students, and teachers of the health and safety requirements of Title 5 regulations that apply to CSPP programs pursuant to Health and Safety Code 1596.7925 and the location at which to obtain a form to file any complaint alleging noncompliance with those requirements. For this purpose, the Superintendent or designee may download and post a notice available from the CDE website. (Education Code 8212; 5 CCR 4691)

The district's annual UCP notification distributed pursuant to 5 CCR 4622 shall clearly indicate which of its CSPP programs are operating as exempt from licensing and which CSPP programs are operating pursuant to requirements under Title 22 of the Code of Regulations. (5 CCR 4691)

Any complaint regarding specified health or safety issues in a license-exempt CSPP program shall be filed with the preschool program administrator or designee, and may be filed anonymously. The complaint form shall specify the location for filing the complaint, contain a space to indicate whether the complainant desires a response to the complaint, and allow a complainant to add as

much text as desired to explain the complaint. (Education Code 8212; 5 CCR 4690)

If it is determined that the complaint is beyond the authority of the preschool program administrator, the matter shall be forwarded to the Superintendent or designee in a timely manner, not to exceed 10 working days, for resolution. The preschool administrator or the Superintendent or designee shall make all reasonable efforts to investigate any complaint within their authority. (Education Code 8212; 5 CCR 4692)

Investigation of a complaint regarding health or safety issues in a license-exempt CSPP program shall begin within 10 days of receipt of the complaint. (Education Code 8212; 5 CCR 4692)

The preschool administrator or designee shall remedy a valid complaint within a reasonable time period not to exceed 30 working days from the date the complaint was received. If the complainant has indicated on the complaint form a desire to receive a response to the complaint, the preschool administrator or Superintendent's designee shall, within 45 working days of the initial filing of the complaint, report the resolution of the complaint to the complainant and CDE's assigned field consultant. If the preschool administrator makes this report, the information shall be reported at the same time to the Superintendent or designee. (Education Code 8212; 5 CCR 4692)

CSBA NOTE: Education Code 48985 requires that reports sent to parents/guardians be written in their primary language when 15 percent or more of a school's enrolled students speak a single primary language other than English. During the FPM process, CDE staff will check to ensure compliance with this requirement. Based on Title VI of the Civil Rights Act of 1964, OCR requires districts to ensure meaningful access to all relevant UCP information for parents/guardians with limited English proficiency.

If a complaint regarding health or safety issues in a license-exempt CSPP program involves an LEP student or parent/guardian, then the district's response, if requested by the complainant, and the investigation report shall be written in English and the primary language in which the complaint was filed.

If a complainant is not satisfied with the resolution of a complaint, the complainant has the right to describe the complaint to the Board at a regularly scheduled hearing and, within 30 days of the date of the written report, may file a written appeal of the district's decision to the Superintendent of Public Instruction in accordance with 5 CCR 4632. (Education Code 8212; 5 CCR 4693, 4694)

All complaints and responses are public records. (5 CCR 4690)

On a quarterly basis, the Superintendent or designee shall report summarized data on the nature and resolution of all CSPP health and safety complaints, including the number of complaints by general subject area with the number of resolved and unresolved complaints, to the Board at a regularly scheduled Board meeting and to the County Superintendent. (5 CCR 4693)

Policy Reference UPDATE Service

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Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State	Description
2 CCR 11023	Harassment and discrimination prevention and correction
5 CCR 15580-15584	Child nutrition programs complaint procedures
5 CCR 3200-3205	Special education compliance complaints
5 CCR 4600-4670	Uniform complaint procedures
5 CCR 4600-4687	Uniform complaint procedures and Williams complaints
5 CCR 4690-4694	Complaints regarding health and safety issues in license-exempt preschool programs
5 CCR 4900-4965	Nondiscrimination in elementary and secondary educational programs receiving state or federal financial assistance
Ed. Code 18100-18203	School libraries
Ed. Code 200-262.4	Prohibition of discrimination
Ed. Code 32280-32289.5	School safety plans
Ed. Code 35186	Williams uniform complaint procedures
Ed. Code 46015	Parental leave for students
Ed. Code 48645.7	Juvenile court schools
Ed. Code 48853-48853.5	Foster youth
<u>Ed. Code 48900.5</u>	<u>Suspension; other means of correction</u>
Ed. Code 48985	Notices to parents in language other than English
Ed. Code 49010-49013	Student fees
Ed. Code 49060-49079	Student records
Ed. Code 49069.5	Records of foster youth
Ed. Code 49490-49590	Child nutrition programs
Ed. Code 49701	Provisions of the Interstate Compact on Educational Opportunities for Military Children
Ed. Code 51204.5	Social sciences instruction; contributions of specified groups
Ed. Code 51210	Course of study for grades 1-6
Ed. Code 51222	Physical education

Ed. Code 51223	Physical education; elementary schools
Ed. Code 51225.1-51225.2	Foster youth, homeless children, former juvenile court school students; course credits; graduation requirements
Ed. Code 51226-51226.1	Career technical education
Ed. Code 51228.1-51228.3	Course periods without educational content
Ed. Code 51501	Nondiscriminatory subject matter
Ed. Code 52059.5	Statewide system of support
Ed. Code 52060-52077	Local control and accountability plan
Ed. Code 52075	Complaint for lack of compliance with local control and accountability plan requirements
Ed. Code 52300-52462	Career technical education
Ed. Code 52500-52617	Adult schools
Ed. Code 54400-54425	Compensatory education programs
Ed. Code 54440-54445	Migrant education
Ed. Code 54460-54529	Compensatory education programs
Ed. Code 59000-59300	Special schools and centers
Ed. Code 60010	Instructional materials; definition
Ed. Code 60040-60052	Requirements for instructional materials
Ed. Code 64000-64001	Consolidated application process; school plan for student achievement
Ed. Code 65000-65001	School site councils
Ed. Code 8200-8488	Child care and development programs
Ed. Code 8500-8538	Adult basic education
Gov. Code 11135	Prohibition of discrimination
Gov. Code 12900-12996	Fair Employment and Housing Act
H&S Code 1596.792	California Child Day Care Act; general provisions and definitions
H&S Code 1596.7925	California Child Day Care Act; health and safety regulations
Pen. Code 422.55	Definition of hate crime
Pen. Code 422.6	Crimes; harassment
Federal	Description

20 USC 1221	Application of laws
20 USC 1232g	Family Educational Rights and Privacy Act (FERPA) of 1974
20 USC 1681-1688	Title IX of the Education Amendments of 1972; discrimination based on sex
20 USC 6301-6576	Title I Improving the Academic Achievement of the Disadvantaged
20 USC 6801-7014	Title III language instruction for limited English proficient and immigrant students
28 CFR 35.107	Nondiscrimination on basis of disability; complaints
29 USC 794	Rehabilitation Act of 1973; Section 504
34 CFR 100.3	Prohibition of discrimination on basis of race, color or national origin
34 CFR 104.7	Section 504; Designation of responsible employee and adoption of grievances procedures
34 CFR 106.1-106.82	Nondiscrimination on the basis of sex in education programs
34 CFR 106.30	Discrimination on the basis of sex in education programs and activities; definitions
34 CFR 106.44	Recipient's response to sexual harassment
34 CFR 106.45	Grievance process for formal complaints of sexual harassment
34 CFR 106.8	Designation of coordinator; dissemination of policy, and adoption of grievance procedures
34 CFR 110.25	Notification of nondiscrimination on the basis of age
34 CFR 99.1-99.67	Family Educational Rights and Privacy
42 USC 11431-11435	McKinney-Vento Homeless Assistance Act
42 USC 12101-12213	Americans with Disabilities Act
42 USC 2000d-2000d-7	Title VI, Civil Rights Act of 1964
42 USC 2000h-2-2000h-6	Title IX of the Civil Rights Act of 1964
42 USC 6101-6107	Age Discrimination Act of 1975

Management Resources

CSBA Publication

Description

Instructional Materials Adoptions: State and local governing board processes, roles, and responsibilities, February 2024
(<https://www.csba.org/-/media/CSBA/Files/GovernanceResources/GovernanceBriefs/2024-REPD-instructional-materials->

CSBA Publication

[brief.ashx?la=en&rev=9880900e6d334c81a7f64d637e40dc56\)](https://www.csba.org/-/media/CSBA/Files/GovernanceResources/GovernanceBriefs/2024-REPD-IM-LocalRoles.ashx?la=en&rev=9880900e6d334c81a7f64d637e40dc56)

Fact Sheet: Instructional Materials Adoption: Local governing board responsibilities, February 2024 (<https://www.csba.org/-/media/CSBA/Files/GovernanceResources/GovernanceBriefs/2024-REPD-IM-LocalRoles.ashx?la=en&rev=94453dc92df043379995b07589a4d558>)

CSBA Publication

Reference: State Roles, Responsibilities, and Process for Instructional Materials Adoption, February 2024 (<https://www.csba.org/-/media/CSBA/Files/GovernanceResources/GovernanceBriefs/2024-REPD-IM-StateRoles.ashx?la=en&rev=f00baf9bd1af4844b94f99135ca65588>)

California Department of Education
Publication

Uniform Complaint Procedure 2021-22 Program Instrument

California Department of Education
Publication

Sample UCP Board Policies and Procedures

U.S. DOE, Office for Civil Rights California
Department of Justice Publication

Part 1: Questions and Answers Regarding the Department's Title IX Regulations, January 2021 Guidance to School Officials re: Legal Requirements for Providing Inclusive Curricula and Books, January 2024

(<https://oag.ca.gov/system/files/attachments/press-docs/Legal%20Alert%20Re%20Inclusive%20Curricula.1.9.24.1157CLEAN.pdf>)

U.S. DOE, Office for Civil Rights
Publication Federal Register

Questions and Answers on the Title IX Regulations on Sexual Harassment, July 2021 Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, April 29, 2024, Vol. 89, No. 83, pages 33474-33896

(<https://www.federalregister.gov/documents/2024/04/29/2024-07915/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>)

U.S. DOE, Office for Civil Rights
Publication

Dear Colleague Letter: Responding to Bullying of Students with Disabilities, October 2014

U.S. DOJ Publication

Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 2007

Website	CSBA District and County Office of Education Legal Services
Website	Student Privacy Policy Office
Website	U.S. Department of Agriculture
Website	California Department of Social Services
Website	U.S. Department of Justice
Website	California Department of Education
Website	CSBA
Website	U.S. Department of Education, Office for Civil Rights
Website	California Civil Rights Department

Cross References

Code	Description
0410	Nondiscrimination In District Programs And Activities
0420	School Plans/Site Councils
0420	School Plans/Site Councils
0420.41	Charter School Oversight
0420.41-E(1)	Charter School Oversight
0430	Comprehensive Local Plan For Special Education
0430	Comprehensive Local Plan For Special Education
0450	Comprehensive Safety Plan
0450	Comprehensive Safety Plan
0460	Local Control And Accountability Plan
0460	Local Control And Accountability Plan
1100	Communication With The Public
1113	District And School Websites
1113	District And School Websites
1113-E(1)	District And School Websites
1114	District-Sponsored Social Media
1114	District-Sponsored Social Media
1220	Citizen Advisory Committees

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Policy 4030: Nondiscrimination In Employment

Status: ADOPTED

Original Adopted Date: 05/01/2016 | Last Revised Date: 03/07/01/2023 ~~2023~~ | Last Reviewed
Date: 03/07/01/2023 ~~2023~~ 2024

CSBA NOTE: The following Board policy and accompanying administrative regulation are mandated pursuant to 2 CCR 11023. The California Fair Employment and Housing Act (FEHA) (Government Code 12900-12996) prohibits districts and district employees from harassing or discriminating against employees and job applicants on the basis of actual or perceived race, color, ancestry, national origin, age, religious creed, marital status, pregnancy, reproductive health decisionmaking ~~decision-making~~, physical or mental disability, medical condition, genetic information, veteran or military status, sex, sexual orientation, gender, gender identity, or gender expression. Pursuant to Government Code 12940, these protections apply to employees, job applicants, persons who serve in an unpaid internship or other limited-duration program to gain unpaid work experience, volunteers, and independent contractors.

Additionally, protections are available under various provisions of federal law, including Title VI of the Civil Rights Act of 1964 (42 USC 2000d-2000d-7), Title VII of the Civil Rights Act of 1964 (42 USC 2000e-2000e-17), the Pregnant Workers Fairness Act (42 USC 2000gg-2000gg-6), Title IX of the Education Amendments of 1972 (20 USC 1681-1688), the Americans with Disabilities Act (42 USC 12101-12213), Section 504 of the Rehabilitation Act of 1973 (29 USC 794), and the Genetic Information Nondiscrimination Act (42 USC 2000ff-2000ff-11).

For policy addressing sexual harassment of and by employees, see BP/AR 4119.11/4219.11/4319.11 - Sexual Harassment.

The U.S. Equal Employment Opportunity Commission's (EEOC) April 2024, "Enforcement Guidance on Harassment in the Workplace," provides for components of an effective anti-harassment policy, including that the policy (1) defines what conduct is prohibited, (2) is widely disseminated, (3) is comprehensible to employees, (4) requires supervisors to report harassment when they are aware of it, (5) offers multiple avenues for reporting harassment, enabling employees to contact someone other than their harasser, (6) clearly identifies who complaints can be made to, including contact information, and (7) explains the complaint process, including anti-retaliation and confidentiality protections.

For policy addressing sex discrimination and sex-based harassment of and by employees, see BP/AR 4119.11/4219.11/4319.11 - Sex Discrimination and Sex-Based Harassment, and for language regarding Title IX sex discrimination, including sex-based harassment, complaint procedures, see AR/E(1) 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

The Governing Board is determined to provide a safe, positive environment where all district employees are assured of full and equal employment access and opportunities, protection from harassment and intimidation, and freedom from any fear of reprisal or retribution for asserting their employment rights in accordance with law. For purposes of this policy, employees include job

applicants, interns, volunteers, and persons who contracted with the district to provide services, as applicable.

CSBA NOTE: 34 CFR 106.2 and 106.10, as amended by 89 Fed. Reg. 33474, clarify that discrimination on the basis of sex for the purpose of Title IX includes sex stereotypes; sex characteristics; gender identity; sexual orientation; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions or recovery; and parental, marital, and family status.

No district employee shall be discriminated against or harassed by any coworker, supervisor, manager, or other person with whom the employee comes in contact in the course of employment, on the basis of the employee's actual or perceived race; color; ancestry; national origin; age; religious creed; ; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions and recovery; parental, family, or marital status; pregnancy; physical or mental disability; medical condition; genetic information; veteran or military status; sex; sex stereotypes; sex characteristics; sexual orientation; gender; gender identity; gender expression; or association with a person or group with one or more of these actual or perceived characteristics.

CSBA NOTE: Government Code 12940, as amended by SB 523 (Ch. 630, Statutes of 2022), includes reproductive health decisionmakingdecision-making as a characteristic for which employment discrimination is prohibited. Pursuant to Government Code 12926(y) "reproductive health decisionmakingdecision-making" includes a person'sperson's decision to use or access a particular drug, device, product, or medical service for reproductive health.

Employers are also prohibited from discrimination against employees or job applicants on the basis of reproductive health decisionmakingdecision-making, defined as a person's decision to use or access a particular drug, device, product, or medical service for reproductive health. (Government Code 12926, 12940)

CSBA NOTE: 2 CCR 11028 prohibits inquiry into an employee's immigration status or discrimination on the basis of such status, unless the district provides clear and convincing evidence that itsuch inquiry is required to do so in ordernecessary to comply with federal immigration law. Districts should consult CSBA's District and County Office of Education Legal Services or district legal counsel as necessary.

The district shall not inquire into any employee's immigration status nor discriminate against an employee on the basis of immigration status, unless there is clear and convincing evidence that the districtsuch inquiry is required to do so in ordernecessary to comply with federal immigration law. (2 CCR 11028)

CSBA NOTE: Pursuant to Government Code 12954, as amended by SB 700 (Ch. 408, Statutes of 2023), the district may not discriminate against an employee in termination, or any term or condition of employment, or otherwise penalize a person, based on the person's use of cannabis when off the job or away from the workplace. However, Government Code 12954 does not interfere with the district's right to maintain drug-free schools or to prohibit employees from possessing, being impaired by, or using cannabis while at work. Government Code 12954 also does not preempt state or federal laws requiring applicants to be tested for controlled substances as a condition of employment or to applicants in the building and construction trades or for positions requiring a federal background investigation. Districts with questions about employee cannabis use or screening should consult CSBA's District and County Office of Education Legal Services or district

legal counsel. Also see BP 4111 – Recruitment and Selection, AR 4112.5 – Criminal Record Check, BP/AR 4118 – Dismissal/Suspension/Disciplinary Action, and BP/AR 4218 – Dismissal/Suspension/Disciplinary Action.

Unless otherwise provided for in law, the district may not discriminate against an employee, including an applicant for employment, in any term or condition of employment, or otherwise penalize a person, including termination, based on the person's use of cannabis off the job and away from the workplace, or on a drug screening which finds that the person has nonpsychoactive cannabis metabolites in the applicant's hair, blood, urine, or other bodily fluid. However, the district retains the right to maintain drug-free schools or prohibit employees from possessing, being impaired by, or using cannabis while on the job. (Government Code 12954)

CSBA NOTE: The following items illustrate unlawful discriminatory practices as specified in Government Code 12940.

Labor Code 1197.5 prohibits the payment of different wage rates to employees for similar work based on sex, race, or ethnicity and prohibits the use of prior salary history by itself to justify any disparity in compensation under the bona fide factor exception. Labor Code 1197.5, as amended by SB 497 (Ch. 612, Statutes of 2023), creates a rebuttable presumption in favor of the employee's claim if a district retaliates against an employee within 90 days of the specified protected activity.

Discrimination in employment based on the characteristics listed above is prohibited in all areas of employment and in all employment-related practices, including the following:

1. Hiring, compensation, terms, conditions, and other privileges of employment

CSBA NOTE: When disciplining an employee, the district must ensure that all the surrounding facts and circumstances are considered and analyzed within the parameters of any applicable constitutional or legal framework. In Kennedy v. Bremerton School District, the U.S. Supreme Court held that the district violated the employee's protected free exercise and free speech rights when the district did not rehire the employee, a coach, for refusing to follow the district's direction to refrain from kneeling and praying at the 50-yard line immediately after each football game. The district's direction was based on a concern that the employee's prayer violated the district's religious practices policy and could subject the district to an Establishment Clause violation. Notwithstanding that the prayer occurred at a school event and in the presence of students, the court reasoned that the timing and circumstances indicated that the coach's prayers were offered as a private citizen rather than as a district employee. The Court held that since the prayer occurred during a break, a period when employees would ordinarily be free to engage in personal activities such as speaking with friends, checking email, calling for restaurant reservations, etc., the district's concerns about a possible Establishment Clause violation did not justify restricting the employee's free exercise and free speech rights to offer a private, personal prayer.

In Kennedy v. Bremerton School District, the U.S. Supreme Court held that the district could not discipline an employee for non-coercive religious conduct while the employee was acting as a private citizen. Also see BP 4118 - Dismissal/Suspension/Disciplinary Action, 4218 - Dismissal/Suspension/Disciplinary Action, and BP 4119.1/4219.1/4319.1 - Civil and Legal Rights.

In Groff v. DeJoy, the U.S. Supreme Court held that Title VII's protections against religious discrimination require an employer who denies an employee's religious accommodation to show

that the burden of granting the accommodation would result in substantial increased costs in relation to the conduct of its particular business.

EEOC's April 2024, "Enforcement Guidance on Harassment in the Workplace," notes that while Title VII requires districts to accommodate an employee's sincerely held religious belief, districts are also responsible for protecting employees against unlawful harassment, including harassment motivated by religion. EEOC's guidance suggests that in order to address the dual obligations under Title VII, a district should accommodate an employee's sincerely held religious practice, unless doing so would create a hostile work environment.

In May 2023, the U.S. Department of Education issued, "Guidance on Constitutionally Protected Prayer and Religious Expression in Public Schools," which includes the extent to which prayer in public schools is legally protected, constitutional principles that relate to religious expression in general, and requirements under federal and state laws relevant to prayer and religious expression. The guidance states that, "Nothing in the First Amendment, however, converts the public schools into religion-free zones, or requires students, teachers, or other school officials to leave their private religious expression behind at the schoolhouse door." The guidance also states that employees may pray when they are not acting in their official capacity and the prayer does not result in any coercion of students.

Employee discipline, especially with respect to suspension and dismissal, involves complex legal considerations and districts are advised to consult CSBA's District and County Office of Education Legal Services or district legal counsel, accordingly.

2. Taking of adverse employment actions such as termination or denial of employment, promotion, job assignment, or training
3. Unwelcome conduct, whether verbal, physical, or visual, that is **offensive and** so severe or pervasive as to adversely affect an employee's employment opportunities or that has the purpose or effect of unreasonably interfering with the employee's work performance or creating an intimidating, hostile, or offensive work environment

CSBA NOTE: Item #4 below lists some, but not all, specific practices prohibited under Government Code 12940 or 2 CCR 11006-11086 in relation to certain protected categories. For example, because "sex" as defined in Government Code 12926 includes pregnancy, childbirth, breastfeeding, or related medical conditions, any of these conditions may be the basis for an employee's sex discrimination claim. As the specific prohibitions are too numerous to list in policy, it is recommended that **districts consult** CSBA's District and County Office of Education Legal Services or district legal counsel be consulted when questions arise as to any specific claim.

4. Actions and practices identified as unlawful or discriminatory pursuant to Government Code 12940 or 2 CCR 11006-11086, such as:
 - a.—Sex discrimination based on an employee's pregnancy, childbirth, breastfeeding, or any related medical condition or on an employee's gender, gender expression, or gender identity, including transgender status

a. Sex discrimination as specified in Board Policy and Administrative Regulation 4119.11/4219.11/4319.11 – Sex Discrimination and Sex-Based Harassment

- b. Religious creed discrimination based on an employee's religious belief or observance, including religious dress or grooming practices, or based on the district's failure or refusal to use reasonable means to accommodate an employee's religious belief, observance, or practice which conflicts with an employment requirement
- c. Requiring medical or psychological examination of a job applicant or making an inquiry into whether a job applicant has a mental or physical disability or a medical condition or as to the severity of any such disability or condition, without the showing of a job-related need or business necessity
- d. Failure to make reasonable accommodation for the known physical or mental disability of an employee or to engage in a timely, good faith, interactive process with an employee who has requested such accommodations in order to determine the effective reasonable accommodations, if any, to be provided to the employee

CSBA NOTE: Government 12940, as amended by SB 523, makes it unlawful for an employer to require disclosure of information relating to an applicant's or employee's reproductive health decisionmaking.

- e. Requiring an applicant or employee to disclose information relating to the employee's reproductive health decisionmaking decision-making

CSBA NOTE: Retaliation against complainants or other participants in the grievance procedures is prohibited by Government Code 12940 and 34 CFR 110.34. In addition to the general prohibition against retaliation, Government Code 12940 provides that an employee who requests accommodation for a physical or mental disability or religious belief is protected from retaliation as specified below. CSBA recommends that this protection be extended to all protected characteristics, as provided below.

The Board also prohibits retaliation against any district employee who opposes any discriminatory employment practice by the district or its employees, agents, or representatives or who complains, reports an incident, testifies, assists, or in any way participates in the district's complaint process pursuant to this policy. No employee who requests an accommodation for any protected characteristic listed in this policy shall be subjected to any punishment or sanction, regardless of whether the request was granted. (Government Code 12940; 2 CCR 11028)

CSBA NOTE: Pursuant to Government Code 12964.5, the district is prohibited from requiring an employee, in exchange for a raise or bonus or as a condition of employment or continued employment, to sign a nondisparagement agreement or similar document that would deny the employee the right to disclose information about unlawful acts in the workplace or requiring an employee to release the right to file a claim or civil action against the district.

Pursuant to Government Code 12964.5, the above prohibition applies not only to claims or complaints of ~~sexual~~ sex-based harassment or sexual assault, but to those involving harassment or discrimination based on any protected characteristic and to other unlawful employment practices under FEHA.

No employee shall, in exchange for a raise or bonus or as a condition of employment or continued employment, be required to sign a release of the employee's claim or right to file a claim against the district or a nondisparagement agreement or other document that has the purpose or effect of preventing the employee from disclosing information about harassment, discrimination, or other unlawful acts in the workplace, including any conduct that the employee has reasonable cause to believe is unlawful. (Government Code 12964.5)

CSBA NOTE: Pursuant to 34 CFR 106.11 and 106.44, as amended by 89 Fed. Reg. 33474, a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, is required to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct. As such a complaint may also fall within the complaint process as specified in the accompanying administrative regulation, it is unclear whether districts would additionally be required to follow the procedures specified in the accompanying administrative regulation. Due to this uncertainty, it is recommended that districts consult CSBA's District and County Office of Education Legal Services or district legal counsel prior to utilizing such a complaint process for this purpose. For more information regarding the Title IX grievance procedures, see AR 4119.12/4219.12/4319.12 – Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

Complaints concerning employment discrimination, harassment, or retaliation shall immediately be investigated in accordance with procedures specified in the accompanying administrative regulation. However, complaints alleging sex discrimination under Title IX shall be investigated and resolved in accordance with the procedures specified in 34 CFR 106.44 and 106.45 and Administrative Regulation 4119.12/4219.12/4319.12 – Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

CSBA NOTE: Pursuant to 2 CCR 11019, in certain instances, an employee's (especially a supervisor's) knowledge or notice of prohibited conduct of another employee or individual may subject the district to liability. Therefore, it is recommended that the district require its employees with knowledge of harassment or discrimination to report the incident to the appropriate district authorities. In addition, Government Code 12940 provides that a district may be responsible for harassment of employees by nonemployees when the district knows or should have known of the conduct and failed to take immediate and corrective action, taking into consideration the extent of the district's control and other legal responsibility that the district may have with respect to the conduct of those nonemployees. See also BP/AR 4119.11/4219.11/4319.11 - ~~Sexual~~ Sex Discrimination and Sex-Based Harassment.

See the accompanying administrative regulation for requirements related to the identification of the employee who will be responsible for compliance with nondiscrimination laws.

The following paragraph should be revised to reflect the district's timeline.

Any supervisory or management employee who observes or has knowledge of an incident of prohibited discrimination or harassment, including harassment of an employee by a nonemployee, shall report the incident to the Superintendent or designated district coordinator ~~as soon as practical after the incident.~~ within one workday. All other employees are encouraged to ~~shall~~ report such incidents to their supervisor ~~immediately.~~ or designated district coordinator within one workday.

CSBA NOTE: Government Code 12940 and 2 CCR 11023 require districts to take all reasonable steps to prevent prohibited discrimination and harassment, including, but not limited to, dissemination of the district's policy on the prevention of harassment, discrimination, and retaliation. Government Code 12950 and 2 CCR 11049 require districts to post, in prominent and accessible locations on district premises, posters developed by the California Civil Rights Department (CRD), formerly the Department of Fair Employment and Housing (DFEH), which are available on CRD's ~~web site~~ website. In addition, Executive Order 11246 requires contractors and subcontractors who hold a single federal contract or subcontract in excess of \$10,000, or who hold contracts or subcontracts with the federal government in any 12-month period that have a total value of more than \$10,000, to display the U.S. Equal Employment Opportunity Commission EEOC's "Know Your Rights: Workplace Discrimination is Illegal" poster in conspicuous places available to employees and applicants for employment and representatives of each labor union with which the covered contractor or subcontractor has a collective bargaining agreement.

EEOC's April 2024, "Enforcement Guidance on Harassment in the Workplace," provides for components of effective training, including that it (1) explains the district's anti-harassment policy, complaint process, and confidentiality and anti-retaliation protections, (2) describes and provides examples of prohibited conduct under the policy, (3) provides information about employees' rights if they experience, observe, become aware of, or report prohibited conduct, (4) provides supervisors with information about how to prevent, identify, stop, report, and correct harassment, with clear instructions for addressing and reporting harassment, (5) is tailored to the workplace and workforce, (6) is provided on a regular basis to all employees, and (7) is provided in a clear and easily understood format.

For further information on prevention strategies, including posting requirements, see the accompanying administrative regulation.

The Superintendent or designee shall use all appropriate means to reinforce the district's nondiscrimination policy, including providing training and information to employees about how to recognize harassment, discrimination, or other prohibited conduct, how to respond appropriately, and components of the district's policies and regulations regarding discrimination. The Superintendent or designee shall regularly review the district's employment practices and, as necessary, shall take action to ensure district compliance with the nondiscrimination laws.

Any district employee who engages in prohibited discrimination, harassment, or retaliation or who aids, abets, incites, compels, or coerces another to engage or attempt to engage in such behavior in violation of this policy shall be subject to disciplinary action, up to and including dismissal.

CSBA NOTE: Government Code 12946 makes it an unlawful employment practice for a district to fail to maintain certain records and files for employees, applicants, and terminated employees, as provided in the following paragraph.

The district shall maintain and preserve all applications, personnel, membership, or employment referral records and files for at least four years after the records are initially created or received or, for an applicant or a terminated employee, for four years after the date the employment action was taken. However, when the district is notified that a complaint has been filed with the California Civil Rights Department, records related to the employee involved shall be maintained and preserved until the later of the first date after the time for filing a civil action has expired or the first date after the complaint has been fully and finally disposed of and all administrative proceedings, civil actions, appeals, or related proceedings have been terminated. (Government Code 12946)

Policy Reference UPDATE Service

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Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State	Description
2 CCR 11006-11086	Discrimination in employment
2 CCR 11023	Harassment and discrimination prevention and correction
2 CCR 11024	Required training and education on harassment based on sex, gender identity and expression, and sexual orientation
2 CCR 11027-11028	National origin and ancestry discrimination
5 CCR 4900-4965	Nondiscrimination in elementary and secondary educational programs receiving state or federal financial assistance
CA Constitution Article 1, Section 1	Inalienable rights
Civ. Code 51.7	Freedom from violence or intimidation
Ed. Code 200-262.4	Prohibition of discrimination
Gov. Code 11135	Prohibition of discrimination
Gov. Code 12900-12996	Fair Employment and Housing Act
Gov. Code 12940- 12952 12954	Unlawful employment practices
Gov. Code 12960-12976	Unlawful employment practices; complaints
Labor Code 79-107	Division of Labor Standards Enforcement
Labor Code 1030-1034	Lactation accommodation
Labor Code 1197.5	Wages, hours and working conditions
Pen. Code 422.56	Definitions; hate crimes
Federal	Description
20 USC 1681-1688	Title IX of the Education Amendments of 1972; discrimination based on sex
28 CFR 35.101-35.190	Americans with Disabilities Act
29 USC 218d	Fair Labor Standards Act; Providing Urgent Maternal Protections for Nursing Mothers (PUMP) Act
29 USC 621-634	Age Discrimination in Employment Act
29 USC 794	Rehabilitation Act of 1973; Section 504
42 USC 2000gg-2000gg-6	Pregnant Workers Fairness Act

29 CFR 1636

34 CFR 100.6

34 CFR 104.7

34 CFR 104.8

34 CFR 106.81-106.82

34 CFR 110.1-110.39

42 USC 12101-12213

42 USC 2000d-2000d-7

42 USC 2000e-2000e-17

42 USC 2000ff-2000ff-11

42 USC 2000h-2-2000h-6

42 USC 6101-6107

Executive Order 11246

U.S. Constitution, First Amendment

Management Resources

CA Civil Rights Department Publication

CA Civil Rights Department Publication

CA Civil Rights Department Publication

CA Civil Rights Department Publication

Implementation of the Pregnant Workers Fairness Act

Title VI; Compliance information

Section 504; Designation of responsible employee and adoption of grievances procedures

Notice of Nondiscrimination on the Basis of Handicap

Designation of coordinator; dissemination of policy, and adoption of grievance procedures Discrimination on the basis of sex; effectuating Title IX

Nondiscrimination on the basis of age

Americans with Disabilities Act

Title VI, Civil Rights Act of 1964

Title VII, Civil Rights Act of 1964, as amended

Genetic Information Nondiscrimination Act of 2008

Title IX of the Civil Rights Act of 1964

Age discrimination in federally assisted programs

"Know Your Rights: Workplace Discrimination is Illegal" poster
Equal Employment Opportunity
(<https://www.dol.gov/agencies/ofccp/executive-order-11246/as-amended>)

Amendment 1; Free exercise, free speech, and establishment clauses

Description

Family Care and Medical Leave and Pregnancy Disability Leave, January 2023 (https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2023/01/CFRA-and-Pregnancy-Leave_ENG.pdf)

California Law Prohibits Workplace Discrimination and Harassment, January 2024

Transgender Rights in the Workplace
The Rights of Employees Who Are Transgender or Gender Nonconforming: Fact Sheet, November 2022 (https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2022/11/The-Rights-of-Employees-who-are-Transgender-or-Gender-Nonconforming-Fact-Sheet_ENG.pdf)

Harassment Prevention Guide for California Employers, 2017 (<https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2017/06/DFEH-Workplace-Harassment-Guide-1.pdf>)

CA Civil Rights Department Publication	Your Rights and Obligations as a Pregnant Employee, <u>January 2023</u> (https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2023/01/Your-Rights-and-Obligations-as-a-Pregnant-Employee_ENG.pdf)
<u>CA Civil Rights Department Publication</u>	<u>Sexual Harassment, January 2023</u> (https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2022/12/Sexual-Harassment-Poster_ENG.pdf)
<u>Court Decision</u>	<u>Groff v. DeJoy (2023) 600 U.S. 447</u>
Court Decision	Kennedy v. Bremerton (2022) 142 S.Ct. 2407
Court Decision	Shephard v. Loyola Marymount (2002) 102 Cal.App. 4th 837
Court Decision	Thomson v. North American Stainless LP (2011) 62 U.S. 170
<u>Court Decision</u>	<u>Faragher-Ellerth v. City of Boca Raton (1998) 524 U.S. 775</u>
<u>Court Decision</u>	<u>Burlington Industries, Inc v. Ellerth (1998) 524 U.S. 742</u>
U.S. DOE Office for Civil Rights Publication	<u>Notice of Non-Discrimination, August 2010</u> <u>Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools, May 2023</u> (https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html)
<u>Federal Register</u>	<u>Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, April 29, 2024, Vol. 89, No. 83, pages 33474-33896</u> (https://www.federalregister.gov/documents/2024/04/29/2024-07915/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal)
U.S. Equal Employment Opportunity Comm Publication	Know Your Rights: Workplace Discrimination is Illegal, October 2022 <u>June 2023</u> (https://www.eeoc.gov/poster)
U.S. Equal Employment Opportunity Comm Publication	Enforcement Guidance: Vicarious Employer Liability for Unlawful <u>on</u> Harassment by Supervisors, June 1999 <u>in the Workplace, April 2024</u> (https://www.eeoc.gov/laws/guidance/enforcement-guidance-harassment-workplace)
U.S. Equal Employment Opportunity Comm Publication	EEOC Compliance Manual (https://www.eeoc.gov/guidance-subject-area)
<u>Website</u>	<u>Equal Employment Opportunity Commission</u> (https://www.eeoc.gov/)
Website	U.S. Department of Labor, Office of Federal Contract Compliance Program

Website	CSBA District and County Office of Education Legal Services
Website	California Civil Rights Department
<u>Website</u>	<u>California Department of Industrial Relations</u> <u>(https://www.dir.ca.gov/)</u>
Website	U.S. Department of Education, Office for Civil Rights
Website	U.S. Equal Employment Opportunity Commission

Cross References

Code	Description
0410	Nondiscrimination In District Programs And Activities
1113	District And School Websites
1113	District And School Websites
1113-E(1)	District And School Websites
1114	District-Sponsored Social Media
1114	District-Sponsored Social Media
1240	Volunteer Assistance
1240	Volunteer Assistance
1312.1	Complaints Concerning District Employees
1312.1	Complaints Concerning District Employees
1312.3	Uniform Complaint Procedures
1312.3	Uniform Complaint Procedures
1312.3-E(1)	Uniform Complaint Procedures
1312.3-E(2)	Uniform Complaint Procedures
1313	Civility
3312	Contracts
3530	Risk Management/Insurance
3530	Risk Management/Insurance
3580	District Records
3580	District Records
3600	Consultants
4000	Concepts And Roles
4032	Reasonable Accommodation

4033	Lactation Accommodation
4111	Recruitment And Selection
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4111.2	Legal Status Requirement
4112.4	Health Examinations
4112.41	Employee Drug Testing
4112.41	Employee Drug Testing
<u>4112.5</u>	<u>Criminal Record Check</u>
4112.6	Personnel Files
4112.8	Employment Of Relatives
4112.9	Employee Notifications
4112.9-E(1)	Employee Notifications
4113.5	Working Remotely
4114	Transfers
4118	Dismissal/Suspension/Disciplinary Action
4118	Dismissal/Suspension/Disciplinary Action
4119.1	Civil And Legal Rights
4119.11	<u>Sex Discrimination and SexualSex-Based</u> Harassment
4119.11	<u>Sex Discrimination and SexualSex-Based</u> Harassment
4119.12	Title IX <u>SexualSex Discrimination and Sex-Based</u> Harassment Complaint Procedures
4119.12-E(1)	Title IX <u>SexualSex Discrimination and Sex-Based</u> Harassment Complaint Procedures
4119.22	Dress And Grooming
4119.23	Unauthorized Release Of Confidential/Privileged Information
4119.41	Employees With Infectious Disease
4131	Staff Development
4144	Complaints
4144	Complaints
4151	Employee Compensation
4154	Health And Welfare Benefits
4154	Health And Welfare Benefits

4161.5	Military Leave
4161.8	Family Care And Medical Leave
4211	Recruitment And Selection
4211.2	Legal Status Requirement
4211.2	Legal Status Requirement
4212.4	Health Examinations
4212.41	Employee Drug Testing
4212.41	Employee Drug Testing
4212.6	Personnel Files
4212.8	Employment Of Relatives
4212.9	Employee Notifications
4212.9-E(1)	Employee Notifications
4213.5	Working Remotely
4218	Dismissal/Suspension/Disciplinary Action
4218	Dismissal/Suspension/Disciplinary Action
4218.1	Dismissal/Suspension/Disciplinary Action (Merit System)
4219.1	Civil And Legal Rights
4219.11	Sex Discrimination and Sexual Sex-Based Harassment
4219.11	Sex Discrimination and Sexual Sex-Based Harassment
4219.12	Title IX Sexual Sex Discrimination and Sex-Based Harassment Complaint Procedures
4219.12-E(1)	Title IX Sexual Sex Discrimination and Sex-Based Harassment Complaint Procedures
4219.22	Dress And Grooming
4219.23	Unauthorized Release Of Confidential/Privileged Information
4219.41	Employees With Infectious Disease
4231	Staff Development
4244	Complaints
4244	Complaints
4251	Employee Compensation
4254	Health And Welfare Benefits
4254	Health And Welfare Benefits

4261.5	Military Leave
4261.8	Family Care And Medical Leave
4311	Recruitment And Selection
4311.2	Legal Status Requirement
4311.2	Legal Status Requirement
4312.4	Health Examinations
4312.41	Employee Drug Testing
4312.41	Employee Drug Testing
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4312.8	Employment Of Relatives
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4312.9-E(1)	Employee Notifications
4313.5	Working Remotely
4319.1	Civil And Legal Rights
4319.11	Sex Discrimination and Sexual Sex-Based Harassment
4319.11	Sex Discrimination and Sexual Sex-Based Harassment
4319.12	Title IX Sexual Sex Discrimination and Sex-Based Harassment Complaint Procedures
4319.12-E(1)	Title IX Sexual Sex Discrimination and Sex-Based Harassment Complaint Procedures
4319.22	Dress And Grooming
4319.23	Unauthorized Release Of Confidential/Privileged Information
4319.41	Employees With Infectious Disease
4331	Staff Development
4344	Complaints
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4351	Employee Compensation
4354	Health And Welfare Benefits
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4361.5	Military Leave
4361.8	Family Care And Medical Leave
9000	Role Of The Board

9321

Closed Session

9321-E(1)

Closed Session

9321-E(2)

Closed Session

Regulation 4030: Nondiscrimination In Employment

Status: ADOPTED

Original Adopted Date: 12/01/2015 | Last Revised Date: 07/01/2020 2024 | Last Reviewed
Date: 07/01/2020 2024

CSBA NOTE: Pursuant to 2 CCR 11023, districts are mandated to adopt rules and regulations to ensure that district programs and activities are free from unlawful discriminatory practices. Pursuant to Government Code 12940, protections against discrimination apply to employees, job applicants, persons who serve in unpaid internship or other limited-duration programs to gain unpaid work experience, volunteers, and independent contractors.

Pursuant to 34 CFR 106.11 and 106.44, as amended by 89 Fed. Reg. 33474, a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, is required to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct. As such a complaint may also fall within the complaint process as specified in the accompanying administrative regulation, it is unclear whether districts would additionally be required to follow the procedures specified in the accompanying administrative regulation. Due to this uncertainty, it is recommended that districts consult CSBA's District and County Office of Education Legal Services or district legal counsel prior to utilizing such a complaint process for this purpose. For more information regarding the Title IX grievance procedures, see AR 4119.12/4219.12/4319.12 – Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

All allegations of discrimination in employment, including those involving an employee, job applicant, intern, volunteer, or other person contracted to provide services to the district shall be investigated and resolved in accordance with procedures specified in this administrative regulation. However, complaints alleging sex discrimination under Title IX shall be investigated and resolved in accordance with the procedures specified in 34 CFR 106.44 and 106.45 and Administrative Regulation 4119.12/4219.12/4319.12 – Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

CSBA NOTE: Many nondiscrimination laws and regulations require identification of an employee who is responsible for compliance with the nondiscrimination laws. For example, pursuant to 34 CFR 104.7, 106.8, and 110.25, the district is required to designate the person(s) responsible for the overall implementation of the requirements of federal laws which prohibit discrimination on the basis of disability, sex, and age, i.e., Section 504 of the Rehabilitation Act of 1973 (29 USC 794), Title IX of the Education Amendments of 1972 (20 USC 1681-1688), and the Age Discrimination in Employment Act (29 USC 621-634). The district should fill in the blanks below to designate the responsible employee and contact information.

34 CFR 106.8 requires the district to designate at least one district employee to coordinate its

responsibilities under Title IX, who must be referred to as the Title IX Coordinator. Thelf the district has more than one Title IX Coordinator may, it must designate one of its Title IX Coordinators to retain ultimate oversight over those responsibilities and ensure the district's consistent compliance with its responsibilities under Title IX. It is recommended that the Title IX Coordinator be the same person designated below; or and, if the district may designate wishes to separate employees to serve out these functions. See responsibilities, for one individual to designate designees and maintain oversight; see AR 4119.11/4219.11/4319.11 - Sexual - Sex Discrimination and Sex-Based Harassment. The Title IX Coordinator is responsible for receiving complaints of sexual harassment and determining whether they should be handled in accordance with the procedures specified in this administrative regulation or in accordance with AR 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures; see section on "Complaint Procedure" below.

The district designates the position identified below as its coordinator for nondiscrimination in employment (coordinator) to organize and manage the district's efforts to comply with state and federal nondiscrimination laws and to answer inquiries regarding the district's nondiscrimination policies. The coordinator may be contacted at:

(position title)

(address)

(telephone number)

(email)

*Assistant Principal Chief Business Off
or Designee*
15305 Rockwood Rd, Escondido, CA
9202
760.745.4931
spusde@spusdunion.net

Measures to Prevent Discrimination

CSBA NOTE: Pursuant to Government Code 12940 and 2 CCR 11023, the district is required to take all reasonable steps to prevent unlawful discrimination and harassment. 2 CCR 11023 specifies certain requirements to be included in the district's policy.

The following section reflects the requirements of 2 CCR 11023 and other applicable laws or regulations, as indicated.

To prevent unlawful discrimination, harassment, and retaliation in district employment, the Superintendent or designee shall implement the following measures:

CSBA NOTE: Pursuant to Government Code 12950 and 2 CCR 11049, districts are required to post the California Civil Rights Department (CRD), formerly the Department of Fair Employment and Housing (DFEH), posters, "California Law Prohibits Workplace Discrimination and Harassment," "Sexual Harassment," "The Rights of Employees Who Are Transgender or Gender Nonconforming," "Your Rights and Obligations as a Pregnant Employee," and "Family Care and Medical Leave and Pregnancy Disability Leave," as provided in Item #1. CRD rules require that

these materials be posted electronically and in every location where the district has employees (e.g., district office, hiring office, each school site). These posters and the rules for posting are available on CRD's ~~web site~~ [website](#). Also see AR 4161.8/4261.8/4361.8 - Family Care and Medical Leave.

In addition, Executive Order 11246 requires contractors and subcontractors who hold a single federal contract or subcontract in excess of \$10,000, or who hold contracts or subcontracts with the federal government in any 12-month period that have a total value of more than \$10,000, to display the U.S. Equal Employment Opportunity Commission (EEOC) "Know Your Rights: Workplace Discrimination is Illegal" poster in conspicuous places available to employees and applicants for employment and representatives of each labor union with which the covered contractor or subcontractor has a collective bargaining agreement. The poster and rules for posting are available on EEOC's ~~web site~~ [website](#).

1. Display in a prominent and accessible location at every work site where the district has employees, and post electronically in a conspicuous location on computers for employee use, up-to-date California Civil Rights Department (CRD) posters on the prohibition of workplace discrimination and harassment, [including sex-based harassment](#), the rights of transgender employees, and the rights and obligations of employees who are pregnant, have a related medical condition, or are recovering from childbirth (Government Code 12950; 2 CCR 11013, 11023, 11049)
2. Publicize the district's nondiscrimination policy and regulation, including the complaint procedures and the coordinator's contact information, by: (5 CCR 4960; 34 CFR 100.6, 106.8)
 - a. Including them in each announcement, bulletin, or application form that is used in employee recruitment
 - b. Posting them in all district schools and offices, including staff lounges and other prominent locations
 - c. Posting them on the district's ~~web site~~ [website](#) and providing easy access to them through district-supported social media, when available
3. Disseminate the district's nondiscrimination policy and administrative regulation to all employees by one or more of the following methods: (2 CCR 11023)
 - a. Printing and providing a copy to all employees, with an acknowledgment form for each employee to sign and return

- b. Sending a copy via email with an acknowledgment return form
- c. Posting a copy on the district intranet with a tracking system ensuring all employees have read and acknowledged receipt of the policies
- d. Discussing the policy and regulation with employees upon hire and/or during a new hire orientation session
- e. Any other way that ensures employees receive and understand the policy

CSBA NOTE: Pursuant to Title IX and its implementing regulation 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, districts are required to provide a notice of nondiscrimination on the basis of sex, as specified below.

- 4. Post in a prominent location on the district's website and include in each handbook, catalog, announcement, bulletin, and application form for students, parents/guardians or other authorized legal representative, and employees, the Title IX notice of nondiscrimination which includes the following: (34 CFR 106.8)
 - a. The district does not discriminate on the basis of sex in any education program or activity that it operates
 - b. Inquiries about the application of Title IX may be referred to the district's Title IX Coordinator and/or the U.S. Department of Education Office for Civil Rights
 - c. The name or title, office and email address, and telephone number of the district's Title IX Coordinator
 - d. How to locate the district's nondiscrimination policy and the district's grievance procedures for Title IX complaints
 - e. How to report conduct that may constitute sex discrimination under Title IX
 - f. How to make a complaint of Title IX sex discrimination

If necessary due to the format or size of any publication specified above, the district may include only the statement that the district prohibits sex discrimination in any education program or activity that it operates, that individuals may report concerns or questions to the Title IX Coordinator, and the location of the complete notice on the district's website.

The district shall not distribute a publication stating that the district treats students, employees or applicants differently on the basis of sex, unless such treatment is permitted by Title IX.

- 4. 5. Provide to employees a handbook which contains information that clearly describes the district's nondiscrimination policy, procedures for filing a complaint, and resources

available to employees who believe they have been the victim of any discriminatory or harassing behavior

CSBA NOTE: Optional item #5 ~~Item #6~~ below provides for training regarding the district's discrimination policy and reporting procedures. Title IX, and its implementing regulation 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, requires specified training related to sex discrimination for all district employees, as well as additional training for (1) investigators, decisionmakers, and other persons who are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures, (2) facilitators of an informal resolution process, and (3) the Title IX Coordinator(s) and designees. For requirements specifically pertaining to sexual ~~sex~~ sex discrimination and sex-based harassment training, see AR 4119.11/4219.11/4319.11 - ~~Sexual~~ Sex Discrimination and Sex-Based Harassment.

- 5- 6. Provide training regarding the district's nondiscrimination policy, including what constitutes unlawful discrimination, harassment, and retaliation and how and to whom a report of an incident should be made, as well as any additional training as specified in 34 CFR 106.8 related to the prohibition of Title IX sex discrimination

The district may also provide bystander intervention training to employees ~~which~~ that includes information and practical guidance on how to recognize potentially problematic behaviors and which may motivate them to take action when they observe such behaviors. The training and education may include exercises to provide employees with the skills and confidence to intervene as appropriate and to provide them with resources they can call upon that support their intervention. (Government Code 12950.2)

- 6- 7. Periodically review the district's recruitment, hiring, and promotion processes and regularly monitor the terms, conditions, and privileges of employment to ensure district compliance with law
and Board Policy 4111 - Recruitment and Selection
- 7- 8. For any district facility where 10 percent of employees have a language other than English as their spoken language, translate the policy into every language spoken by at least 10 percent of the workforce (2 CCR 11023)

Complaint Procedure

CSBA NOTE: 2 CCR 11023 mandates that a district's policy include a complaint process with specified requirements. Some of the requirements of 2 CCR 11023 are similar to those required under existing case law.

Courts have In Faragher-Ellerth v. City of Boca Raton and Burlington Industries, Inc v. Ellerth, the Supreme Court held that liability may be mitigated for hostile environment employment discrimination when (1) the employer took reasonable care to prevent and promptly correct the discriminatory or harassing conduct (i.e., provided a complaint procedure) and (2) the aggrieved employee unreasonably failed to take advantage of corrective opportunities offered by the employer (i.e., failure to file a complaint).

In its June 1999 April 2024, "Enforcement Guidance: Vicarious Employer Liability for Unlawful on Harassment by Supervisors in the Workplace," EEOC outlines the elements of an effective complaint procedure to include (1) a clear explanation of the process; (2) protection against retaliation; (3) designation of multiple individuals authorized to receive complaints; (4) a mechanism for including (1) prompt, thorough, and impartial investigation; (5) assurance of immediate effective investigations and appropriate corrective action; (2) adequate confidentiality protections, and (6) information about time frames for filing charges with EEOC or CRD.

3) adequate anti-retaliation protections. While EEOC's guidance recommends a "prompt" investigation, neither the law nor EEOC delineates a specific time frame for resolution. EEOC's guidance acknowledges that whether an investigation is considered "prompt" is fact-sensitive and may vary depending on the seriousness nature and complexity severity of the circumstances alleged harassment and reasons for the delay, and that intermediate measures may be necessary to prevent further harassment during the investigation. The following section, including the listed timelines, is consistent with EEOC's guidance and should be modified to reflect district practice.

In lieu of using the procedures described below, complaints of sexual harassment must be addressed through the federal Title IX complaint procedures established pursuant to 34 CFR 106.44-106.45 if the alleged conduct meets the federal definition of sexual harassment. Pursuant to 34 CFR 106.30, Title IX sexual harassment includes (1) a district employee conditioning the provision of a district aid, benefit, or service on an individual's participation in unwelcome sexual conduct; (2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity; or (3) sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 and 34 USC 12291. See BP/AR 4119.11/4219.11/4319.11 - Sexual Harassment and AR 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures.

Complaints of sexual harassment shall be investigated and resolved in accordance with AR 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures if the alleged conduct meets the definition of sexual harassment pursuant to 34 CFR 106.30.

~~Any other~~ Any complaint alleging unlawful discrimination or harassment shall be addressed in accordance with the following procedures:

1. Notice and Receipt of Complaint: A complainant may inform a direct supervisor, another supervisor, the coordinator, the Superintendent or, if available, a complaint hotline or an ombudsman. The complainant's direct supervisor may be bypassed in filing a complaint when the supervisor is the subject of the complaint.

The complainant may first attempt to resolve the situation informally with the complainant's supervisor before filing a written complaint.

A supervisor or manager who has received information about an incident of discrimination or harassment, or has observed such an incident, shall report it to the coordinator, whether or not the complainant files a written complaint.

The written complaint should contain the complainant's name, the name of the individual who allegedly committed the act, a description of the incident, the date and location where the incident occurred, any witnesses who may have relevant information, any available evidence of the discrimination or harassment, and any other pertinent information which may assist in investigating and resolving the complaint.

2. **Investigation Process:** The coordinator shall initiate an impartial investigation of an allegation of discrimination or harassment within five business days of receiving notice of the alleged discriminatory or harassing behavior, regardless of whether a written complaint has been filed or whether the written complaint is complete.

The coordinator shall meet with the complainant to describe the district's complaint procedure and discuss the actions being sought by the complainant in response to the allegation. The coordinator shall inform the complainant that the investigation of the allegations will be fair, timely, and thorough and will be conducted in a manner that provides all parties due process and reaches reasonable conclusions based on the evidence collected. The coordinator shall also inform the parties that the investigation will be kept confidential to the extent possible, but that some information may be disclosed as necessary to conduct an effective investigation.

If the coordinator determines that a detailed fact-finding investigation is necessary, the investigation shall begin immediately. As part of this investigation, the coordinator should interview the complainant, the person accused, and other persons who could be expected to have relevant information.

The coordinator shall track and document the progress of the investigation to ensure reasonable progress and shall inform the parties as necessary.

When necessary to carry out the investigation or to protect employee safety, the coordinator may discuss the complaint with the Superintendent or designee, district legal counsel, or the district's risk manager.

The coordinator shall also determine whether interim measures, such as scheduling changes, transfers, or leaves, need to be taken before the investigation is completed in order to prevent further incidents. The coordinator shall ensure that such interim measures do not constitute retaliation.

3. **Written Report on Findings and Remedial/Corrective Action:** No more than 20 business days after receiving the complaint, the coordinator shall conclude the investigation and prepare a written report of the findings. This timeline may be extended for good cause. If an extension is needed, the coordinator shall notify the parties and explain the reasons for the extension.

The report shall include the decision and the reasons for the decision and shall summarize the steps taken during the investigation. If a determination has been made that discrimination or harassment occurred, the report shall also include any corrective action(s) that have been or will be taken to address the behavior, provide appropriate options for remedial actions and resolutions for the complainant, and ensure that retaliation or further discrimination or harassment is prevented. The report shall be presented to the Superintendent or designee.

A summary of the findings shall be presented to the complainant and the person accused.

4. **Appeal to the Governing Board:** The complainant or the person accused may appeal any findings to the Board within 10 business days of receiving the written report of the coordinator's findings. The Superintendent or designee shall provide the Board with all information presented during the investigation. Upon receiving an appeal, the Board shall schedule a hearing as soon as practicable. Any complaint against a district employee shall be addressed in closed session in accordance with law. The Board shall render its decision within 10 business days.

Other Remedies

CSBA NOTE: Items #1-3 below state the time limits within which complaints must be filed.

EEOC's guidance states that it is important for employers' nondiscrimination policies to contain information about timeframes for filing charges of unlawful discrimination or harassment with EEOC or CRD.

Employees should be informed that the deadline for filing charges starts to run from the last date of the unlawful act, not from the conclusion of the district's complaint investigation. Pursuant to CRD procedures, CRD will automatically forward any complaint it has accepted for investigation to EEOC when the matter falls within EEOC's jurisdiction.

In addition to filing a discrimination or harassment complaint with the district, a person may file a complaint with either CRD or the Equal Employment Opportunity Commission (EEOC). The time limits for filing such complaints are as follows:

CSBA NOTE: Pursuant to Government Code 12960, a complaint alleging employment discrimination pursuant to Government Code 12940-12952 must be filed with CRD within three years of the alleged discriminatory act(s). That period may be extended under certain circumstances. Districts should consult CSBA's District and County Office of Education Legal Services or district legal counsel if any questions arise.

1. For filing a complaint with CRD alleging a violation of Government Code 12940-12952, within three years of the alleged discriminatory act(s), unless an exception exists pursuant to Government Code 12960 (Government Code 12960)

CSBA NOTE: 42 USC 2000e-5 specifies that a person must file a discrimination complaint with EEOC within 180 days of the alleged discriminatory act. Pursuant to 42 USC 2000e-5, the 180-day timeline for compensation discrimination starts when the discriminatory paycheck is received and that each discriminatory paycheck restarts the timeline for the filing of a complaint.

2. For filing a complaint with EEOC, within 180 days of the alleged discriminatory act(s) (42 USC 2000e-5)

3. For filing a complaint with EEOC after first filing a complaint with CRD, within 300 days of the alleged discriminatory act(s) or within 30 days after the termination of proceedings by CRD, whichever is earlier (42 USC 2000e-5)

CSBA NOTE: Additional remedies may be available for violation of the PUMP Act (29 USC 218d) under the Fair Labor Standards Act, the Pregnant Workers Fairness Act (42 USC 2000gg-2), and state law pursuant to Labor Code 1030-1034 and Government Code 12925-12954. See BP 4033 – Lactation Accommodation.

An employee may also file a complaint with the Wage and Hour Division of the U.S. Department of Labor for an alleged violation of the PUMP Act and/or the Equal Employment Opportunity Commission for failure to provide reasonable accommodations pursuant to the Pregnant Workers Fairness Act. (29 USC 218c, 218d, 42 USC 2000gg-2)

Additionally, an employee may file a complaint with the Labor Commissioner at the California Department of Industrial Relations for any alleged violation of Labor Code 1030-1034. (Labor Code 1034)

Policy Reference UPDATE Service

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Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State	Description
2 CCR 11006-11086	Discrimination in employment
2 CCR 11023	Harassment and discrimination prevention and correction
2 CCR 11024	Required training and education on harassment based on sex, gender identity and expression, and sexual orientation
2 CCR 11027-11028	National origin and ancestry discrimination
5 CCR 4900-4965	Nondiscrimination in elementary and secondary educational programs receiving state or federal financial assistance
CA Constitution Article 1, Section 1	Inalienable rights
Civ. Code 51.7	Freedom from violence or intimidation
Ed. Code 200-262.4	Prohibition of discrimination
Gov. Code 11135	Prohibition of discrimination
Gov. Code 12900-12996	Fair Employment and Housing Act
Gov. Code 12940- 12952 12954	Unlawful employment practices

Gov. Code 12960-12976

Labor Code 79-107

Labor Code 1030-1034

Labor Code 1197.5

Pen. Code 422.56

Federal

20 USC 1681-1688

28 CFR 35.101-35.190

29 USC 218d

29 USC 621-634

29 USC 794

42 USC 2000gg-2000gg-6

29 CFR 1636

34 CFR 100.6

34 CFR 104.7

34 CFR 104.8

34 CFR 106.81-106.82

34 CFR 110.1-110.39

42 USC 12101-12213

42 USC 2000d-2000d-7

42 USC 2000e-2000e-17

42 USC 2000ff-2000ff-11

42 USC 2000h-2-2000h-6

42 USC 6101-6107

Executive Order 11246

Unlawful employment practices; complaints

Division of Labor Standards Enforcement

Lactation accommodation

Wages, hours and working conditions

Definitions; hate crimes

Description

Title IX of the Education Amendments of 1972;
discrimination based on sex

Americans with Disabilities Act

Fair Labor Standards Act; Providing Urgent Maternal
Protections for Nursing Mothers (PUMP) Act

Age Discrimination in Employment Act

Rehabilitation Act of 1973; Section 504

Pregnant Workers Fairness Act

Implementation of the Pregnant Workers Fairness Act

Title VI; Compliance information

Section 504; Designation of responsible employee and
adoption of grievances procedures

Notice of Nondiscrimination on the Basis of Handicap

~~Designation of coordinator; dissemination of policy; and
adoption of grievance procedures~~Discrimination on the basis
of sex; effectuating Title IX

Nondiscrimination on the basis of age

Americans with Disabilities Act

Title VI, Civil Rights Act of 1964

Title VII, Civil Rights Act of 1964, as amended

Genetic Information Nondiscrimination Act of 2008

Title IX of the Civil Rights Act of 1964

Age discrimination in federally assisted programs

"Know Your Rights: Workplace Discrimination is Illegal"
posterEqual Employment Opportunity

	https://www.dol.gov/agencies/ofccp/executive-order-11246/as-amended
U.S. Constitution, First Amendment	Amendment 1 ; Free exercise, free speech, and establishment clauses
Management Resources	Description
CA Civil Rights Department Publication	Family Care and Medical Leave and Pregnancy Disability Leave, January 2023 (https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2023/01/CFRA-and-Pregnancy-Leave_ENG.pdf)
CA Civil Rights Department Publication	California Law Prohibits Workplace Discrimination and Harassment, January 2024
CA Civil Rights Department Publication	Transgender Rights in the Workplace The Rights of Employees Who Are Transgender or Gender Nonconforming: Fact Sheet, November 2022 (https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2022/11/The-Rights-of-Employees-who-are-Transgender-or-Gender-Nonconforming-Fact-Sheet_ENG.pdf)
CA Civil Rights Department Publication	Harassment Prevention Guide for California Employers, 2017 (https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2017/06/DFEH-Workplace-Harassment-Guide-1.pdf)
CA Civil Rights Department Publication	Your Rights and Obligations as a Pregnant Employee, January 2023 (https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2023/01/Your-Rights-and-Obligations-as-a-Pregnant-Employee_ENG.pdf)
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Court Decision	Thomson v. North American Stainless LP (2011) 62 U.S. 170
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Court Decision	Burlington Industries, Inc v. Ellerth (1998) 524 U.S. 742

U.S. DOE Office for Civil Rights
Publication

Federal Register

U.S. Equal Employment Opportunity
Comm Publication

U.S. Equal Employment Opportunity
Comm Publication

U.S. Equal Employment Opportunity
Comm Publication

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(<https://www.federalregister.gov/documents/2024/04/29/2024-07915/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>)

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Enforcement Guidance: Vicarious Employer Liability for Unlawful on Harassment by Supervisors, June 1999 in the Workplace, April 2024 (<https://www.eeoc.gov/laws/guidance/enforcement-guidance-harassment-workplace>)

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Equal Employment Opportunity Commission
(<https://www.eeoc.gov/>)

U.S. Department of Labor, Office of Federal Contract
Compliance Program

CSBA District and County Office of Education Legal Services

California Civil Rights Department

California Department of Industrial Relations
(<https://www.dir.ca.gov/>)

U.S. Department of Education, Office for Civil Rights

U.S. Equal Employment Opportunity Commission

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Nondiscrimination In District Programs And Activities

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4119.11	Sex Discrimination and Sexual <u>Sex-Based</u> Harassment
4119.12	Title IX Sexual <u>Sex Discrimination and Sex-Based</u> Harassment Complaint Procedures
4119.12-E(1)	Title IX Sexual <u>Sex Discrimination and Sex-Based</u> Harassment Complaint Procedures
4119.22	Dress And Grooming
4119.23	Unauthorized Release Of Confidential/Privileged Information
4119.41	Employees With Infectious Disease
4131	Staff Development
4144	Complaints
4144	Complaints
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4219.1	Civil And Legal Rights
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4313.5	Working Remotely
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9321-E(1)

1001 Closed Session

9321-E(2)

1002 Closed Session

Policy 4033: Lactation Accommodation

Status: ADOPTED

Original Adopted Date: 07/01/2011 | **Last Revised Date:** 12/07/01/2019 2024 | **Last Reviewed**
Date: 12/07/01/2019 2024

CSBA NOTE: Pursuant to Labor Code 1034, as added by SB 142 (Ch. 720, Statutes of 2019), districts are mandated to develop policy regarding lactation accommodation with specified components, as provided below.

Both federal and state law require that employees be provided reasonable break time and an appropriate location to accommodate their desire to express breast milk for their infant children. Title IX (20 USC 1681-1688), and its implementing regulation 34 CFR 106.57, as amended by 89 Fed. Reg. 33474, require districts to provide reasonable break time for employees to express breast milk or breastfeed, and to ensure that employees have access to a lactation space, as specified. Additionally, the Providing Urgent Maternal Protections for Nursing Mothers (PUMP) Act (29 USC 207218d) requires employers to provide reasonable break time for nursing employees, but applies only to employees who are not exempt from the overtime pay requirements of to express breast milk for one year after the Fair Labor Standards Act (FLSA)-child's birth, and to ensure that employees have access to a lactation space, as specified. In addition, the Pregnant Workers Fairness Act (PWFA) (42 USC 2000gg-2000gg-6) requires employers to provide reasonable accommodation to employees due to pregnancy, childbirth, or related medical conditions, including lactation. State law (Labor Code 1030-1034); Government Code 12925-12954) also applies to all district employees. Where provisions of the ~~two~~ laws conflict, the statute providing greater protections for employees supersedes. The district should consult CSBA's District and County Office of Education Legal Services or district legal counsel if questions arise about the application of these conflicting laws to a particular employee.

Government Code 12926 includes breastfeeding or medical conditions related to breastfeeding within the definition of "sex" for purposes of sex discrimination under the California Fair Employment and Housing Act. Additionally, ~~Labor Code 1033~~ 34 CFR 106.10, as amended by ~~SB 142~~ 89 Fed. Reg. 33474, provides that "sex" for purposes of sex discrimination under Title IX includes lactation and related medical conditions or recovery. In addition, Labor Code 1033 prohibits an employer from discharging, or in any manner discriminating or retaliating against, an employee for exercising or attempting to exercise any right related to lactation accommodation. Pursuant to Labor Code 1033, violation of Labor Code 1030-1034 may result in a citation from the Labor Commissioner and/or a civil penalty.

Districts are required to prohibit retaliation when a right or privilege secured by Title IX is interfered with, including when a person reported possible sex discrimination, made a sex-discrimination complaint, or participated or refused to participate in any way in the district's Title IX process. Pursuant to 34 CFR 106.71, as amended by 89 Fed. Reg. 33474, when the district has information about conduct that reasonably may constitute retaliation under Title IX, the district is required to respond to such conduct using the procedures used for other forms of sex discrimination as specified in 34 CFR 106.44 and 106.45; see AR/E(1) 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

The district should ensure consistency of this policy with provisions in the district's collective bargaining agreement, if any, related to break times or other employment issues.

The Governing Board recognizes the immediate and long-term health benefits of breastfeeding and desires to provide a supportive environment for any district employee to express **breast** milk for an infant child upon returning to work following the birth of the child. The Board prohibits discrimination, harassment, and/or retaliation against any district employee for seeking an accommodation to express breast milk for an infant child while at work.

CSBA NOTE: Labor Code 1034, as added by SB 142, mandates that the district's policy regarding lactation accommodation include the process by which the employee is to make a lactation accommodation request and the district's obligation to respond to the request. The following paragraph should be modified to reflect the district's process.

For more information regarding workplace accommodations, see AR 4032 – Reasonable Accommodation and for temporary assignments, see BP 4113.4/4213.4/4313.4 – Temporary Modified/Light-Duty Assignment.

An employee shall notify the employee's supervisor or other appropriate **personnel district administrator** in advance of the intent to request an accommodation. The supervisor **or appropriate district administrator** shall respond to the request and shall work with the employee to make arrangements. If needed, the supervisor **or appropriate district administrator** shall address scheduling in order to ensure that the employee's essential job duties are covered during the break time.

CSBA NOTE: Pursuant to Labor Code 1032, all districts are required to grant lactation accommodation except when granting the accommodation would "seriously disrupt" district operations. "Serious disruption" is not defined in the law.

Additionally, the PUMP Act (29 USC 218d) and Labor Code 1031, as amended by SB 142, provides **provide** an exception for districts with fewer than 50 employees when lactation accommodation would result in "undue hardship" based on significant difficulty or expense in relation to the size, financial resources, nature, or structure of the district. When suchIn addition, the PWFA (42 USC 2000gg-1) applies to districts with 15 or more employees, but provides an exception for accommodations that would impose an "undue hardship." When a district is able to demonstrate undue hardship, Labor Code 1031 only requires that reasonable efforts be made to provide the employee with the use of a room or other location in close proximity to the employee's work area for the employee to express **breast** milk in private. Pursuant to Labor Code 1031, the provided room or location may not be a toilet stall.

Regardless of the size of the district, the determination of serious disruption or undue hardship should be made on a case-by-case basis and only in limited, stringent circumstances. The burden of demonstrating why accommodation could not be made, even if on a temporary basis or for less time than requested, would likely fall to the district.

Lactation accommodations shall be granted unless limited circumstances exist as specified in law. (Labor Code 1031, 1032; 29 USC 207**218d**, **42 USC 2000gg-1**)

CSBA NOTE: Labor Code 1034, as added by SB 142, mandates that the district's policy include a statement that the district provide a written response to an employee if the district is unable to comply with the break time or location requirements.

34 CFR 106.57, as amended by 89 Fed. Reg. 33474, requires the district to provide "reasonable" break time for an employee to express breast milk or breastfeed, but does have any qualification related to the requirement to provide a lactation space. Additionally, it would be unlikely that a district would have a valid reason to deny a lactation accommodation pursuant to the PWFA. Thus, districts should proceed with caution before denying a lactation accommodation, and consult CSBA's District and County Office of Education Legal Services or district legal counsel as necessary.

Before a determination is made to deny lactation accommodations to an employee, the employee's supervisor shall consult with the Superintendent or designee. When lactation accommodations are denied, the Superintendent or designee shall document the options that were considered and the reasons for denying the accommodations.

The Superintendent or designee shall provide a written response to any employee who was denied the accommodation(s). (Labor Code 1034)

CSBA NOTE: Labor Code 1034, as added by SB 142, mandates that the district's policy regarding lactation accommodation be distributed to employees as provided in the following paragraph.

Additionally, pursuant to 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, the district's policy regarding the prohibition of sex discrimination, which includes lactation and related conditions, is required to be published, and the district's notice of nondiscrimination on the basis of sex is required to be posted on the district's website and appear in each handbook, catalog, announcement, bulletin, and application that the district makes available to employees and applicants for employment.

The district shall include this policy in its employee handbook or in any set of policies that the district makes available to employees. In addition, the Superintendent or designee shall distribute the policy to new employees upon hire and when an employee makes an inquiry about or requests parental leave. (Labor Code 1034)

Break Time and Location Requirements

CSBA NOTE: Although the PUMP Act (29 USC 207218d) limits the length of time that a classified employee is entitled to lactation accommodation to one year after the birth of the child, Labor Code 1030 ~~does~~ and the PWFA (42 USC 2000gg-1) do not set a specific limit on the infant child's age and therefore provides greater benefits to employees.

Additionally, 34 CFR 106.57, as amended by 89 Fed. Reg. 33474, which requires districts to provide reasonable break time for an employee to express breast milk or breastfeed, does not specify a duration of time from birth of the child.

The district shall provide a reasonable amount of break time to accommodate an employee each time the employee has a need to express breast milk for an infant child. (Labor Code 1030; 42 USC 2000gg-1; 34 CFR 106.57)

CSBA NOTE: Labor Code 1030 and the PUMP Act (29 USC 207218d) do not require the district to compensate non-exempt employees for breaks taken for the purpose of expressing breast milk. However, an employee who uses break time already provided by the district as paid time must be compensated for that break time in the same manner as any other employee. Any additional time beyond the authorized paid break time could be uncompensated, provided the employee is completely relieved from duty during that time. If the district instead chooses to provide compensation for such additional break time, it should modify the following paragraph accordingly. The district also may provide flexible scheduling for those employees who choose to work extra time to make up for any uncompensated break time beyond the authorized break time.

To the extent possible, any break time granted for lactation accommodation shall run concurrently with the break time already provided to the employee. Any additional break time used by a non-exempt employee for this purpose shall be unpaid. (Labor Code 1030; 29 USC 207218d)

CSBA NOTE: Labor Code 1031, as amended by SB 142, requires the district to provide an employee with the use of a room or location, other than a bathroom, to express breast milk in private. This may include the place where the employee normally works if the location otherwise meets legal requirements, as specified below. Labor Code 1031 authorizes the district to designate a temporary location to express breast milk if the district is unable to provide a permanent location due to operational, financial, or space limitation, as long as the space is in close proximity to the employee's work area, shielded from view, free from intrusion while breast milk is being expressed, and is otherwise compliant with law.

Additionally, the PUMP Act (29 USC 218d) and Title IX (34 CR 106.57, as amended by 89 Fed. Reg. 33474) require the district to ensure that an employee can access a lactation space, other than a bathroom, that is clean, shielded from view, and free from intrusion from others.

The employee shall be provided a lactation space which may be used by the use of employee for expressing breast milk or breastfeeding as needed. The lactation space shall be a private room or location, other than a bathroom, which may be the employee's work area or another location that is in close proximity to the employee's work area. ~~The room or location provided,~~ and shall meet the following requirements: (Labor Code 1031; 29 USC 207218d; 34 CFR 106.57)

1. Is shielded from view and free from intrusion while the employee is expressing breast milk
2. Is safe, clean, and free of hazardous materials, as defined in Labor Code 6382
3. Contains a place to sit and a surface to place a breast pump and personal items
4. Has access to electricity or alternative devices, including, but not limited to, extension cords or charging stations, needed to operate an electric or battery-powered breast pump
5. Has access to a sink with running water and a refrigerator or, if a refrigerator cannot be provided, another cooling device suitable for storing breast milk in close proximity to the employee's workspace

If a multipurpose room is used for lactation, among other uses, the use of the room for lactation shall take precedence over other uses for the time it is in use for lactation purposes. (Labor Code 1031)

Dispute Resolution

CSBA NOTE: The following paragraph is mandated pursuant to Labor Code 1034, as added by SB 142. **CSBA NOTE:** Pursuant to 34 CFR 106.11 and 106.44, as amended by 89 Fed. Reg. 33474, a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, is required to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct. As such a complaint may also fall within the complaint process as specified in AR 4030 - Nondiscrimination in Employment, it is unclear whether districts would additionally be required to follow the procedures specified in AR 4030 - Nondiscrimination in Employment. Due to this uncertainty, it is recommended that districts consult CSBA's District and County of Office Education Legal Services or district legal counsel prior to utilizing such a complaint process for this purpose. For more information regarding the Title IX grievance procedures, see AR 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

Additional remedies may be available for violation of the PUMP Act (29 USC 218d) under the Fair Labor Standards Act, the PWFA (42 USC 2000gg-2), and state law pursuant to Labor Code 1030-1034 and Government Code 12925-12954.

Ar Complaints alleging sex discrimination under Title IX shall be investigated and resolved in accordance with the procedures specified in 34 CFR 106.44 and 106.45 and Administrative Regulation 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

Additionally, an employee may file a complaint with the Wage and Hour Division of the U.S Department of Labor for an alleged violation of the Providing Urgent Maternal Protections for Nursing Mothers Act and/or the Equal Employment Opportunity Commission for failure to provide reasonable accommodations pursuant to the Pregnant Workers Fairness Act. (29 USC 218c, 218d, 42 USC 2000gg-2).

CSBA NOTE: The following paragraph is mandated pursuant to Labor Code 1034.

In addition, an employee may file a complaint with the Labor Commissioner at the California Department of Industrial Relations for any alleged violation of Labor Code 1030-1034. (Labor Code 1034)

Policy Reference UPDATE Service

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Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State

2 CCR 11035-11051

Description

Unlawful sex discrimination; pregnancy, childbirth, and related medical conditions

Civ. Code 43.3

Right of mothers to breastfeed in any public or private location

Ed. Code 200-262.4

Prohibition of discrimination

Gov. Code 12926

Definitions

Gov. Code ~~12940~~12925-12954

Gov. Code 12945

Lab. Code 1030-1034

Lab. Code 6382

Federal

20 USC 1681-1688

29 USC 218c

29 USC ~~207~~218d

42 USC 2000gg-2000gg-6

29 CFR 1636

34 CFR 106.1-106.82

Management Resources

CA Department of Industrial Relations
Publication

California Department of Public Health
Publication

CDC Publication

Fair Employment and Housing
~~Commission~~California Civil Rights
Department Decision
Federal Register

Federal Register

U.S. Department of Health Resources
& Human Services Admin. Office on
Women's Health Publication

Unlawful discriminatory employment practices

Unlawful discrimination based on pregnancy, childbirth, or
related medical conditions

Lactation ~~Accommodation~~Accommodation

Procedure for listing hazardous substances

Description

Title IX of the Education Amendments of 1972;
discrimination based on sex

Fair Labor Standards Act; protections for employees

Fair Labor Standards Act; Providing Urgent Maternal
Protections for Nursing Mothers (PUMP) Act

Pregnant Workers Fairness Act

Implementation of the Pregnant Workers Fairness Act

Discrimination on the basis of sex; effectuating Title IX

Description

Rest Periods/Lactation Accommodation, Frequently Asked
Questions (https://www.dir.ca.gov/dlse/faq_restperiods.htm)

Lactation Accommodation for Employers
(<https://www.cdph.ca.gov/Programs/CFH/DMCAH/Breastfeeding/Pages/Lactation-Accommodation-for-Employers.aspx>)

Lactation Support Program Toolkit

Department of Fair Employment and Housing v. Acosta Tacos
(Chavez), FEHC Precedential Decision 09-03P, 2009

Nondiscrimination on the Basis of Sex in Education Programs
or Activities Receiving Federal Financial Assistance, April 29,
2024, Vol. 89, No. 83, pages 33474-33896

(<https://www.federalregister.gov/documents/2024/04/29/2024-07915/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>)

Reasonable Break Time for Nursing Mothers, December 21,
2010, Vol. 78, No. 244, pages 80073-~~70079~~80079
([https://www.federalregister.gov/documents/2010/12/21/2010-31959/reasonable-break-time-for-nursing-mothers#:~:text=Employers%20are%20required%20to%20provide,207\(r\)\(2\).](https://www.federalregister.gov/documents/2010/12/21/2010-31959/reasonable-break-time-for-nursing-mothers#:~:text=Employers%20are%20required%20to%20provide,207(r)(2).))

The Business Case for Breastfeeding: Steps for Creating a
Breastfeeding Friendly Worksite, Toolkit, 2008
(<https://www.womenshealth.gov/breastfeeding/breastfeeding>)

MB

Office of the Surgeon General
Publication

[-home-work-and-public/breastfeeding-and-going-back-work/business-case\)](#)

The Surgeon General's Call to Action to Support
Breastfeeding, 2011

https://www.cdc.gov/breastfeeding/php/resources/surgeon-generals-call-to-action.html?CDC_AAref_Val=https://www.cdc.gov/breastfeeding/resources/calltoaction.htm)

[U.S. DoL, Wage and Hour Div.,
Publication](#)

[Education FAQs](#)

<https://www.dol.gov/sites/dolgov/files/WHD/flsa/PUMP-education-faq.pdf>

U.S. DoL, Wage and Hour Div.,
Publication

Frequently Asked Questions- **Break Time for Nursing Mothers - Pumping Breast Milk at Work**

<https://www.dol.gov/agencies/whd/nursing-mothers/faq>

U.S. DoL, Wage and Hour Div.,
Publication

Fact Sheet #73: **Break Time FLSA Protections for Nursing Mothers under the FLSA** [Employees to Pump Breast Milk at Work](#), rev. April 2018 [January 2023](#)

<https://www.dol.gov/agencies/whd/fact-sheets/73-flsa-break-time-nursing-mothers>

Website

CSBA District and County Office of Education Legal Services

Website

California Department of Industrial Relations, Division of
Labor and Standards Enforcement

Website

California Department of Public Health

Website

California Women, Infants and Children Program

Website

Centers for Disease Control and Prevention

Website

Health Resources and Services Administration

Website

Office of the Surgeon General

Website

U.S. Department of Labor, Wage and Hour Division, **Break Time for Nursing Mothers** [FLSA Protections to Pump at Work](#)

[Website](#)

[Equal Employment Opportunity Commission](#)

<https://www.eeoc.gov/>

Cross References

Code

0410

Description

Nondiscrimination In District Programs And Activities

4030

Nondiscrimination In Employment

4030	Nondiscrimination In Employment
<u>4032</u>	<u>Reasonable Accommodation</u>
4112.9	Employee Notifications
4112.9-E(1)	Employee Notifications
<u>4113.4</u>	<u>Temporary Modified/Light-Duty Assignment</u>
<u>4119.11</u>	<u>Sex Discrimination and Sex-Based Harassment</u>
<u>4119.11</u>	<u>Sex Discrimination and Sex-Based Harassment</u>
<u>4119.12</u>	<u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
<u>4119.12-E(1)</u>	<u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4144	Complaints
4144	Complaints
4161.8	Family Care And Medical Leave
4212.9	Employee Notifications
4212.9-E(1)	Employee Notifications
<u>4213.4</u>	<u>Temporary Modified/Light-Duty Assignment</u>
<u>4219.11</u>	<u>Sex Discrimination and Sex-Based Harassment</u>
<u>4219.11</u>	<u>Sex Discrimination and Sex-Based Harassment</u>
<u>4219.12</u>	<u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
<u>4219.12-E(1)</u>	<u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4244	Complaints
4244	Complaints
4261.8	Family Care And Medical Leave
4312.9	Employee Notifications
4312.9-E(1)	Employee Notifications
<u>4313.4</u>	<u>Temporary Modified/Light-Duty Assignment</u>
<u>4319.11</u>	<u>Sex Discrimination and Sex-Based Harassment</u>
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<u>4319.12</u>	<u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>

4319.12-E(1)

Title IX Sex Discrimination and Sex-Based Harassment
Complaint Procedures

4344

Complaints

4344

Complaints

4361.8

Family Care And Medical Leave

37

MF

Policy 4119.11: Sexual~~Sex~~ Discrimination and Sex-Based Harassment Status: ADOPTED

Original Adopted Date: 12/01/2015 | Last Revised Date: ~~10~~07/01/2020~~2020~~2024 | Last Reviewed

Date: ~~10~~07/01/2020~~2020~~2024

CSBA NOTE: Education Code 231.5, 2 CCR 11023, and 34 CFR 106.8 mandate the district to have a written policy on sexual harassment. As part of this mandate, the district also should adopt a sexual harassment policy related to students; see BP/AR 5145.7 - Sexual Harassment and AR 5145.71 - Title IX Sexual Harassment Complaint Procedures.

Sexual harassment is prohibited pursuant to CSBA NOTE: Sex discrimination and sex-based harassment are prohibited by Title VII of the Civil Rights Act of 1964 (42 USC 2000e-2000e-17) and/or Title IX of the Education Amendments of 1972 (20 USC 1681-1688; 34 CFR 106.1-106.82), as well as the California Fair Employment and Housing Act (Government Code 12900-12996).

Education Code 231.5, 2 CCR 11023, and 34 CFR 106.8 mandate that districts have a written policy prohibiting sex discrimination and sex-based harassment against employees. As part of this mandate, districts are also required to adopt a written policy prohibiting sex discrimination and sex-based harassment against students; see BP/AR 5145.7 - Sex Discrimination and Sex-Based Harassment and AR 5145.71 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

Pursuant to 34 CFR 106.11 and 106.44, as amended by 89 Fed. Reg. 33474, a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, is required to follow Title IX grievance procedures when investigating and resolving a complaint of sexual harassment is addressed through federal Title IX complaint procedures adopted pursuant to 34 CFR 106.44-106.45, as added by 85 Fed. based on 30026, or procedures adopted pursuant to 2 CCR 11023 is dependent on whether the alleged conduct meets. As such a complaint may also fall within the more stringent federal definition of sexual harassment or the state definition. In order to meet the applicable timelines, in some instances it may be necessary to review a complaint under both procedures concurrently. See the accompanying administrative regulation, process as specified in AR 4030 -- Nondiscrimination in Employment, and AR it is unclear whether districts would additionally be required to follow the procedures specified in AR 4030 - Nondiscrimination in Employment. Due to this uncertainty, it is recommended that districts consult CSBA's District and County Office of Education Legal Services or district legal counsel prior to utilizing the process specified in AR 4030 - Nondiscrimination in Employment for this purpose. For more information regarding the Title IX grievance procedures, see AR 4119.12/4219.12/4319.12 - Title IX Sexual - Sex Discrimination and Sex-Based Harassment Complaint Procedures.

Pursuant to 2 CCR 11034, the district may be liable for ~~sexual~~sex-based harassment committed by a supervisor, coworker, or a third party. Pursuant to Government Code 12940, employers may also be held liable for ~~sexual~~sex-based harassment committed against their workers by clients, customers, or other third parties if they knew or should have known of the harassment and failed to take immediate and appropriate corrective action to stop the harassment.

The following policy shall apply to all district employees, interns, volunteers, contractors, job applicants, and other persons with an employment relationship with the district.

The Governing Board is committed to providing a safe work environment that is free of discrimination, harassment, and intimidation. The Board prohibits ~~sexual~~sex discrimination, including sex-based harassment, as defined in the accompanying administrative regulation, in district programs and activities by and against district employees and ~~retaliatory behavior or action against any person who complains, testifies, or otherwise participates in the complaint process established for the purpose of this policy.~~

CSBA NOTE: Pursuant to Education Code 220.1, as added by AB 1955 (Ch. 95, Statutes of 2024), a district, including a Governing Board member, may not retaliate or otherwise take adverse action against an employee, including by placing the employee on administrative leave, on the basis that the employee supported a student exercising rights specified in Education Code 220.1, performed work in a manner consistent with the district's legal obligations related to educational equity, or provided instruction to students consistent with current content standards, curriculum frameworks, instructional materials adopted by the state board, and state law.

Additionally, the Board prohibits retaliatory behavior or action against any person who complains or testifies about conduct that reasonably may constitute sex discrimination, including sex-based harassment, reports such conduct, or otherwise participates or refuses to participate in the complaint process established for the purpose of this policy. (Education Code 220.1; 34 CFR 106.71)

CSBA NOTE: Federal and state courts have provided guidance that may help employers avoid liability or mitigate damages in sex-based harassment cases. In *Department of Health Services v. Superior Court (McGinnis)*, the California Supreme Court outlined measures that may constitute mitigating factors in the assessment of damages, including establishing anti-harassment policies, communicating those policies to employees, consistently enforcing the policies, preserving the confidentiality of employees who report harassment, and preventing retaliation against reporting employees. The U.S. Supreme Court in *Burlington Industries v. Ellerth* held that, for certain claims under federal law, an employer may defend against sex-based harassment claims by proving that (1) reasonable care was exercised to prevent and promptly correct any sexually harassing behavior, and (2) the employee (victim) failed to take advantage of the preventive and corrective opportunities provided by the employer. Additionally, in *Faragher v. City of Boca Raton*, one of the factors relied on by the U.S. Supreme Court in finding liability for harassment by a supervisor was the failure of the policy to provide an assurance to its employees that harassing supervisors may be bypassed in registering complaints.

Pursuant to Government Code 12950.1, employers with five or more employees are required to

provide sex-based harassment training to supervisory and nonsupervisory employees which includes training in regard to sex discrimination. Additionally, Title IX, and its implementing regulation 34 CFR 106.8, as amended by 89 Fed. Reg. CSBA NOTE: Government Code 12940 clarifies that sexual harassment includes harassment based on sex, gender, pregnancy, childbirth, or related medical conditions. 33474, requires specified training related to sex discrimination, including sex-based harassment, for all district employees, as well as additional training for (1) investigators, decisionmakers, and other persons who are responsible for implementing the recipient's grievance procedures or have the authority to modify or terminate supportive measures, (2) facilitators of an informal resolution process, and (3) Title IX Coordinators and designees. See the accompanying administrative regulation for timelines and training requirements.

Items #1-4 below reflect the courts' guidance, Government Code 12950.1, and 34 CFR 106.8, and should be modified to reflect district practice.

Sexual harassment includes, but is not limited to, harassment that is based on the sex, gender, gender identity, gender expression, or sexual orientation of the victim and harassment based on pregnancy, childbirth, or related medical conditions.

CSBA NOTE: Federal and state courts have provided guidance that may help employers avoid liability or mitigate damages in sexual harassment cases. In *Department of Health Services v. Superior Court (McGinnis)*, the California Supreme Court outlined measures that may constitute mitigating factors in the assessment of damages, including establishing anti-harassment policies, communicating those policies to employees, consistently enforcing the policies, preserving the confidentiality of employees who report harassment, and preventing retaliation against reporting employees. The U.S. Supreme Court in *Burlington Industries v. Ellerth* held that, for certain claims under federal law, an employer may defend against sexual harassment claims by proving that (1) reasonable care was exercised to prevent and promptly correct any sexually harassing behavior, and (2) the employee (victim) failed to take advantage of the preventive and corrective opportunities provided by the employer.

Pursuant to Government Code 12950.1, as amended by SB 778 (Ch. 215, Statutes of 2019), employers with five or more employees are required to provide sexual harassment training to supervisory and nonsupervisory employees. See the accompanying administrative regulation for timelines and training requirements.

Items #1-4 below reflect the courts' guidance and Government Code 12950.1, and should be modified to reflect district practice.

The Superintendent or designee shall take all actions necessary to ensure the prevention, investigation, and correction of sexual sex discrimination and sex-based harassment, including but not limited to:

1. Providing training to employees in accordance with law and administrative regulation

2. Publicizing and disseminating the district's ~~sexual~~ sex discrimination and sex-based harassment policy to employees and others to whom the policy may apply

CSBA NOTE: Pursuant to Title IX and its implementing regulation 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, districts are required to provide a notice of nondiscrimination on the basis of sex, as specified below. For more information about the content and publication requirements for the notice of nondiscrimination, see AR 4030 – Nondiscrimination in Employment.

3. Publicizing, in accordance with 34 CFR 106.8 and as specified in Administrative Regulation 4030 – Nondiscrimination in Employment, a Title IX notice of nondiscrimination to employees, applicants for employment, and bargaining units
3. 4. Ensuring prompt, thorough, fair, and equitable investigation of complaints through the appropriate state and/or federal procedures
4. 5. Taking timely and appropriate corrective/remedial action(s), which may require interim separation of the complainant and the alleged harasser and subsequent monitoring of developments

CSBA NOTE: The following optional paragraph reflects a recommendation of the U.S. Equal Employment Opportunity Commission's informal guidance, "Promising Practices for Preventing Harassment," has been expanded to include sex discrimination, and may be revised to reflect district practice.

The Superintendent or designee shall periodically evaluate the effectiveness of the district's strategies to prevent and address sex discrimination and sex-based harassment. Such evaluation may involve conducting regular anonymous employee surveys to assess whether sex discrimination and/or sex-based harassment is occurring or is perceived to be tolerated, partnering with researchers or other agencies with the needed expertise to evaluate the district's prevention strategies, and using any other effective tool for receiving feedback on systems and/or processes. As necessary, changes shall be made to the harassment policy, (ies), complaint procedures, or training, as appropriate and in accordance with law.

Sexual Harassment

Reports and Complaints

CSBA NOTE: 34 CFR 106.8, as amended by ~~85~~ 89 Fed. Reg. ~~30026~~ 33474, requires the district to designate at least one employee to coordinate its responsibilities under Title IX, who must be referred to as the Title IX Coordinator. See the accompanying administrative regulation.

34 CFR 106.44, as added by 85 Fed. Reg. 30026, requires the district, when there is actual knowledge of sexual harassment, to respond promptly in a manner that is not unreasonable in light of the known circumstances and in compliance with Title IX regulations. 34 CFR 106.30, as added, defines "actual knowledge" as notice of sexual harassment or allegations of sexual harassment being submitted to the district's Title IX Coordinator, any official of the district who has authority to institute corrective measures, or any employee of an elementary or secondary school. For this

reason, the district should train all employees regarding the reporting process.

In *Faragher v. City of Boca Raton*, one of the factors relied on by the U.S. Supreme Court in finding liability for harassment by a supervisor was the failure of the policy to provide an assurance to its employees that harassing supervisors may be bypassed in registering complaints.

District employees who feel that they have been sexually harassed in the performance of their Any district responsibilities or who have knowledge of any incident of sexual harassment by or against another employee shall immediately report the incident to their direct supervisor, a district administrator, or the district's who has experienced sex discrimination or sex-based harassment in the district's education program or activity may file a complaint with the district's Title IX Coordinator. Employees may bypass their supervisor in filing a complaint if the supervisor is the subject of the complaint. A supervisor or administrator who receives a harassment complaint shall (34 CFR 106.2, 106.44)

CSBA NOTE: Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, a district is required to respond promptly and effectively when it has knowledge of conduct that reasonably may constitute sex discrimination or sex-based harassment in its education program or activity. 34 CFR 106.44 further obligates a district to require its Title IX Coordinator to monitor the district's programs and activities for barriers to reporting information of such conduct and its employees to notify the Title IX Coordinator: when they have such information. The following paragraph should be revised to reflect the district's timeline.

Any employee with knowledge of conduct that reasonably may constitute sex discrimination or sex-based harassment by or against another district employee, a student, or a third party in a district education program or activity shall notify the Title IX Coordinator within one workday. An employee may be subject to discipline for failure to timely report such conduct. (34 CFR 106.44)

Once notified, the Title IX Coordinator shall ensure the complaint or allegation is addressed through AR Administrative Regulation 4119.12/4219.12/4319.12 - Title IX Sexual Sex Discrimination and Sex-Based Harassment Complaint Procedures or AR 4030 - Nondiscrimination in Employment, as applicable. Because a complaint or allegation that is dismissed or denied under the Title IX complaint procedure may still be subject to consideration under state law, the Title IX Coordinator shall ensure that any implementation of AR 4119.12/4219.12/4319.12 concurrently meets the requirements of AR 4030.

CSBA NOTE: The Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, when the Title IX Coordinator shall is notified of conduct that reasonably may constitute sex discrimination, including sex-based harassment, the Title IX Coordinator is required to offer and coordinate supportive measures to the complainant and . Thus, districts should not wait to respond until a "formal" complaint is made. If the district has begun grievance procedures or offered an informal resolution process to the respondent, the Title IX Coordinator is required to offer and coordinate supportive measures to the respondent, as appropriate.

The Title IX Coordinator shall offer and coordinate supportive measures to be provided to the complainant and, if the district has begun grievance procedures or offered an informal resolution process to the respondent, offer and coordinate supportive measures to be provided to the respondent as deemed appropriate under the circumstances. (34 CFR 106.44)

CSBA NOTE: In addition to district discipline imposed on employees who engage in ~~sexual~~sex-based harassment, Government Code 12940 provides that such employees may be held personally liable in a court of law for any damage to the victim(s).

Upon investigation of a ~~sexual~~sex discrimination or sex-based harassment complaint, any district employee found to have engaged or participated in ~~sexual~~sex discrimination or sex-based harassment or to have aided, abetted, incited, compelled, or coerced another to commit ~~sexual~~sex discrimination or sex-based harassment in violation of this policy shall be subject to disciplinary action, up to and including dismissal, in accordance with law and the applicable collective bargaining agreement.

Policy Reference UPDATE Service

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Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State	Description
2 CCR 11006-11086	Discrimination in employment
2 CCR 11009	Employment discrimination
2 CCR 11021	Discrimination in employment - retaliation
2 CCR 11023	Harassment and discrimination prevention and correction
2 CCR 11024	Required training and education on harassment based on sex, gender identity and expression, and sexual orientation
2 CCR 11034	Terms, conditions, and privileges of employment
5 CCR 4900-4965	Nondiscrimination in elementary and secondary educational programs receiving state or federal financial assistance
Ed. Code 200-262.4	Prohibition of discrimination
<u>Ed. Code 220.1</u>	<u>Prohibition of retaliation related to educational equity</u>
<u>Ed. Code 220.3</u>	<u>Prohibition of disclosure of information related to student's sexual orientation, gender identity, or gender expression</u>
<u>Ed. Code 220.5</u>	<u>Prohibition of policies requiring disclosure of information related to student's sexual orientation, gender identity, or gender expression</u>
Gov. Code 12900-12996	Fair Employment and Housing Act
Gov. Code 12940	Unlawful discriminatory employment practices
Gov. Code 12950	Sexual harassment

Gov. Code 12950.1	Sexual harassment training
Lab. Code 1101	Political activities of employees
Lab. Code 1102.1	Discrimination: sexual orientation
<u>Lab. Code 1197.5</u>	<u>Wages, hours, and working conditions</u>
Federal	Description
20 USC 1681-1688	Title IX of the Education Amendments of 1972; discrimination based on sex
34 ²⁹ CFR 106.1-106.9 ¹⁶³⁶	Nondiscrimination on the basis of sex in education programs or activities <u>Implementation of the Pregnant Workers Fairness Act</u>
34 CFR 106.5 1 ¹ -106.6 1 ⁸²	Nondiscrimination on the basis of sex in employment in education program <u>programs</u> or activities
42 USC 2000e-2000e-17	Title VII, Civil Rights Act of 1964, as amended
<u>42 USC 2000gg-2000gg-6</u>	<u>Pregnant Workers Fairness Act</u>
Management Resources	Description
Court Decision	Burlington Industries v. Ellreth (1998) 118 S.Ct. 2257
Court Decision	Department of Health Services v. Superior Court of California (2003) 31 Cal.4th 1026
Court Decision	Faragher v. City of Boca Raton (1998) 118 S.Ct. 2275
Court Decision	Gebser v. Lago Vista Independent School District (1998) 118 S.Ct. 1989
Court Decision	Meritor Savings Bank, FSB v. Vinson et al. (1986) 447 U.S. 57
Court Decision	Oncale v. Sundowner Offshore Serv. Inc. (1998) 118 S.Ct. 998
<u>Federal Register</u>	<u>Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, April 29, 2024, Vol. 89, No. 83, pages 33474-33896</u> <u>(https://www.federalregister.gov/documents/2024/04/29/2024-07915/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal)</u>
U.S. Equal Employment Opportunity Com. Publication	Promising Practices for Preventing Harassment, November 2017
Website	CSBA District and County Office of Education Legal Services
Website	California Civil Rights Department
Website	<u>U.S. Department of Education, Office for Civil Rights</u> <u>California Department of Education</u>

(<https://www.cde.ca.gov/>)

Website

U.S. Equal Employment Opportunity Commission
U.S. Department of Education, Office for Civil Rights

Website

U.S. Equal Employment Opportunity Commission

Cross References

Code	Description
0410	Nondiscrimination In District Programs And Activities
0450	Comprehensive Safety Plan
0450	Comprehensive Safety Plan
1312.3	Uniform Complaint Procedures
1312.3	Uniform Complaint Procedures
1312.3-E(1)	Uniform Complaint Procedures
1312.3-E(2)	Uniform Complaint Procedures
1313	Civility
3530	Risk Management/Insurance
3530	Risk Management/Insurance
3600	Consultants
4030	Nondiscrimination In Employment
4030	Nondiscrimination In Employment
<u>4033</u>	<u>Lactation Accommodation</u>
4040	Employee Use Of Technology
4040-E(1)	Employee Use Of Technology
4112.9	Employee Notifications
4112.9-E(1)	Employee Notifications
4117.7	Employment Status Reports
4118	Dismissal/Suspension/Disciplinary Action
4118	Dismissal/Suspension/Disciplinary Action
4119.12	<u>Title IX Sexual Harassment Complaint Procedures</u> <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>

4119.12-E(1)	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4119.21	Professional Standards
4119.21-E(1)	Professional Standards
4119.22	Dress And Grooming
4131	Staff Development
4144	Complaints
4144	Complaints
4212.9	Employee Notifications
4212.9-E(1)	Employee Notifications
4218.1	Dismissal/Suspension/Disciplinary Action (Merit System)
4219.12	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4219.12-E(1)	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4219.21	Professional Standards
4219.21-E(1)	Professional Standards
4219.22	Dress And Grooming
4231	Staff Development
4244	Complaints
4244	Complaints
4300	Administrative And Supervisory Personnel
4300	Administrative And Supervisory Personnel
4312.9	Employee Notifications
4312.9-E(1)	Employee Notifications
4317.7	Employment Status Reports
4319.12	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>

4319.12-E(1)	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4319.21	Professional Standards
4319.21-E(1)	Professional Standards
4319.22	Dress And Grooming
4344	Complaints
4344	Complaints
5145.7	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>
5145.7	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>
5145.71	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
5145.71-E(1)	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
<u>5146</u>	<u>Married/Pregnant/Parenting Students</u>

Regulation 4119.11: Sexual~~Sex~~ Discrimination and Sex-Based Harassment

Status: ADOPTED

Original Adopted Date: 12/01/2016 | Last Revised Date: ~~10/07/01/2020~~2024 | Last Reviewed Date: ~~10/07/01/2020~~2024

CSBA NOTE: The following administrative regulation is mandated pursuant to Education Code 231.5 and includes reasonable steps for preventing the occurrence of discrimination and harassment as required pursuant to Government Code 12940 (California Fair Employment and Housing Act). The focus of this administrative regulation is on ~~sexual~~sex discrimination and sex-based harassment by and of employees. Pursuant to Government Code 12940 and 2 CCR 11009, interns, volunteers, and job applicants are entitled to the same protection against ~~sexual~~sex-based harassment as applicable to employees.

For information regarding steps the district is required to take to prevent sex discrimination related to ~~sexual~~lactation, see BP 4033 – Lactation Accommodation.

For information related to sex discrimination and sex-based harassment involving students, see BP/AR 5145.7 – ~~Sexual~~ Sex Discrimination and Sex-Based Harassment and AR 5145.71 - Title IX ~~Sexual~~Sex Discrimination and Sex-Based Harassment Complaint Procedures. For information regarding steps the district is required to take to prevent sex discrimination related to a student's pregnancy or related condition pursuant to Title IX (20 USC 1681-1688) and its implementing regulation 34 CFR 106.40, as amended by 89 Fed. Reg. 33474, see BP 5146 – Married/Pregnant/Parenting Students.

The district does not discriminate on the basis of sex in any of its programs or activities and complies with Title IX of the Education Amendments of 1972 and its implementing regulations. Sex discrimination, including sex-based harassment, is prohibited in district education programs and activities.

The following administrative regulation shall apply to all allegations of ~~sexual~~sex discrimination and sex-based harassment ~~involving~~by and against district employees, interns, volunteers, and job applicants, but shall not be used to resolve any complaint by ~~or against~~ a student.

Definitions

CSBA NOTE: The U.S. Equal Employment Opportunity Commission describes sex discrimination as treating someone differently because of that person's sex. Additionally, 34 CFR 106.2 and 106.10, as amended by 89 Fed. Reg. 33474, clarify that sex discrimination for the purpose of Title IX includes discrimination on the basis of sex stereotypes; sex characteristics; gender identity; sexual orientation; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions or recovery; and, parental, marital, and family status.

Sex discrimination includes treating an employee differently based on the employee's sex, which includes differential treatment based on sex stereotypes; sex characteristics; sexual orientation; gender; gender identity; gender expression; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions and recovery; parental, family, or marital status; or association with a person or group with one or more of these actual or perceived characteristics. Sex discrimination, including sex-based harassment, intimidation, or bullying, may result from physical, verbal, nonverbal, or written conduct and occurs when prohibited conduct is so severe, persistent, or pervasive that it creates an intimidating, threatening, hostile, or offensive work environment; has the effect of substantially or unreasonably interfering with an employee's term or condition of employment; or otherwise adversely affects an employee's employment opportunities.

CSBA NOTE: Alleged conduct that meets the federal definition of sexual harassment in 34 CFR 106.30, as added by 85 Fed. A30026, requires investigation and resolution through Title IX regulations; see AR 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures. Pursuant to 34 CFR 106.30, sexual², sex-based harassment includes (1) a district employee, agent, or other individual authorized by the district to provide an aid, benefit, or service under the district's education program or activity explicitly or impliedly conditioning the provision of a district aid, benefit, or service on an individual's participation in unwelcome sexual conduct; (2) "hostile environment harassment," defined as unwelcome sex-based conduct determined by a reasonable person to be so severe, pervasive, that, based on the totality of the circumstance, is subjectively and objectively offensive and is so severe or pervasive that it effectively limits or denies a person equal access to person's ability to participate in or benefit from the district's education program or activity; or (3) sexual assault, dating violence, domestic violence, or stalking, as defined in 20 USC 1092 and 34 USC 12291) CFR 106.2. Conduct that meets the definition of Title IX sex discrimination, including sex-based harassment, requires investigation and resolution through the Title IX grievance procedures; see AR 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

Education Code 212.5 defines sexual harassment as any unwelcome sexual advance, request for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone in the educational setting. **Conduct**

34 CFR 106.2 and 106.10, as amended by 89 Fed. Reg. 33474, clarify that does not meet sex-based harassment for the definition purpose of Title IX includes harassment on the basis of sex stereotypes; sex characteristics; gender identity; sexual harassment orientation; pregnancy, childbirth, termination of pregnancy, or lactation, including related conditions; and, parental, marital, and family status. Additionally, in 34 CFR 106.30 shall be investigated and resolved in accordance with AR 4030 - Nondiscrimination in Employment.

In *Oncale v. Sundowner Offshore Services, Inc.*, the U.S. Supreme Court held that same-sex sexual harassment could be actionable under Title VII of the Civil Rights Act of 1964 (42 USC 2000e-2000e-17).

Sex-based harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, sex stereotypes, sex characteristics, or other bases specified above. Conduct will constitute sex-based harassment when it takes the form of: (34 CFR 106.2, 106.11)

1. Quid pro quo harassment: A district employee, agent, or other individual authorized by the district to provide an aid, benefit, or service in the district's education program or activity conditioning the provision of district aid, benefit, or service on a student's participation in unwelcome sexual conduct

CSBA NOTE: Pursuant to 34 CFR 106.11, as amended by 89 Fed. Reg. 33474, Title IX grievance procedures are required for Title IX sex discrimination complaints, including sex-based harassment complaints, for conduct which occurs on or after August 1, 2024 under the district's education program or activity, which includes conduct alleged to be contributing to a hostile environment that occurred outside the district's education program or activity or outside the United States. Item #2 below reflects "hostile environment harassment" as defined by 34 CFR 106.2, as amended by 89 Fed. Reg. 33474.

2. Hostile environment harassment: Unwelcome sex-based conduct that, based on the totality of the circumstances, 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

Any prohibited conduct that occurs off campus or outside of school-related or school-sponsored programs or activities will be regarded as sex-based harassment in violation of district policy if it has a continuing effect on a student's ability to participate in or benefit from district educational programs or activities.

3. Sexual assault, dating violence, domestic violence, or stalking, as defined in 34 CFR 106.2

Sexual harassment includes, but is not limited to, unwelcome sexual advances, unwanted requests for sexual favors, or other unwanted verbal, visual, or physical conduct of a sexual nature, regardless of whether or not the conduct is motivated by sexual desire. Conduct is considered to be sexual harassment when made against another person of the same or opposite sex in the work or educational setting under any of the following conditions: (Education Code 212.5; Government Code 12940; 2 CCR 11034)

1. Submission to the conduct is made explicitly or implicitly a term or condition of the individual's employment.
2. Submission to or rejection of the conduct is used as the basis for an employment decision affecting the individual.
3. The conduct has the purpose or effect of having a negative impact upon the individual's work performance or of creating an intimidating, hostile, or offensive work environment.
4. Submission to or rejection of the conduct is used as the basis for any decision affecting the individual regarding benefits, services, honors, programs, or activities available at or through the district.

For purposes of applying the complaint procedures specified in Title IX of the Education Amendments of 1972, sexual harassment is defined as any of the following forms of conduct that occurs in an education program or activity in which a district school exercises substantial control over the context and respondent: (34 CFR 106.30, 106.44)

- 1.—A district employee conditioning the provision of a district aid, benefit, or service on the person's participation in unwelcome sexual conduct
- 2.—Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity
- 3.—Sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 or 34 USC 12291

Examples of Sexual Sex Discrimination and Sex-Based Harassment

CSBA NOTE: Pursuant to Government Code 12940 and 34 CFR 106.11, the district may be held liable for sexual sex-based harassment committed against employees by clients, customers, or other third parties if the district knew, or should have known, of the harassment and failed to take immediate and appropriate corrective action to stop the harassment. The following paragraph clarifies that sexual sex-based harassment may include acts by supervisors, co-workers, or other parties and should be modified to reflect district practice.

Examples of actions that might constitute sexual sex-based harassment under state and/or federal law in accordance with the definitions above, in the work or educational setting, whether committed by a supervisor, a co-worker, or a non-employee, include, but are not limited to:

1. Unwelcome verbal conduct such as sexual sex-based flirtations or propositions; graphic comments about an individual's body; overly personal conversations or pressure for sexual sex-based activity; sexual sex-based jokes or stories; unwelcome sexual sex-based slurs, epithets, threats, innuendoes; derogatory comments; sexually; sex-based degrading descriptions; or the spreading of sexual sex-based rumors
2. Unwelcome visual conduct such as drawings, pictures, graffiti, or gestures; sexually explicit emails; or messaging; or displaying sexually suggestive objects
3. Unwelcome physical conduct such as massaging, grabbing, fondling, stroking, or brushing the body; touching an individual's body or clothes in a sexual way; or cornering, blocking, leaning over, or impeding normal movements

Title IX Coordinator/Compliance Officer

CSBA NOTE: Pursuant to 34 CFR 106.8, districts that receive federal financial assistance are mandated to designate an employee to ensure district compliance with Title IX of the Education Amendments of 1972 and its implementing regulations. If the district has more than one Title IX Coordinator, it must designate one of its Title IX Coordinators to retain ultimate oversight over

those responsibilities and ensure the district's consistent compliance with its responsibilities under Title IX. The following paragraph specifies that the Title IX Coordinator will be the same person(s) designated to serve as the coordinator for nondiscrimination in employment pursuant to AR 4030 - Nondiscrimination in Employment. Districts may modify this policy to designate separate district employees to serve these functions.

The district designates the following individual(s) as the responsible employee(s) to coordinate its efforts to comply with Title IX of the Education Amendments of 1972 in accordance with AR Administrative Regulation 4119.12/4219.12/4319.12 - Title IX Sexual Sex Discrimination and Sex-Based Harassment Complaint Procedures, as well as to and oversee, investigate, and resolve sexual harassment the district's response to discrimination complaints processed under AR Administrative Regulation 4030 - Nondiscrimination in Employment. The Title IX Coordinator(s) may be contacted at:

(title or position)

(address)

(telephone number)

(email)

CB or Designee
15305 Rockwood Rd Exton, PA
76745-4931 CA 92027
spusdecampasgualunion.net

Training

CSBA NOTE: Government Code 12950.1, as amended by SB 778 (Ch. 215, Statutes of 2019), requires districts with five or more employees to provide sexual harassment training and education to supervisory and nonsupervisory employees by January 1, 2021 (or two years after a training provided in 2019) and once every two years thereafter. As amended, Additionally, Government Code 12950.1 requires that new nonsupervisory employees be provided the training within six months of hire, consistent with the requirement for all newly hired supervisors or employees promoted to a supervisory position. Compliance with this law does not insulate the district from any liability for harassment.

In addition, Title IX and its implementing regulation 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, requires that all employees receive training related to their duties under Title IX promptly upon hire or change of position that alters their duties under Title IX, and annually thereafter. The training provided to all employees is required to include the district's obligation to address sex discrimination, the scope of conduct that constitutes sex discrimination under Title IX, including the definition of sex-based harassment, and the applicable notice and information requirements. 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, requires additional training for (1) investigators, decisionmakers, and other persons who are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures, (2) facilitators of an informal resolution process, and (3) Title IX Coordinators and designees.

Governing Board members, as elected officials, are not usually considered "supervisors"; however,

since Board members have the authority to hire, reward, or discipline the Superintendent and other employees, Board members may also be required to receive ~~sexual~~sex-based harassment training. Districts should consult ~~with~~CSBA's District and County Office of Education Legal Services or district legal counsel to ensure that the appropriate individuals receive training.

The following section reflects sex discrimination and sex-based harassment training required for employees under both state and federal law.

The Superintendent or designee shall ensure that all employees receive training regarding sex discrimination and sex-based harassment in accordance with state and federal law.

Every two years, the Superintendent or designee shall ensure that supervisory employees receive at least two hours, and nonsupervisory employees receive at least one hour, of classroom or other effective interactive training and education regarding sexual harassment: as specified in Government Code 12950.1. All newly hired employees and employees promoted to a supervisory position shall receive training within six months of their assumption of the new position. (Government Code 12950.1)

A supervisory employee is any employee having the authority, in the interest of the district, to hire, transfer, suspend, lay off, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, adjust their grievances, or effectively recommend such action, when the exercise of the authority is not of a merely routine or clerical nature, but requires the use of independent judgment. (Government Code 12926)

Such training may be completed by employees individually or as part of a group presentation, may be completed in shorter segments as long as the applicable hourly requirement is met, and may be provided in conjunction with other training provided to the employees. The training shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation. (Government Code 12950.1)

The district's sexual harassment training and education program shall include, but is not limited to, the following: (Government Code 12950.1; 2 CCR 11024)

1. Information and practical guidance regarding federal and state laws concerning the prohibition, prevention, and correction of sexual harassment
2. The types of conduct that constitute sexual harassment
3. Remedies available for victims in civil actions, and potential employer/individual exposure/liability
4. Strategies to prevent harassment in the workplace

5. Supervisors' obligation to report sexual harassment, discrimination, and retaliation of which they become aware
6. Practical examples which illustrate sexual harassment, discrimination, and retaliation using training modalities such as role plays, case studies, and group discussions, based on factual scenarios taken from case law, news and media accounts, and hypotheticals based on workplace situations and other sources
7. The limited confidentiality of the complaint process
8. Resources for victims of unlawful harassment, such as to whom they should report any alleged harassment
9. Steps necessary to take appropriate remedial measures to correct harassing behavior, which includes the district's obligation to conduct an effective workplace investigation of a harassment complaint
10. What to do if the supervisor is personally accused of harassment
11. The essential elements of the district's anti-harassment policy, and how to use the policy if a harassment complaint is filed

Employees shall receive a copy of the district's sexual harassment policy and administrative regulations, which they shall read and acknowledge that they have received.
12. Information, including practical examples, of harassment based on gender identity, gender expression, and sexual orientation
13. Prevention of abusive conduct, including a review of the definition and elements of abusive conduct pursuant to Government Code 12950.1, the negative effects that abusive conduct has on the victim and other in the workplace, the detrimental consequences of this conduct on employee productivity and morale, and that a single act does not constitute abusive conduct unless the act is severe or egregious

Additionally, the Superintendent or designee shall ensure that all employees receive annual training related to their duties under Title IX in accordance with 34 CFR 106.8, and that a newly hired employee receive training promptly upon hire or change of position that alters the employee's duties under Title IX. (34 CFR 106.8)

The district's Title IX sex discrimination and sex-based harassment training shall include: (34 CFR 106.8)

1. The district's obligation to address sex-based discrimination, including sex-based harassment, in its education program or activity
2. The scope of conduct that constitutes sex discrimination under Title IX, including the definition of sex-based harassment
3. The notification and information requirements specified in 34 CFR 106.40 and 106.44

The district's Title IX sex-based harassment training and education program shall also include additional training required of supervisors; investigators, decisionmakers, and other persons who are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures; facilitators of an informal resolution process; and Title IX Coordinators and designees. (34 CFR 106.8)

The Superintendent or designee shall retain for at least two years the records of any training provided to supervisory employees. Such records shall include the names of trained employees, date of the training, the type of training, and the name of the training provider. (2 CCR 11024) type of training, and name of the training provider. (2 CCR 11024)

The Superintendent or designee shall notify employees that the district does not discriminate on the basis of sex as required by Title IX; that the Title IX nondiscrimination requirement extends to employment; and that inquiries about the application of Title IX to the district may be referred to the district's Title IX Coordinator and/or to the Assistant Secretary for Civil Rights, U.S. Department of Education. (34 CFR 106.8)

The district shall notify employees, bargaining units, and applicants for employment of the name or title, office address, email address, and telephone number of the district's Title IX Coordinator. (34 CFR 106.8)

A copy of the Board policy and this administrative regulation shall:

Additionally, the Superintendent or designee shall retain for at least seven years the materials used to provide training as specified in 34 CFR 106.8, and to make these materials available, upon request, to members of the public. (34 CFR 106.8)

Notifications

CSBA NOTE: As part of its responsibility to monitor district compliance with legal requirements concerning discrimination pursuant to Education Code 234.1, as amended by SB 153 (Ch. 38, Statutes of 2024), the California Department of Education is required to ensure that the district prominently and conspicuously displays its nondiscrimination policies in all areas that are accessible to, and commonly frequented by, school site employees, students, and members of the public at each school site and district office, including, but not limited to, in school office lobbies, staff lounges, student government meeting rooms, and on the district's website. Additionally, Title IX, and its implementing regulations, 34 CFR 106.1-106.82, as amended by 89 Fed. Reg. 33474, require the district to provided notifications and take specified actions to prevent sex

discrimination, including sex-based harassment. For more information regarding measures to prevent discrimination, see AR 4030 – Nondiscrimination in Employment.

To prevent unlawful sex discrimination and sex-based harassment, including retaliation, in district programs and activities, the Superintendent or designee shall provide notifications and implement measures to prevent discrimination and harassment as specified in Administrative Regulation 4030 – Nondiscrimination in Employment.

In addition to the measures to prevent discrimination as specified in Administrative Regulation 4030 – Nondiscrimination in Employment, the Superintendent or designee shall ensure that a copy of the Board policy and this administrative regulation:

1. Be displayed in a prominent location in the main administrative building, district office, or other area of the school where notices of district rules, regulations, procedures, and standards of conduct are posted (Education Code 231.5)
2. Be provided to every district employee at the beginning of the first quarter or semester of the school year or whenever a new employee is hired (Education Code 231.5)
3. Appear in any school or district publication that sets forth the school's or district's comprehensive rules, regulations, procedures, and standards of conduct (Education Code 231.5)
4. Be posted, along with the name or title and contact information of the Title IX Coordinator, in a prominent location on the district's web site (34 CFR 106.8)
5. Be included, along with the name or title and contact information of the Title IX Coordinator, in any handbook provided to employees or employee organizations (34 CFR 106.8)

CSBA NOTE: Government Code 12950 requires the California Civil Rights Department (~~CCRD~~CRD) to develop an information sheet on employment discrimination and the illegality of sexual harassment and a poster regarding the rights of transgender employees. These documents are available on ~~CCRD's web site~~CRD's website. This list has been modified to make it applicable to sex-based harassment in general, not just sexual harassment.

All employees shall receive a copy of an information sheet prepared by the California Civil Rights Department (~~CCRD~~CRD) or the district that contains, at a minimum, components on: (Government Code 12950)

1. The illegality of sexual~~sexual~~sex-based harassment
2. The definition of sexual~~sexual~~sex-based harassment under applicable state and federal law

3. A description of sexual~~sexual~~sex-based harassment, with examples
4. The district's complaint process available to the employee
5. The legal remedies and complaint process available through ~~CCRD~~CRD and the Equal Employment Opportunity Commission (EEOC)
6. Directions on how to contact ~~CCRD~~CRD and the EEOC
7. The protection against retaliation provided by 2 CCR 11021 for opposing harassment prohibited by law or for filing a complaint with or otherwise participating in an investigation, proceeding, or hearing conducted by ~~CCRD~~CRD and the EEOC

In addition~~in addition~~Additionally, the district shall post, in a prominent and accessible location, the ~~CCRD~~CRD poster on discrimination in employment and the illegality of sexual~~sexual~~sex-based harassment, and the ~~CCRD~~CRD poster regarding transgender rights. (Government Code 12950)

Complaint Procedures

CSBA NOTE: Pursuant to 34 CFR 106.11 and 106.44, as amended by 89 Fed. Reg. 33474, a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, is required to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct. As such a complaint may also fall within the complaint process as specified in AR 4030 – Nondiscrimination in Employment, it is unclear whether districts would additionally be required to follow the process specified in AR 4030 – Nondiscrimination in Employment. Due to this uncertainty, it is recommended that districts consult CSBA's District and County Office of Education Legal Services or district legal counsel prior to utilizing the process specified in AR 4030 – Nondiscrimination in Employment for this purpose. For more information regarding the Title IX grievance procedures, see AR 4119.12/4219.12/4319.12 – Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

All complaints and allegations of sexual~~sexual~~sex discrimination and sex-based harassment by and against employees shall be investigated and resolved in accordance with law and district procedures. The Title IX Coordinator shall review the allegations to determine the applicable procedure for responding to the complaint. All complaints that meet the definition of sexual harassment under Title IX shall be investigated and resolved in accordance with AR 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures. Other sexual harassment complaints shall be investigated and resolved pursuant to AR 4030 - Nondiscrimination in Employment. as specified in 34 CFR 106.44 and 106.45 and Administrative Regulation 4119.12/4219.12/4319.12 – Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

If sexual~~sexual~~sex discrimination or sex-based harassment is found following an investigation, the Title IX

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Coordinator, or designee in consultation with the [Title IX](#) Coordinator, shall take prompt action to stop the ~~sexual~~[sex discrimination or sex-based](#) harassment, prevent recurrence, and address any continuing effects.

Policy Reference UPDATE Service

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Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State	Description
2 CCR 11006-11086	Discrimination in employment
2 CCR 11009	Employment discrimination
2 CCR 11021	Discrimination in employment - retaliation
2 CCR 11023	Harassment and discrimination prevention and correction
2 CCR 11024	Required training and education on harassment based on sex, gender identity and expression, and sexual orientation
2 CCR 11034	Terms, conditions, and privileges of employment
5 CCR 4900-4965	Nondiscrimination in elementary and secondary educational programs receiving state or federal financial assistance
Ed. Code 200-262.4	Prohibition of discrimination
Ed. Code 220.1	Prohibition of retaliation related to educational equity
Ed. Code 220.3	Prohibition of disclosure of information related to student's sexual orientation, gender identity, or gender expression
Ed. Code 220.5	Prohibition of policies requiring disclosure of information related to student's sexual orientation, gender identity, or gender expression
Gov. Code 12900-12996	Fair Employment and Housing Act
Gov. Code 12940	Unlawful discriminatory employment practices
Gov. Code 12950	Sexual harassment
Gov. Code 12950.1	Sexual harassment training
Lab. Code 1101	Political activities of employees
Lab. Code 1102.1	Discrimination: sexual orientation
Lab. Code 1197.5	Wages, hours, and working conditions

Federal	Description
20 USC 1681-1688	Title IX of the Education Amendments of 1972; discrimination based on sex
34 29 CFR 106.1-106.9 1636	Nondiscrimination on the basis of sex in education programs or activities Implementation of the Pregnant Workers Fairness Act
34 CFR 106.51 1 -106.61 82	Nondiscrimination on the basis of sex in employment in education program programs or activities
42 USC 2000e-2000e-17	Title VII, Civil Rights Act of 1964, as amended
<u>42 USC 2000gg-2000gg-6</u>	<u>Pregnant Workers Fairness Act</u>
Management Resources	Description
Court Decision	Burlington Industries v. Ellreth (1998) 118 S.Ct. 2257
Court Decision	Department of Health Services v. Superior Court of California (2003) 31 Cal.4th 1026
Court Decision	Faragher v. City of Boca Raton (1998) 118 S.Ct. 2275
Court Decision	Gebser v. Lago Vista Independent School District (1998) 118 S.Ct. 1989
Court Decision	Meritor Savings Bank, FSB v. Vinson et al. (1986) 447 U.S. 57
Court Decision	Oncale v. Sundowner Offshore Serv. Inc. (1998) 118 S.Ct. 998
<u>Federal Register</u>	<u>Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, April 29, 2024, Vol. 89, No. 83, pages 33474-33896</u> <u>(https://www.federalregister.gov/documents/2024/04/29/2024-07915/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal)</u>
U.S. Equal Employment Opportunity Com. Publication	Promising Practices for Preventing Harassment, November 2017
Website	CSBA District and County Office of Education Legal Services
Website	California Civil Rights Department
Website	<u>U.S. Department of Education, Office for Civil Rights</u> <u>California Department of Education</u> <u>(https://www.cde.ca.gov/)</u>
Website	<u>U.S. Equal Employment Opportunity Commission</u> <u>U.S. Department of Education, Office for Civil Rights</u>
<u>Website</u>	<u>U.S. Equal Employment Opportunity Commission</u>

Cross References

Code	Description
0410	Nondiscrimination In District Programs And Activities
0450	Comprehensive Safety Plan
0450	Comprehensive Safety Plan
1312.3	Uniform Complaint Procedures
1312.3	Uniform Complaint Procedures
1312.3-E(1)	Uniform Complaint Procedures
1312.3-E(2)	Uniform Complaint Procedures
1313	Civility
3530	Risk Management/Insurance
3530	Risk Management/Insurance
3600	Consultants
4030	Nondiscrimination In Employment
4030	Nondiscrimination In Employment
<u>4033</u>	<u>Lactation Accommodation</u>
4040	Employee Use Of Technology
4040-E(1)	Employee Use Of Technology
4112.9	Employee Notifications
4112.9-E(1)	Employee Notifications
4117.7	Employment Status Reports
4118	Dismissal/Suspension/Disciplinary Action
4118	Dismissal/Suspension/Disciplinary Action
4119.12	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4119.12-E(1)	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4119.21	Professional Standards
4119.21-E(1)	Professional Standards
4119.22	Dress And Grooming

4131	Staff Development
4144	Complaints
4144	Complaints
4212.9	Employee Notifications
4212.9-E(1)	Employee Notifications
4218.1	Dismissal/Suspension/Disciplinary Action (Merit System)
4219.12	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4219.12-E(1)	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4219.21	Professional Standards
4219.21-E(1)	Professional Standards
4219.22	Dress And Grooming
4231	Staff Development
4244	Complaints
4244	Complaints
4300	Administrative And Supervisory Personnel
4300	Administrative And Supervisory Personnel
4312.9	Employee Notifications
4312.9-E(1)	Employee Notifications
4317.7	Employment Status Reports
4319.12	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4319.12-E(1)	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4319.21	Professional Standards
4319.21-E(1)	Professional Standards
4319.22	Dress And Grooming

4344	Complaints
4344	Complaints
5145.7	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>
5145.7	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>
5145.71	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
5145.71-E(1)	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
<u>5146</u>	<u>Married/Pregnant/Parenting Students</u>

Regulation 4119.12: Title IX Sexual ~~Sex~~ Discrimination and Sex-Based Harassment Complaint Procedures Status: ADOPTED

Original Adopted Date: 07/01/2020 | Last Revised Date: ~~100~~7/01/2020~~2024~~ | Last Reviewed Date: ~~100~~7/01/2020~~2024~~

CSBA NOTE: Title IX of the Education Amendments of 1972 (20 USC 1681-1688; 34 CFR 106.1-106.82) prohibits discrimination based on sex, including sexual harassment, and mandates that the district adopt and publish complaint procedures.

The following administrative regulation reflects the Title IX complaint procedure detailed in 34 CFR 106.44-106.45, as added by 85 Fed. Reg. 30026, which must be used, effective August 14, 2020, to address any complaint of sexual harassment that meets the definition in 34 CFR 106.30. Pursuant to 34 CFR 106.30, allegations of sexual harassment governed by these regulations include (1) a district employee conditioning the provision of a district aid, benefit, or service on an individual's participation in unwelcome sexual conduct; (2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity; or (3) sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 and 34 USC 12291. Alleged sexual harassment in employment that does not meet this definition should be addressed through the district's complaint procedures described in AR 4030 - Nondiscrimination in Employment.

34 CFR 106.44 requires the district, when there is actual knowledge of sexual harassment, to respond promptly in a manner that is not deliberately indifferent. 34 CFR 106.30 defines "actual knowledge" as notice of sexual harassment or allegations of sexual harassment being submitted to the district's Title IX Coordinator, any official of the district who has authority to institute corrective measures, or any employee of an elementary or secondary school. A district is deliberately indifferent only if its response to Title IX sexual harassment is clearly unreasonable in light of the known circumstances.

Application of the Title IX complaint procedures to the facts of a specific complaint may implicate complicated questions about the intersection of state law, federal law, and, in cases involving employees, the applicable collective bargaining agreement. Districts with questions about specific complaints are strongly encouraged to consult legal counsel.

Also see BP/AR 4119.11/4219.11/4319.11 - Sexual Harassment for information about prohibited conduct, training, required notifications, and processes for reporting sexual harassment.

CSBA NOTE: Title IX of the Education Amendments of 1972 (20 USC 1681-1688; 34 CFR 106.1-106.82) prohibits discrimination based on sex, including sex-based harassment, and mandates that the district adopt and publish complaint procedures. The following administrative regulation reflects the Title IX grievance procedures detailed in 34 CFR 106.44-106.45, as amended by 89 Fed. Reg. 33474.

Application of the Title IX complaint procedures to the facts of a specific complaint may implicate complicated questions about the intersection of state law, federal law, and, in cases involving

employees, the applicable collective bargaining agreement. Pursuant to 34 CFR 106.11 and 106.44, as amended by 89 Fed. Reg. 33474, a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, is required to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct. As such a complaint may also fall within the complaint process as specified in AR 4030 – Nondiscrimination in Employment, it is unclear whether districts would additionally be required to follow the procedures specified in AR 4030 – Nondiscrimination in Employment. Due to this uncertainty, it is recommended that districts consult with CSBA's District and County Office of Education Legal Services or district legal counsel prior to utilizing the procedures specified in AR 4030 – Nondiscrimination in Employment for this purpose.

See AR 4030 – Nondiscrimination in Employment. Also see BP/AR 4119.11/4219.11/4319.11 – Sex Discrimination and Sex-Based Harassment for information about prohibited conduct, training, required notifications, and processes for reporting sex discrimination and sex-based harassment.

The complaint procedures described in this administrative regulation shall be used to address any complaint governed by Title IX of the Education Amendments of 1972 alleging that a district employee, while in an education program or activity in which a district school exercises substantial control over the context and respondent, was subjected to one or more of the following forms of sexual harassment: (34 CFR 106.30; 106.44) , was subjected to conduct on or after August 1, 2024, including, but not limited to, conduct that is under the authority of the district, that constitutes sex discrimination, including sex-based harassment. For conduct that occurred prior to this date, the district should utilize its policies in place at the time the alleged sex discrimination, including sex-based harassment, occurred, so long as they are in accordance with the applicable statutes and regulations.

- 1.—A district employee conditioning the provision of a district aid, benefit, or service on a person's participation in unwelcome sexual conduct
- 2.—Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity
- 3.— Sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 or 34 USC 12291

All other sexual harassment complaints or allegations shall be investigated and resolved in accordance with AR 4030 – Nondiscrimination in Employment. The determination of whether the allegations meet the definition of sexual harassment under Title IX shall be made by the district's Title IX Coordinator.

Because the complainant has a right to pursue a complaint under AR 4030 for any allegation that is dismissed or denied under the Title IX complaint procedure, the Title IX Coordinator shall ensure that all requirements and timelines for AR 4030 are concurrently met while implementing the Title IX procedure.

Reporting Allegations/Filing a Formal Complaint

Sex discrimination and sex-based harassment include, but are not limited to, sex-based conduct as specified in Administrative Regulation 4119.11/4219.11/4319.11 - Sex Discrimination and Sex-Based Harassment.

Basic Requirements

CSBA NOTE: 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, requires that the district's grievance procedures follow specified basic requirements, which are reflected below.

When implementing Title IX grievance procedures, the district shall: (34 CFR 106.45)

1. Treat complainants and respondents equitably
2. Ensure that the Title IX Coordinator or designee, investigator, or decisionmaker not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent

The investigator and the decisionmaker may be the same person as the Title IX Coordinator or designee.
3. Presume that the respondent is not responsible for the alleged sex discrimination, including sex-based harassment, until a determination is made at the conclusion of the grievance procedures
4. Establish reasonably prompt timeframes for the major stages of the grievance procedures, such as evaluation of whether to dismiss or investigate a complaint, investigation, decision, and appeals if any
5. Establish a process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the parties that includes the reason for the delay

CSBA NOTE: Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, the district may not disclose personally identifiable information obtained while complying with the Title IX complaint procedures, except as provided below.

Additionally, the district shall not disclose personally identifiable information obtained while implementing Title IX complaint procedures unless the district has obtained prior written consent from a person with the legal right to consent to the disclosure; the information is disclosed to a parent/guardian or other authorized legal representative with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue; to take action to address conduct that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, in the district's education program or activity; as required by federal law, regulations, or as a condition to a federal award; as required by state or local law; or to the extent such disclosures are not otherwise in conflict with Title IX. (34 CFR 106.44)

If the respondent is a student with a disability, the Title IX Coordinator or designee shall consult with one or more members, as appropriate, of the student's individualized education program or 504 team, to determine how to comply with the requirements of the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973.

Filing a Complaint

Upon receiving information of an allegation of sex discrimination, including sex-based harassment, the Title IX Coordinator or designee shall notify the individual(s) specified in law of the Title IX grievance procedures, and of the informal resolution process, if available and appropriate.

CSBA NOTE: Pursuant to 34 CFR 106.2, as amended by 89 Fed. Reg. 33474, a "complaint" is defined as an oral or written request to the district that objectively can be understood as a request for the district to investigate and make a determination about alleged discrimination under Title IX.

A complaint is an oral or written request that can objectively be understood by the Title IX Coordinator or designee as a request for the district to investigate and make a determination about alleged sex discrimination, including sex-based harassment. (34 CFR 106.2)

Complaints of sex discrimination and sex-based harassment may only be brought by an employee, or former employee, who was participating or attempting to participate in the district's education program or activity at the time of the alleged sex-based harassment, or the Title IX Coordinator or designee. (34 CFR 106.45)

CSBA NOTE: Pursuant to 34 CFR 106.30, the timeline for resolving a sexual harassment complaint begins when the district has actual knowledge of sexual harassment, defined as the receipt of a report by the Title IX Coordinator or other employee of an elementary or secondary school. The following paragraph reflects the requirement for any employee to forward the report to the Title IX Coordinator as stated in AR 4119.11/4219.11/4319.11 - Sexual Harassment and may be revised to reflect district practice.
CSBA NOTE: Given the district's duty pursuant to 34 CFR 106.44 to respond to reports of sex discrimination, including sex-based harassment, promptly and effectively, the Title IX Coordinator or designee should file a complaint even when the victim chooses not to do so, when, based on the considerations described below, the Title IX Coordinator or designee determines that a health or safety threat exists or when the district would be prevented from ensuring equal access based on sex in its programs or activities. In such cases, the alleged victim must receive notices as required by the Title IX regulations at specific points in the complaint process.

An employee who is If the alleged victim chooses not to bring a complaint, or withdraws any or all of sexualthe allegations in a complaint, and in the absence or termination of an informal resolution process, the Title IX Coordinator or designee shall consider whether to initiate a complaint. To do so, the Title IX Coordinator or designee shall first consider the following factors: (34 CFR 106.44)

1. The victim's request not to proceed with initiation of a complaint
2. The victim's reasonable safety concerns regarding initiation of a complaint
3. The risk that additional acts of sex discrimination, including sex-based harassment may submit, would occur if a reportcomplaint is not initiated
4. The severity of sexualthe alleged sex discrimination or sex-based harassment to the district's Title IX Coordinator using the contact, including whether the discrimination, if established,

would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence

5. The age and relationship of the parties, including whether the respondent is an employee of the district
6. The scope of the alleged sex discrimination, including information listed in AR 4119.11/4219.11/4319.11 - Sexual Harassment suggesting a pattern; ongoing sex discrimination, including sex-based harassment; or sex discrimination, including sex-based harassment, alleged to have impacted multiple individuals
7. The availability of evidence to assist a decisionmaker in determining whether sex discrimination, including sex-based harassment, occurred
8. Whether the employee's direct supervisor or other district administrator, who shall forward could end the report to alleged sex discrimination, including sex-based harassment, and prevent its recurrence without initiating the Title IX Coordinator within one day of receiving the report.

Upon receiving such a report grievance procedures

If, after considering these factors, the Title IX Coordinator shall ~~inform~~ determines that the alleged conduct presents an imminent and serious threat to the health and safety of the complainant of the right to file a formal complaint and the process for filing a formal complaint.

A formal complaint, with the complainant's physical or digital signature, may be filed ~~with or another person, or that the conduct as alleged prevents the district from ensuring equal access to a district program or activity on the basis of sex,~~ the Title IX Coordinator in person, may initiate a complaint.

CSBA NOTE: Pursuant to 34 CFR 106.44, as amended by mail, by email, or by any other method authorized by the district. (34 CFR 106.30) 89 Fed. Reg. 33474, the Title IX Coordinator or designee is required to take the steps described below upon initiating a complaint.

CSBA NOTE: Given the district's duty pursuant to 34 CFR 106.44 to respond to reports of sexual harassment in a manner that is not deliberately indifferent, the Title IX Coordinator should file a complaint in certain situations even when the victim chooses not to do so, including, but not limited to, when a safety threat exists. In such cases, the Title IX Coordinator and the alleged victim are not named parties to the case, but the alleged victim must receive notices as required by the Title IX regulations at specific points in the complaint process.

Even if the alleged victim chooses not to file a formal If the Title IX Coordinator initiates a complaint, the Title IX Coordinator shall file a formal complaint in situations when a safety threat exists. In addition, the Title IX Coordinator may file a formal complaint in other situations as permitted under the Title IX regulations, including as part of the district's obligation to not be deliberately indifferent to known allegations of sexual harassment. In such cases, the Title IX Coordinator shall provide the alleged victim notice of the complaint as well as other notices as required by the Title IX regulations at specific points in the complaint process.

The Title IX Coordinator The Title IX Coordinator shall also address reasonable concerns about the

victim's safety or the safety of others, including providing supportive measures as described in "Supportive Measures" below, and taking other appropriate prompt and effective steps to ensure that sex discrimination, including sex-based harassment, does not continue or recur within the district. (34 CFR 106.44)

CSBA NOTE: Pursuant to 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, in addition to Title IX Coordinators or designees, investigators, and decisionmakers, persons who are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures may not have a conflict of interest or bias for or against complainants or respondents generally, or an individual complainant or respondent, and are required to receive specified training.

The Title IX Coordinator or designee, investigator, ~~decision-maker~~ decisionmaker, other person who is responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures, or a facilitator of an informal resolution process shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. Such persons shall receive training in accordance with 34 CFR 106.45~~8~~. (34 CFR 106.45)

Supportive Measures

CSBA NOTE: Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, the Title IX Coordinator is required to monitor the district for barriers to reporting information about conduct that reasonably may constitute sex discrimination, including sex-based harassment, under Title IX, as specified below.

Upon receipt of a report of Title IX sexual In order to ensure that employees are not barred from reporting information about conduct that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, the Title IX Coordinator shall promptly contact the complainant to discuss the availability of supportive measures and shall consider~~monitor~~ the complainant's wishes with respect~~district for barriers to the~~reporting and take steps reasonably calculated to address such barriers. (34 CFR 106.44, 106.45)

Supportive Measures

CSBA NOTE: 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, requires districts to offer and coordinate supportive measures implemented. Supportive as described below. Pursuant to 34 CFR 106.2, as amended by 89 Fed. Reg. 33474, "supportive measures shall be" are defined as individualized measures offered as appropriate, as reasonably available, and without charge to the unreasonably burdening a complainant or the respondent before, not for punitive or after the filing of a formal complaint or where no formal complaint has been filed. Such measures shall be nondisciplinary, nonpunitive, and not unreasonably burden the other party, including measures designed to protect the safety of all parties or the district's educational environment or to deter sexual harassment.~~disciplinary reasons, and without charging a fee to the complainant or respondent to (1) restore or preserve the party's access to the district's education program or activity, including measures that are designed to protect the safety of the parties or the district's~~

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educational environment, or (2) provide support during the recipients' grievance procedures specified in 34 CFR 106.45 or during any informal resolution process as specified in 34 CFR 106.44.]

Upon receipt of a report of Title IX sex discrimination or sex-based harassment, the Title IX Coordinator or designee shall offer and coordinate supportive measures. Supportive measures may vary depending on what the district determines to be reasonably available and shall not unreasonably burden either the complainant or respondent. Supportive measures shall be provided without charging a fee to the complainant or respondent and be designed to protect the safety of the complainant, respondent, and the district's educational environment, and to provide support during any grievance procedures implemented as specified in 34 CFR 106.45 or informal resolution process as specified in 34 CFR 106.44. The district shall not impose such measures for punitive or disciplinary reasons. Supportive measures may include, but are not limited to, counseling; extensions of deadlines; and other course- or work-related adjustment; changes in class, work, housing, or extracurricular or any other activity regardless of whether there is a comparable alternative; campus escort services; modifications of class or work schedules; mutual restrictions on contact; changes in class or work locations; leaves of absence; increased security; and; monitoring of certain areas of the campus. (34 CFR 106.30, 106.44)

The district shall maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the district's ability to provide the ; and, training and education programs related to sex-based harassment. (34 CFR 106.2, 106.44)

CSBA NOTE: Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, the district's provision of supportive measures. (34 CFR 106.30) does not require the district, its employees, or any other persons authorized to provide aid, benefit, or service on the district's behalf to alter the alleged discriminatory conduct for the purpose of providing the supportive measures unless there is an allegation of sex-based harassment or retaliation.

Unless there is an allegation of sex-based harassment or retaliation, the district may provide supportive measures without altering the alleged discriminatory conduct. (34 CFR 106.44)

Upon the conclusion of any grievance procedures implemented as specified in 34 CFR 106.45 or informal resolution process as specified in 34 CFR 106.44, the district may continue with the supportive measures, or modify or terminate such measures, as appropriate. (34 CFR 106.44)

CSBA NOTE: Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, the district is required to provide both parties for whom supportive measures have been implemented with the opportunity to challenge, to an impartial employee, the implementation of such measures. An "impartial employee" must be someone other than the employee who made the decision to provide the supportive measures which are being challenged, but who has the authority to modify or reverse the decision if the employee determines that the decision to provide, deny, modify, or terminate the supportive measures was inconsistent with the definition of supportive measures as specified in 34 CFR 106.2.

The district shall provide a complainant or respondent for whom supportive measures have been implemented with a timely opportunity to seek, from an impartial employee with authority to modify or reverse the supportive measures, modification or reversal of the district's decision to provide, deny, modify, or terminate such measures, and to seek additional modification or termination of the supportive measures if circumstances materially change. (34 CFR 106.44)

The district shall not disclose information about supportive measures to any person other than the person to whom they apply, including informing one party of supportive measures provided to another party, unless the disclosure is necessary to providing the supportive measures, or restoring or preserving a party's access to the district's education program or activity. (34 CFR 106.44)

Emergency Removal

If a district employee is the respondent, the employee may be placed on administrative leave during the pendency of the formal complaint process. (34 CFR 106.44)

CSBA NOTE: Pursuant to Education Code 48900.2, a student in grades 4-12 may be suspended and/or expelled from school for sexual harassment. ~~Districts should also note that~~ Additionally, Education Code 48915(c) requires the Superintendent or designee to recommend expulsion for any student, irrespective of grade, who commits sexual assault or battery as defined in the Penal Code. See AR 5144.1 - Suspension and Expulsion/Due Process.

34 CFR 106.44 allows a student to be removed in emergency situations as described below, but 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, requires that a student should not be "disciplined" prior to a finding being made pursuant to the Title IX grievance process established by 34 CFR ~~106.45~~. Due to this inconsistency in state and federal law, districts are advised to consult CSBA's District and County Office of Education Legal Services of district legal counsel as to the manner of imposing an emergency removal.

If the respondent is a student, the district may, on an emergency basis, remove the student from the district's education program or activity, provided that the district conducts an individualized safety and risk analysis, determines that removal is justified due to an ~~immediate~~ imminent and serious threat to the physical health or safety of a complainant or any student, ~~employee,~~ or other individual arising from the allegations, and provides the student ~~respondent~~ with notice and an opportunity to challenge the decision immediately following the removal. This authority to remove a student does not modify a student's rights under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973. (34 CFR 106.44) IDEA or Section 504 of the Rehabilitation Act of 1973. (34 CFR 106.44)

Dismissal of Complaint

The Title IX Coordinator shall dismiss a formal complaint if the alleged conduct would not constitute sexual harassment as defined in 34 CFR 106.30 even if proved. The Title IX Coordinator shall also dismiss any complaint in which the alleged conduct did not occur in the district's education program or activity or did not occur against a person in the United States, and may dismiss a formal complaint if the complainant notifies the district in writing that the complainant would like to withdraw the complaint or any allegations in the complaint, the respondent is no longer employed

by the district, or sufficient circumstances prevent the district from gathering evidence sufficient to reach a determination with regard to the complaint. (34 CFR 106.45)

Upon dismissal, the Title IX Coordinator shall promptly send written notice of the dismissal and the reasons for the dismissal simultaneously to the parties, and shall inform them of their right to appeal the dismissal of a formal complaint or any allegation in the complaint in accordance with the appeal procedures described in the section "Appeals" below. (34 CFR 106.45)

If a complaint is dismissed, the conduct may still be addressed pursuant to AR 4030 - Nondiscrimination in Employment as applicable.

Informal Resolution Process

When a formal complaint of sexual harassment is filed, the district may offer an informal resolution process, such as mediation, at any time prior to reaching a determination regarding responsibility. The district shall not require a party to participate in the informal resolution process or to waive the right to an investigation and adjudication of a formal complaint. (34 CFR 106.45)

The district may facilitate an informal resolution process provided that the district: (34 CFR 106.45)

Dismissal of Complaint

CSBA NOTE: The following section describes when the Title IX Coordinator or designee may dismiss a Title IX complaint and actions the Title IX Coordinator or designee is required to take when a complaint is dismissed pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474.

The Title IX Coordinator or designee may dismiss a complaint if: (34 CFR 106.45)

1. The district is unable to identify the respondent after taking reasonable steps to do so
2. The respondent is not participating in the district's education program or activity and is not employed by the district
3. The district determines that the conduct alleged in the complaint, even if proven, would not constitute sex discrimination, including sex-based harassment, under Title IX
Before dismissing the complaint, the Title IX Coordinator shall make reasonable efforts to clarify the allegations with the complainant.
4. The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and the Title IX Coordinator determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination, including sex-based harassment, under Title IX, even if proven

CSBA NOTE: Pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, the district is required to establish reasonably prompt timeframes for the major stages of the grievance

procedures. The following paragraph should be revised to reflect the timeline established by the district.

The Title IX Coordinator shall determine whether to dismiss or investigate any complaint of sex discrimination, including sex-based harassment, within [redacted] days, unless such timeline is extended in accordance with this administrative regulation. 10 business

Upon dismissal, the Title IX Coordinator shall promptly notify the complainant of the dismissal and the reasons for the dismissal. Additionally, if the dismissal occurs after the respondent has been notified of the allegations, the Title IX Coordinator shall provide such notification to the respondent, which shall occur simultaneously to both parties if the notification is in writing. The Title IX Coordinator shall also inform the complainant, and the respondent if the dismissal occurs after the respondent has been notified of the allegations, of their right to appeal. Dismissals may be appealed on the following bases: (34 CFR 106.45)

1. A procedural irregularity that would change the outcome
2. New evidence that would change the outcome and that was not reasonably available when the dismissal was made
3. The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome

If the dismissal is appealed, the district shall: (34 CFR 106.45)

1. Notify the parties of any appeal, including notice of the allegations, if notice was not previously provided to the respondent
2. Implement appeal procedures equally for the parties
3. Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint
4. Ensure that the decisionmaker for the appeal has been trained consistent with the Title IX regulations
5. Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome
6. Notify the parties of the result of the appeal and the rationale for the result

If a complaint is dismissed, the Title IX Coordinator or designee shall offer supportive measures as described above in "Supportive Measures" to the complainant. Additionally, the respondent shall be offered supportive measures if the complaint was dismissed because the complainant voluntarily withdrew any or all of the allegations in the complaint and the district determined that without the withdrawn allegations the conduct, even if proven, would not constitute sex discrimination, including sex-based harassment, under Title IX, or if the complaint was dismissed because the district determined, after taking reasonable efforts to clarify the allegations of the complaint, that the alleged conduct would not constitute sex discrimination, including sex-based harassment, even if proven. The Title IX Coordinator shall also take other appropriate prompt and effective steps to ensure that sex discrimination, including sex-based harassment, does not continue or recur within the district's education program or activity. (34 CFR 106.45)

If a complaint is dismissed, the conduct may still be addressed pursuant to Administrative Regulation 4030 - Nondiscrimination in Employment as applicable.

Informal Resolution Process

CSBA NOTE: The following section reflects when the district may offer an informal resolution process, notification and consent requirements, criteria for the facilitator of the informal resolution process, and other required steps when an informal resolution process is implemented, as specified in 34 CFR 106.44, as amended by 89 Fed. Reg. 33474.

Additionally, 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, provides potential terms that may be included in an informal resolution agreement. Because such agreements will be fact-specific and reflective of sensitive topics, districts are encouraged to consult CSBA's District and County Office of Education Legal Services or district legal counsel when drafting informal resolution agreements.

At any time prior to determining whether sex discrimination, including sex-based harassment, occurred under the complaint procedures specified in 34 CFR 106.45, the district may offer, if it is determined to be appropriate upon receiving information about conduct that reasonably may constitute sex discrimination under Title IX or when a complaint of sex discrimination is made, an informal resolution process, such as mediation, to the complainant and respondent. However, the district shall not offer an informal resolution process if the complaint alleges that an employee engaged in sex-based harassment of an elementary or secondary school student or that such process would conflict with federal, state, or local law. (34 CFR 106.44)

The district shall not require or pressure a party to participate in the informal resolution process, or to waive the right to an investigation and determination of a complaint as a condition of employment or continuing employment, or exercise of any other right. The district may decline to offer an informal resolution process including, but not limited to, when the district determines that the alleged conduct would present a future risk of harm to others. (34 CFR 106.44)

The district may facilitate an informal resolution process provided that the district, prior to initiating such process: (34 CFR 106.44)

1. Provides the parties with written notice disclosing the allegations; the requirements of the informal resolution process; the right to withdraw from the informal process and resume the formal complaint process; and any consequences resulting; the inability to initiate or resume complaint procedures arising from participating in the same allegations once the informal resolution process is concluded; the potential terms that may be requested or offered in an informal resolution agreement, including that records the agreement would only be binding on the parties; and the information that the district will be maintained or maintain and whether and how the district could be shared. disclose such information for use in Title IX grievance procedures if such procedures are initiated or resumed
2. Obtains the parties' voluntary, written consent to the informal resolution process

The Title IX Coordinator or designee shall ensure that the facilitator of the informal resolution process is not the same person as the investigator or decisionmaker of any ongoing or newly initiated complaint process specified in 34 CFR 106.45, does not have a conflict of interest or bias

for or against complainants or respondents generally or an individual complainant or respondent, and receives training in accordance with 34 CFR 106.8. (34 CFR 106.44)

If the district facilitates an informal resolution process, the Title IX Coordinator shall, to the extent necessary, take other appropriate prompt and effective steps to ensure that sex discrimination, including sex-based harassment, does not continue or recur within the district's education program or activity. (34 CFR 106.45)

Written Notice of Allegations

CSBA NOTE: The following section reflects the notice districts are required to provide to the parties pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474.

If the district initiates a formal complaint is filed Title IX investigation, the Title IX Coordinator or designee shall provide the known parties with written notice of the following: (34 CFR 106.45)

1. The district's complaint process, including any informal resolution process
2. The allegations potentially constituting sexual harassment with sufficient details known Sufficient information, available at the time, including to allow the parties to respond to the allegations, including, to the extent available, the identity of parties involved in the incident if known(s), the conduct allegedly constituting sexual sex discrimination, including sex-based harassment, and the date(s) and location(s) of the alleged incident if known.

Such notice shall be provided with sufficient time for the parties to prepare a response before any initial interview.

If, during the course of the investigation, new Title IX allegations arise about the complainant or respondent that are not included in the initial notice, the Title IX Coordinator shall provide notice of the additional allegations to the parties.

3. A statement that retaliation is prohibited

- 1.—4. A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the complaint process
- 2.—The opportunity for the parties are entitled to have an advisor of their choice who may be, but is not required equal opportunity to be, an attorney, and the ability to inspect and review access the relevant and not otherwise impermissible evidence
3. The prohibition against knowingly making false statements or knowingly submitting false information during the complaint process an accurate description of such evidence, as specified

CSBA NOTE: The following paragraph is optional. Although not required by law, a best practice is to provide notice to the parties of the name of the investigator, facilitator, and decision-

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~~maker~~decisionmaker in order to give the parties an opportunity to raise concerns of conflict of interest or bias as prohibited by 34 CFR 106.45.

The above notice ~~shall~~may also include the name of the investigator, facilitator of an informal process, and ~~decision-maker~~decisionmaker and shall inform the parties that, if at any time a party has concerns regarding conflict of interest or bias regarding any of these persons, the party should immediately notify the Title IX Coordinator: or designee.

Consolidation of Complaints

CSBA NOTE: The following section reflects the district's authority to consolidate complaints of sex discrimination, including sex-based harassment, as specified in 34 CFR 106.45, as amended by 89 Fed. Reg. 33474.

The district may consolidate complaints of sex discrimination, including sex-based harassment, against more than one respondent; by more than one complainant against one or more respondents; or by one party against another party, when the allegations of sex discrimination, including sex-based harassment, arise out of the same facts or circumstances. (34 CFR 106.45)

Investigation Procedures

CSBA NOTE: Pursuant to 34 CFR 106.45, when investigating a ~~formal~~ complaint, the burden of proof rests on the district and not on the parties. However, the district must obtain the party's voluntary, written consent to access, consider, disclose, or otherwise use a party's records that are maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional, which are made and maintained in connection with the provision of treatment to the party.

34 CFR 106.45 authorizes, but does not require, the district to conduct a live hearing at which each party's advisor may ask the other party and any witnesses all relevant questions and follow-up questions. If the district chooses to include such a hearing as a component of its complaint procedure, the following list should be modified to include requirements for the hearing in accordance with 34 CFR 106.45:

The district shall provide for adequate, reliable, and impartial investigation of complaints. (34 CFR 106.45)

During the investigation process, the district's designated investigator shall: (34 CFR 106.45)

1. 1. Provide an equal opportunity for the parties to present ~~fact~~ witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence that is relevant and not otherwise impermissible
2. Review all evidence gathered through the investigation and determine which evidence is relevant and which evidence is impermissible regardless of relevance
3. Provide each party with an equal opportunity to access evidence that is relevant, and not otherwise impermissible, to the allegations of sex discrimination, including sex-based harassment, by:

a. Providing an equal opportunity to access either the relevant and not otherwise impermissible evidence or an accurate description of such evidence

If an accurate description is provided, the district shall, upon request of any party, provide the parties with an equal opportunity to access the relevant and permissible evidence.

b. Providing a reasonable opportunity to respond to the evidence or to the accurate description of the evidence

c. Taking reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures

2. ~~4.~~ Not Take reasonable steps to protect the privacy of parties and witnesses which do not restrict the ability of either party to discuss the allegations under investigation or to gather ~~the parties to obtain~~ and present relevant evidence
3. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney
4. Not limit the choice, by speaking to witnesses; consulting with family members, confidential resources, or presence of an advisor ~~advisors; or otherwise preparing~~ for either the complainant or respondent ~~or participating~~ in any meeting or ~~the~~ grievance proceeding, although the district may establish restrictions regarding the extent to which the advisor may participate in the proceedings as long as the restrictions apply equally to both parties procedures
5. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings, with sufficient time for the party to prepare to participate
6. Send in an electronic format or hard copy to both parties and their advisors, if any, the evidence obtained as part of the investigation that is directly related to the allegations raised in the complaint, and provide the parties at least 10 days to submit a written response for the investigator to consider prior to the completion of the investigative report
7. 5. Objectively evaluate all evidence that is relevant evidence and not otherwise impermissible, including both inculpatory and exculpatory evidence, and determine including that credibility in a manner that is ~~determinations will~~ not be based on a person's person's status as a complainant, respondent, or witness
8. Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to the determination of responsibility, send to the parties and their advisors, if any, the investigative report in an electronic format or a hard copy, for their review and written response
6. Exclude as impermissible the following types of evidence, and questions seeking that evidence:

- a. Evidence that is protected under a privilege recognized by state or federal law or evidence that is provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege
- b. A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the district obtains that party's or witness's voluntary, written consent for use in its grievance procedures
- c. Questions and Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant; unless such questions and evidence are complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct alleged by the complainant or if the questions and is evidence concern about specific incidents of the complainant's complainant's prior sexual behavior conduct with respect to the respondent and are that is offered to prove consent to the alleged sex-based harassment.

The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

CSBA NOTE: The following paragraph should be amended to reflect district practice regarding the process established to enable the decisionmaker to question parties and witnesses adequately to assess a party's or witness's credibility.

The district shall ensure that the decisionmaker is able to question parties and witnesses adequately to assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex-based harassment. (34 CFR 106.45)

Privacy rights of all parties to the complaint shall be maintained in accordance with applicable state and federal laws.

CSBA NOTE: Districts with questions about the application of a collective bargaining agreement in the context of a Title IX investigation should consult CSBA's District and County Office of Education Legal Services or district legal counsel.

If the complaint is against an employee, rights conferred under an applicable collective bargaining agreement shall be applied to the extent they do not conflict with the Title IX requirements.

Written Decision

CSBA NOTE: Pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, the district is required to establish reasonably prompt timeframes for the major stages of the grievance procedures. The district should revise the following paragraph to reflect the timeline established by the district.

The investigator shall complete the investigation within 30 business days after the Title IX Coordinator determines to proceed with an investigation, unless such timeline is extended in accordance with this administrative regulation.

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Written Decision

CSBA NOTE: Pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, the person designated as the ~~decision-maker~~ decisionmaker of the determination of responsibility ~~cannot~~ may be the same person designated as the Title IX Coordinator, ~~an~~ or designee and/or investigator, ~~or the person who considers appeals~~ so long as there is no conflict of interest or bias. The following paragraph may be revised to reflect the position designated by the district to provide a written determination of responsibility. While designation decisions will depend on the size of the district, a best practice is to designate an upper-level administrator as the ~~decision-maker~~ decisionmaker and designate the Superintendent as the person to consider appeals.

The Superintendent shall designate an employee as the ~~decision-maker~~ decisionmaker to determine responsibility for the alleged conduct, who ~~shall not~~ may be the Title IX Coordinator or a person involved in designee or the investigation investigator so long as there is no conflict of the ~~matter~~ interest or bias. (34 CFR 106.45)

~~After~~ Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, the district shall: (34 CFR 106.45)

1. Use the investigative report preponderance of the evidence standard of proof to determine whether sex discrimination, including sex-based harassment, has been sent to occurred
2. Notify the parties but before reaching a in writing of the determination regarding responsibility, the decision-maker of whether sex discrimination, including sex-based harassment, occurred

The notification shall afford each party the opportunity include the rationale for such determination and the procedures and permissible bases for the complainant and respondent to submit appeal, if applicable.

CSBA NOTE: Pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, the district is required to establish reasonably prompt timeframes for the major stages of the grievance procedures. The district should revise the following paragraph to reflect the timeline established by the district.

The written; relevant questions that the party wants asked of any party or witness; provide each party with the answers; and allow for additional, limited follow-up questions from each party

The decision-maker decision shall issue; and simultaneously provide to both parties; a written decision as to ~~whether the respondent is responsible for the alleged conduct.~~ (34 CFR 106.45) be issued within days after the investigation is completed, unless such time is extended in accordance with this administrative regulation.

Appeal of the Decision

10 business days

CSBA NOTE: 34 CFR 106.45 requires that the district's complaint process include a "reasonably prompt" timeframe for concluding the complaint process; but does not specify the number of days within which the final decision must be issued. Districts may revise the following paragraph to

include a different timeline as long as it would satisfy the requirement to act promptly. CSBA NOTE: 34 CFR 106.45 allows either the complainant or respondent to appeal the district's decision, and requires the district to offer the parties an appeal process that at a minimum is the same as it offers in all other comparable proceedings, if any, including proceedings relating to other discrimination complaints, such as AR 4030 – Nondiscrimination in Employment. The district may revise the following section to reflect applicable timelines and appeal process established by the district.

The following section should also be revised to identify the person who has been designated as the decisionmaker(s) for the appeal. Pursuant to 34 CFR 106.45, the decisionmaker for the appeal cannot be the same person as the decisionmaker that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.

The written decision shall be issued within 60 calendar days of the receipt of the complaint.

The timeline may be temporarily extended for good cause with written notice to the complainant and respondent of the extension and the reasons for the action. (34 CFR 106.45)

CSBA NOTE: 34 CFR 106.45 mandates that the district's complaint procedures state whether the district's determination of responsibility will be based on a "preponderance of evidence" standard or "clear and convincing evidence" standard. The following paragraph reflects the "preponderance of evidence" standard, which is a less stringent standard to prove misconduct, and should be revised if the district chooses to use a "clear and convincing evidence" standard. The standard selected by the district must be applied uniformly for all Title IX sexual harassment complaints. The district should consult with legal counsel in determining which standard to use.

In making this determination, the decision-maker shall use the "preponderance of the evidence" standard for all formal complaints of sexual harassment. (34 CFR 106.45)

The written decision shall include the following: (34 CFR 106.45)

1. Identification of the allegations potentially constituting sexual harassment as defined in 34 CFR 106.30
2. A description of the procedural steps taken from receipt of the formal complaint through the written decision, including any notifications to the parties; interviews with parties and witnesses; site visits; methods used to gather other evidence; and hearings held if the district includes hearings as part of the grievance process
3. Findings of fact supporting the determination
4. Conclusions regarding the application of the district's code of conduct or policies to the facts
5. A statement of, and rationale for, the result as to each allegation, including a decision regarding responsibility; any disciplinary sanctions the district imposes on the respondent; and whether remedies designed to restore or preserve equal access to the district's educational program or activity will be provided by the district to the complainant
6. The district's procedures and permissible bases for the complainant and respondent to appeal

Appeals

CSBA NOTE: 34 CFR 106.45 allows either the complainant or respondent to appeal the district's decision. The district may revise the following section to reflect applicable timelines established by the district.

The following section should also be revised to identify the person who has been designated as the decision-maker(s) for the appeal. Pursuant to 34 CFR 106.45, the decision-maker for the appeal cannot be the same person as the decision-maker that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.

Either party may appeal the district's decision or dismissal of a formal complaint or any allegation in the complaint, if the party believes that a procedural irregularity affected the outcome, new evidence is available that could affect the outcome, or a conflict of interest or bias by the Title IX Coordinator, investigator(s), or decision-maker(s) affected the outcome. If an appeal is filed, the district shall: (34 CFR 106.45)

- 1.—Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties
- 2.—Ensure that the decision-maker(s) for the appeal is trained in accordance with 34 CFR 106.45 and is not the same decision-maker(s) who reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator
- 3.—Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome
- 4.—Issue a written decision describing the result of the appeal and the rationale for the result
- 5.—Provide the written decision simultaneously to both parties

An appeal must be filed in writing within 10 calendar days of receiving the notice of the decision or dismissal, stating the grounds for the appeal and including any relevant documentation in support of the appeal. Appeals submitted after this deadline are not timely and shall not be considered.

A written decision shall be provided to the parties within 20 calendar days from the receipt of the appeal.

Either party may appeal the district's decision of a complaint or any allegation in the complaint. (34 CFR 106.45)

When conducting an appeal, the district shall follow the appeal process as specified in Administrative Regulation 4030 – Nondiscrimination in Employment.

Either party has the right to file a complaint with the U.S. Department of Education's Office for Civil Rights within 180 days of the date of the most recently alleged misconduct.

The complainant shall be advised of any civil law remedies, including, but not limited to, injunctions, restraining orders, or other remedies or orders that may be available under state or federal antidiscrimination laws, if applicable.

RemediesExtension of Timelines

CSBA NOTE: Pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, the district is required to establish a process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause, with notice to the parties that includes the reason for the delay.

Any timelines specified in this administrative regulation may be extended by the district for good cause, with written notice to the parties. The written notice shall specify the reasons for the extension. (34 CFR 106.45)

RemediesCSBA NOTE: 34 CFR 106.45 mandates that the district's Title IX complaint process list, or describe the range of possible remedies that the district may implement following any determination of responsibility. The following section may be revised to reflect district practice.

When a determination of responsibility for sexual harassment has been made against the respondent, the district shall provide remedies to the complainant. Such remedies may include the same individualized services described above in the section "Supportive Measures," but need not be nondisciplinary or nonpunitive and need not avoid burdening the respondent.

When there is a determination that sex discrimination, including sex-based harassment, has occurred, the Title IX Coordinator shall coordinate the provision and implementation of remedies to the complainant and other persons the district identifies as having had equal access to the district's education program or activity limited or denied by sex discrimination, including sex-based harassment; coordinate the imposition of any disciplinary sanctions on a respondent as described in "Disciplinary Actions" below, including notification to the complainant of any such disciplinary sanctions; and take other appropriate prompt and effective steps to ensure that sex discrimination, including sex-based harassment, does not continue or recur within the district's education program or activity. (34 CFR 106.45)

Disciplinary Actions

The district shall not impose any disciplinary sanctions or other actions against a respondent, other than supportive measures as described above in the section "Supportive Measures," until the complaint procedure has been completed and a determination of responsibility has been made. (34 CFR 106.44, 106.45)

When an employee is found to have committed sexual sex discrimination, including sex-based harassment, or retaliation, the district shall take appropriate disciplinary action, up to and including dismissal, in accordance with applicable law and collective bargaining agreement.

Record-Keeping

The Superintendent or designee shall maintain, for a period of seven years: (34 CFR 106.45)

1. A record of all reported cases and Title IX investigations of sexual harassment; any determinations of responsibility; any audio or audiovisual recording and transcript if

applicable, any disciplinary sanctions imposed, any remedies provided to the complainant, and any appeal or informal resolution and the results therefrom.

- 2.—A record of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment, including the district's basis for its conclusion that its response was not deliberately indifferent, the measures taken that were designed to restore or preserve equal access to the education program or activity, and, if no supportive measures were provided to the complainant, the reasons that such a response was not unreasonable in light of the known circumstances.

All materials used to train the Title IX Coordinator, investigator(s), decision-maker(s), The district shall not discipline a party, witness, or others participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the district's determination of whether sex discrimination, including sex-based harassment, occurred. (34 CFR 106.45)

Record-Keeping

CSBA NOTE: The following paragraph reflects Title IX record-keeping requirements pursuant to 34 CFR 106.8, as amended by 89 Fed. Reg. 33474.

The Superintendent or designee shall maintain, for at least a period of seven years: (34 CFR 106.45)

1. For each complaint of sex discrimination, including sex-based harassment, records documenting any informal resolution process or formal investigation procedures
2. For each notification the Title IX Coordinator or designee receives of information about conduct that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, records documenting the actions taken to fulfill the district's obligations as specified in 34 CFR 106.44, including supportive measures offered and implemented
3. All materials used to train district employees; the Title IX Coordinator and designee(s); investigator(s), decisionmaker(s), and other person(s) who are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures; and any person who facilitates an informal resolution process.
3. The district shall make such training materials publicly available on its web site, or if the district does not maintain a web site, available upon request by members of the public.

For complaints containing allegations of childhood sexual assault, the Superintendent or designee shall also indefinitely maintain the following: (Code of Civil Procedure 340.1):

1. A record of the allegation(s)
2. A record of the investigation procedures followed
3. A record of the written determination
4. A record of the corrective action implemented, if any

5. A record of any appeals and the outcome of the same

6. All training materials addressing the prohibition and investigation of childhood sexual assault

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Policy Reference Disclaimer:

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State	Description
5 CCR 4600-4670	Uniform complaint procedures
5 CCR 4900-4965	Nondiscrimination in elementary and secondary educational programs receiving state or federal financial assistance
Civ. Code 1714.1	Liability of parent or guardian for act of willful misconduct by a minor
Civ. Code 51.9	Liability for sexual harassment; business, service and professional relationships
Ed. Code 200- 262.4 <u>270</u>	Prohibition of discrimination
Ed. Code 48900	Grounds for suspension or expulsion
Ed. Code 48900.2	Additional grounds for suspension or expulsion; sexual harassment
Ed. Code 48985	Notices to parents in language other than English
Gov. Code 12950.1	Sexual harassment training
Federal	Description
20 USC 1092	Definition of sexual assault
20 USC 1221	Application of laws
20 USC 1681-1688	Title IX of the Education Amendments of 1972; discrimination based on sex
34 CFR 106.1-106.82	Nondiscrimination on the basis of sex in education programs
34 CFR 99.1-99.67	Family Educational Rights and Privacy
34 USC 12291	Definition of dating violence, domestic violence, and stalking
42 USC 1983	Civil action for deprivation of rights
42 USC 2000d-2000d-7	Title VI, Civil Rights Act of 1964
42 USC 2000e-2000e-17	Title VII, Civil Rights Act of 1964, as amended
Management Resources	Description
Court Decision	Reese v. Jefferson School District (2001 <u>2000</u> , 9th Cir.) 208 F.3d 736

Court Decision	Davis v. Monroe County Board of Education (1999) 526 U.S. 629
Court Decision	Gebser v. Lago Vista Independent School District (1998) 524 U.S. 274
Court Decision	Oona by Kate S. v. McCaffrey (1998, 9th Cir.) 143 F.3d 473
Court Decision	Doe v. Petaluma City School District (1995, 9th Cir.) 54 F.3d 1447
Court Decision	Donovan v. Poway Unified School District (2008) 167 Cal.App.4th 567
Court Decision	Flores v. Morgan Hill Unified School District (2003, 9th Cir.) 324 F.3d 1130

Federal Register

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, April 29, 2024, Vol. 89, No. 83, pages 33474-33896

(<https://www.federalregister.gov/documents/2024/04/29/2024-07915/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>)

U.S. Department of Justice, Federal Bureau of Investigation Publication

National Incident-Based Reporting System

(https://ucr.fbi.gov/nibrs/2018/resource-pages/nibrs_offense_definitions-2018.pdf)

Website	CSBA District and County Office of Education Legal Services
Website	CSBA
Website	California Department of Education
Website	U.S. Department of Education, Office for Civil Rights
<u>Website</u>	<u>U.S. Department of Justice, Federal Bureau of Investigation</u> <u>(https://www.justice.gov/doj/federal-bureau-investigation)</u>

Cross References

Code	Description
1313	Civility
3580	District Records
3580	District Records
3600	Consultants
4030	Nondiscrimination In Employment
4030	Nondiscrimination In Employment
4117.7	Employment Status Reports
4118	Dismissal/Suspension/Disciplinary Action

4118	Dismissal/Suspension/Disciplinary Action
4119.11	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>
4119.11	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>
4131	Staff Development
4218	Dismissal/Suspension/Disciplinary Action
4218	Dismissal/Suspension/Disciplinary Action
4219.11	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>
4219.11	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>
4317.7	Employment Status Reports
4319.11	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>
4319.11	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>

Exhibit 4119.12-E(1): Title IX Sexual ~~Sex Discrimination and Sex-Based~~ Harassment Complaint Procedures Status: ADOPTED

Original Adopted Date: 10/01/2020 | Last ~~Revised Date: 07/01/2024~~ | Last Reviewed Date: 10/07/01/2020 ~~2024~~

CSBA NOTE: 34 CFR 106.8 requires the district to provide notice to employees, bargaining units, and job applicants of its policy prohibiting sexual harassment and its grievance procedures that provide for the prompt and equitable resolution of sexual harassment complaints. The following exhibit presents a sample notification that meets these requirements and may be modified to reflect district practice. For a sample notice for students and parents/guardians, see E 5145.71 - Title IX Sexual Harassment Complaint Procedures.

Pursuant to 34 CFR 106.8, the district must provide the Title IX Coordinator's contact information on its web site and in any employee handbook. In addition, state law (Education Code 231.5) requires that the district's sexual harassment policy be provided to employees at the beginning of the school year and when newly hired, displayed in district and school offices, and included in any publication that sets forth standards of employee conduct.

CSBA NOTE: 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, requires the district to provide notice to employees, bargaining units, and job applicants that the district does not discriminate on the basis of sex as required by Title IX; that inquiries about the application of Title IX may be referred to the district's Title IX Coordinator and/or to the U.S. Department of Education, Office for Civil Rights; the Title IX Coordinator's contact information; how to locate the district's policy prohibiting sex discrimination, including sex-based harassment, the district's grievance procedures that provide for the prompt and equitable resolution of sex discrimination and sex-based harassment complaints; how to report information about conduct that may constitute sex discrimination, including sex-based harassment; and how to make a complaint of sex discrimination, including sex-based harassment. The following exhibit presents a sample notification that meets these requirements.

Pursuant to 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, the notice is required to be prominently included on the district's website, and in each handbook, catalog, announcement, bulletin, and application that it makes available to employees, bargaining units, and job applicants. If necessary due to the format or size of any publication specified above, the Superintendent or designee may include in the publication a statement that the district prohibits sex discrimination in any education program or activity that it operates and that individuals may report concerns or questions to the district's Title IX Coordinator, and provide the website location of the notice of nondiscrimination.

Additionally, Education Code 231.5 requires that the district's sexual harassment policy be provided to employees at the beginning of the school year and when newly hired, prominently displayed in

district and school offices, and included in any publication that sets forth standards of employee conduct.

NOTICE OF TITLE IX SEXUAL HARASSMENT POLICY NONDISCRIMINATION

The Code of Federal Regulations, Title 34, Section 106.8 requires the district to issue the following notification to employees, job applicants, and employee organizations:

The district does not discriminate on the basis of sex and prohibits sex discrimination, including sex-based harassment, in any education program or activity that it operates. The prohibition against discrimination on the basis of sex is required by federal law (20 USC 1681-1688; 34 CFR Part 106) and extends to employment. The district also prohibits retaliation against any employee for filing a complaint or exercising any right granted under Title IX.

Title IX requires a school. The district is required, as specified in Title IX, to take immediate prompt and appropriate equitable action to address any potential Title IX violations that are brought to its attention. Any inquiries about the application of Title IX, this notice, and who is protected by Title IX may be referred to the district's Title IX Coordinator, to the Assistant Secretary for Civil Rights of the U.S. Department of Education, or both.

CSBA NOTE: The district should enter the name/title and contact information of the district's Title IX Coordinator below. Such information should be consistent with the person/position identified in AR 5145.7 - Sexual 4119.11/4219.11/4319.11 - Sex Discrimination and Sex-Based Harassment.

The district has designated and authorized the following employee(s) as the district's Title IX Coordinator, to address concerns or inquiries regarding discrimination on the basis of sex, including sexual harassment, sexual assault, dating violence, domestic violence, and stalking sex-based harassment:

(name and/or title/position)

(address)

(telephone number)

(email address)

CB or Designee
15305 Rockwood Rd
Escondido, CA 92027
762.745.4931
SDUSD@scmcsgrunion.net

CSBA NOTE: The district may expand the following paragraph to include other means of contact or reporting methods available in the district, such as online submission forms or mobile applications.

Pursuant to 34 CFR 106.8, the district must provide notice to employees, bargaining units, and job applicants of the district's grievance procedures, and process, including how to report or file a formal complaint of sexual conduct that may constitute sex discrimination and/or, including sex-based harassment, and how the district will respond or file a complaint of sex discrimination, including sex-based harassment.

Any individual may report sex discrimination, including ~~sexual~~sex-based harassment, to the Title IX Coordinator or any other school employee at any time, including during non-business hours, by mail, phone, or email. During district business hours, reports may also be made in person. Upon receiving an allegation of ~~sexual~~sex discrimination, including sex-based harassment, the Title IX Coordinator will promptly notify the parties, in writing, of the applicable district complaint procedure.

To view an electronic copy of the district's policies and administrative regulations on ~~sexual~~sex discrimination, including sex-based harassment, including the grievance process that complies with 34 CFR 106.45, please see BP/AR Board Policy/Administrative Regulation 4119.11/4219.11/4319.11 - Sexual- Sex Discrimination and Sex-Based Harassment, and AR Administrative Regulation 4119.12/4219.12/4319.12 - Title IX Sexual Sex Discrimination and Sex-Based Harassment Complaint Procedures on the district's web site website at _____ (insert website link) _____. www.smpasqualunion.net

To inspect or obtain a copy of the district's ~~sexual~~sex discrimination and sex-based harassment policies and administrative regulations, please contact: _____ (insert location/phone/email of contact person) _____. CBDO in District Office.

Materials used to train employees; the Title IX Coordinator; investigator(s), ~~decision-maker~~decisionmaker(s), and other person(s) who are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures; and any person (s) who facilitates an informal resolution process, are also publicly available on the district's web site or at the district office upon request.

Policy Reference UPDATE Service

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Ed. Code 48900.2	Additional grounds for suspension or expulsion; sexual harassment
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20 USC 1221	Application of laws
20 USC 1681-1688	Title IX of the Education Amendments of 1972; discrimination based on sex
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42 USC 2000d-2000d-7	Title VI, Civil Rights Act of 1964
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Court Decision	Oona by Kate S. v. McCaffrey (1998, 9th Cir.) 143 F.3d 473
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Court Decision	Donovan v. Poway Unified School District (2008) 167 Cal.App.4th 567
Court Decision	Flores v. Morgan Hill Unified School District (2003, 9th Cir.) 324 F.3d 1130
<u>Federal Register</u>	<u>Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, April 29, 2024, Vol. 89, No. 83, pages 33474-33896</u> <u>(https://www.federalregister.gov/documents/2024/04/29/2024-07915/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal)</u>
<u>U.S. Department of Justice, Federal Bureau of Investigation Publication</u>	<u>National Incident-Based Reporting System</u> <u>(https://ucr.fbi.gov/nibrs/2018/resource-pages/nibrs_offense_definitions-2018.pdf)</u>

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4219.11	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>
4317.7	Employment Status Reports

4319.11

~~Sexual Harassment~~Sex Discrimination and Sex-Based Harassment

4319.11

~~Sexual Harassment~~Sex Discrimination and Sex-Based Harassment

Policy 4219.11: Sexual ~~Sex~~ Discrimination and Sex-Based Harassment Status: ADOPTED

Original Adopted Date: 12/01/2015 | Last Revised Date: ~~10~~7/01/2020 ~~2024~~ | Last Reviewed
Date: ~~10~~07/01/2020 ~~2024~~

CSBA NOTE: Education Code 231.5, 2 CCR 11023, and 34 CFR 106.8 mandate the district to have a written policy on sexual harassment. As part of this mandate, the district also should adopt a sexual harassment policy related to students; see BP/AR 5145.7 - Sexual Harassment and AR 5145.71 - Title IX Sexual Harassment Complaint Procedures.

Sexual harassment is prohibited pursuant to CSBA NOTE: Sex discrimination and sex-based harassment are prohibited by Title VII of the Civil Rights Act of 1964 (42 USC 2000e-2000e-17) and/or Title IX of the Education Amendments of 1972 (20 USC 1681-1688; 34 CFR 106.1-106.82), as well as the California Fair Employment and Housing Act (Government Code 12900-12996).

Education Code 231.5, 2 CCR 11023, and 34 CFR 106.8 mandate that districts have a written policy prohibiting sex discrimination and sex-based harassment against employees. As part of this mandate, districts are also required to adopt a written policy prohibiting sex discrimination and sex-based harassment against students; see BP/AR 5145.7 - Sex Discrimination and Sex-Based Harassment and AR 5145.71 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

Pursuant to 34 CFR 106.11 and 106.44, as amended by 89 Fed. Reg. 33474, a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, is required to follow Title IX grievance procedures when investigating and resolving a complaint of sexual harassment is addressed through federal Title IX complaint procedures adopted pursuant to 34 CFR 106.44-106.45, as added by 85 Fed. based on 30026, or procedures adopted pursuant to 2 CCR 11023 is dependent on whether the alleged conduct meets. As such a complaint may also fall within the more stringent federal definition of sexual harassment or the state definition. In order to meet the applicable timelines, in some instances it may be necessary to review a complaint under both procedures concurrently. See the accompanying administrative regulation, process as specified in AR 4030 - Nondiscrimination in Employment, and AR it is unclear whether districts would additionally be required to follow the procedures specified in AR 4030 - Nondiscrimination in Employment. Due to this uncertainty, it is recommended that districts consult CSBA's District and County Office of Education Legal Services or district legal counsel prior to utilizing the process specified in AR 4030 - Nondiscrimination in Employment for this purpose. For more information regarding the Title IX grievance procedures, see AR 4119.12/4219.12/4319.12 - Title IX Sexual - Sex Discrimination and Sex-Based Harassment Complaint Procedures.

Pursuant to 2 CCR 11034, the district may be liable for sexual~~sexual~~sex-based harassment committed by a supervisor, coworker, or a third party. Pursuant to Government Code 12940, employers may also be held liable for sexual~~sexual~~sex-based harassment committed against their workers by clients, customers, or other third parties if they knew or should have known of the harassment and failed to take immediate and appropriate corrective action to stop the harassment.

The following policy shall apply to all district employees, interns, volunteers, contractors, job applicants, and other persons with an employment relationship with the district.

The Governing Board is committed to providing a safe work environment that is free of discrimination, harassment, and intimidation. The Board prohibits sexual~~sexual~~sex discrimination, including sex-based harassment, as defined in the accompanying administrative regulation, in district programs and activities by and against district employees and retaliatory behavior or action against any person who complains, testifies, or otherwise participates in the complaint process established for the purpose of this policy.

CSBA NOTE: Pursuant to Education Code 220.1, as added by AB 1955 (Ch. 95, Statutes of 2024), a district, including a Governing Board member, may not retaliate or otherwise take adverse action against an employee, including by placing the employee on administrative leave, on the basis that the employee supported a student exercising rights specified in Education Code 220.1, performed work in a manner consistent with the district's legal obligations related to educational equity, or provided instruction to students consistent with current content standards, curriculum frameworks, instructional materials adopted by the state board, and state law.

Additionally, the Board prohibits retaliatory behavior or action against any person who complains or testifies about conduct that reasonably may constitute sex discrimination, including sex-based harassment, reports such conduct, or otherwise participates or refuses to participate in the complaint process established for the purpose of this policy. (Education Code 220.1; 34 CFR 106.71)

CSBA NOTE: Federal and state courts have provided guidance that may help employers avoid liability or mitigate damages in sex-based harassment cases. In *Department of Health Services v. Superior Court (McGinnis)*, the California Supreme Court outlined measures that may constitute mitigating factors in the assessment of damages, including establishing anti-harassment policies, communicating those policies to employees, consistently enforcing the policies, preserving the confidentiality of employees who report harassment, and preventing retaliation against reporting employees. The U.S. Supreme Court in *Burlington Industries v. Ellerth* held that, for certain claims under federal law, an employer may defend against sex-based harassment claims by proving that (1) reasonable care was exercised to prevent and promptly correct any sexually harassing behavior, and (2) the employee (victim) failed to take advantage of the preventive and corrective opportunities provided by the employer. Additionally, in *Faragher v. City of Boca Raton*, one of the factors relied on by the U.S. Supreme Court in finding liability for harassment by a supervisor was the failure of the policy to provide an assurance to its employees that harassing supervisors may be bypassed in registering complaints.

Pursuant to Government Code 12950.1, employers with five or more employees are required to

provide sex-based harassment training to supervisory and nonsupervisory employees which includes training in regard to sex discrimination. Additionally, Title IX, and its implementing regulation 34 CFR 106.8, as amended by 89 Fed. Reg. CSBA NOTE: Government Code 12940 clarifies that sexual harassment includes harassment based on sex, gender, pregnancy, childbirth, or related medical conditions. 33474, requires specified training related to sex discrimination, including sex-based harassment, for all district employees, as well as additional training for (1) investigators, decisionmakers, and other persons who are responsible for implementing the recipient's grievance procedures or have the authority to modify or terminate supportive measures, (2) facilitators of an informal resolution process, and (3) Title IX Coordinators and designees. See the accompanying administrative regulation for timelines and training requirements.

Items #1-4 below reflect the courts' guidance, Government Code 12950.1, and 34 CFR 106.8, and should be modified to reflect district practice.

Sexual harassment includes, but is not limited to, harassment that is based on the sex, gender, gender identity, gender expression, or sexual orientation of the victim and harassment based on pregnancy, childbirth, or related medical conditions.

CSBA NOTE: Federal and state courts have provided guidance that may help employers avoid liability or mitigate damages in sexual harassment cases. In *Department of Health Services v. Superior Court (McGinnis)*, the California Supreme Court outlined measures that may constitute mitigating factors in the assessment of damages, including establishing anti-harassment policies, communicating those policies to employees, consistently enforcing the policies, preserving the confidentiality of employees who report harassment, and preventing retaliation against reporting employees. The U.S. Supreme Court in *Burlington Industries v. Ellerth* held that, for certain claims under federal law, an employer may defend against sexual harassment claims by proving that (1) reasonable care was exercised to prevent and promptly correct any sexually harassing behavior, and (2) the employee (victim) failed to take advantage of the preventive and corrective opportunities provided by the employer.

Pursuant to Government Code 12950.1, as amended by SB 778 (Ch. 215, Statutes of 2019), employers with five or more employees are required to provide sexual harassment training to supervisory and nonsupervisory employees. See the accompanying administrative regulation for timelines and training requirements.

Items #1-4 below reflect the courts' guidance and Government Code 12950.1, and should be modified to reflect district practice.

The Superintendent or designee shall take all actions necessary to ensure the prevention, investigation, and correction of sexual sex discrimination and sex-based harassment, including but not limited to:

1. Providing training to employees in accordance with law and administrative regulation

2. Publicizing and disseminating the district's ~~sexual~~sex discrimination and sex-based harassment policy to employees and others to whom the policy may apply

CSBA NOTE: Pursuant to Title IX and its implementing regulation 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, districts are required to provide a notice of nondiscrimination on the basis of sex, as specified below. For more information about the content and publication requirements for the notice of nondiscrimination, see AR 4030 – Nondiscrimination in Employment.

3. Publicizing, in accordance with 34 CFR 106.8 and as specified in Administrative Regulation 4030 – Nondiscrimination in Employment, a Title IX notice of nondiscrimination to employees, applicants for employment, and bargaining units
3. 4. Ensuring prompt, thorough, fair, and equitable investigation of complaints through the appropriate state and/or federal procedures
4. 5. Taking timely and appropriate corrective/remedial action(s), which may require interim separation of the complainant and the alleged harasser and subsequent monitoring of developments

CSBA NOTE: The following optional paragraph reflects a recommendation of the U.S. Equal Employment Opportunity Commission's informal guidance, "Promising Practices for Preventing Harassment," has been expanded to include sex discrimination, and may be revised to reflect district practice.

The Superintendent or designee shall periodically evaluate the effectiveness of the district's strategies to prevent and address sex discrimination and sex-based harassment. Such evaluation may involve conducting regular anonymous employee surveys to assess whether sex discrimination and/or sex-based harassment is occurring or is perceived to be tolerated, partnering with researchers or other agencies with the needed expertise to evaluate the district's prevention strategies, and using any other effective tool for receiving feedback on systems and/or processes. As necessary, changes shall be made to the harassment policy,(ies), complaint procedures, or training; as appropriate and in accordance with law.

Sexual Harassment

Reports and Complaints

CSBA NOTE: 34 CFR 106.8, as amended by 8589 Fed. Reg. ~~30026~~33474, requires the district to designate at least one employee to coordinate its responsibilities under Title IX, who must be referred to as the Title IX Coordinator. See the accompanying administrative regulation.

34 CFR 106.44, as added by 85 Fed. Reg. ~~30026~~, requires the district, when there is actual knowledge of sexual harassment, to respond promptly in a manner that is not unreasonable in light of the known circumstances and in compliance with Title IX regulations. 34 CFR 106.30, as added, defines "actual knowledge" as notice of sexual harassment or allegations of sexual harassment being submitted to the district's Title IX Coordinator, any official of the district who has authority to institute corrective measures, or any employee of an elementary or secondary school. For this

reason, the district should train all employees regarding the reporting process.

In *Faragher v. City of Boca Raton*, one of the factors relied on by the U.S. Supreme Court in finding liability for harassment by a supervisor was the failure of the policy to provide an assurance to its employees that harassing supervisors may be bypassed in registering complaints.

District employees who feel that they have been sexually harassed in the performance of their Any district responsibilities or who have knowledge of any incident of sexual harassment by or against another employee shall immediately report the incident to their direct supervisor, a district administrator, or the district's who has experienced sex discrimination or sex-based harassment in the district's education program or activity may file a complaint with the district's Title IX Coordinator. Employees may bypass their supervisor in filing a complaint if the supervisor is the subject of the complaint. A supervisor or administrator who receives a harassment complaint shall (34 CFR 106.2, 106.44)

CSBA NOTE: Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, a district is required to respond promptly and effectively when it has knowledge of conduct that reasonably may constitute sex discrimination or sex-based harassment in its education program or activity. 34 CFR 106.44 further obligates a district to require its Title IX Coordinator to monitor the district's programs and activities for barriers to reporting information of such conduct and its employees to notify the Title IX Coordinator when they have such information. The following paragraph should be revised to reflect the district's timeline.

Any employee with knowledge of conduct that reasonably may constitute sex discrimination or sex-based harassment by or against another district employee, a student, or a third party in a district education program or activity shall notify the Title IX Coordinator within one workday. An employee may be subject to discipline for failure to timely report such conduct. (34 CFR 106.44)

Once notified, the Title IX Coordinator shall ensure the complaint or allegation is addressed through AR Administrative Regulation 4119.12/4219.12/4319.12 - Title IX SexualSex Discrimination and Sex-Based Harassment Complaint Procedures or AR 4030 - Nondiscrimination in Employment, as applicable. Because a complaint or allegation that is dismissed or denied under the Title IX complaint procedure may still be subject to consideration under state law, the Title IX Coordinator shall ensure that any implementation of AR 4119.12/4219.12/4319.12 concurrently meets the requirements of AR 4030.

CSBA NOTE: The Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, when the Title IX Coordinator shallis notified of conduct that reasonably may constitute sex discrimination, including sex-based harassment, the Title IX Coordinator is required to offer and coordinate supportive measures to the complainant and . Thus, districts should not wait to respond until a "formal" complaint is made. If the district has begun grievance procedures or offered an informal resolution process to the respondent, the Title IX Coordinator is required to offer and coordinate supportive measures to the respondent, as appropriate.

The Title IX Coordinator shall offer and coordinate supportive measures to be provided to the complainant and, if the district has begun grievance procedures or offered an informal resolution process to the respondent, offer and coordinate supportive measures to be provided to the respondent as deemed appropriate under the circumstances. (34 CFR 106.44)

CSBA NOTE: In addition to district discipline imposed on employees who engage in sexual~~sex~~-based harassment, Government Code 12940 provides that such employees may be held personally liable in a court of law for any damage to the victim(s).

Upon investigation of a sexual~~sex~~ discrimination or sex-based harassment complaint, any district employee found to have engaged or participated in sexual~~sex~~ discrimination or sex-based harassment or to have aided, abetted, incited, compelled, or coerced another to commit sexual~~sex~~ discrimination or sex-based harassment in violation of this policy shall be subject to disciplinary action, up to and including dismissal, in accordance with law and the applicable collective bargaining agreement.

Policy Reference UPDATE Service

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Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State	Description
2 CCR 11006-11086	Discrimination in employment
2 CCR 11009	Employment discrimination
2 CCR 11021	Discrimination in employment - retaliation
2 CCR 11023	Harassment and discrimination prevention and correction
2 CCR 11024	Required training and education on harassment based on sex, gender identity and expression, and sexual orientation
2 CCR 11034	Terms, conditions, and privileges of employment
5 CCR 4900-4965	Nondiscrimination in elementary and secondary educational programs receiving state or federal financial assistance
Ed. Code 200-262.4	Prohibition of discrimination
<u>Ed. Code 220.1</u>	<u>Prohibition of retaliation related to educational equity</u>
<u>Ed. Code 220.3</u>	<u>Prohibition of disclosure of information related to student's sexual orientation, gender identity, or gender expression</u>
<u>Ed. Code 220.5</u>	<u>Prohibition of policies requiring disclosure of information related to student's sexual orientation, gender identity, or gender expression</u>
Gov. Code 12900-12996	Fair Employment and Housing Act
Gov. Code 12940	Unlawful discriminatory employment practices
Gov. Code 12950	Sexual harassment

Gov. Code 12950.1	Sexual harassment training
Lab. Code 1101	Political activities of employees
Lab. Code 1102.1	Discrimination: sexual orientation
<u>Lab. Code 1197.5</u>	<u>Wages, hours, and working conditions</u>
Federal	Description
20 USC 1681-1688	Title IX of the Education Amendments of 1972; discrimination based on sex
34 29 CFR 106.1-106.9 1636	Nondiscrimination on the basis of sex in education programs or activities <u>Implementation of the Pregnant Workers Fairness Act</u>
34 CFR 106.51 1 -106.61 82	Nondiscrimination on the basis of sex in employment in education program <u>programs</u> or activities
42 USC 2000e-2000e-17	Title VII, Civil Rights Act of 1964, as amended
<u>42 USC 2000gg-2000gg-6</u>	<u>Pregnant Workers Fairness Act</u>
Management Resources	Description
Court Decision	Burlington Industries v. Ellreth (1998) 118 S.Ct. 2257
Court Decision	Department of Health Services v. Superior Court of California (2003) 31 Cal.4th 1026
Court Decision	Faragher v. City of Boca Raton (1998) 118 S.Ct. 2275
Court Decision	Gebser v. Lago Vista Independent School District (1998) 118 S.Ct. 1989
Court Decision	Meritor Savings Bank, FSB v. Vinson et al. (1986) 447 U.S. 57
Court Decision	Oncale v. Sundowner Offshore Serv. Inc. (1998) 118 S.Ct. 998
<u>Federal Register</u>	<u>Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, April 29, 2024, Vol. 89, No. 83, pages 33474-33896</u> <u>(https://www.federalregister.gov/documents/2024/04/29/2024-07915/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal)</u>
U.S. Equal Employment Opportunity Com. Publication	Promising Practices for Preventing Harassment, November 2017
Website	CSBA District and County Office of Education Legal Services
Website	California Civil Rights Department
Website	<u>U.S. Department of Education, Office for Civil Rights</u> <u>California Department of Education</u>

[\(https://www.cde.ca.gov/\)](https://www.cde.ca.gov/)

Website

~~U.S. Equal Employment Opportunity Commission~~ [U.S. Department of Education, Office for Civil Rights](#)

[Website](#)

[U.S. Equal Employment Opportunity Commission](#)

Cross References

Code	Description
0410	Nondiscrimination In District Programs And Activities
0450	Comprehensive Safety Plan
0450	Comprehensive Safety Plan
1312.3	Uniform Complaint Procedures
1312.3	Uniform Complaint Procedures
1312.3-E(1)	Uniform Complaint Procedures
1312.3-E(2)	Uniform Complaint Procedures
1313	Civility
3530	Risk Management/Insurance
3530	Risk Management/Insurance
3600	Consultants
4030	Nondiscrimination In Employment
4030	Nondiscrimination In Employment
4033	Lactation Accommodation
4040	Employee Use Of Technology
4040-E(1)	Employee Use Of Technology
4112.9	Employee Notifications
4112.9-E(1)	Employee Notifications
4117.7	Employment Status Reports
4118	Dismissal/Suspension/Disciplinary Action
4118	Dismissal/Suspension/Disciplinary Action
4119.12	Title IX Sexual Harassment Complaint Procedures Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures

4119.12-E(1)	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4119.21	Professional Standards
4119.21-E(1)	Professional Standards
4119.22	Dress And Grooming
4131	Staff Development
4144	Complaints
4144	Complaints
4212.9	Employee Notifications
4212.9-E(1)	Employee Notifications
4218.1	Dismissal/Suspension/Disciplinary Action (Merit System)
4219.12	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4219.12-E(1)	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4219.21	Professional Standards
4219.21-E(1)	Professional Standards
4219.22	Dress And Grooming
4231	Staff Development
4244	Complaints
4244	Complaints
4300	Administrative And Supervisory Personnel
4300	Administrative And Supervisory Personnel
4312.9	Employee Notifications
4312.9-E(1)	Employee Notifications
4317.7	Employment Status Reports
4319.12	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>

4319.12-E(1)	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4319.21	Professional Standards
4319.21-E(1)	Professional Standards
4319.22	Dress And Grooming
4344	Complaints
4344	Complaints
5145.7	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>
5145.7	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>
5145.71	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
5145.71-E(1)	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
5146	<u>Married/Pregnant/Parenting Students</u>

Regulation 4219.11: Sexual~~Sex~~ Discrimination and Sex-Based Harassment

Status: ADOPTED

Original Adopted Date: 12/01/2016 | Last Revised Date: 1007/01/20202024 | Last Reviewed Date: 1007/01/20202024

CSBA NOTE: The following administrative regulation is mandated pursuant to Education Code 231.5 and includes reasonable steps for preventing the occurrence of discrimination and harassment as required pursuant to Government Code 12940 (California Fair Employment and Housing Act). The focus of this administrative regulation is on sexual~~sex~~ discrimination and sex-based harassment by and of employees. Pursuant to Government Code 12940 and 2 CCR 11009, interns, volunteers, and job applicants are entitled to the same protection against sexual~~sex~~-based harassment as applicable to employees.

For information regarding steps the district is required to take to prevent sex discrimination related to sexual~~lactation~~, see BP 4033 – Lactation Accommodation.

For information related to sex discrimination and sex-based harassment involving students, see BP/AR 5145.7 – Sexual~~Sex~~ Discrimination and Sex-Based Harassment and AR 5145.71 – Title IX Sexual~~Sex~~ Discrimination and Sex-Based Harassment Complaint Procedures. For information regarding steps the district is required to take to prevent sex discrimination related to a student's pregnancy or related condition pursuant to Title IX (20 USC 1681-1688) and its implementing regulation 34 CFR 106.40, as amended by 89 Fed. Reg. 33474, see BP 5146 – Married/Pregnant/Parenting Students.

The district does not discriminate on the basis of sex in any of its programs or activities and complies with Title IX of the Education Amendments of 1972 and its implementing regulations. Sex discrimination, including sex-based harassment, is prohibited in district education programs and activities.

The following administrative regulation shall apply to all allegations of sexual~~sex~~ discrimination and sex-based harassment involving~~by and against~~ district employees, interns, volunteers, and job applicants, but shall not be used to resolve any complaint by or against a student.

Definitions

CSBA NOTE: The U.S. Equal Employment Opportunity Commission describes sex discrimination as treating someone differently because of that person's sex. Additionally, 34 CFR 106.2 and 106.10, as amended by 89 Fed. Reg. 33474, clarify that sex discrimination for the purpose of Title IX includes discrimination on the basis of sex stereotypes; sex characteristics; gender identity; sexual orientation; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions or recovery; and, parental, marital, and family status.

Sex discrimination includes treating an employee differently based on the employee's sex, which includes differential treatment based on sex stereotypes; sex characteristics; sexual orientation; gender; gender identity; gender expression; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions and recovery; parental, family, or marital status; or association with a person or group with one or more of these actual or perceived characteristics. Sex discrimination, including sex-based harassment, intimidation, or bullying, may result from physical, verbal, nonverbal, or written conduct and occurs when prohibited conduct is so severe, persistent, or pervasive that it creates an intimidating, threatening, hostile, or offensive work environment; has the effect of substantially or unreasonably interfering with an employee's term or condition of employment; or otherwise adversely affects an employee's employment opportunities.

CSBA NOTE: Alleged conduct that meets the federal definition of sexual harassment in 34 CFR 106.30, as added by 85 Fed. A30026, requires investigation and resolution through Title IX regulations; see AR 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures. Pursuant to 34 CFR 106.30, sexual², sex-based harassment includes (1) a district employee, agent, or other individual authorized by the district to provide an aid, benefit, or service under the district's education program or activity explicitly or impliedly conditioning the provision of a district aid, benefit, or service on an individual's participation in unwelcome sexual conduct; (2) "hostile environment harassment," defined as unwelcome sex-based conduct determined by a reasonable person to be so severe, pervasive, that, based on the totality of the circumstance, is subjectively and objectively offensive and is so severe or pervasive that it effectively limits or denies a person equal access to person's ability to participate in or benefit from the district's education program or activity; or (3) sexual assault, dating violence, domestic violence, or stalking, as defined in 20 USC 1092 and 34 USC 12291) CFR 106.2. Conduct that meets the definition of Title IX sex discrimination, including sex-based harassment, requires investigation and resolution through the Title IX grievance procedures; see AR 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

Education Code 212.5 defines sexual harassment as any unwelcome sexual advance, request for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone in the educational setting. Conduct

34 CFR 106.2 and 106.10, as amended by 89 Fed. Reg. 33474, clarify that does not meet sex-based harassment for the definition purpose of Title IX includes harassment on the basis of sex stereotypes; sex characteristics; gender identity; sexual harassment orientation; pregnancy, childbirth, termination of pregnancy, or lactation, including related conditions; and, parental, marital, and family status. Additionally, in 34 CFR 106.30 shall be investigated and resolved in accordance with AR 4030 - Nondiscrimination in Employment.

In *Oncale v. Sundowner Offshore Services, Inc.*, the U.S. Supreme Court held that same-sex sexual harassment could be actionable under Title VII of the Civil Rights Act of 1964 (42 USC 2000e-2000e-17).

Sex-based harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, sex stereotypes, sex characteristics, or other bases specified above. Conduct will constitute sex-based harassment when it takes the form of: (34 CFR 106.2, 106.11)

1. Quid pro quo harassment: A district employee, agent, or other individual authorized by the district to provide an aid, benefit, or service in the district's education program or activity conditioning the provision of district aid, benefit, or service on a student's participation in unwelcome sexual conduct

CSBA NOTE: Pursuant to 34 CFR 106.11, as amended by 89 Fed. Reg. 33474, Title IX grievance procedures are required for Title IX sex discrimination complaints, including sex-based harassment complaints, for conduct which occurs on or after August 1, 2024 under the district's education program or activity, which includes conduct alleged to be contributing to a hostile environment that occurred outside the district's education program or activity or outside the United States. Item #2 below reflects "hostile environment harassment" as defined by 34 CFR 106.2, as amended by 89 Fed. Reg. 33474.

2. Hostile environment harassment: Unwelcome sex-based conduct that, based on the totality of the circumstances, 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

Any prohibited conduct that occurs off campus or outside of school-related or school-sponsored programs or activities will be regarded as sex-based harassment in violation of district policy if it has a continuing effect on a student's ability to participate in or benefit from district educational programs or activities.

3. Sexual assault, dating violence, domestic violence, or stalking, as defined in 34 CFR 106.2

Sexual harassment includes, but is not limited to, unwelcome sexual advances, unwanted requests for sexual favors, or other unwanted verbal, visual, or physical conduct of a sexual nature, regardless of whether or not the conduct is motivated by sexual desire. Conduct is considered to be sexual harassment when made against another person of the same or opposite sex in the work or educational setting under any of the following conditions: (Education Code 212.5; Government Code 12940; 2 CCR 11034)

1. Submission to the conduct is made explicitly or implicitly a term or condition of the individual's employment:
2. Submission to or rejection of the conduct is used as the basis for an employment decision affecting the individual:
3. The conduct has the purpose or effect of having a negative impact upon the individual's work performance or of creating an intimidating, hostile, or offensive work environment:
4. Submission to or rejection of the conduct is used as the basis for any decision affecting the individual regarding benefits, services, honors, programs, or activities available at or through the district:

For purposes of applying the complaint procedures specified in Title IX of the Education Amendments of 1972, sexual harassment is defined as any of the following forms of conduct that occurs in an education program or activity in which a district school exercises substantial control over the context and respondent: (34 CFR 106.30, 106.44)

1. A district employee conditioning the provision of a district aid, benefit, or service on the person's participation in unwelcome sexual conduct
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity
3. Sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 or 34 USC 12291

Examples of Sexual ~~Sex~~ Discrimination and Sex-Based Harassment

CSBA NOTE: Pursuant to Government Code 12940 and 34 CFR 106.11, the district may be held liable for sexual ~~sex-based~~ harassment committed against employees by clients, customers, or other third parties if the district knew, or should have known, of the harassment and failed to take immediate and appropriate corrective action to stop the harassment. The following paragraph clarifies that sexual ~~sex-based~~ harassment may include acts by supervisors, co-workers, or other parties and should be modified to reflect district practice.

Examples of actions that might constitute sexual ~~sex-based~~ harassment under state ~~and~~/or federal law in accordance with the definitions above, in the work or educational setting, whether committed by a supervisor, a co-worker, or a non-employee, include, but are not limited to:

1. Unwelcome verbal conduct such as sexual ~~sex-based~~ flirtations or propositions; graphic comments about an individual's body; overly personal conversations or pressure for sexual ~~sex-based~~ activity; sexual ~~sex-based~~ jokes or stories; unwelcome sexual ~~sex-based~~ slurs, epithets, threats, innuendoes; derogatory comments, sexually; ~~sex-based~~ degrading descriptions; or the spreading of sexual ~~sex-based~~ rumors
2. Unwelcome visual conduct such as drawings, pictures, graffiti, or gestures; sexually explicit emails; ~~or messaging; or~~ displaying sexually suggestive objects
3. Unwelcome physical conduct such as massaging, grabbing, fondling, stroking, or brushing the body; touching an individual's body or clothes in a sexual way; ~~or~~ cornering, blocking, leaning over, or impeding normal movements

Title IX Coordinator/Compliance Officer

CSBA NOTE: Pursuant to 34 CFR 106.8, districts that receive federal financial assistance are mandated to designate an employee to ensure district compliance with Title IX of the Education Amendments of 1972 and its implementing regulations. If the district has more than one Title IX Coordinator, it must designate one of its Title IX Coordinators to retain ultimate oversight over

those responsibilities and ensure the district's consistent compliance with its responsibilities under Title IX. The following paragraph specifies that the Title IX Coordinator will be the same person(s) designated to serve as the coordinator for nondiscrimination in employment pursuant to AR 4030 - Nondiscrimination in Employment. Districts may modify this policy to designate separate district employees to serve these functions.

The district designates the following individual(s) as the responsible employee(s) to coordinate its efforts to comply with Title IX of the Education Amendments of 1972 in accordance with AR Administrative Regulation 4119.12/4219.12/4319.12 - Title IX Sexual Sex Discrimination and Sex-Based Harassment Complaint Procedures, as well as to and oversee, investigate, and resolve sexual harassment the district's response to discrimination complaints processed under AR Administrative Regulation 4030 - Nondiscrimination in Employment. The Title IX Coordinator(s) may be contacted at:

	(BO or Designee
(title or position)	15305 Rockwood Rd, Escondido
	CA 92025
(address)	760.745.4931
	SPUSDE SanPasqualunion.ca
(telephone number)	
(email)	

Training

CSBA NOTE: Government Code 12950.1, as amended by SB 778 (Ch. 215, Statutes of 2019), requires districts with five or more employees to provide sexual harassment training and education to supervisory and nonsupervisory employees by January 1, 2021 (or two years after a training provided in 2019) and once every two years thereafter. As amended, Additionally, Government Code 12950.1 requires that new nonsupervisory employees be provided the training within six months of hire, consistent with the requirement for all newly hired supervisors or employees promoted to a supervisory position. Compliance with this law does not insulate the district from any liability for harassment.

In addition, Title IX and its implementing regulation 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, requires that all employees receive training related to their duties under Title IX promptly upon hire or change of position that alters their duties under Title IX, and annually thereafter. The training provided to all employees is required to include the district's obligation to address sex discrimination, the scope of conduct that constitutes sex discrimination under Title IX, including the definition of sex-based harassment, and the applicable notice and information requirements. 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, requires additional training for (1) investigators, decisionmakers, and other persons who are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures, (2) facilitators of an informal resolution process, and (3) Title IX Coordinators and designees.

Governing Board members, as elected officials, are not usually considered "supervisors"; however,

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since Board members have the authority to hire, reward, or discipline the Superintendent and other employees, Board members may also be required to receive ~~sexual~~sex-based harassment training. Districts should consult ~~with~~CSBA's District and County Office of Education Legal Services or district legal counsel to ensure that the appropriate individuals receive training.

The following section reflects sex discrimination and sex-based harassment training required for employees under both state and federal law.

The Superintendent or designee shall ensure that all employees receive training regarding sex discrimination and sex-based harassment in accordance with state and federal law.

Every two years, the Superintendent or designee shall ensure that supervisory employees receive at least two hours, and nonsupervisory employees receive at least one hour, of classroom or other effective interactive training and education regarding sexual harassment: as specified in Government Code 12950.1. All newly hired employees and employees promoted to a supervisory position shall receive training within six months of their assumption of the new position. (Government Code 12950.1)

A supervisory employee is any employee having the authority, in the interest of the district, to hire, transfer, suspend, lay off, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, adjust their grievances, or effectively recommend such action, when the exercise of the authority is not of a merely routine or clerical nature, but requires the use of independent judgment. (Government Code 12926)

Such training may be completed by employees individually or as part of a group presentation, may be completed in shorter segments as long as the applicable hourly requirement is met, and may be provided in conjunction with other training provided to the employees. The training shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation. (Government Code 12950.1)

The district's sexual harassment training and education program shall include, but is not limited to, the following: (Government Code 12950.1; 2 CCR 11024)

1. Information and practical guidance regarding federal and state laws concerning the prohibition, prevention, and correction of sexual harassment
2. The types of conduct that constitute sexual harassment
3. Remedies available for victims in civil actions, and potential employer/individual exposure/liability
4. Strategies to prevent harassment in the workplace

5. Supervisors' obligation to report sexual harassment, discrimination, and retaliation of which they become aware
6. Practical examples which illustrate sexual harassment, discrimination, and retaliation using training modalities such as role plays, case studies, and group discussions, based on factual scenarios taken from case law, news and media accounts, and hypotheticals based on workplace situations and other sources
7. The limited confidentiality of the complaint process
8. Resources for victims of unlawful harassment, such as to whom they should report any alleged harassment
9. Steps necessary to take appropriate remedial measures to correct harassing behavior, which includes the district's obligation to conduct an effective workplace investigation of a harassment complaint
10. What to do if the supervisor is personally accused of harassment
11. The essential elements of the district's anti-harassment policy, and how to use the policy if a harassment complaint is filed

Employees shall receive a copy of the district's sexual harassment policy and administrative regulations, which they shall read and acknowledge that they have received.
12. Information, including practical examples, of harassment based on gender identity, gender expression, and sexual orientation
13. Prevention of abusive conduct, including a review of the definition and elements of abusive conduct pursuant to Government Code 12950.1, the negative effects that abusive conduct has on the victim and other in the workplace, the detrimental consequences of this conduct on employee productivity and morale, and that a single act does not constitute abusive conduct unless the act is severe or egregious

Additionally, the Superintendent or designee shall ensure that all employees receive annual training related to their duties under Title IX in accordance with 34 CFR 106.8, and that a newly hired employee receive training promptly upon hire or change of position that alters the employee's duties under Title IX. (34 CFR 106.8)

The district's Title IX sex discrimination and sex-based harassment training shall include: (34 CFR 106.8)

1. The district's obligation to address sex-based discrimination, including sex-based harassment, in its education program or activity
2. The scope of conduct that constitutes sex discrimination under Title IX, including the definition of sex-based harassment
3. The notification and information requirements specified in 34 CFR 106.40 and 106.44

The district's Title IX sex-based harassment training and education program shall also include additional training required of supervisors; investigators, decisionmakers, and other persons who are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures; facilitators of an informal resolution process; and Title IX Coordinators and designees. (34 CFR 106.8)

The Superintendent or designee shall retain for at least two years the records of any training provided to supervisory employees. Such records shall include the names of trained employees, date of the training, the type of training, and the name of the training provider. (2 CCR 11024) type of training, and name of the training provider. (2 CCR 11024)

The Superintendent or designee shall notify employees that the district does not discriminate on the basis of sex as required by Title IX, that the Title IX nondiscrimination requirement extends to employment, and that inquiries about the application of Title IX to the district may be referred to the district's Title IX Coordinator and/or to the Assistant Secretary for Civil Rights, U.S. Department of Education. (34 CFR 106.8)

The district shall notify employees, bargaining units, and applicants for employment of the name or title, office address, email address, and telephone number of the district's Title IX Coordinator. (34 CFR 106.8)

A copy of the Board policy and this administrative regulation shall:

Additionally, the Superintendent or designee shall retain for at least seven years the materials used to provide training as specified in 34 CFR 106.8, and to make these materials available, upon request, to members of the public. (34 CFR 106.8)

Notifications

CSBA NOTE: As part of its responsibility to monitor district compliance with legal requirements concerning discrimination pursuant to Education Code 234.1, as amended by SB 153 (Ch. 38, Statutes of 2024), the California Department of Education is required to ensure that the district prominently and conspicuously displays its nondiscrimination policies in all areas that are accessible to, and commonly frequented by, school site employees, students, and members of the public at each school site and district office, including, but not limited to, in school office lobbies, staff lounges, student government meeting rooms, and on the district's website. Additionally, Title IX, and its implementing regulations, 34 CFR 106.1-106.82, as amended by 89 Fed. Reg. 33474, require the district to provide notifications and take specified actions to prevent sex

discrimination, including sex-based harassment. For more information regarding measures to prevent discrimination, see AR 4030 – Nondiscrimination in Employment.

To prevent unlawful sex discrimination and sex-based harassment, including retaliation, in district programs and activities, the Superintendent or designee shall provide notifications and implement measures to prevent discrimination and harassment as specified in Administrative Regulation 4030 – Nondiscrimination in Employment.

In addition to the measures to prevent discrimination as specified in Administrative Regulation 4030 – Nondiscrimination in Employment, the Superintendent or designee shall ensure that a copy of the Board policy and this administrative regulation:

1. Be displayed in a prominent location in the main administrative building, district office, or other area of the school where notices of district rules, regulations, procedures, and standards of conduct are posted (Education Code 231.5)
2. Be provided to every district employee at the beginning of the first quarter or semester of the school year or whenever a new employee is hired (Education Code 231.5)
3. Appear in any school or district publication that sets forth the school's or district's comprehensive rules, regulations, procedures, and standards of conduct (Education Code 231.5)
4. ~~Be posted, along with the name or title and contact information of the Title IX Coordinator, in a prominent location on the district's web site (34 CFR 106.8)~~
5. ~~Be included, along with the name or title and contact information of the Title IX Coordinator, in any handbook provided to employees or employee organizations (34 CFR 106.8)~~

CSBA NOTE: Government Code 12950 requires the California Civil Rights Department (~~CCRD~~**CRD**) to develop an information sheet on employment discrimination and the illegality of sexual harassment and a poster regarding the rights of transgender employees. These documents are available on ~~CCRD's web site~~**CRD's website**. This list has been modified to make it applicable to sex-based harassment in general, not just sexual harassment.

All employees shall receive a copy of an information sheet prepared by the California Civil Rights Department (~~CCRD~~**CRD**) or the district that contains, at a minimum, components on: (Government Code 12950)

1. The illegality of ~~sexual~~**sex-based** harassment
2. The definition of ~~sexual~~**sex-based** harassment under applicable state and federal law

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3. A description of sexual~~sexual~~sex-based harassment, with examples
4. The district's complaint process available to the employee
5. The legal remedies and complaint process available through ~~CCRD~~CRD and the Equal Employment Opportunity Commission (EEOC)
6. Directions on how to contact ~~CCRD~~CRD and the EEOC
7. The protection against retaliation provided by 2 CCR 11021 for opposing harassment prohibited by law or for filing a complaint with or otherwise participating in an investigation, proceeding, or hearing conducted by ~~CCRD~~CRD and the EEOC

In addition~~addition~~Additionally, the district shall post, in a prominent and accessible location, the ~~CCRD~~CRD poster on discrimination in employment and the illegality of sexual~~sexual~~sex-based harassment, and the ~~CCRD~~CRD poster regarding transgender rights. (Government Code 12950)

Complaint Procedures

CSBA NOTE: Pursuant to 34 CFR 106.11 and 106.44, as amended by 89 Fed. Reg. 33474, a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, is required to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct. As such a complaint may also fall within the complaint process as specified in AR 4030 – Nondiscrimination in Employment, it is unclear whether districts would additionally be required to follow the process specified in AR 4030 – Nondiscrimination in Employment. Due to this uncertainty, it is recommended that districts consult CSBA's District and County Office of Education Legal Services or district legal counsel prior to utilizing the process specified in AR 4030 – Nondiscrimination in Employment for this purpose. For more information regarding the Title IX grievance procedures, see AR 4119.12/4219.12/4319.12 – Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

All complaints and allegations of sexual~~sexual~~sex discrimination and sex-based harassment by and against employees shall be investigated and resolved in accordance with law and district procedures. The Title IX Coordinator shall review the allegations to determine the applicable procedure for responding to the complaint. All complaints that meet the definition of sexual harassment under Title IX shall be investigated and resolved in accordance with AR 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures. Other sexual harassment complaints shall be investigated and resolved pursuant to AR 4030 - Nondiscrimination in Employment. as specified in 34 CFR 106.44 and 106.45 and Administrative Regulation 4119.12/4219.12/4319.12 – Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

If sexual~~sexual~~sex discrimination or sex-based harassment is found following an investigation, the Title IX

Coordinator, or designee in consultation with the [Title IX](#) Coordinator, shall take prompt action to stop the ~~sexual~~[sex discrimination or sex-based](#) harassment, prevent recurrence, and address any continuing effects.

Policy Reference UPDATE Service

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Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State	Description
2 CCR 11006-11086	Discrimination in employment
2 CCR 11009	Employment discrimination
2 CCR 11021	Discrimination in employment - retaliation
2 CCR 11023	Harassment and discrimination prevention and correction
2 CCR 11024	Required training and education on harassment based on sex, gender identity and expression, and sexual orientation
2 CCR 11034	Terms, conditions, and privileges of employment
5 CCR 4900-4965	Nondiscrimination in elementary and secondary educational programs receiving state or federal financial assistance
Ed. Code 200-262.4	Prohibition of discrimination
Ed. Code 220.1	Prohibition of retaliation related to educational equity
Ed. Code 220.3	Prohibition of disclosure of information related to student's sexual orientation, gender identity, or gender expression
Ed. Code 220.5	Prohibition of policies requiring disclosure of information related to student's sexual orientation, gender identity, or gender expression
Gov. Code 12900-12996	Fair Employment and Housing Act
Gov. Code 12940	Unlawful discriminatory employment practices
Gov. Code 12950	Sexual harassment
Gov. Code 12950.1	Sexual harassment training
Lab. Code 1101	Political activities of employees
Lab. Code 1102.1	Discrimination: sexual orientation
Lab. Code 1197.5	Wages, hours, and working conditions

Federal	Description
20 USC 1681-1688	Title IX of the Education Amendments of 1972; discrimination based on sex
34 ²⁹ CFR 106.1-106.9 ¹⁶³⁶	Nondiscrimination on the basis of sex in education programs or activities <u>Implementation of the Pregnant Workers Fairness Act</u>
34 CFR 106. 51 ¹ -106. 61 ⁸²	Nondiscrimination on the basis of sex in employment in education program <u>programs</u> or activities
42 USC 2000e-2000e-17	Title VII, Civil Rights Act of 1964, as amended
<u>42 USC 2000gg-2000gg-6</u>	<u>Pregnant Workers Fairness Act</u>
Management Resources	Description
Court Decision	Burlington Industries v. Ellreth (1998) 118 S.Ct. 2257
Court Decision	Department of Health Services v. Superior Court of California (2003) 31 Cal.4th 1026
Court Decision	Faragher v. City of Boca Raton (1998) 118 S.Ct. 2275
Court Decision	Gebser v. Lago Vista Independent School District (1998) 118 S.Ct. 1989
Court Decision	Meritor Savings Bank, FSB v. Vinson et al. (1986) 447 U.S. 57
Court Decision	Oncale v. Sundowner Offshore Serv. Inc. (1998) 118 S.Ct. 998
<u>Federal Register</u>	<u>Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, April 29, 2024, Vol. 89, No. 83, pages 33474-33896</u> <u>(https://www.federalregister.gov/documents/2024/04/29/2024-07915/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal)</u>
U.S. Equal Employment Opportunity Com. Publication	Promising Practices for Preventing Harassment, November 2017
Website	CSBA District and County Office of Education Legal Services
Website	California Civil Rights Department
Website	<u>U.S. Department of Education, Office for Civil Rights</u> <u>California Department of Education</u> <u>(https://www.cde.ca.gov/)</u>
Website	<u>U.S. Equal Employment Opportunity Commission</u> <u>U.S. Department of Education, Office for Civil Rights</u>
<u>Website</u>	<u>U.S. Equal Employment Opportunity Commission</u>

Cross References

Code	Description
0410	Nondiscrimination In District Programs And Activities
0450	Comprehensive Safety Plan
0450	Comprehensive Safety Plan
1312.3	Uniform Complaint Procedures
1312.3	Uniform Complaint Procedures
1312.3-E(1)	Uniform Complaint Procedures
1312.3-E(2)	Uniform Complaint Procedures
1313	Civility
3530	Risk Management/Insurance
3530	Risk Management/Insurance
3600	Consultants
4030	Nondiscrimination In Employment
4030	Nondiscrimination In Employment
<u>4033</u>	<u>Lactation Accommodation</u>
4040	Employee Use Of Technology
4040-E(1)	Employee Use Of Technology
4112.9	Employee Notifications
4112.9-E(1)	Employee Notifications
4117.7	Employment Status Reports
4118	Dismissal/Suspension/Disciplinary Action
4118	Dismissal/Suspension/Disciplinary Action
4119.12	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4119.12-E(1)	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4119.21	Professional Standards
4119.21-E(1)	Professional Standards
4119.22	Dress And Grooming

4131	Staff Development
4144	Complaints
4144	Complaints
4212.9	Employee Notifications
4212.9-E(1)	Employee Notifications
4218.1	Dismissal/Suspension/Disciplinary Action (Merit System)
4219.12	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4219.12-E(1)	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4219.21	Professional Standards
4219.21-E(1)	Professional Standards
4219.22	Dress And Grooming
4231	Staff Development
4244	Complaints
4244	Complaints
4300	Administrative And Supervisory Personnel
4300	Administrative And Supervisory Personnel
4312.9	Employee Notifications
4312.9-E(1)	Employee Notifications
4317.7	Employment Status Reports
4319.12	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4319.12-E(1)	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4319.21	Professional Standards
4319.21-E(1)	Professional Standards
4319.22	Dress And Grooming

4344	Complaints
4344	Complaints
5145.7	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>
5145.7	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>
5145.71	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
5145.71-E(1)	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
<u>5146</u>	<u>Married/Pregnant/Parenting Students</u>

Regulation 4219.12: Title IX Sexual ~~Sex Discrimination and Sex-Based~~ Harassment Complaint Procedures Status: ADOPTED

Original Adopted Date: 07/01/2020 | Last Revised Date: ~~10~~07/01/2020~~2024~~ | Last Reviewed Date: ~~10~~07/01/2020~~2024~~

CSBA NOTE: Title IX of the Education Amendments of 1972 (20 USC 1681-1688; 34 CFR 106.1-106.82) prohibits discrimination based on sex, including sexual harassment, and mandates that the district adopt and publish complaint procedures.

The following administrative regulation reflects the Title IX complaint procedure detailed in 34 CFR 106.44-106.45, as added by 85 Fed. Reg. 30026, which must be used, effective August 14, 2020, to address any complaint of sexual harassment that meets the definition in 34 CFR 106.30. Pursuant to 34 CFR 106.30, allegations of sexual harassment governed by these regulations include (1) a district employee conditioning the provision of a district aid, benefit, or service on an individual's participation in unwelcome sexual conduct; (2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity; or (3) sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 and 34 USC 12291. Alleged sexual harassment in employment that does not meet this definition should be addressed through the district's complaint procedures described in AR 4030 - Nondiscrimination in Employment.

34 CFR 106.44 requires the district, when there is actual knowledge of sexual harassment, to respond promptly in a manner that is not deliberately indifferent. 34 CFR 106.30 defines "actual knowledge" as notice of sexual harassment or allegations of sexual harassment being submitted to the district's Title IX Coordinator, any official of the district who has authority to institute corrective measures, or any employee of an elementary or secondary school. A district is deliberately indifferent only if its response to Title IX sexual harassment is clearly unreasonable in light of the known circumstances.

Application of the Title IX complaint procedures to the facts of a specific complaint may implicate complicated questions about the intersection of state law, federal law, and, in cases involving employees, the applicable collective bargaining agreement. Districts with questions about specific complaints are strongly encouraged to consult legal counsel.

Also see BP/AR 4119.11/4219.11/4319.11 - Sexual Harassment for information about prohibited conduct, training, required notifications, and processes for reporting sexual harassment.

CSBA NOTE: Title IX of the Education Amendments of 1972 (20 USC 1681-1688; 34 CFR 106.1-106.82) prohibits discrimination based on sex, including sex-based harassment, and mandates that the district adopt and publish complaint procedures. The following administrative regulation reflects the Title IX grievance procedures detailed in 34 CFR 106.44-106.45, as amended by 89 Fed. Reg. 33474.

Application of the Title IX complaint procedures to the facts of a specific complaint may implicate complicated questions about the intersection of state law, federal law, and, in cases involving

employees, the applicable collective bargaining agreement. Pursuant to 34 CFR 106.11 and 106.44, as amended by 89 Fed. Reg. 33474, a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, is required to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct. As such a complaint may also fall within the complaint process as specified in AR 4030 – Nondiscrimination in Employment, it is unclear whether districts would additionally be required to follow the procedures specified in AR 4030 – Nondiscrimination in Employment. Due to this uncertainty, it is recommended that districts consult with CSBA's District and County Office of Education Legal Services or district legal counsel prior to utilizing the procedures specified in AR 4030 – Nondiscrimination in Employment for this purpose.

See AR 4030 – Nondiscrimination in Employment. Also see BP/AR 4119.11/4219.11/4319.11 – Sex Discrimination and Sex-Based Harassment for information about prohibited conduct, training, required notifications, and processes for reporting sex discrimination and sex-based harassment.

The complaint procedures described in this administrative regulation shall be used to address any complaint governed by Title IX of the Education Amendments of 1972 alleging that a district employee, while in an education program or activity in which a district school exercises substantial control over the context and respondent, was subjected to one or more of the following forms of sexual harassment: (34 CFR 106.30, 106.44) , was subjected to conduct on or after August 1, 2024, including, but not limited to, conduct that is under the authority of the district, that constitutes sex discrimination, including sex-based harassment. For conduct that occurred prior to this date, the district should utilize its policies in place at the time the alleged sex discrimination, including sex-based harassment, occurred, so long as they are in accordance with the applicable statutes and regulations.

- 1.—A district employee conditioning the provision of a district aid, benefit, or service on a person's participation in unwelcome sexual conduct
- 2.—Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity
- 3.— Sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 or 34 USC 12291

All other sexual harassment complaints or allegations shall be investigated and resolved in accordance with AR 4030 - Nondiscrimination in Employment. The determination of whether the allegations meet the definition of sexual harassment under Title IX shall be made by the district's Title IX Coordinator.

Because the complainant has a right to pursue a complaint under AR 4030 for any allegation that is dismissed or denied under the Title IX complaint procedure, the Title IX Coordinator shall ensure that all requirements and timelines for AR 4030 are concurrently met while implementing the Title IX procedure.

Reporting Allegations/Filing a Formal Complaint

Sex discrimination and sex-based harassment include, but are not limited to, sex-based conduct as specified in Administrative Regulation 4119.11/4219.11/4319.11 - Sex Discrimination and Sex-Based Harassment.

Basic Requirements

CSBA NOTE: 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, requires that the district's grievance procedures follow specified basic requirements, which are reflected below.

When implementing Title IX grievance procedures, the district shall: (34 CFR 106.45)

1. Treat complainants and respondents equitably
2. Ensure that the Title IX Coordinator or designee, investigator, or decisionmaker not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent

The investigator and the decisionmaker may be the same person as the Title IX Coordinator or designee.

3. Presume that the respondent is not responsible for the alleged sex discrimination, including sex-based harassment, until a determination is made at the conclusion of the grievance procedures
4. Establish reasonably prompt timeframes for the major stages of the grievance procedures, such as evaluation of whether to dismiss or investigate a complaint, investigation, decision, and appeals if any
5. Establish a process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the parties that includes the reason for the delay

CSBA NOTE: Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, the district may not disclose personally identifiable information obtained while complying with the Title IX complaint procedures, except as provided below.

Additionally, the district shall not disclose personally identifiable information obtained while implementing Title IX complaint procedures unless the district has obtained prior written consent from a person with the legal right to consent to the disclosure; the information is disclosed to a parent/guardian or other authorized legal representative with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue; to take action to address conduct that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, in the district's education program or activity; as required by federal law, regulations, or as a condition to a federal award; as required by state or local law; or to the extent such disclosures are not otherwise in conflict with Title IX. (34 CFR 106.44)

If the respondent is a student with a disability, the Title IX Coordinator or designee shall consult with one or more members, as appropriate, of the student's individualized education program or 504 team, to determine how to comply with the requirements of the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973.

Filing a Complaint

Upon receiving information of an allegation of sex discrimination, including sex-based harassment, the Title IX Coordinator or designee shall notify the individual(s) specified in law of the Title IX grievance procedures, and of the informal resolution process, if available and appropriate.

CSBA NOTE: Pursuant to 34 CFR 106.2, as amended by 89 Fed. Reg. 33474, a "complaint" is defined as an oral or written request to the district that objectively can be understood as a request for the district to investigate and make a determination about alleged discrimination under Title IX.

A complaint is an oral or written request that can objectively be understood by the Title IX Coordinator or designee as a request for the district to investigate and make a determination about alleged sex discrimination, including sex-based harassment. (34 CFR 106.2)

Complaints of sex discrimination and sex-based harassment may only be brought by an employee, or former employee, who was participating or attempting to participate in the district's education program or activity at the time of the alleged sex-based harassment, or the Title IX Coordinator or designee. (34 CFR 106.45)

CSBA NOTE: Pursuant to 34 CFR 106.30, the timeline for resolving a sexual harassment complaint begins when the district has actual knowledge of sexual harassment, defined as the receipt of a report by the Title IX Coordinator or other employee of an elementary or secondary school. The following paragraph reflects the requirement for any employee to forward the report to the Title IX Coordinator as stated in AR 4119.11/4219.11/4319.11 - Sexual Harassment and may be revised to reflect district practice.

CSBA NOTE: Given the district's duty pursuant to 34 CFR 106.44 to respond to reports of sex discrimination, including sex-based harassment, promptly and effectively, the Title IX Coordinator or designee should file a complaint even when the victim chooses not to do so, when, based on the considerations described below, the Title IX Coordinator or designee determines that a health or safety threat exists or when the district would be prevented from ensuring equal access based on sex in its programs or activities. In such cases, the alleged victim must receive notices as required by the Title IX regulations at specific points in the complaint process.

An employee who is If the alleged victim chooses not to bring a complaint, or withdraws any or all of sexualthe allegations in a complaint, and in the absence or termination of an informal resolution process, the Title IX Coordinator or designee shall consider whether to initiate a complaint. To do so, the Title IX Coordinator or designee shall first consider the following factors: (34 CFR 106.44)

1. The victim's request not to proceed with initiation of a complaint
2. The victim's reasonable safety concerns regarding initiation of a complaint
3. The risk that additional acts of sex discrimination, including sex-based harassment may submit, would occur if a reportcomplaint is not initiated
4. The severity of sexualthe alleged sex discrimination or sex-based harassment to the district's Title IX Coordinator using the contact, including whether the discrimination, if established,

would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence

5. The age and relationship of the parties, including whether the respondent is an employee of the district
6. The scope of the alleged sex discrimination, including information listed in AR 4119.11/4219.11/4319.11 - Sexual Harassment suggesting a pattern; ongoing sex discrimination, including sex-based harassment; or sex discrimination, including sex-based harassment, alleged to have impacted multiple individuals
7. The availability of evidence to assist a decisionmaker in determining whether sex discrimination, including sex-based harassment, occurred
8. Whether the employee's direct supervisor or other district administrator, who shall forward could end the report to alleged sex discrimination, including sex-based harassment, and prevent its recurrence without initiating the Title IX Coordinator within one day of receiving the report.

Upon receiving such a report grievance procedures

If, after considering these factors, the Title IX Coordinator shall inform determines that the alleged conduct presents an imminent and serious threat to the health and safety of the complainant of the right to file a formal complaint and the process for filing a formal complaint.

A formal complaint, with the complainant's physical or digital signature, may be filed with or another person, or that the conduct as alleged prevents the district from ensuring equal access to a district program or activity on the basis of sex, the Title IX Coordinator in person; may initiate a complaint.

CSBA NOTE: Pursuant to 34 CFR 106.44, as amended by mail, by email, or by any other method authorized by the district. (34 CFR 106.30) 89 Fed. Reg. 33474, the Title IX Coordinator or designee is required to take the steps described below upon initiating a complaint.

CSBA NOTE: Given the district's duty pursuant to 34 CFR 106.44 to respond to reports of sexual harassment in a manner that is not deliberately indifferent, the Title IX Coordinator should file a complaint in certain situations even when the victim chooses not to do so, including, but not limited to, when a safety threat exists. In such cases, the Title IX Coordinator and the alleged victim are not named parties to the case, but the alleged victim must receive notices as required by the Title IX regulations at specific points in the complaint process.

Even if the alleged victim chooses not to file a formal If the Title IX Coordinator initiates a complaint, the Title IX Coordinator shall file a formal complaint in situations when a safety threat exists. In addition, the Title IX Coordinator may file a formal complaint in other situations as permitted under the Title IX regulations, including as part of the district's obligation to not be deliberately indifferent to known allegations of sexual harassment. In such cases, the Title IX Coordinator shall provide the alleged victim notice of the complaint as well as other notices as required by the Title IX regulations at specific points in the complaint process.

The Title IX Coordinator The Title IX Coordinator shall also address reasonable concerns about the

victim's safety or the safety of others, including providing supportive measures as described in "Supportive Measures" below, and taking other appropriate prompt and effective steps to ensure that sex discrimination, including sex-based harassment, does not continue or recur within the district. (34 CFR 106.44)

CSBA NOTE: Pursuant to 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, in addition to Title IX Coordinators or designees, investigators, and decisionmakers, persons who are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures may not have a conflict of interest or bias for or against complainants or respondents generally, or an individual complainant or respondent, and are required to receive specified training.

The Title IX Coordinator or designee, investigator, ~~decision-maker~~ decisionmaker, other person who is responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures, or a facilitator of an informal resolution process shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. Such persons shall receive training in accordance with 34 CFR 106.45~~8~~. (34 CFR 106.45)

Supportive Measures

CSBA NOTE: Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, the Title IX Coordinator is required to monitor the district for barriers to reporting information about conduct that reasonably may constitute sex discrimination, including sex-based harassment, under Title IX, as specified below.

Upon receipt of a report of Title IX sexual ~~In order to ensure that employees are not barred from reporting information about conduct that reasonably may constitute sex discrimination under Title IX, including sex-based harassment,~~ the Title IX Coordinator shall promptly contact the complainant to discuss the availability of supportive measures and shall consider ~~monitor~~ the complainant's wishes with respect ~~district for barriers to the reporting and take steps reasonably calculated to address such barriers.~~ (34 CFR 106.44, 106.45)

Supportive Measures

CSBA NOTE: 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, requires districts to offer and coordinate supportive measures implemented. Supportive as described below. Pursuant to 34 CFR 106.2, as amended by 89 Fed. Reg. 33474, "supportive measures shall be" are defined as individualized measures offered as appropriate, as reasonably available; and without charge to the ~~unreasonably burdening a~~ complainant or the respondent before, not for punitive or after the filing of a formal complaint or where no formal complaint has been filed. Such measures shall be nondisciplinary, nonpunitive, and not unreasonably burden the other party, including measures designed to protect the safety of all parties or the district's educational environment or to deter sexual harassment. ~~disciplinary reasons, and without charging a fee to the complainant or respondent to (1) restore or preserve the party's access to the district's education program or activity, including measures that are designed to protect the safety of the parties or the district's~~

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educational environment, or (2) provide support during the recipients' grievance procedures specified in 34 CFR 106.45 or during any informal resolution process as specified in 34 CFR 106.44.]

Upon receipt of a report of Title IX sex discrimination or sex-based harassment, the Title IX Coordinator or designee shall offer and coordinate supportive measures. Supportive measures may vary depending on what the district determines to be reasonably available and shall not unreasonably burden either the complainant or respondent. Supportive measures shall be provided without charging a fee to the complainant or respondent and be designed to protect the safety of the complainant, respondent, and the district's educational environment, and to provide support during any grievance procedures implemented as specified in 34 CFR 106.45 or informal resolution process as specified in 34 CFR 106.44. The district shall not impose such measures for punitive or disciplinary reasons. Supportive measures may include, but are not limited to, counseling; extensions of deadlines; and other course- or work-related adjustment; changes in class, work, housing, or extracurricular or any other activity regardless of whether there is a comparable alternative; campus escort services; modifications of class or work schedules; mutual restrictions on contact; changes in class or work locations; leaves of absence; increased security; and; monitoring of certain areas of the campus. (34 CFR 106.30, 106.44)

The district shall maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the district's ability to provide the ; and, training and education programs related to sex-based harassment. (34 CFR 106.2, 106.44)

CSBA NOTE: Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, the district's provision of supportive measures: (34 CFR 106.30) does not require the district, its employees, or any other persons authorized to provide aid, benefit, or service on the district's behalf to alter the alleged discriminatory conduct for the purpose of providing the supportive measures unless there is an allegation of sex-based harassment or retaliation.

Unless there is an allegation of sex-based harassment or retaliation, the district may provide supportive measures without altering the alleged discriminatory conduct. (34 CFR 106.44)

Upon the conclusion of any grievance procedures implemented as specified in 34 CFR 106.45 or informal resolution process as specified in 34 CFR 106.44, the district may continue with the supportive measures, or modify or terminate such measures, as appropriate. (34 CFR 106.44)

CSBA NOTE: Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, the district is required to provide both parties for whom supportive measures have been implemented with the opportunity to challenge, to an impartial employee, the implementation of such measures. An "impartial employee" must be someone other than the employee who made the decision to provide the supportive measures which are being challenged, but who has the authority to modify or reverse the decision if the employee determines that the decision to provide, deny, modify, or terminate the supportive measures was inconsistent with the definition of supportive measures as specified in 34 CFR 106.2.

The district shall provide a complainant or respondent for whom supportive measures have been implemented with a timely opportunity to seek, from an impartial employee with authority to modify or reverse the supportive measures, modification or reversal of the district's decision to provide, deny, modify, or terminate such measures, and to seek additional modification or termination of the supportive measures if circumstances materially change. (34 CFR 106.44)

The district shall not disclose information about supportive measures to any person other than the person to whom they apply, including informing one party of supportive measures provided to another party, unless the disclosure is necessary to providing the supportive measures, or restoring or preserving a party's access to the district's education program or activity. (34 CFR 106.44)

Emergency Removal

If a district employee is the respondent, the employee may be placed on administrative leave during the pendency of the formal complaint process. (34 CFR 106.44)

CSBA NOTE: Pursuant to Education Code 48900.2, a student in grades 4-12 may be suspended and/or expelled from school for sexual harassment. Districts should also note that Additionally, Education Code 48915(c) requires the Superintendent or designee to recommend expulsion for any student, irrespective of grade, who commits sexual assault or battery as defined in the Penal Code. See AR 5144.1 - Suspension and Expulsion/Due Process.

34 CFR 106.44 allows a student to be removed in emergency situations as described below, but 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, requires that a student ~~should~~ not be "disciplined" prior to a finding being made pursuant to the Title IX grievance process established by 34 CFR ~~106.45~~. Due to this inconsistency in state and federal law, districts are advised to consult CSBA's District and County Office of Education Legal Services of district legal counsel as to the manner of imposing an emergency removal.

If the respondent is a student, the district may, on an emergency basis, remove the student from the district's education program or activity, provided that the district conducts an individualized safety and risk analysis, determines that removal is justified due to an ~~immediate~~ imminent and serious threat to the physical health or safety of a complainant or any student, employee, or other individual arising from the allegations, and provides the ~~student~~ respondent with notice and an opportunity to challenge the decision immediately following the removal. This authority to remove a student does not modify a student's rights under the ~~Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973~~. (34 CFR 106.44) IDEA or Section 504 of the Rehabilitation Act of 1973. (34 CFR 106.44)

Dismissal of Complaint

The Title IX Coordinator shall dismiss a formal complaint if the alleged conduct would not constitute sexual harassment as defined in 34 CFR 106.30 even if proved. The Title IX Coordinator shall also dismiss any complaint in which the alleged conduct did not occur in the district's education program or activity or did not occur against a person in the United States, and may dismiss a formal complaint if the complainant notifies the district in writing that the complainant would like to withdraw the complaint or any allegations in the complaint, the respondent is no longer employed

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by the district, or sufficient circumstances prevent the district from gathering evidence sufficient to reach a determination with regard to the complaint. (34 CFR 106.45)

Upon dismissal, the Title IX Coordinator shall promptly send written notice of the dismissal and the reasons for the dismissal simultaneously to the parties, and shall inform them of their right to appeal the dismissal of a formal complaint or any allegation in the complaint in accordance with the appeal procedures described in the section "Appeals" below. (34 CFR 106.45)

If a complaint is dismissed, the conduct may still be addressed pursuant to AR 4030 - Nondiscrimination in Employment as applicable.

Informal Resolution Process

When a formal complaint of sexual harassment is filed, the district may offer an informal resolution process, such as mediation, at any time prior to reaching a determination regarding responsibility. The district shall not require a party to participate in the informal resolution process or to waive the right to an investigation and adjudication of a formal complaint. (34 CFR 106.45)

The district may facilitate an informal resolution process provided that the district: (34 CFR 106.45)

Dismissal of Complaint

CSBA NOTE: The following section describes when the Title IX Coordinator or designee may dismiss a Title IX complaint and actions the Title IX Coordinator or designee is required to take when a complaint is dismissed pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474.

The Title IX Coordinator or designee may dismiss a complaint if: (34 CFR 106.45)

1. The district is unable to identify the respondent after taking reasonable steps to do so
2. The respondent is not participating in the district's education program or activity and is not employed by the district
3. The district determines that the conduct alleged in the complaint, even if proven, would not constitute sex discrimination, including sex-based harassment, under Title IX
Before dismissing the complaint, the Title IX Coordinator shall make reasonable efforts to clarify the allegations with the complainant.
4. The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and the Title IX Coordinator determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination, including sex-based harassment, under Title IX, even if proven

CSBA NOTE: Pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, the district is required to establish reasonably prompt timeframes for the major stages of the grievance

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procedures. The following paragraph should be revised to reflect the timeline established by the district.

The Title IX Coordinator shall determine whether to dismiss or investigate any complaint of sex discrimination, including sex-based harassment, within [redacted] days, unless such timeline is extended in accordance with this administrative regulation. 10 business

Upon dismissal, the Title IX Coordinator shall promptly notify the complainant of the dismissal and the reasons for the dismissal. Additionally, if the dismissal occurs after the respondent has been notified of the allegations, the Title IX Coordinator shall provide such notification to the respondent, which shall occur simultaneously to both parties if the notification is in writing. The Title IX Coordinator shall also inform the complainant, and the respondent if the dismissal occurs after the respondent has been notified of the allegations, of their right to appeal. Dismissals may be appealed on the following bases: (34 CFR 106.45)

1. A procedural irregularity that would change the outcome
2. New evidence that would change the outcome and that was not reasonably available when the dismissal was made
3. The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome

If the dismissal is appealed, the district shall: (34 CFR 106.45)

1. Notify the parties of any appeal, including notice of the allegations, if notice was not previously provided to the respondent
2. Implement appeal procedures equally for the parties
3. Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint
4. Ensure that the decisionmaker for the appeal has been trained consistent with the Title IX regulations
5. Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome
6. Notify the parties of the result of the appeal and the rationale for the result

If a complaint is dismissed, the Title IX Coordinator or designee shall offer supportive measures as described above in "Supportive Measures" to the complainant. Additionally, the respondent shall be offered supportive measures if the complaint was dismissed because the complainant voluntarily withdrew any or all of the allegations in the complaint and the district determined that without the withdrawn allegations the conduct, even if proven, would not constitute sex discrimination, including sex-based harassment, under Title IX, or if the complaint was dismissed because the district determined, after taking reasonable efforts to clarify the allegations of the complaint, that the alleged conduct would not constitute sex discrimination, including sex-based harassment, even if proven. The Title IX Coordinator shall also take other appropriate prompt and effective steps to ensure that sex discrimination, including sex-based harassment, does not continue or recur within the district's education program or activity. (34 CFR 106.45)

If a complaint is dismissed, the conduct may still be addressed pursuant to Administrative Regulation 4030 - Nondiscrimination in Employment as applicable.

Informal Resolution Process

CSBA NOTE: The following section reflects when the district may offer an informal resolution process, notification and consent requirements, criteria for the facilitator of the informal resolution process, and other required steps when an informal resolution process is implemented, as specified in 34 CFR 106.44, as amended by 89 Fed. Reg. 33474.

Additionally, 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, provides potential terms that may be included in an informal resolution agreement. Because such agreements will be fact-specific and reflective of sensitive topics, districts are encouraged to consult CSBA's District and County Office of Education Legal Services or district legal counsel when drafting informal resolution agreements.

At any time prior to determining whether sex discrimination, including sex-based harassment, occurred under the complaint procedures specified in 34 CFR 106.45, the district may offer, if it is determined to be appropriate upon receiving information about conduct that reasonably may constitute sex discrimination under Title IX or when a complaint of sex discrimination is made, an informal resolution process, such as mediation, to the complainant and respondent. However, the district shall not offer an informal resolution process if the complaint alleges that an employee engaged in sex-based harassment of an elementary or secondary school student or that such process would conflict with federal, state, or local law. (34 CFR 106.44)

The district shall not require or pressure a party to participate in the informal resolution process, or to waive the right to an investigation and determination of a complaint as a condition of employment or continuing employment, or exercise of any other right. The district may decline to offer an informal resolution process including, but not limited to, when the district determines that the alleged conduct would present a future risk of harm to others. (34 CFR 106.44)

The district may facilitate an informal resolution process provided that the district, prior to initiating such process: (34 CFR 106.44)

1. Provides the parties with written notice disclosing the allegations; the requirements of the informal resolution process; the right to withdraw from the informal process and resume the formal complaint process, and any consequences resulting; the inability to initiate or resume complaint procedures arising from participating in the same allegations once the informal resolution process is concluded; the potential terms that may be requested or offered in an informal resolution agreement, including that records the agreement would only be binding on the parties; and the information that the district will be maintained or maintain and whether and how the district could be shared. disclose such information for use in Title IX grievance procedures if such procedures are initiated or resumed
2. Obtains the parties' voluntary, written consent to the informal resolution process

The Title IX Coordinator or designee shall ensure that the facilitator of the informal resolution process is not the same person as the investigator or decisionmaker of any ongoing or newly initiated complaint process specified in 34 CFR 106.45, does not have a conflict of interest or bias

for or against complainants or respondents generally or an individual complainant or respondent, and receives training in accordance with 34 CFR 106.8. (34 CFR 106.44)

If the district facilitates an informal resolution process, the Title IX Coordinator shall, to the extent necessary, take other appropriate prompt and effective steps to ensure that sex discrimination, including sex-based harassment, does not continue or recur within the district's education program or activity. (34 CFR 106.45)

Written Notice of Allegations

CSBA NOTE: The following section reflects the notice districts are required to provide to the parties pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474.

If the district initiates a formal complaint is filed Title IX investigation, the Title IX Coordinator or designee shall provide the known parties with written notice of the following: (34 CFR 106.45)

1. The district's complaint process, including any informal resolution process
2. The allegations potentially constituting sexual harassment with sufficient details known Sufficient information, available at the time, including to allow the parties to respond to the allegations, including, to the extent available, the identity of parties involved in the incident if known(s), the conduct allegedly constituting sexual sex discrimination, including sex-based harassment, and the date(s) and location(s) of the alleged incident if known.

Such notice shall be provided with sufficient time for the parties to prepare a response before any initial interview.

If, during the course of the investigation, new Title IX allegations arise about the complainant or respondent that are not included in the initial notice, the Title IX Coordinator shall provide notice of the additional allegations to the parties.

3. A statement that retaliation is prohibited

1. 4. A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the complaint process
2. The opportunity for the parties are entitled to have an advisor of their choice who may be, but is not required equal opportunity to be, an attorney, and the ability to inspect and review access the relevant and not otherwise impermissible evidence
3. The prohibition against knowingly making false statements or knowingly submitting false information during the complaint process an accurate description of such evidence, as specified

CSBA NOTE: The following paragraph is optional. Although not required by law, a best practice is to provide notice to the parties of the name of the investigator, facilitator, and decision-

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~~maker~~decisionmaker in order to give the parties an opportunity to raise concerns of conflict of interest or bias as prohibited by 34 CFR 106.45.

The above notice ~~shall~~may also include the name of the investigator, facilitator of an informal process, and ~~decision-maker~~decisionmaker and shall inform the parties that, if at any time a party has concerns regarding conflict of interest or bias regarding any of these persons, the party should immediately notify the Title IX Coordinator: or designee.

Consolidation of Complaints

CSBA NOTE: The following section reflects the district's authority to consolidate complaints of sex discrimination, including sex-based harassment, as specified in 34 CFR 106.45, as amended by 89 Fed. Reg. 33474.

The district may consolidate complaints of sex discrimination, including sex-based harassment, against more than one respondent; by more than one complainant against one or more respondents; or by one party against another party, when the allegations of sex discrimination, including sex-based harassment, arise out of the same facts or circumstances. (34 CFR 106.45)

Investigation Procedures

CSBA NOTE: Pursuant to 34 CFR 106.45, when investigating a ~~formal~~ complaint, the burden of proof rests on the district and not on the parties. However, the district must obtain the party's voluntary, written consent to access, consider, disclose, or otherwise use a party's records that are maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional, which are made and maintained in connection with the provision of treatment to the party.

34 CFR 106.45 authorizes, but does not require, the district to conduct a live hearing at which each party's advisor may ask the other party and any witnesses all relevant questions and follow-up questions. If the district chooses to include such a hearing as a component of its complaint procedure, the following list should be modified to include requirements for the hearing in accordance with 34 CFR 106.45.

The district shall provide for adequate, reliable, and impartial investigation of complaints. (34 CFR 106.45)

During the investigation process, the district's designated investigator shall: (34 CFR 106.45)

1. 1. Provide an equal opportunity for the parties to present ~~fact~~ witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence that is relevant and not otherwise impermissible
2. Review all evidence gathered through the investigation and determine which evidence is relevant and which evidence is impermissible regardless of relevance
3. Provide each party with an equal opportunity to access evidence that is relevant, and not otherwise impermissible, to the allegations of sex discrimination, including sex-based harassment, by:

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- a. Providing an equal opportunity to access either the relevant and not otherwise impermissible evidence or an accurate description of such evidence

If an accurate description is provided, the district shall, upon request of any party, provide the parties with an equal opportunity to access the relevant and permissible evidence.

- b. Providing a reasonable opportunity to respond to the evidence or to the accurate description of the evidence

- c. Taking reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures

2. ~~4.~~ Not Take reasonable steps to protect the privacy of parties and witnesses which do not restrict the ability of either party to discuss the allegations under investigation or to ~~gather~~ the parties to obtain and present relevant evidence
3. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney
4. Not limit the choice, by speaking to witnesses; consulting with family members, confidential resources, or presence of an ~~advisor~~ advisors; or otherwise preparing for either the complainant or respondent or participating in any meeting or the grievance proceeding, although the district may establish restrictions regarding the extent to which the advisor may participate in the proceedings as long as the restrictions apply equally to both parties procedures
5. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings, with sufficient time for the party to prepare to participate
6. Send in an electronic format or hard copy to both parties and their advisors, if any, the evidence obtained as part of the investigation that is directly related to the allegations raised in the complaint, and provide the parties at least 10 days to submit a written response for the investigator to consider prior to the completion of the investigative report
7. 5. Objectively evaluate all evidence that is relevant evidence and not otherwise impermissible, including both inculpatory and exculpatory evidence, and determine including that credibility in a manner that is determinations will not be based on a ~~person's~~ person's status as a complainant, respondent, or witness
8. Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to the determination of responsibility, send to the parties and their advisors, if any, the investigative report in an electronic format or a hard copy, for their review and written response
6. Exclude as impermissible the following types of evidence, and questions seeking that evidence:

- a. Evidence that is protected under a privilege recognized by state or federal law or evidence that is provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege
- b. A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the district obtains that party's or witness's voluntary, written consent for use in its grievance procedures
- c. Questions and Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct alleged by the complainant or if the questions and is evidence concern about specific incidents of the complainant's complainant's prior sexual behavior conduct with respect to the respondent and are that is offered to prove consent to the alleged sex-based harassment.

The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

CSBA NOTE: The following paragraph should be amended to reflect district practice regarding the process established to enable the decisionmaker to question parties and witnesses adequately to assess a party's or witness's credibility.

The district shall ensure that the decisionmaker is able to question parties and witnesses adequately to assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex-based harassment. (34 CFR 106.45)

Privacy rights of all parties to the complaint shall be maintained in accordance with applicable state and federal laws.

CSBA NOTE: Districts with questions about the application of a collective bargaining agreement in the context of a Title IX investigation should consult CSBA's District and County Office of Education Legal Services or district legal counsel.

If the complaint is against an employee, rights conferred under an applicable collective bargaining agreement shall be applied to the extent they do not conflict with the Title IX requirements.

Written Decision

CSBA NOTE: Pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, the district is required to establish reasonably prompt timeframes for the major stages of the grievance procedures. The district should revise the following paragraph to reflect the timeline established by the district.

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The investigator shall complete the investigation within [redacted] days after the Title IX Coordinator determines to proceed with an investigation, unless such timeline is extended in accordance with this administrative regulation.

Written Decision

CSBA NOTE: Pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, the person designated as the ~~decision-maker~~decisionmaker of the determination of responsibility ~~cannot~~may be the same person designated as the Title IX Coordinator, an or designee and/or investigator, or the person who considers appeals so long as there is no conflict of interest or bias. The following paragraph may be revised to reflect the position designated by the district to provide a written determination of responsibility. While designation decisions will depend on the size of the district, a best practice is to designate an upper-level administrator as the ~~decision-maker~~decisionmaker and designate the Superintendent as the person to consider appeals.

The Superintendent shall designate an employee as the ~~decision-maker~~decisionmaker to determine responsibility for the alleged conduct, who shall ~~not~~may be the Title IX Coordinator or a person involved in designee or the investigation investigator so long as there is no conflict of the matter.interest or bias. (34 CFR 106.45)

~~After~~Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, the district shall: (34 CFR 106.45)

1. Use the investigative report~~preponderance of the evidence standard of proof to determine whether sex discrimination, including sex-based harassment, has been sent to~~ occurred
2. Notify the parties ~~but before reaching a~~ in writing of the determination regarding responsibility, the ~~decision-maker~~of whether sex discrimination, including sex-based harassment, occurred

The notification shall afford each party the opportunity include the rationale for such determination and the procedures and permissible bases for the complainant and respondent to ~~submit~~appeal, if applicable.

CSBA NOTE: Pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, the district is required to establish reasonably prompt timeframes for the major stages of the grievance procedures. The district should revise the following paragraph to reflect the timeline established by the district.

The written, relevant questions that the party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party

The decision-maker decision shall issue, and simultaneously provide to both parties, a written decision as to ~~whether the respondent is responsible for the alleged conduct.~~ (34 CFR 106.45)be issued within 15 business days after the investigation is completed, unless such time is extended in accordance with this administrative regulation.

Appeal of the Decision

CSBA NOTE: 34 CFR 106.45 requires that the district's complaint process include a "reasonably prompt" timeframe for concluding the complaint process, but does not specify the number of days within which the final decision must be issued. Districts may revise the following paragraph to

include a different timeline as long as it would satisfy the requirement to act promptly. **CSBA NOTE:** 34 CFR 106.45 allows either the complainant or respondent to appeal the district's decision, and requires the district to offer the parties an appeal process that at a minimum is the same as it offers in all other comparable proceedings, if any, including proceedings relating to other discrimination complaints, such as AR 4030 – Nondiscrimination in Employment. The district may revise the following section to reflect applicable timelines and appeal process established by the district.

The following section should also be revised to identify the person who has been designated as the decisionmaker(s) for the appeal. Pursuant to 34 CFR 106.45, the decisionmaker for the appeal cannot be the same person as the decisionmaker that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.

The written decision shall be issued within 60 calendar days of the receipt of the complaint:

The timeline may be temporarily extended for good cause with written notice to the complainant and respondent of the extension and the reasons for the action. (34 CFR 106.45)

CSBA NOTE: 34 CFR 106.45 mandates that the district's complaint procedures state whether the district's determination of responsibility will be based on a "preponderance of evidence" standard or "clear and convincing evidence" standard. The following paragraph reflects the "preponderance of evidence" standard, which is a less stringent standard to prove misconduct, and should be revised if the district chooses to use a "clear and convincing evidence" standard. The standard selected by the district must be applied uniformly for all Title IX sexual harassment complaints. The district should consult with legal counsel in determining which standard to use:

In making this determination, the decision-maker shall use the "preponderance of the evidence" standard for all formal complaints of sexual harassment. (34 CFR 106.45)

The written decision shall include the following: (34 CFR 106.45)

- 1.— Identification of the allegations potentially constituting sexual harassment as defined in 34 CFR 106.30
- 2.— A description of the procedural steps taken from receipt of the formal complaint through the written decision, including any notifications to the parties; interviews with parties and witnesses; site visits; methods used to gather other evidence; and hearings held if the district includes hearings as part of the grievance process
- 3.— Findings of fact supporting the determination
- 4.— Conclusions regarding the application of the district's code of conduct or policies to the facts
- 5.— A statement of, and rationale for, the result as to each allegation, including a decision regarding responsibility; any disciplinary sanctions the district imposes on the respondent; and whether remedies designed to restore or preserve equal access to the district's educational program or activity will be provided by the district to the complainant
- 6.— The district's procedures and permissible bases for the complainant and respondent to appeal

Appeals

CSBA NOTE: 34 CFR 106.45 allows either the complainant or respondent to appeal the district's decision. The district may revise the following section to reflect applicable timelines established by the district.

The following section should also be revised to identify the person who has been designated as the decision-maker(s) for the appeal. Pursuant to 34 CFR 106.45, the decision-maker for the appeal cannot be the same person as the decision-maker that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.

Either party may appeal the district's decision or dismissal of a formal complaint or any allegation in the complaint, if the party believes that a procedural irregularity affected the outcome, new evidence is available that could affect the outcome, or a conflict of interest or bias by the Title IX Coordinator, investigator(s), or decision-maker(s) affected the outcome. If an appeal is filed, the district shall: (34 CFR 106.45)

- 1.—Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties
- 2.—Ensure that the decision-maker(s) for the appeal is trained in accordance with 34 CFR 106.45 and is not the same decision-maker(s) who reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator
- 3.—Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome
- 4.—Issue a written decision describing the result of the appeal and the rationale for the result
- 5.—Provide the written decision simultaneously to both parties

An appeal must be filed in writing within 10 calendar days of receiving the notice of the decision or dismissal, stating the grounds for the appeal and including any relevant documentation in support of the appeal. Appeals submitted after this deadline are not timely and shall not be considered.

A written decision shall be provided to the parties within 20 calendar days from the receipt of the appeal.

Either party may appeal the district's decision of a complaint or any allegation in the complaint. (34 CFR 106.45)

When conducting an appeal, the district shall follow the appeal process as specified in Administrative Regulation 4030 – Nondiscrimination in Employment.

Either party has the right to file a complaint with the U.S. Department of Education's Office for Civil Rights within 180 days of the date of the most recently alleged misconduct.

The complainant shall be advised of any civil law remedies, including, but not limited to, injunctions, restraining orders, or other remedies or orders that may be available under state or federal antidiscrimination laws, if applicable.

Remedies Extension of Timelines

CSBA NOTE: Pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, the district is required to establish a process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause, with notice to the parties that includes the reason for the delay.

Any timelines specified in this administrative regulation may be extended by the district for good cause, with written notice to the parties. The written notice shall specify the reasons for the extension. (34 CFR 106.45)

Remedies CSBA NOTE: 34 CFR 106.45 mandates that the district's Title IX complaint process list, or describe the range of possible remedies that the district may implement following any determination of responsibility. The following section may be revised to reflect district practice.

When a determination of responsibility for sexual harassment has been made against the respondent, the district shall provide remedies to the complainant. Such remedies may include the same individualized services described above in the section "Supportive Measures," but need not be nondisciplinary or nonpunitive and need not avoid burdening the respondent.

When there is a determination that sex discrimination, including sex-based harassment, has occurred, the Title IX Coordinator shall coordinate the provision and implementation of remedies to the complainant and other persons the district identifies as having had equal access to the district's education program or activity limited or denied by sex discrimination, including sex-based harassment; coordinate the imposition of any disciplinary sanctions on a respondent as described in "Disciplinary Actions" below, including notification to the complainant of any such disciplinary sanctions; and take other appropriate prompt and effective steps to ensure that sex discrimination, including sex-based harassment, does not continue or recur within the district's education program or activity. (34 CFR 106.45)

Disciplinary Actions

The district shall not impose any disciplinary sanctions or other actions against a respondent, other than supportive measures as described above in the section "Supportive Measures," until the complaint procedure has been completed and a determination of responsibility has been made. (34 CFR 106.44, 106.45)

When an employee is found to have committed ~~sexual~~ sex discrimination, including sex-based harassment, or retaliation, the district shall take appropriate disciplinary action, up to and including dismissal, in accordance with applicable law and collective bargaining agreement.

Record-Keeping

The Superintendent or designee shall maintain, for a period of seven years: (34 CFR 106.45)

- 1.—A record of all reported cases and Title IX investigations of sexual harassment, any determinations of responsibility, any audio or audiovisual recording and transcript if

applicable, any disciplinary sanctions imposed, any remedies provided to the complainant, and any appeal or informal resolution and the results therefrom.

- 2.—A record of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment, including the district's basis for its conclusion that its response was not deliberately indifferent, the measures taken that were designed to restore or preserve equal access to the education program or activity, and, if no supportive measures were provided to the complainant, the reasons that such a response was not unreasonable in light of the known circumstances.

All materials used to train the Title IX Coordinator, investigator(s), decision-maker(s), The district shall not discipline a party, witness, or others participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the district's determination of whether sex discrimination, including sex-based harassment, occurred. (34 CFR 106.45)

Record-Keeping

CSBA NOTE: The following paragraph reflects Title IX record-keeping requirements pursuant to 34 CFR 106.8, as amended by 89 Fed. Reg. 33474.

The Superintendent or designee shall maintain, for at least a period of seven years: (34 CFR 106.45)

1. For each complaint of sex discrimination, including sex-based harassment, records documenting any informal resolution process or formal investigation procedures
2. For each notification the Title IX Coordinator or designee receives of information about conduct that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, records documenting the actions taken to fulfill the district's obligations as specified in 34 CFR 106.44, including supportive measures offered and implemented
3. All materials used to train district employees; the Title IX Coordinator and designee(s); investigator(s), decisionmaker(s), and other person(s) who are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures; and any person who facilitates an informal resolution process.
3. The district shall make such training materials publicly available on its web site, or if the district does not maintain a web site, available upon request by members of the public.

For complaints containing allegations of childhood sexual assault, the Superintendent or designee shall also indefinitely maintain the following: (Code of Civil Procedure 340.1):

1. A record of the allegation(s)
2. A record of the investigation procedures followed
3. A record of the written determination
4. A record of the corrective action implemented, if any

5. A record of any appeals and the outcome of the same

6. All training materials addressing the prohibition and investigation of childhood sexual assault

Policy Reference UPDATE Service

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Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State	Description
5 CCR 4600-4670	Uniform complaint procedures
5 CCR 4900-4965	Nondiscrimination in elementary and secondary educational programs receiving state or federal financial assistance
Civ. Code 1714.1	Liability of parent or guardian for act of willful misconduct by a minor
Civ. Code 51.9	Liability for sexual harassment; business, service and professional relationships
Ed. Code 200-262.4 270	Prohibition of discrimination
Ed. Code 48900	Grounds for suspension or expulsion
Ed. Code 48900.2	Additional grounds for suspension or expulsion; sexual harassment
Ed. Code 48985	Notices to parents in language other than English
Gov. Code 12950.1	Sexual harassment training
Federal	Description
20 USC 1092	Definition of sexual assault
20 USC 1221	Application of laws
20 USC 1681-1688	Title IX of the Education Amendments of 1972; discrimination based on sex
34 CFR 106.1-106.82	Nondiscrimination on the basis of sex in education programs
34 CFR 99.1-99.67	Family Educational Rights and Privacy
34 USC 12291	Definition of dating violence, domestic violence, and stalking
42 USC 1983	Civil action for deprivation of rights
42 USC 2000d-2000d-7	Title VI, Civil Rights Act of 1964
42 USC 2000e-2000e-17	Title VII, Civil Rights Act of 1964, as amended
Management Resources	Description
Court Decision	Reese v. Jefferson School District (2001 2000 , 9th Cir.) 208 F.3d 736

Court Decision	Davis v. Monroe County Board of Education (1999) 526 U.S. 629
Court Decision	Gebser v. Lago Vista Independent School District (1998) 524 U.S. 274
Court Decision	Oona by Kate S. v. McCaffrey (1998, 9th Cir.) 143 F.3d 473
Court Decision	Doe v. Petaluma City School District (1995, 9th Cir.) 54 F.3d 1447
Court Decision	Donovan v. Poway Unified School District (2008) 167 Cal.App.4th 567
Court Decision	Flores v. Morgan Hill Unified School District (2003, 9th Cir.) 324 F.3d 1130

Federal Register

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, April 29, 2024, Vol. 89, No. 83, pages 33474-33896

(<https://www.federalregister.gov/documents/2024/04/29/2024-07915/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>)

U.S. Department of Justice, Federal Bureau of Investigation Publication

National Incident-Based Reporting System

(https://ucr.fbi.gov/nibrs/2018/resource-pages/nibrs_offense_definitions-2018.pdf)

Website CSBA District and County Office of Education Legal Services

Website CSBA

Website California Department of Education

Website U.S. Department of Education, Office for Civil Rights

Website U.S. Department of Justice, Federal Bureau of Investigation
(<https://www.justice.gov/doj/federal-bureau-investigation>)

Cross References

Code	Description
1313	Civility
3580	District Records
3580	District Records
3600	Consultants
4030	Nondiscrimination In Employment
4030	Nondiscrimination In Employment
4117.7	Employment Status Reports
4118	Dismissal/Suspension/Disciplinary Action

4118	Dismissal/Suspension/Disciplinary Action
4119.11	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>
4119.11	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>
4131	Staff Development
4218	Dismissal/Suspension/Disciplinary Action
4218	Dismissal/Suspension/Disciplinary Action
4219.11	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>
4219.11	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>
4317.7	Employment Status Reports
4319.11	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>
4319.11	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>

Exhibit 4219.12-E(1): Title IX Sexual Sex Discrimination and Sex-Based Harassment Complaint Procedures Status: ADOPTED

Original Adopted Date: 10/01/2020 | Last Revised Date: 07/01/2024 | Last Reviewed Date: 10/07/01/2020 2024

CSBA NOTE: 34 CFR 106.8 requires the district to provide notice to employees, bargaining units, and job applicants of its policy prohibiting sexual harassment and its grievance procedures that provide for the prompt and equitable resolution of sexual harassment complaints. The following exhibit presents a sample notification that meets these requirements and may be modified to reflect district practice. For a sample notice for students and parents/guardians, see E 5145.71 - Title IX Sexual Harassment Complaint Procedures.

Pursuant to 34 CFR 106.8, the district must provide the Title IX Coordinator's contact information on its web site and in any employee handbook. In addition, state law (Education Code 231.5) requires that the district's sexual harassment policy be provided to employees at the beginning of the school year and when newly hired, displayed in district and school offices, and included in any publication that sets forth standards of employee conduct.

CSBA NOTE: 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, requires the district to provide notice to employees, bargaining units, and job applicants that the district does not discriminate on the basis of sex as required by Title IX; that inquiries about the application of Title IX may be referred to the district's Title IX Coordinator and/or to the U.S. Department of Education, Office for Civil Rights; the Title IX Coordinator's contact information; how to locate the district's policy prohibiting sex discrimination, including sex-based harassment, the district's grievance procedures that provide for the prompt and equitable resolution of sex discrimination and sex-based harassment complaints; how to report information about conduct that may constitute sex discrimination, including sex-based harassment; and how to make a complaint of sex discrimination, including sex-based harassment. The following exhibit presents a sample notification that meets these requirements.

Pursuant to 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, the notice is required to be prominently included on the district's website, and in each handbook, catalog, announcement, bulletin, and application that it makes available to employees, bargaining units, and job applicants. If necessary due to the format or size of any publication specified above, the Superintendent or designee may include in the publication a statement that the district prohibits sex discrimination in any education program or activity that it operates and that individuals may report concerns or questions to the district's Title IX Coordinator, and provide the website location of the notice of nondiscrimination.

Additionally, Education Code 231.5 requires that the district's sexual harassment policy be provided to employees at the beginning of the school year and when newly hired, prominently displayed in

district and school offices, and included in any publication that sets forth standards of employee conduct.

NOTICE OF TITLE IX ~~SEXUAL HARASSMENT POLICY~~ NONDISCRIMINATION

The Code of Federal Regulations, Title 34, Section 106.8 requires the district to issue the following notification to employees, job applicants, and employee organizations:

The district does not discriminate on the basis of sex and prohibits sex discrimination, including sex-based harassment, in any education program or activity that it operates. The prohibition against discrimination on the basis of sex is required by federal law (20 USC 1681-1688; 34 CFR Part 106) and extends to employment. The district also prohibits retaliation against any employee for filing a complaint or exercising any right granted under Title IX.

Title IX ~~requires a school~~ The district is required, as specified in Title IX, to take immediate prompt and appropriate equitable action to address any potential Title IX violations that are brought to its attention. Any inquiries about the application of Title IX, this notice, and who is protected by Title IX may be referred to the district's Title IX Coordinator, to the Assistant Secretary for Civil Rights of the U.S. Department of Education, or both.

CSBA NOTE: The district should enter the name/title and contact information of the district's Title IX Coordinator below. Such information should be consistent with the person/position identified in AR 5145.7 - ~~Sexual~~ 4119.11/4219.11/4319.11 - Sex Discrimination and Sex-Based Harassment.

The district has designated and authorized the following employee(s) as the district's Title IX Coordinator, to address concerns or inquiries regarding discrimination on the basis of sex, including sexual harassment, sexual assault, dating violence, domestic violence, and stalking sex-based harassment:

(name and/or title/position)

(address)

(telephone number)

(email address)

CBDO or Designee
15305 Rockwood Rd
Escondido, CA 92027
760.745.4931
SDUSD E-SAFETY/union ref

CSBA NOTE: The district may expand the following paragraph to include other means of contact or reporting methods available in the district, such as online submission forms or mobile applications.

Pursuant to 34 CFR 106.8, the district must provide notice to employees, bargaining units, and job applicants of the district's grievance procedures, and process, including how to report or file a formal complaint of sexual conduct that may constitute sex discrimination and/or, including sex-based harassment, and how the district will respond or file a complaint of sex discrimination, including sex-based harassment.

MS

Any individual may report sex discrimination, including sexual sex-based harassment, to the Title IX Coordinator or any other school employee at any time, including during non-business hours, by mail, phone, or email. During district business hours, reports may also be made in person. Upon receiving an allegation of sexual sex discrimination, including sex-based harassment, the Title IX Coordinator will promptly notify the parties, in writing, of the applicable district complaint procedure.

To view an electronic copy of the district's policies and administrative regulations on sexual sex discrimination, including sex-based harassment, including the grievance process that complies with 34 CFR 106.45, please see BP/AR Board Policy/Administrative Regulation 4119.11/4219.11/4319.11 - Sexual Sex Discrimination and Sex-Based Harassment, and AR Administrative Regulation 4119.12/4219.12/4319.12 - Title IX Sexual Sex Discrimination and Sex-Based Harassment Complaint Procedures on the district's web site website at www.snpasquajunior.net (insert website link) www.snpasquajunior.net

To inspect or obtain a copy of the district's sexual sex discrimination and sex-based harassment policies and administrative regulations, please contact: SPVSD@SNPASQUAJUNIOR.NET (insert location/phone/email of contact person) SPVSD@SNPASQUAJUNIOR.NET

Materials used to train employees; the Title IX Coordinator; investigator(s), decision-maker decisionmaker(s), and other person(s) who are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures; and any person (s) who facilitates an informal resolution process, are also publicly available on the district's web site or at the district office upon request.

Policy Reference UPDATE Service

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Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State	Description
5 CCR 4600-4670	Uniform complaint procedures
5 CCR 4900-4965	Nondiscrimination in elementary and secondary educational programs receiving state or federal financial assistance
Civ. Code 1714.1	Liability of parent or guardian for act of willful misconduct by a minor
Civ. Code 51.9	Liability for sexual harassment; business, service and professional relationships
Ed. Code 200- 262.4 270	Prohibition of discrimination
Ed. Code 48900	Grounds for suspension or expulsion

Ed. Code 48900.2	Additional grounds for suspension or expulsion; sexual harassment
Ed. Code 48985	Notices to parents in language other than English
Gov. Code 12950.1	Sexual harassment training
Federal	Description
20 USC 1092	Definition of sexual assault
20 USC 1221	Application of laws
20 USC 1681-1688	Title IX of the Education Amendments of 1972; discrimination based on sex
34 CFR 106.1-106.82	Nondiscrimination on the basis of sex in education programs
34 CFR 99.1-99.67	Family Educational Rights and Privacy
34 USC 12291	Definition of dating violence, domestic violence, and stalking
42 USC 1983	Civil action for deprivation of rights
42 USC 2000d-2000d-7	Title VI, Civil Rights Act of 1964
42 USC 2000e-2000e-17	Title VII, Civil Rights Act of 1964, as amended
Management Resources	Description
Court Decision	Reese v. Jefferson School District (2001 2000 , 9th Cir.) 208 F.3d 736
Court Decision	Davis v. Monroe County Board of Education (1999) 526 U.S. 629
Court Decision	Gebser v. Lago Vista Independent School District (1998) 524 U.S. 274
Court Decision	Oona by Kate S. v. McCaffrey (1998, 9th Cir.) 143 F.3d 473
Court Decision	Doe v. Petaluma City School District (1995, 9th Cir.) 54 F.3d 1447
Court Decision	Donovan v. Poway Unified School District (2008) 167 Cal.App.4th 567
Court Decision	Flores v. Morgan Hill Unified School District (2003, 9th Cir.) 324 F.3d 1130
<u>Federal Register</u>	<u>Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, April 29, 2024, Vol. 89, No. 83, pages 33474-33896</u> <u>(https://www.federalregister.gov/documents/2024/04/29/2024-07915/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal)</u>
<u>U.S. Department of Justice, Federal Bureau of Investigation Publication</u>	<u>National Incident-Based Reporting System</u> <u>(https://ucr.fbi.gov/nibrs/2018/resource-pages/nibrs_offense_definitions-2018.pdf)</u>

Website	CSBA District and County Office of Education Legal Services
Website	CSBA
Website	California Department of Education
Website	U.S. Department of Education, Office for Civil Rights
<u>Website</u>	<u>U.S. Department of Justice, Federal Bureau of Investigation</u> <u>(https://www.justice.gov/doj/federal-bureau-investigation)</u>

Cross References

Code	Description
1313	Civility
3580	District Records
3580	District Records
3600	Consultants
4030	Nondiscrimination In Employment
4030	Nondiscrimination In Employment
4117.7	Employment Status Reports
4118	Dismissal/Suspension/Disciplinary Action
4118	Dismissal/Suspension/Disciplinary Action
4119.11	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>
4119.11	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>
4131	Staff Development
4218	Dismissal/Suspension/Disciplinary Action
4218	Dismissal/Suspension/Disciplinary Action
4219.11	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>
4219.11	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>
4317.7	Employment Status Reports

4319.11

Sexual HarassmentSex Discrimination and Sex-Based Harassment

4319.11

Sexual HarassmentSex Discrimination and Sex-Based Harassment

Policy 4319.11: Sexual~~Sex~~ Discrimination and Sex-Based Harassment Status: ADOPTED

Original Adopted Date: 12/01/2015 | Last Revised Date: ~~1007~~7/01/2020~~2024~~ | Last Reviewed

Date: ~~1007~~7/01/2020~~2024~~

CSBA NOTE: Education Code 231.5, 2 CCR 11023, and 34 CFR 106.8 mandate the district to have a written policy on sexual harassment. As part of this mandate, the district also should adopt a sexual harassment policy related to students; see BP/AR 5145.7 - Sexual Harassment and AR 5145.71 - Title IX Sexual Harassment Complaint Procedures.

Sexual harassment is prohibited pursuant to CSBA NOTE: Sex discrimination and sex-based harassment are prohibited by Title VII of the Civil Rights Act of 1964 (42 USC 2000e-2000e-17) and/or Title IX of the Education Amendments of 1972 (20 USC 1681-1688; 34 CFR 106.1-106.82), as well as the California Fair Employment and Housing Act (Government Code 12900-12996).

Education Code 231.5, 2 CCR 11023, and 34 CFR 106.8 mandate that districts have a written policy prohibiting sex discrimination and sex-based harassment against employees. As part of this mandate, districts are also required to adopt a written policy prohibiting sex discrimination and sex-based harassment against students; see BP/AR 5145.7 - Sex Discrimination and Sex-Based Harassment and AR 5145.71 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

Pursuant to 34 CFR 106.11 and 106.44, as amended by 89 Fed. Reg. ~~Whether~~33474, a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, is required to follow Title IX grievance procedures when investigating and resolving a complaint of sexual harassment is addressed through federal Title IX complaint procedures adopted pursuant to 34 CFR 106.44-106.45; as added by 85 Fed. based on 30026; or procedures adopted pursuant to 2 CCR 11023 is dependent on whether the alleged conduct meets. As such a complaint may also fall within the more stringent federal definition of sexual harassment or the state definition. In order to meet the applicable timelines, in some instances it may be necessary to review a complaint under both procedures concurrently. See the accompanying administrative regulation; process as specified in AR 4030 -- Nondiscrimination in Employment, and AR it is unclear whether districts would additionally be required to follow the procedures specified in AR 4030 - Nondiscrimination in Employment. Due to this uncertainty, it is recommended that districts consult CSBA's District and County Office of Education Legal Services or district legal counsel prior to utilizing the process specified in AR 4030 - Nondiscrimination in Employment for this purpose. For more information regarding the Title IX grievance procedures, see AR 4119.12/4219.12/4319.12 - Title IX Sexual - Sex Discrimination and Sex-Based Harassment Complaint Procedures.

Pursuant to 2 CCR 11034, the district may be liable for sexual~~sexual~~sex-based harassment committed by a supervisor, coworker, or a third party. Pursuant to Government Code 12940, employers may also be held liable for sexual~~sexual~~sex-based harassment committed against their workers by clients, customers, or other third parties if they knew or should have known of the harassment and failed to take immediate and appropriate corrective action to stop the harassment.

The following policy shall apply to all district employees, interns, volunteers, contractors, job applicants, and other persons with an employment relationship with the district.

The Governing Board is committed to providing a safe work environment that is free of discrimination, harassment, and intimidation. The Board prohibits ~~sexual~~sex discrimination, including sex-based harassment, as defined in the accompanying administrative regulation, in district programs and activities by and against district employees and retaliatory behavior or action against any person who complains, testifies, or otherwise participates in the complaint process established for the purpose of this policy.

CSBA NOTE: Pursuant to Education Code 220.1, as added by AB 1955 (Ch. 95, Statutes of 2024), a district, including a Governing Board member, may not retaliate or otherwise take adverse action against an employee, including by placing the employee on administrative leave, on the basis that the employee supported a student exercising rights specified in Education Code 220.1, performed work in a manner consistent with the district's legal obligations related to educational equity, or provided instruction to students consistent with current content standards, curriculum frameworks, instructional materials adopted by the state board, and state law.

Additionally, the Board prohibits retaliatory behavior or action against any person who complains or testifies about conduct that reasonably may constitute sex discrimination, including sex-based harassment, reports such conduct, or otherwise participates or refuses to participate in the complaint process established for the purpose of this policy. (Education Code 220.1; 34 CFR 106.71)

CSBA NOTE: Federal and state courts have provided guidance that may help employers avoid liability or mitigate damages in sex-based harassment cases. In *Department of Health Services v. Superior Court (McGinnis)*, the California Supreme Court outlined measures that may constitute mitigating factors in the assessment of damages, including establishing anti-harassment policies, communicating those policies to employees, consistently enforcing the policies, preserving the confidentiality of employees who report harassment, and preventing retaliation against reporting employees. The U.S. Supreme Court in *Burlington Industries v. Ellerth* held that, for certain claims under federal law, an employer may defend against sex-based harassment claims by proving that (1) reasonable care was exercised to prevent and promptly correct any sexually harassing behavior, and (2) the employee (victim) failed to take advantage of the preventive and corrective opportunities provided by the employer. Additionally, in *Faragher v. City of Boca Raton*, one of the factors relied on by the U.S. Supreme Court in finding liability for harassment by a supervisor was the failure of the policy to provide an assurance to its employees that harassing supervisors may be bypassed in registering complaints.

Pursuant to Government Code 12950.1, employers with five or more employees are required to

provide sex-based harassment training to supervisory and nonsupervisory employees which includes training in regard to sex discrimination. Additionally, Title IX, and its implementing regulation 34 CFR 106.8, as amended by 89 Fed. Reg. CSBA NOTE: Government Code 12940 clarifies that sexual harassment includes harassment based on sex, gender, pregnancy, childbirth, or related medical conditions. 33474, requires specified training related to sex discrimination, including sex-based harassment, for all district employees, as well as additional training for (1) investigators, decisionmakers, and other persons who are responsible for implementing the recipient's grievance procedures or have the authority to modify or terminate supportive measures, (2) facilitators of an informal resolution process, and (3) Title IX Coordinators and designees. See the accompanying administrative regulation for timelines and training requirements.

Items #1-4 below reflect the courts' guidance, Government Code 12950.1, and 34 CFR 106.8, and should be modified to reflect district practice.

Sexual harassment includes, but is not limited to, harassment that is based on the sex, gender, gender identity, gender expression, or sexual orientation of the victim and harassment based on pregnancy, childbirth, or related medical conditions.

CSBA NOTE: Federal and state courts have provided guidance that may help employers avoid liability or mitigate damages in sexual harassment cases. In *Department of Health Services v. Superior Court (McGinnis)*, the California Supreme Court outlined measures that may constitute mitigating factors in the assessment of damages, including establishing anti-harassment policies, communicating those policies to employees, consistently enforcing the policies, preserving the confidentiality of employees who report harassment, and preventing retaliation against reporting employees. The U.S. Supreme Court in *Burlington Industries v. Ellerth* held that, for certain claims under federal law, an employer may defend against sexual harassment claims by proving that (1) reasonable care was exercised to prevent and promptly correct any sexually harassing behavior, and (2) the employee (victim) failed to take advantage of the preventive and corrective opportunities provided by the employer.

Pursuant to Government Code 12950.1, as amended by SB 778 (Ch. 215, Statutes of 2019), employers with five or more employees are required to provide sexual harassment training to supervisory and nonsupervisory employees. See the accompanying administrative regulation for timelines and training requirements.

Items #1-4 below reflect the courts' guidance and Government Code 12950.1, and should be modified to reflect district practice.

The Superintendent or designee shall take all actions necessary to ensure the prevention, investigation, and correction of sexual sex discrimination and sex-based harassment, including but not limited to:

1. Providing training to employees in accordance with law and administrative regulation

2. Publicizing and disseminating the district's ~~sexual~~sex discrimination and sex-based harassment policy to employees and others to whom the policy may apply

CSBA NOTE: Pursuant to Title IX and its implementing regulation 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, districts are required to provide a notice of nondiscrimination on the basis of sex, as specified below. For more information about the content and publication requirements for the notice of nondiscrimination, see AR 4030 – Nondiscrimination in Employment.

3. Publicizing, in accordance with 34 CFR 106.8 and as specified in Administrative Regulation 4030 – Nondiscrimination in Employment, a Title IX notice of nondiscrimination to employees, applicants for employment, and bargaining units
3. 4. Ensuring prompt, thorough, fair, and equitable investigation of complaints through the appropriate state and/or federal procedures
4. 5. Taking timely and appropriate corrective/remedial action(s), which may require interim separation of the complainant and the alleged harasser and subsequent monitoring of developments

CSBA NOTE: The following optional paragraph reflects a recommendation of the U.S. Equal Employment Opportunity Commission's informal guidance, "Promising Practices for Preventing Harassment," has been expanded to include sex discrimination, and may be revised to reflect district practice.

The Superintendent or designee shall periodically evaluate the effectiveness of the district's strategies to prevent and address sex discrimination and sex-based harassment. Such evaluation may involve conducting regular anonymous employee surveys to assess whether sex discrimination and/or sex-based harassment is occurring or is perceived to be tolerated, partnering with researchers or other agencies with the needed expertise to evaluate the district's prevention strategies, and using any other effective tool for receiving feedback on systems and/or processes. As necessary, changes shall be made to the harassment policy, (ies), complaint procedures, or training, as appropriate and in accordance with law.

Sexual Harassment

Reports and Complaints

CSBA NOTE: 34 CFR 106.8, as amended by 8589 Fed. Reg. ~~30026~~33474, requires the district to designate at least one employee to coordinate its responsibilities under Title IX, who must be referred to as the Title IX Coordinator. See the accompanying administrative regulation.

34 CFR 106.44, as added by 85 Fed. Reg. ~~30026~~, requires the district, when there is actual knowledge of sexual harassment, to respond promptly in a manner that is not unreasonable in light of the known circumstances and in compliance with Title IX regulations. 34 CFR 106.30, as added, defines "actual knowledge" as notice of sexual harassment or allegations of sexual harassment being submitted to the district's Title IX Coordinator, any official of the district who has authority to institute corrective measures, or any employee of an elementary or secondary school. For this

reason, the district should train all employees regarding the reporting process.

In *Faragher v. City of Boca Raton*, one of the factors relied on by the U.S. Supreme Court in finding liability for harassment by a supervisor was the failure of the policy to provide an assurance to its employees that harassing supervisors may be bypassed in registering complaints.

District employees who feel that they have been sexually harassed in the performance of their Any district responsibilities or who have knowledge of any incident of sexual harassment by or against another employee shall immediately report the incident to their direct supervisor, a district administrator, or the district's who has experienced sex discrimination or sex-based harassment in the district's education program or activity may file a complaint with the district's Title IX Coordinator. Employees may bypass their supervisor in filing a complaint if the supervisor is the subject of the complaint. A supervisor or administrator who receives a harassment complaint shall (34 CFR 106.2, 106.44)

CSBA NOTE: Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, a district is required to respond promptly and effectively when it has knowledge of conduct that reasonably may constitute sex discrimination or sex-based harassment in its education program or activity. 34 CFR 106.44 further obligates a district to require its Title IX Coordinator to monitor the district's programs and activities for barriers to reporting information of such conduct and its employees to notify the Title IX Coordinator when they have such information. The following paragraph should be revised to reflect the district's timeline.

Any employee with knowledge of conduct that reasonably may constitute sex discrimination or sex-based harassment by or against another district employee, a student, or a third party in a district education program or activity shall notify the Title IX Coordinator within one workday. An employee may be subject to discipline for failure to timely report such conduct. (34 CFR 106.44)

Once notified, the Title IX Coordinator shall ensure the complaint or allegation is addressed through AR Administrative Regulation 4119.12/4219.12/4319.12 - Title IX SexualSex Discrimination and Sex-Based Harassment Complaint Procedures or AR 4030 - Nondiscrimination in Employment, as applicable. Because a complaint or allegation that is dismissed or denied under the Title IX complaint procedure may still be subject to consideration under state law, the Title IX Coordinator shall ensure that any implementation of AR 4119.12/4219.12/4319.12 concurrently meets the requirements of AR 4030.

CSBA NOTE: The Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, when the Title IX Coordinator shallis notified of conduct that reasonably may constitute sex discrimination, including sex-based harassment, the Title IX Coordinator is required to offer and coordinate supportive measures to the complainant and . Thus, districts should not wait to respond until a "formal" complaint is made. If the district has begun grievance procedures or offered an informal resolution process to the respondent, the Title IX Coordinator is required to offer and coordinate supportive measures to the respondent, as appropriate.

The Title IX Coordinator shall offer and coordinate supportive measures to be provided to the complainant and, if the district has begun grievance procedures or offered an informal resolution process to the respondent, offer and coordinate supportive measures to be provided to the respondent as deemed appropriate under the circumstances. (34 CFR 106.44)

CSBA NOTE: In addition to district discipline imposed on employees who engage in sexual~~sex~~-based harassment, Government Code 12940 provides that such employees may be held personally liable in a court of law for any damage to the victim(s).

Upon investigation of a sexual~~sex~~ discrimination or sex-based harassment complaint, any district employee found to have engaged or participated in sexual~~sex~~ discrimination or sex-based harassment or to have aided, abetted, incited, compelled, or coerced another to commit sexual~~sex~~ discrimination or sex-based harassment in violation of this policy shall be subject to disciplinary action, up to and including dismissal, in accordance with law and the applicable collective bargaining agreement.

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State	Description
2 CCR 11006-11086	Discrimination in employment
2 CCR 11009	Employment discrimination
2 CCR 11021	Discrimination in employment - retaliation
2 CCR 11023	Harassment and discrimination prevention and correction
2 CCR 11024	Required training and education on harassment based on sex, gender identity and expression, and sexual orientation
2 CCR 11034	Terms, conditions, and privileges of employment
5 CCR 4900-4965	Nondiscrimination in elementary and secondary educational programs receiving state or federal financial assistance
Ed. Code 200-262.4	Prohibition of discrimination
<u>Ed. Code 220.1</u>	<u>Prohibition of retaliation related to educational equity</u>
<u>Ed. Code 220.3</u>	<u>Prohibition of disclosure of information related to student's sexual orientation, gender identity, or gender expression</u>
<u>Ed. Code 220.5</u>	<u>Prohibition of policies requiring disclosure of information related to student's sexual orientation, gender identity, or gender expression</u>
Gov. Code 12900-12996	Fair Employment and Housing Act
Gov. Code 12940	Unlawful discriminatory employment practices
Gov. Code 12950	Sexual harassment

Gov. Code 12950.1	Sexual harassment training
Lab. Code 1101	Political activities of employees
Lab. Code 1102.1	Discrimination: sexual orientation
<u>Lab. Code 1197.5</u>	<u>Wages, hours, and working conditions</u>
Federal	Description
20 USC 1681-1688	Title IX of the Education Amendments of 1972; discrimination based on sex
34 29 CFR 106.1-106.9 <u>1636</u>	Nondiscrimination on the basis of sex in education programs or activities <u>Implementation of the Pregnant Workers Fairness Act</u>
34 CFR 106.51-106.61 <u>82</u>	Nondiscrimination on the basis of sex in employment in education program <u>programs</u> or activities
42 USC 2000e-2000e-17	Title VII, Civil Rights Act of 1964, as amended
<u>42 USC 2000gg-2000gg-6</u>	<u>Pregnant Workers Fairness Act</u>
Management Resources	Description
Court Decision	Burlington Industries v. Ellreth (1998) 118 S.Ct. 2257
Court Decision	Department of Health Services v. Superior Court of California (2003) 31 Cal.4th 1026
Court Decision	Faragher v. City of Boca Raton (1998) 118 S.Ct. 2275
Court Decision	Gebser v. Lago Vista Independent School District (1998) 118 S.Ct. 1989
Court Decision	Meritor Savings Bank, FSB v. Vinson et al. (1986) 447 U.S. 57
Court Decision	Oncale v. Sundowner Offshore Serv. Inc. (1998) 118 S.Ct. 998
<u>Federal Register</u>	<u>Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, April 29, 2024, Vol. 89, No. 83, pages 33474-33896</u> <u>(https://www.federalregister.gov/documents/2024/04/29/2024-07915/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal)</u>
U.S. Equal Employment Opportunity Com. Publication	Promising Practices for Preventing Harassment, November 2017
Website	CSBA District and County Office of Education Legal Services
Website	California Civil Rights Department
Website	<u>U.S. Department of Education, Office for Civil Rights</u> <u>California Department of Education</u>

[\(https://www.cde.ca.gov/\)](https://www.cde.ca.gov/)

Website

~~U.S. Equal Employment Opportunity Commission~~ U.S.
Department of Education, Office for Civil Rights

Website

U.S. Equal Employment Opportunity Commission

Cross References

Code	Description
0410	Nondiscrimination In District Programs And Activities
0450	Comprehensive Safety Plan
0450	Comprehensive Safety Plan
1312.3	Uniform Complaint Procedures
1312.3	Uniform Complaint Procedures
1312.3-E(1)	Uniform Complaint Procedures
1312.3-E(2)	Uniform Complaint Procedures
1313	Civility
3530	Risk Management/Insurance
3530	Risk Management/Insurance
3600	Consultants
4030	Nondiscrimination In Employment
4030	Nondiscrimination In Employment
<u>4033</u>	<u>Lactation Accommodation</u>
4040	Employee Use Of Technology
4040-E(1)	Employee Use Of Technology
4112.9	Employee Notifications
4112.9-E(1)	Employee Notifications
4117.7	Employment Status Reports
4118	Dismissal/Suspension/Disciplinary Action
4118	Dismissal/Suspension/Disciplinary Action
4119.12	<u>Title IX Sexual Harassment Complaint Procedures Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>

4119.12-E(1)	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4119.21	Professional Standards
4119.21-E(1)	Professional Standards
4119.22	Dress And Grooming
4131	Staff Development
4144	Complaints
4144	Complaints
4212.9	Employee Notifications
4212.9-E(1)	Employee Notifications
4218.1	Dismissal/Suspension/Disciplinary Action (Merit System)
4219.12	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4219.12-E(1)	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4219.21	Professional Standards
4219.21-E(1)	Professional Standards
4219.22	Dress And Grooming
4231	Staff Development
4244	Complaints
4244	Complaints
4300	Administrative And Supervisory Personnel
4300	Administrative And Supervisory Personnel
4312.9	Employee Notifications
4312.9-E(1)	Employee Notifications
4317.7	Employment Status Reports
4319.12	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>

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4319.12-E(1)	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4319.21	Professional Standards
4319.21-E(1)	Professional Standards
4319.22	Dress And Grooming
4344	Complaints
4344	Complaints
5145.7	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>
5145.7	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>
5145.71	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
5145.71-E(1)	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
<u>5146</u>	<u>Married/Pregnant/Parenting Students</u>

Regulation 4319.11: Sexual~~Sex~~ Discrimination and Sex-Based Harassment

Status: ADOPTED

Original Adopted Date: 12/01/2016 | Last Revised Date: 1007/01/2020~~2024~~ | Last Reviewed Date: 1007/01/2020~~2024~~

CSBA NOTE: The following administrative regulation is mandated pursuant to Education Code 231.5 and includes reasonable steps for preventing the occurrence of discrimination and harassment as required pursuant to Government Code 12940 (California Fair Employment and Housing Act). The focus of this administrative regulation is on ~~sexual~~sex discrimination and sex-based harassment by and of employees. Pursuant to Government Code 12940 and 2 CCR 11009, interns, volunteers, and job applicants are entitled to the same protection against ~~sexual~~sex-based harassment as applicable to employees.

For information regarding steps the district is required to take to prevent sex discrimination related to ~~sexual~~lactation, see BP 4033 – Lactation Accommodation.

For information related to sex discrimination and sex-based harassment involving students, see BP/AR 5145.7 - ~~Sexual~~ Sex Discrimination and Sex-Based Harassment and AR 5145.71 - Title IX ~~Sexual~~Sex Discrimination and Sex-Based Harassment Complaint Procedures. For information regarding steps the district is required to take to prevent sex discrimination related to a student's pregnancy or related condition pursuant to Title IX (20 USC 1681-1688) and its implementing regulation 34 CFR 106.40, as amended by 89 Fed. Reg. 33474, see BP 5146 – Married/Pregnant/Parenting Students.

The district does not discriminate on the basis of sex in any of its programs or activities and complies with Title IX of the Education Amendments of 1972 and its implementing regulations. Sex discrimination, including sex-based harassment, is prohibited in district education programs and activities.

The following administrative regulation shall apply to all allegations of ~~sexual~~sex discrimination and sex-based harassment ~~involving~~by and against district employees, interns, volunteers, and job applicants, but shall not be used to resolve any complaint by or against a student.

Definitions

CSBA NOTE: The U.S. Equal Employment Opportunity Commission describes sex discrimination as treating someone differently because of that person's sex. Additionally, 34 CFR 106.2 and 106.10, as amended by 89 Fed. Reg. 33474, clarify that sex discrimination for the purpose of Title IX includes discrimination on the basis of sex stereotypes; sex characteristics; gender identity; sexual orientation; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions or recovery; and, parental, marital, and family status.

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Sex discrimination includes treating an employee differently based on the employee's sex, which includes differential treatment based on sex stereotypes; sex characteristics; sexual orientation; gender; gender identity; gender expression; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions and recovery; parental, family, or marital status; or association with a person or group with one or more of these actual or perceived characteristics. Sex discrimination, including sex-based harassment, intimidation, or bullying, may result from physical, verbal, nonverbal, or written conduct and occurs when prohibited conduct is so severe, persistent, or pervasive that it creates an intimidating, threatening, hostile, or offensive work environment; has the effect of substantially or unreasonably interfering with an employee's term or condition of employment; or otherwise adversely affects an employee's employment opportunities.

CSBA NOTE: Alleged conduct that meets the federal definition of sexual harassment in 34 CFR 106.30, as added by 85 Fed. A30026, requires investigation and resolution through Title IX regulations; see AR 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures. Pursuant to 34 CFR 106.30, sexual2, sex-based harassment includes (1) a district employee, agent, or other individual authorized by the district to provide an aid, benefit, or service under the district's education program or activity explicitly or impliedly conditioning the provision of a district aid, benefit, or service on an individual's participation in unwelcome sexual conduct; (2) "hostile environment harassment," defined as unwelcome sex-based conduct determined by a reasonable person to be so severe, pervasive, that, based on the totality of the circumstance, is subjectively and objectively offensive and is so severe or pervasive that it effectively limits or denies a person equal access to person's ability to participate in or benefit from the district's education program or activity; or (3) sexual assault, dating violence, domestic violence, or stalking, as defined in 20 USC 1092 and 34 USC 12291) CFR 106.2. Conduct that meets the definition of Title IX sex discrimination, including sex-based harassment, requires investigation and resolution through the Title IX grievance procedures; see AR 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

Education Code 212.5 defines sexual harassment as any unwelcome sexual advance, request for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone in the educational setting. ~~Conduct~~

34 CFR 106.2 and 106.10, as amended by 89 Fed. Reg. 33474, clarify that does not meet sex-based harassment for the definition purpose of Title IX includes harassment on the basis of sex stereotypes; sex characteristics; gender identity; sexual harassment orientation; pregnancy, childbirth, termination of pregnancy, or lactation, including related conditions; and, parental, marital, and family status. Additionally, in 34 CFR 106.30 shall be investigated and resolved in accordance with AR 4030 - Nondiscrimination in Employment.

In *Oncale v. Sundowner Offshore Services, Inc.*, the U.S. Supreme Court held that same-sex sexual harassment could be actionable under Title VII of the Civil Rights Act of 1964 (42 USC 2000e-2000e-17).

Sex-based harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, sex stereotypes, sex characteristics, or other bases specified above. Conduct will constitute sex-based harassment when it takes the form of: (34 CFR 106.2, 106.11)

1. Quid pro quo harassment: A district employee, agent, or other individual authorized by the district to provide an aid, benefit, or service in the district's education program or activity conditioning the provision of district aid, benefit, or service on a student's participation in unwelcome sexual conduct

CSBA NOTE: Pursuant to 34 CFR 106.11, as amended by 89 Fed. Reg. 33474, Title IX grievance procedures are required for Title IX sex discrimination complaints, including sex-based harassment complaints, for conduct which occurs on or after August 1, 2024 under the district's education program or activity, which includes conduct alleged to be contributing to a hostile environment that occurred outside the district's education program or activity or outside the United States. Item #2 below reflects "hostile environment harassment" as defined by 34 CFR 106.2, as amended by 89 Fed. Reg. 33474.

2. Hostile environment harassment: Unwelcome sex-based conduct that, based on the totality of the circumstances, 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

Any prohibited conduct that occurs off campus or outside of school-related or school-sponsored programs or activities will be regarded as sex-based harassment in violation of district policy if it has a continuing effect on a student's ability to participate in or benefit from district educational programs or activities.

3. Sexual assault, dating violence, domestic violence, or stalking, as defined in 34 CFR 106.2

Sexual harassment includes, but is not limited to, unwelcome sexual advances, unwanted requests for sexual favors, or other unwanted verbal, visual, or physical conduct of a sexual nature, regardless of whether or not the conduct is motivated by sexual desire. Conduct is considered to be sexual harassment when made against another person of the same or opposite sex in the work or educational setting under any of the following conditions: (Education Code 212.5; Government Code 12940; 2 CCR 11034)

1. Submission to the conduct is made explicitly or implicitly a term or condition of the individual's employment:
2. Submission to or rejection of the conduct is used as the basis for an employment decision affecting the individual:
3. The conduct has the purpose or effect of having a negative impact upon the individual's work performance or of creating an intimidating, hostile, or offensive work environment:
4. Submission to or rejection of the conduct is used as the basis for any decision affecting the individual regarding benefits, services, honors, programs, or activities available at or through the district:

For purposes of applying the complaint procedures specified in Title IX of the Education Amendments of 1972, sexual harassment is defined as any of the following forms of conduct that occurs in an education program or activity in which a district school exercises substantial control over the context and respondent: (34 CFR 106.30, 106.44)

- 1.—A district employee conditioning the provision of a district aid, benefit, or service on the person's participation in unwelcome sexual conduct
- 2.—Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity
- 3.—Sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 or 34 USC 12291

Examples of Sexual Sex Discrimination and Sex-Based Harassment

CSBA NOTE: Pursuant to Government Code 12940 and 34 CFR 106.11, the district may be held liable for sexual sex-based harassment committed against employees by clients, customers, or other third parties if the district knew, or should have known, of the harassment and failed to take immediate and appropriate corrective action to stop the harassment. The following paragraph clarifies that sexual sex-based harassment may include acts by supervisors, co-workers, or other parties and should be modified to reflect district practice.

Examples of actions that might constitute sexual sex-based harassment under state and/or federal law in accordance with the definitions above, in the work or educational setting, whether committed by a supervisor, a co-worker, or a non-employee, include, but are not limited to:

1. Unwelcome verbal conduct such as sexual sex-based flirtations or propositions; graphic comments about an individual's body; overly personal conversations or pressure for sexual sex-based activity; sexual sex-based jokes or stories; unwelcome sexual sex-based slurs, epithets, threats, innuendoes; derogatory comments, sexually; sex-based degrading descriptions; or the spreading of sexual sex-based rumors
2. Unwelcome visual conduct such as drawings, pictures, graffiti, or gestures; sexually explicit emails; or messaging; or displaying sexually suggestive objects
3. Unwelcome physical conduct such as massaging, grabbing, fondling, stroking, or brushing the body; touching an individual's body or clothes in a sexual way; or cornering, blocking, leaning over, or impeding normal movements

Title IX Coordinator/Compliance Officer

CSBA NOTE: Pursuant to 34 CFR 106.8, districts that receive federal financial assistance are mandated to designate an employee to ensure district compliance with Title IX of the Education Amendments of 1972 and its implementing regulations. If the district has more than one Title IX Coordinator, it must designate one of its Title IX Coordinators to retain ultimate oversight over

those responsibilities and ensure the district's consistent compliance with its responsibilities under Title IX. The following paragraph specifies that the Title IX Coordinator will be the same person(s) designated to serve as the coordinator for nondiscrimination in employment pursuant to AR 4030 - Nondiscrimination in Employment. ~~Districts may modify this policy to designate separate district employees to serve these functions.~~

The district designates the following individual(s) as the responsible employee(s) to coordinate its efforts to comply with Title IX of the Education Amendments of 1972 in accordance with AR Administrative Regulation 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures, as well as to and oversee, investigate, and resolve sexual harassment the district's response to discrimination complaints processed under AR Administrative Regulation 4030 - Nondiscrimination in Employment. The Title IX Coordinator(s) may be contacted at:

(title or position)

(address)

(telephone number)

(email)

CB O. Desisnee
15305 Rockwood Rd
Escondido, CA 92027
760.745.4931
SDUSD eempasgualunion.net

Training

CSBA NOTE: Government Code 12950.1, as amended by SB 778 (Ch. 215, Statutes of 2019), requires districts with five or more employees to provide sexual harassment training and education to supervisory and nonsupervisory employees by January 1, 2021 (or two years after a training provided in 2019) and once every two years thereafter. As amended, Additionally, Government Code 12950.1 requires that new nonsupervisory employees be provided the training within six months of hire, consistent with the requirement for all newly hired supervisors or employees promoted to a supervisory position. Compliance with this law does not insulate the district from any liability for harassment.

In addition, Title IX and its implementing regulation 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, requires that all employees receive training related to their duties under Title IX promptly upon hire or change of position that alters their duties under Title IX, and annually thereafter. The training provided to all employees is required to include the district's obligation to address sex discrimination, the scope of conduct that constitutes sex discrimination under Title IX, including the definition of sex-based harassment, and the applicable notice and information requirements. 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, requires additional training for (1) investigators, decisionmakers, and other persons who are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures, (2) facilitators of an informal resolution process, and (3) Title IX Coordinators and designees.

Governing Board members, as elected officials, are not usually considered "supervisors"; however,

since Board members have the authority to hire, reward, or discipline the Superintendent and other employees, Board members may also be required to receive ~~sexual~~sex-based harassment training. Districts should consult ~~with~~CSBA's District and County Office of Education Legal Services or district legal counsel to ensure that the appropriate individuals receive training.

The following section reflects sex discrimination and sex-based harassment training required for employees under both state and federal law.

The Superintendent or designee shall ensure that all employees receive training regarding sex discrimination and sex-based harassment in accordance with state and federal law.

Every two years, the Superintendent or designee shall ensure that supervisory employees receive at least two hours, and nonsupervisory employees receive at least one hour, of classroom or other effective interactive training and education regarding sexual harassment: as specified in Government Code 12950.1. All newly hired employees and employees promoted to a supervisory position shall receive training within six months of their assumption of the new position. (Government Code 12950.1)

A supervisory employee is any employee having the authority, in the interest of the district, to hire, transfer, suspend, lay off, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, adjust their grievances, or effectively recommend such action, when the exercise of the authority is not of a merely routine or clerical nature, but requires the use of independent judgment. (Government Code 12926)

Such training may be completed by employees individually or as part of a group presentation, may be completed in shorter segments as long as the applicable hourly requirement is met, and may be provided in conjunction with other training provided to the employees. The training shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation. (Government Code 12950.1)

The district's sexual harassment training and education program shall include, but is not limited to, the following: (Government Code 12950.1; 2 CCR 11024)

1. Information and practical guidance regarding federal and state laws concerning the prohibition, prevention, and correction of sexual harassment
2. The types of conduct that constitute sexual harassment
3. Remedies available for victims in civil actions, and potential employer/individual exposure/liability
4. Strategies to prevent harassment in the workplace

5. Supervisors' obligation to report sexual harassment, discrimination, and retaliation of which they become aware
6. Practical examples which illustrate sexual harassment, discrimination, and retaliation using training modalities such as role plays, case studies, and group discussions, based on factual scenarios taken from case law, news and media accounts, and hypotheticals based on workplace situations and other sources
7. The limited confidentiality of the complaint process
8. Resources for victims of unlawful harassment, such as to whom they should report any alleged harassment
9. Steps necessary to take appropriate remedial measures to correct harassing behavior, which includes the district's obligation to conduct an effective workplace investigation of a harassment complaint
10. What to do if the supervisor is personally accused of harassment
11. The essential elements of the district's anti-harassment policy, and how to use the policy if a harassment complaint is filed

Employees shall receive a copy of the district's sexual harassment policy and administrative regulations, which they shall read and acknowledge that they have received.
12. Information, including practical examples, of harassment based on gender identity, gender expression, and sexual orientation
13. Prevention of abusive conduct, including a review of the definition and elements of abusive conduct pursuant to Government Code 12950.1, the negative effects that abusive conduct has on the victim and other in the workplace, the detrimental consequences of this conduct on employee productivity and morale, and that a single act does not constitute abusive conduct unless the act is severe or egregious

Additionally, the Superintendent or designee shall ensure that all employees receive annual training related to their duties under Title IX in accordance with 34 CFR 106.8, and that a newly hired employee receive training promptly upon hire or change of position that alters the employee's duties under Title IX. (34 CFR 106.8)

The district's Title IX sex discrimination and sex-based harassment training shall include: (34 CFR 106.8)

1. The district's obligation to address sex-based discrimination, including sex-based harassment, in its education program or activity
2. The scope of conduct that constitutes sex discrimination under Title IX, including the definition of sex-based harassment
3. The notification and information requirements specified in 34 CFR 106.40 and 106.44

The district's Title IX sex-based harassment training and education program shall also include additional training required of supervisors; investigators, decisionmakers, and other persons who are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures; facilitators of an informal resolution process; and Title IX Coordinators and designees. (34 CFR 106.8)

The Superintendent or designee shall retain for at least two years the records of any training provided to supervisory employees. Such records shall include the names of trained employees, date of the training, the type of training, and the name of the training provider. (2 CCR 11024) type of training, and name of the training provider. (2 CCR 11024)

The Superintendent or designee shall notify employees that the district does not discriminate on the basis of sex as required by Title IX; that the Title IX nondiscrimination requirement extends to employment; and that inquiries about the application of Title IX to the district may be referred to the district's Title IX Coordinator and/or to the Assistant Secretary for Civil Rights, U.S. Department of Education. (34 CFR 106.8)

The district shall notify employees, bargaining units, and applicants for employment of the name or title, office address, email address, and telephone number of the district's Title IX Coordinator. (34 CFR 106.8)

A copy of the Board policy and this administrative regulation shall:

Additionally, the Superintendent or designee shall retain for at least seven years the materials used to provide training as specified in 34 CFR 106.8, and to make these materials available, upon request, to members of the public. (34 CFR 106.8)

Notifications

CSBA NOTE: As part of its responsibility to monitor district compliance with legal requirements concerning discrimination pursuant to Education Code 234.1, as amended by SB 153 (Ch. 38, Statutes of 2024), the California Department of Education is required to ensure that the district prominently and conspicuously displays its nondiscrimination policies in all areas that are accessible to, and commonly frequented by, school site employees, students, and members of the public at each school site and district office, including, but not limited to, in school office lobbies, staff lounges, student government meeting rooms, and on the district's website. Additionally, Title IX, and its implementing regulations, 34 CFR 106.1-106.82, as amended by 89 Fed. Reg. 33474, require the district to provided notifications and take specified actions to prevent sex

discrimination, including sex-based harassment. For more information regarding measures to prevent discrimination, see AR 4030 – Nondiscrimination in Employment.

To prevent unlawful sex discrimination and sex-based harassment, including retaliation, in district programs and activities, the Superintendent or designee shall provide notifications and implement measures to prevent discrimination and harassment as specified in Administrative Regulation 4030 – Nondiscrimination in Employment.

In addition to the measures to prevent discrimination as specified in Administrative Regulation 4030 – Nondiscrimination in Employment, the Superintendent or designee shall ensure that a copy of the Board policy and this administrative regulation:

1. Be displayed in a prominent location in the main administrative building, district office, or other area of the school where notices of district rules, regulations, procedures, and standards of conduct are posted (Education Code 231.5)
2. Be provided to every district employee at the beginning of the first quarter or semester of the school year or whenever a new employee is hired (Education Code 231.5)
3. Appear in any school or district publication that sets forth the school's or district's comprehensive rules, regulations, procedures, and standards of conduct (Education Code 231.5)
4. ~~Be posted, along with the name or title and contact information of the Title IX Coordinator, in a prominent location on the district's web site (34 CFR 106.8)~~
5. ~~Be included, along with the name or title and contact information of the Title IX Coordinator, in any handbook provided to employees or employee organizations (34 CFR 106.8)~~

CSBA NOTE: Government Code 12950 requires the California Civil Rights Department (CCRD~~CRD~~) to develop an information sheet on employment discrimination and the illegality of sexual harassment and a poster regarding the rights of transgender employees. These documents are available on CCRD's web site.~~CRD's website. This list has been modified to make it applicable to sex-based harassment in general, not just sexual harassment.~~

All employees shall receive a copy of an information sheet prepared by the California Civil Rights Department (CCRD~~CRD~~) or the district that contains, at a minimum, components on: (Government Code 12950)

1. The illegality of sexual~~sexual~~ sex-based harassment
2. The definition of sexual~~sexual~~ sex-based harassment under applicable state and federal law

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3. A description of sexual~~sexual~~sex-based harassment, with examples
4. The district's complaint process available to the employee
5. The legal remedies and complaint process available through ~~CCRD~~CRD and the Equal Employment Opportunity Commission (EEOC)
6. Directions on how to contact ~~CCRD~~CRD and the EEOC
7. The protection against retaliation provided by 2 CCR 11021 for opposing harassment prohibited by law or for filing a complaint with or otherwise participating in an investigation, proceeding, or hearing conducted by ~~CCRD~~CRD and the EEOC

In addition~~addition~~Additionally, the district shall post, in a prominent and accessible location, the ~~CCRD~~CRD poster on discrimination in employment and the illegality of sexual~~sexual~~sex-based harassment, and the ~~CCRD~~CRD poster regarding transgender rights. (Government Code 12950)

Complaint Procedures

CSBA NOTE: Pursuant to 34 CFR 106.11 and 106.44, as amended by 89 Fed. Reg. 33474, a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, is required to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct. As such a complaint may also fall within the complaint process as specified in AR 4030 – Nondiscrimination in Employment, it is unclear whether districts would additionally be required to follow the process specified in AR 4030 – Nondiscrimination in Employment. Due to this uncertainty, it is recommended that districts consult CSBA's District and County Office of Education Legal Services or district legal counsel prior to utilizing the process specified in AR 4030 – Nondiscrimination in Employment for this purpose. For more information regarding the Title IX grievance procedures, see AR 4119.12/4219.12/4319.12 – Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

All complaints and allegations of sexual~~sexual~~sex discrimination and sex-based harassment by and against employees shall be investigated and resolved in accordance with law and district procedures. The Title IX Coordinator shall review the allegations to determine the applicable procedure for responding to the complaint. All complaints that meet the definition of sexual harassment under Title IX shall be investigated and resolved in accordance with AR 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures. Other sexual harassment complaints shall be investigated and resolved pursuant to AR 4030 - Nondiscrimination in Employment: as specified in 34 CFR 106.44 and 106.45 and Administrative Regulation 4119.12/4219.12/4319.12 – Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

If sexual~~sexual~~sex discrimination or sex-based harassment is found following an investigation, the Title IX

Coordinator, or designee in consultation with the [Title IX](#) Coordinator, shall take prompt action to stop the sexual [sex discrimination or sex-based](#) harassment, prevent recurrence, and address any continuing effects.

Policy Reference UPDATE Service

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Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State	Description
2 CCR 11006-11086	Discrimination in employment
2 CCR 11009	Employment discrimination
2 CCR 11021	Discrimination in employment - retaliation
2 CCR 11023	Harassment and discrimination prevention and correction
2 CCR 11024	Required training and education on harassment based on sex, gender identity and expression, and sexual orientation
2 CCR 11034	Terms, conditions, and privileges of employment
5 CCR 4900-4965	Nondiscrimination in elementary and secondary educational programs receiving state or federal financial assistance
Ed. Code 200-262.4	Prohibition of discrimination
Ed. Code 220.1	Prohibition of retaliation related to educational equity
Ed. Code 220.3	Prohibition of disclosure of information related to student's sexual orientation, gender identity, or gender expression
Ed. Code 220.5	Prohibition of policies requiring disclosure of information related to student's sexual orientation, gender identity, or gender expression
Gov. Code 12900-12996	Fair Employment and Housing Act
Gov. Code 12940	Unlawful discriminatory employment practices
Gov. Code 12950	Sexual harassment
Gov. Code 12950.1	Sexual harassment training
Lab. Code 1101	Political activities of employees
Lab. Code 1102.1	Discrimination: sexual orientation
Lab. Code 1197.5	Wages, hours, and working conditions

Federal

20 USC 1681-1688

Description

Title IX of the Education Amendments of 1972; discrimination based on sex

~~34~~²⁹ CFR ~~106.1-106.9~~¹⁶³⁶

Nondiscrimination on the basis of sex in education programs or activities Implementation of the Pregnant Workers Fairness Act

34 CFR 106.~~51~~¹-106.~~61~~⁸²

Nondiscrimination on the basis of sex in employment in education program programs or activities

42 USC 2000e-2000e-17

Title VII, Civil Rights Act of 1964, as amended

42 USC 2000gg-2000gg-6

Pregnant Workers Fairness Act

Management Resources

Description

Court Decision

Burlington Industries v. Ellreth (1998) 118 S.Ct. 2257

Court Decision

Department of Health Services v. Superior Court of California (2003) 31 Cal.4th 1026

Court Decision

Faragher v. City of Boca Raton (1998) 118 S.Ct. 2275

Court Decision

Gebser v. Lago Vista Independent School District (1998) 118 S.Ct. 1989

Court Decision

Meritor Savings Bank, FSB v. Vinson et al. (1986) 447 U.S. 57

Court Decision

Oncale v. Sundowner Offshore Serv. Inc. (1998) 118 S.Ct. 998

Federal Register

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, April 29, 2024, Vol. 89, No. 83, pages 33474-33896

(<https://www.federalregister.gov/documents/2024/04/29/2024-07915/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>)

U.S. Equal Employment Opportunity
Com. Publication

Promising Practices for Preventing Harassment, November 2017

Website

CSBA District and County Office of Education Legal Services

Website

California Civil Rights Department

Website

U.S. Department of Education, Office for Civil Rights California Department of Education

(<https://www.cde.ca.gov/>)

Website

U.S. Equal Employment Opportunity Commission U.S. Department of Education, Office for Civil Rights

Website

U.S. Equal Employment Opportunity Commission

Cross References

Code	Description
0410	Nondiscrimination In District Programs And Activities
0450	Comprehensive Safety Plan
0450	Comprehensive Safety Plan
1312.3	Uniform Complaint Procedures
1312.3	Uniform Complaint Procedures
1312.3-E(1)	Uniform Complaint Procedures
1312.3-E(2)	Uniform Complaint Procedures
1313	Civility
3530	Risk Management/Insurance
3530	Risk Management/Insurance
3600	Consultants
4030	Nondiscrimination In Employment
4030	Nondiscrimination In Employment
<u>4033</u>	<u>Lactation Accommodation</u>
4040	Employee Use Of Technology
4040-E(1)	Employee Use Of Technology
4112.9	Employee Notifications
4112.9-E(1)	Employee Notifications
4117.7	Employment Status Reports
4118	Dismissal/Suspension/Disciplinary Action
4118	Dismissal/Suspension/Disciplinary Action
4119.12	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4119.12-E(1)	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4119.21	Professional Standards
4119.21-E(1)	Professional Standards
4119.22	Dress And Grooming

4131	Staff Development
4144	Complaints
4144	Complaints
4212.9	Employee Notifications
4212.9-E(1)	Employee Notifications
4218.1	Dismissal/Suspension/Disciplinary Action (Merit System)
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4219.12-E(1)	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4219.21	Professional Standards
4219.21-E(1)	Professional Standards
4219.22	Dress And Grooming
4231	Staff Development
4244	Complaints
4244	Complaints
4300	Administrative And Supervisory Personnel
4300	Administrative And Supervisory Personnel
4312.9	Employee Notifications
4312.9-E(1)	Employee Notifications
4317.7	Employment Status Reports
4319.12	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4319.12-E(1)	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4319.21	Professional Standards
4319.21-E(1)	Professional Standards
4319.22	Dress And Grooming

4344	Complaints
4344	Complaints
5145.7	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>
5145.7	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>
5145.71	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
5145.71-E(1)	Title IX Sexual Harassment Complaint Procedures <u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
<u>5146</u>	<u>Married/Pregnant/Parenting Students</u>

Regulation 4319.12: Title IX Sexual Sex Discrimination and Sex-Based Harassment Complaint Procedures Status: ADOPTED

Original Adopted Date: 07/01/2020 | Last Revised Date: ~~1007~~/01/2020 2024 | Last Reviewed Date: ~~1007~~/01/2020 2024

CSBA NOTE: Title IX of the Education Amendments of 1972 (20 USC 1681-1688; 34 CFR 106.1-106.82) prohibits discrimination based on sex, including sexual harassment, and mandates that the district adopt and publish complaint procedures.

The following administrative regulation reflects the Title IX complaint procedure detailed in 34 CFR 106.44-106.45, as added by 85 Fed. Reg. 30026, which must be used, effective August 14, 2020, to address any complaint of sexual harassment that meets the definition in 34 CFR 106.30. Pursuant to 34 CFR 106.30, allegations of sexual harassment governed by these regulations include (1) a district employee conditioning the provision of a district aid, benefit, or service on an individual's participation in unwelcome sexual conduct; (2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity; or (3) sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 and 34 USC 12291. Alleged sexual harassment in employment that does not meet this definition should be addressed through the district's complaint procedures described in AR 4030 - Nondiscrimination in Employment.

34 CFR 106.44 requires the district, when there is actual knowledge of sexual harassment, to respond promptly in a manner that is not deliberately indifferent. 34 CFR 106.30 defines "actual knowledge" as notice of sexual harassment or allegations of sexual harassment being submitted to the district's Title IX Coordinator, any official of the district who has authority to institute corrective measures, or any employee of an elementary or secondary school. A district is deliberately indifferent only if its response to Title IX sexual harassment is clearly unreasonable in light of the known circumstances.

Application of the Title IX complaint procedures to the facts of a specific complaint may implicate complicated questions about the intersection of state law, federal law, and, in cases involving employees, the applicable collective bargaining agreement. Districts with questions about specific complaints are strongly encouraged to consult legal counsel.

Also see BP/AR 4119.11/4219.11/4319.11 - Sexual Harassment for information about prohibited conduct, training, required notifications, and processes for reporting sexual harassment.

CSBA NOTE: Title IX of the Education Amendments of 1972 (20 USC 1681-1688; 34 CFR 106.1-106.82) prohibits discrimination based on sex, including sex-based harassment, and mandates that the district adopt and publish complaint procedures. The following administrative regulation reflects the Title IX grievance procedures detailed in 34 CFR 106.44-106.45, as amended by 89 Fed. Reg. 33474.

Application of the Title IX complaint procedures to the facts of a specific complaint may implicate complicated questions about the intersection of state law, federal law, and, in cases involving

employees, the applicable collective bargaining agreement. Pursuant to 34 CFR 106.11 and 106.44, as amended by 89 Fed. Reg. 33474, a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, is required to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct. As such a complaint may also fall within the complaint process as specified in AR 4030 – Nondiscrimination in Employment, it is unclear whether districts would additionally be required to follow the procedures specified in AR 4030 – Nondiscrimination in Employment. Due to this uncertainty, it is recommended that districts consult with CSBA's District and County Office of Education Legal Services or district legal counsel prior to utilizing the procedures specified in AR 4030 – Nondiscrimination in Employment for this purpose.

See AR 4030 – Nondiscrimination in Employment. Also see BP/AR 4119.11/4219.11/4319.11 – Sex Discrimination and Sex-Based Harassment for information about prohibited conduct, training, required notifications, and processes for reporting sex discrimination and sex-based harassment.

The complaint procedures described in this administrative regulation shall be used to address any complaint governed by Title IX of the Education Amendments of 1972 alleging that a district employee, while in an education program or activity in which a district school exercises substantial control over the context and respondent, was subjected to one or more of the following forms of sexual harassment: (34 CFR 106.30, 106.44) , was subjected to conduct on or after August 1, 2024, including, but not limited to, conduct that is under the authority of the district, that constitutes sex discrimination, including sex-based harassment. For conduct that occurred prior to this date, the district should utilize its policies in place at the time the alleged sex discrimination, including sex-based harassment, occurred, so long as they are in accordance with the applicable statutes and regulations.

- 1.—A district employee conditioning the provision of a district aid, benefit, or service on a person's participation in unwelcome sexual conduct
- 2.—Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity
- 3.— Sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 or 34 USC 12291

All other sexual harassment complaints or allegations shall be investigated and resolved in accordance with AR 4030 – Nondiscrimination in Employment. The determination of whether the allegations meet the definition of sexual harassment under Title IX shall be made by the district's Title IX Coordinator.

Because the complainant has a right to pursue a complaint under AR 4030 for any allegation that is dismissed or denied under the Title IX complaint procedure, the Title IX Coordinator shall ensure that all requirements and timelines for AR 4030 are concurrently met while implementing the Title IX procedure.

Reporting Allegations/Filing a Formal Complaint

Sex discrimination and sex-based harassment include, but are not limited to, sex-based conduct as specified in Administrative Regulation 4119.11/4219.11/4319.11 - Sex Discrimination and Sex-Based Harassment.

Basic Requirements

CSBA NOTE: 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, requires that the district's grievance procedures follow specified basic requirements, which are reflected below.

When implementing Title IX grievance procedures, the district shall: (34 CFR 106.45)

1. Treat complainants and respondents equitably
2. Ensure that the Title IX Coordinator or designee, investigator, or decisionmaker not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent

The investigator and the decisionmaker may be the same person as the Title IX Coordinator or designee.
3. Presume that the respondent is not responsible for the alleged sex discrimination, including sex-based harassment, until a determination is made at the conclusion of the grievance procedures
4. Establish reasonably prompt timeframes for the major stages of the grievance procedures, such as evaluation of whether to dismiss or investigate a complaint, investigation, decision, and appeals if any
5. Establish a process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the parties that includes the reason for the delay

CSBA NOTE: Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, the district may not disclose personally identifiable information obtained while complying with the Title IX complaint procedures, except as provided below.

Additionally, the district shall not disclose personally identifiable information obtained while implementing Title IX complaint procedures unless the district has obtained prior written consent from a person with the legal right to consent to the disclosure; the information is disclosed to a parent/guardian or other authorized legal representative with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue; to take action to address conduct that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, in the district's education program or activity; as required by federal law, regulations, or as a condition to a federal award; as required by state or local law; or to the extent such disclosures are not otherwise in conflict with Title IX. (34 CFR 106.44)

If the respondent is a student with a disability, the Title IX Coordinator or designee shall consult with one or more members, as appropriate, of the student's individualized education program or 504 team, to determine how to comply with the requirements of the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973.

Filing a Complaint

Upon receiving information of an allegation of sex discrimination, including sex-based harassment, the Title IX Coordinator or designee shall notify the individual(s) specified in law of the Title IX grievance procedures, and of the informal resolution process, if available and appropriate.

CSBA NOTE: Pursuant to 34 CFR 106.2, as amended by 89 Fed. Reg. 33474, a "complaint" is defined as an oral or written request to the district that objectively can be understood as a request for the district to investigate and make a determination about alleged discrimination under Title IX.

A complaint is an oral or written request that can objectively be understood by the Title IX Coordinator or designee as a request for the district to investigate and make a determination about alleged sex discrimination, including sex-based harassment. (34 CFR 106.2)

Complaints of sex discrimination and sex-based harassment may only be brought by an employee, or former employee, who was participating or attempting to participate in the district's education program or activity at the time of the alleged sex-based harassment, or the Title IX Coordinator or designee. (34 CFR 106.45)

CSBA NOTE: Pursuant to 34 CFR 106.30, the timeline for resolving a sexual harassment complaint begins when the district has actual knowledge of sexual harassment, defined as the receipt of a report by the Title IX Coordinator or other employee of an elementary or secondary school. The following paragraph reflects the requirement for any employee to forward the report to the Title IX Coordinator as stated in AR 4119.11/4219.11/4319.11 - Sexual Harassment and may be revised to reflect district practice: CSBA NOTE: Given the district's duty pursuant to 34 CFR 106.44 to respond to reports of sex discrimination, including sex-based harassment, promptly and effectively, the Title IX Coordinator or designee should file a complaint even when the victim chooses not to do so, when, based on the considerations described below, the Title IX Coordinator or designee determines that a health or safety threat exists or when the district would be prevented from ensuring equal access based on sex in its programs or activities. In such cases, the alleged victim must receive notices as required by the Title IX regulations at specific points in the complaint process.

An employee who is If the alleged victim chooses not to bring a complaint, or withdraws any or all of sexualthe allegations in a complaint, and in the absence or termination of an informal resolution process, the Title IX Coordinator or designee shall consider whether to initiate a complaint. To do so, the Title IX Coordinator or designee shall first consider the following factors: (34 CFR 106.44)

1. The victim's request not to proceed with initiation of a complaint
2. The victim's reasonable safety concerns regarding initiation of a complaint
3. The risk that additional acts of sex discrimination, including sex-based harassment may submit, would occur if a reportcomplaint is not initiated
4. The severity of sexualthe alleged sex discrimination or sex-based harassment to the district's Title IX Coordinator using the contact, including whether the discrimination, if established,

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would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence

5. The age and relationship of the parties, including whether the respondent is an employee of the district
6. The scope of the alleged sex discrimination, including information listed in AR 4119.11/4219.11/4319.11 - Sexual Harassment suggesting a pattern; ongoing sex discrimination, including sex-based harassment; or sex discrimination, including sex-based harassment, alleged to have impacted multiple individuals
7. The availability of evidence to assist a decisionmaker in determining whether sex discrimination, including sex-based harassment, occurred
8. Whether the employee's direct supervisor or other district administrator, who shall forward could end the report to alleged sex discrimination, including sex-based harassment, and prevent its recurrence without initiating the Title IX Coordinator within one day of receiving the report.

Upon receiving such a report grievance procedures

If, after considering these factors, the Title IX Coordinator shall inform determines that the alleged conduct presents an imminent and serious threat to the health and safety of the complainant of the right to file a formal complaint and the process for filing a formal complaint.

A formal complaint, with the complainant's physical or digital signature, may be filed with or another person, or that the conduct as alleged prevents the district from ensuring equal access to a district program or activity on the basis of sex, the Title IX Coordinator in person, may initiate a complaint.

CSBA NOTE: Pursuant to 34 CFR 106.44, as amended by mail, by email, or by any other method authorized by the district. (34 CFR 106.30) 89 Fed. Reg. 33474, the Title IX Coordinator or designee is required to take the steps described below upon initiating a complaint.

CSBA NOTE: Given the district's duty pursuant to 34 CFR 106.44 to respond to reports of sexual harassment in a manner that is not deliberately indifferent, the Title IX Coordinator should file a complaint in certain situations even when the victim chooses not to do so, including, but not limited to, when a safety threat exists. In such cases, the Title IX Coordinator and the alleged victim are not named parties to the case, but the alleged victim must receive notices as required by the Title IX regulations at specific points in the complaint process.

Even if the alleged victim chooses not to file a formal If the Title IX Coordinator initiates a complaint, the Title IX Coordinator shall file a formal complaint in situations when a safety threat exists. In addition, the Title IX Coordinator may file a formal complaint in other situations as permitted under the Title IX regulations, including as part of the district's obligation to not be deliberately indifferent to known allegations of sexual harassment. In such cases, the Title IX Coordinator shall provide the alleged victim notice of the complaint as well as other notices as required by the Title IX regulations at specific points in the complaint process.

The Title IX Coordinator The Title IX Coordinator shall also address reasonable concerns about the

victim's safety or the safety of others, including providing supportive measures as described in "Supportive Measures" below, and taking other appropriate prompt and effective steps to ensure that sex discrimination, including sex-based harassment, does not continue or recur within the district. (34 CFR 106.44)

CSBA NOTE: Pursuant to 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, in addition to Title IX Coordinators or designees, investigators, and decisionmakers, persons who are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures may not have a conflict of interest or bias for or against complainants or respondents generally, or an individual complainant or respondent, and are required to receive specified training.

The Title IX Coordinator or designee, investigator, ~~decision-maker~~ decisionmaker, other person who is responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures, or a facilitator of an informal resolution process shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. Such persons shall receive training in accordance with 34 CFR 106.45~~8~~. (34 CFR 106.45)

Supportive Measures

CSBA NOTE: Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, the Title IX Coordinator is required to monitor the district for barriers to reporting information about conduct that reasonably may constitute sex discrimination, including sex-based harassment, under Title IX, as specified below.

Upon receipt of a report of Title IX sexual In order to ensure that employees are not barred from reporting information about conduct that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, the Title IX Coordinator shall promptly contact the complainant to discuss the availability of supportive measures and shall consider monitor the complainant's wishes with respect ~~district for barriers to the~~ reporting and take steps reasonably calculated to address such barriers. (34 CFR 106.44, 106.45)

Supportive Measures

CSBA NOTE: 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, requires districts to offer and coordinate supportive measures implemented. Supportive as described below. Pursuant to 34 CFR 106.2, as amended by 89 Fed. Reg. 33474, "supportive measures shall be" are defined as individualized measures offered as appropriate, as reasonably available; and without charge to the unreasonably burdening a complainant or the respondent before, not for punitive or after the filing of a formal complaint or where no formal complaint has been filed. Such measures shall be nondisciplinary, nonpunitive, and not unreasonably burden the other party, including measures designed to protect the safety of all parties or the district's educational environment or to deter sexual harassment. disciplinary reasons, and without charging a fee to the complainant or respondent to (1) restore or preserve the party's access to the district's education program or activity, including measures that are designed to protect the safety of the parties or the district's

educational environment, or (2) provide support during the recipients' grievance procedures specified in 34 CFR 106.45 or during any informal resolution process as specified in 34 CFR 106.44.]

Upon receipt of a report of Title IX sex discrimination or sex-based harassment, the Title IX Coordinator or designee shall offer and coordinate supportive measures. Supportive measures may vary depending on what the district determines to be reasonably available and shall not unreasonably burden either the complainant or respondent. Supportive measures shall be provided without charging a fee to the complainant or respondent and be designed to protect the safety of the complainant, respondent, and the district's educational environment, and to provide support during any grievance procedures implemented as specified in 34 CFR 106.45 or informal resolution process as specified in 34 CFR 106.44. The district shall not impose such measures for punitive or disciplinary reasons. Supportive measures may include, but are not limited to, counseling; extensions of deadlines; and other course- or work-related adjustment; changes in class, work, housing, or extracurricular or any other activity regardless of whether there is a comparable alternative; campus escort services; modifications of class or work schedules; mutual restrictions on contact; changes in class or work locations; leaves of absence; increased security; and; monitoring of certain areas of the campus. (34 CFR 106.30, 106.44)

The district shall maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the district's ability to provide the ; and, training and education programs related to sex-based harassment. (34 CFR 106.2, 106.44)

CSBA NOTE: Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, the district's provision of supportive measures. (34 CFR 106.30) does not require the district, its employees, or any other persons authorized to provide aid, benefit, or service on the district's behalf to alter the alleged discriminatory conduct for the purpose of providing the supportive measures unless there is an allegation of sex-based harassment or retaliation.

Unless there is an allegation of sex-based harassment or retaliation, the district may provide supportive measures without altering the alleged discriminatory conduct. (34 CFR 106.44)

Upon the conclusion of any grievance procedures implemented as specified in 34 CFR 106.45 or informal resolution process as specified in 34 CFR 106.44, the district may continue with the supportive measures, or modify or terminate such measures, as appropriate. (34 CFR 106.44)

CSBA NOTE: Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, the district is required to provide both parties for whom supportive measures have been implemented with the opportunity to challenge, to an impartial employee, the implementation of such measures. An "impartial employee" must be someone other than the employee who made the decision to provide the supportive measures which are being challenged, but who has the authority to modify or reverse the decision if the employee determines that the decision to provide, deny, modify, or terminate the supportive measures was inconsistent with the definition of supportive measures as specified in 34 CFR 106.2.

The district shall provide a complainant or respondent for whom supportive measures have been implemented with a timely opportunity to seek, from an impartial employee with authority to modify or reverse the supportive measures, modification or reversal of the district's decision to provide, deny, modify, or terminate such measures, and to seek additional modification or termination of the supportive measures if circumstances materially change. (34 CFR 106.44)

The district shall not disclose information about supportive measures to any person other than the person to whom they apply, including informing one party of supportive measures provided to another party, unless the disclosure is necessary to providing the supportive measures, or restoring or preserving a party's access to the district's education program or activity. (34 CFR 106.44)

Emergency Removal

If a district employee is the respondent, the employee may be placed on administrative leave during the pendency of the formal complaint process. (34 CFR 106.44)

CSBA NOTE: Pursuant to Education Code 48900.2, a student in grades 4-12 may be suspended and/or expelled from school for sexual harassment. ~~Districts should also note that~~ Additionally, Education Code 48915(c) requires the Superintendent or designee to recommend expulsion for any student, irrespective of grade, who commits sexual assault or battery as defined in the Penal Code. See AR 5144.1 - Suspension and Expulsion/Due Process.

34 CFR 106.44 allows a student to be removed in emergency situations as described below, but 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, requires that a student ~~should not be~~ "disciplined" prior to a finding being made pursuant to the Title IX grievance process established by 34 CFR 106.45. Due to this inconsistency in state and federal law, districts are advised to consult CSBA's District and County Office of Education Legal Services of district legal counsel as to the manner of imposing an emergency removal.

If the respondent is a student, the district may, on an emergency basis, remove the student from the district's education program or activity, provided that the district conducts an individualized safety and risk analysis, determines that removal is justified due to an ~~immediate~~ imminent and serious threat to the physical health or safety of a complainant or any student, employee, or other individual arising from the allegations, and provides the ~~student~~ respondent with notice and an opportunity to challenge the decision immediately following the removal. This authority to remove a student does not modify a student's rights under the ~~Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973.~~ (34 CFR 106.44) IDEA or Section 504 of the Rehabilitation Act of 1973. (34 CFR 106.44)

Dismissal of Complaint

The Title IX Coordinator shall dismiss a formal complaint if the alleged conduct would not constitute sexual harassment as defined in 34 CFR 106.30 even if proved. The Title IX Coordinator shall also dismiss any complaint in which the alleged conduct did not occur in the district's education program or activity or did not occur against a person in the United States, and may dismiss a formal complaint if the complainant notifies the district in writing that the complainant would like to withdraw the complaint or any allegations in the complaint, the respondent is no longer employed

by the district, or sufficient circumstances prevent the district from gathering evidence sufficient to reach a determination with regard to the complaint. (34 CFR 106.45)

Upon dismissal, the Title IX Coordinator shall promptly send written notice of the dismissal and the reasons for the dismissal simultaneously to the parties, and shall inform them of their right to appeal the dismissal of a formal complaint or any allegation in the complaint in accordance with the appeal procedures described in the section "Appeals" below. (34 CFR 106.45)

If a complaint is dismissed, the conduct may still be addressed pursuant to AR 4030 - Nondiscrimination in Employment as applicable.

Informal Resolution Process

When a formal complaint of sexual harassment is filed, the district may offer an informal resolution process, such as mediation, at any time prior to reaching a determination regarding responsibility. The district shall not require a party to participate in the informal resolution process or to waive the right to an investigation and adjudication of a formal complaint. (34 CFR 106.45)

The district may facilitate an informal resolution process provided that the district: (34 CFR 106.45)

Dismissal of Complaint

CSBA NOTE: The following section describes when the Title IX Coordinator or designee may dismiss a Title IX complaint and actions the Title IX Coordinator or designee is required to take when a complaint is dismissed pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474.

The Title IX Coordinator or designee may dismiss a complaint if: (34 CFR 106.45)

1. The district is unable to identify the respondent after taking reasonable steps to do so
2. The respondent is not participating in the district's education program or activity and is not employed by the district
3. The district determines that the conduct alleged in the complaint, even if proven, would not constitute sex discrimination, including sex-based harassment, under Title IX
Before dismissing the complaint, the Title IX Coordinator shall make reasonable efforts to clarify the allegations with the complainant.
4. The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and the Title IX Coordinator determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination, including sex-based harassment, under Title IX, even if proven

CSBA NOTE: Pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, the district is required to establish reasonably prompt timeframes for the major stages of the grievance

procedures. The following paragraph should be revised to reflect the timeline established by the district.

The Title IX Coordinator shall determine whether to dismiss or investigate any complaint of sex discrimination, including sex-based harassment, within [REDACTED] days, unless such timeline is extended in accordance with this administrative regulation. 10 business

Upon dismissal, the Title IX Coordinator shall promptly notify the complainant of the dismissal and the reasons for the dismissal. Additionally, if the dismissal occurs after the respondent has been notified of the allegations, the Title IX Coordinator shall provide such notification to the respondent, which shall occur simultaneously to both parties if the notification is in writing. The Title IX Coordinator shall also inform the complainant, and the respondent if the dismissal occurs after the respondent has been notified of the allegations, of their right to appeal. Dismissals may be appealed on the following bases: (34 CFR 106.45)

1. A procedural irregularity that would change the outcome
2. New evidence that would change the outcome and that was not reasonably available when the dismissal was made
3. The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome

If the dismissal is appealed, the district shall: (34 CFR 106.45)

1. Notify the parties of any appeal, including notice of the allegations, if notice was not previously provided to the respondent
2. Implement appeal procedures equally for the parties
3. Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint
4. Ensure that the decisionmaker for the appeal has been trained consistent with the Title IX regulations
5. Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome
6. Notify the parties of the result of the appeal and the rationale for the result

If a complaint is dismissed, the Title IX Coordinator or designee shall offer supportive measures as described above in "Supportive Measures" to the complainant. Additionally, the respondent shall be offered supportive measures if the complaint was dismissed because the complainant voluntarily withdrew any or all of the allegations in the complaint and the district determined that without the withdrawn allegations the conduct, even if proven, would not constitute sex discrimination, including sex-based harassment, under Title IX, or if the complaint was dismissed because the district determined, after taking reasonable efforts to clarify the allegations of the complaint, that the alleged conduct would not constitute sex discrimination, including sex-based harassment, even if proven. The Title IX Coordinator shall also take other appropriate prompt and effective steps to ensure that sex discrimination, including sex-based harassment, does not continue or recur within the district's education program or activity. (34 CFR 106.45)

If a complaint is dismissed, the conduct may still be addressed pursuant to Administrative Regulation 4030 - Nondiscrimination in Employment as applicable.

Informal Resolution Process

CSBA NOTE: The following section reflects when the district may offer an informal resolution process, notification and consent requirements, criteria for the facilitator of the informal resolution process, and other required steps when an informal resolution process is implemented, as specified in 34 CFR 106.44, as amended by 89 Fed. Reg. 33474.

Additionally, 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, provides potential terms that may be included in an informal resolution agreement. Because such agreements will be fact-specific and reflective of sensitive topics, districts are encouraged to consult CSBA's District and County Office of Education Legal Services or district legal counsel when drafting informal resolution agreements.

At any time prior to determining whether sex discrimination, including sex-based harassment, occurred under the complaint procedures specified in 34 CFR 106.45, the district may offer, if it is determined to be appropriate upon receiving information about conduct that reasonably may constitute sex discrimination under Title IX or when a complaint of sex discrimination is made, an informal resolution process, such as mediation, to the complainant and respondent. However, the district shall not offer an informal resolution process if the complaint alleges that an employee engaged in sex-based harassment of an elementary or secondary school student or that such process would conflict with federal, state, or local law. (34 CFR 106.44)

The district shall not require or pressure a party to participate in the informal resolution process, or to waive the right to an investigation and determination of a complaint as a condition of employment or continuing employment, or exercise of any other right. The district may decline to offer an informal resolution process including, but not limited to, when the district determines that the alleged conduct would present a future risk of harm to others. (34 CFR 106.44)

The district may facilitate an informal resolution process provided that the district, prior to initiating such process: (34 CFR 106.44)

1. Provides the parties with written notice disclosing the allegations; the requirements of the informal resolution process; the right to withdraw from the informal process and resume the formal complaint process; and any consequences resulting; the inability to initiate or resume complaint procedures arising from participating in the same allegations once the informal resolution process is concluded; the potential terms that may be requested or offered in an informal resolution agreement, including that records the agreement would only be binding on the parties; and the information that the district will be maintained or maintain and whether and how the district could be shared. disclose such information for use in Title IX grievance procedures if such procedures are initiated or resumed
2. Obtains the parties' voluntary, written consent to the informal resolution process

The Title IX Coordinator or designee shall ensure that the facilitator of the informal resolution process is not the same person as the investigator or decisionmaker of any ongoing or newly initiated complaint process specified in 34 CFR 106.45, does not have a conflict of interest or bias

for or against complainants or respondents generally or an individual complainant or respondent, and receives training in accordance with 34 CFR 106.8. (34 CFR 106.44)

If the district facilitates an informal resolution process, the Title IX Coordinator shall, to the extent necessary, take other appropriate prompt and effective steps to ensure that sex discrimination, including sex-based harassment, does not continue or recur within the district' education program or activity. (34 CFR 106.45)

Written Notice of Allegations

CSBA NOTE: The following section reflects the notice districts are required to provide to the parties pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474.

If the district initiates a formal complaint is filed Title IX investigation, the Title IX Coordinator or designee shall provide the known parties with written notice of the following: (34 CFR 106.45)

1. The district's complaint process, including any informal resolution process
2. The allegations potentially constituting sexual harassment with sufficient details known
Sufficient information, available at the time, including to allow the parties to respond to the
allegations, including, to the extent available, the identity of parties involved in the incident
if known(s), the conduct allegedly constituting sexual sex discrimination, including sex-based
harassment, and the date(s) and location(s) of the alleged incident if known.

Such notice shall be provided with sufficient time for the parties to prepare a response before any initial interview.

If, during the course of the investigation, new Title IX allegations arise about the complainant or respondent that are not included in the initial notice, the Title IX Coordinator shall provide notice of the additional allegations to the parties.

3. A statement that retaliation is prohibited

- ~~1.~~ 4. A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the complaint process
- ~~2.~~ The opportunity for the parties are entitled to have an advisor of their choice who may be, but is not required equal opportunity to be, an attorney, and the ability to inspect and review access the relevant and not otherwise impermissible evidence
3. The prohibition against knowingly making false statements or knowingly submitting false information during the complaint process an accurate description of such evidence, as specified

CSBA NOTE: The following paragraph is optional. Although not required by law, a best practice is to provide notice to the parties of the name of the investigator, facilitator, and decision-

~~maker~~decisionmaker in order to give the parties an opportunity to raise concerns of conflict of interest or bias as prohibited by 34 CFR 106.45.

The above notice shall~~may~~ also include the name of the investigator, facilitator of an informal process, and ~~decision-maker~~decisionmaker and shall inform the parties that, if at any time a party has concerns regarding conflict of interest or bias regarding any of these persons, the party should immediately notify the Title IX Coordinator. or designee.

Consolidation of Complaints

CSBA NOTE: The following section reflects the district's authority to consolidate complaints of sex discrimination, including sex-based harassment, as specified in 34 CFR 106.45, as amended by 89 Fed. Reg. 33474.

The district may consolidate complaints of sex discrimination, including sex-based harassment, against more than one respondent; by more than one complainant against one or more respondents; or by one party against another party, when the allegations of sex discrimination, including sex-based harassment, arise out of the same facts or circumstances. (34 CFR 106.45)

Investigation Procedures

CSBA NOTE: Pursuant to 34 CFR 106.45, when investigating a formal complaint, the burden of proof rests on the district and not on the parties. However, the district must obtain the party's voluntary, written consent to access, consider, disclose, or otherwise use a party's records that are maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional, which are made and maintained in connection with the provision of treatment to the party.

34 CFR 106.45 authorizes, but does not require, the district to conduct a live hearing at which each party's advisor may ask the other party and any witnesses all relevant questions and follow-up questions. If the district chooses to include such a hearing as a component of its complaint procedure, the following list should be modified to include requirements for the hearing in accordance with 34 CFR 106.45:

The district shall provide for adequate, reliable, and impartial investigation of complaints. (34 CFR 106.45)

During the investigation process, the district's designated investigator shall: (34 CFR 106.45)

1. 1. Provide an equal opportunity for the parties to present ~~fact~~ witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence that is relevant and not otherwise impermissible
2. Review all evidence gathered through the investigation and determine which evidence is relevant and which evidence is impermissible regardless of relevance
3. Provide each party with an equal opportunity to access evidence that is relevant, and not otherwise impermissible, to the allegations of sex discrimination, including sex-based harassment, by:

a. Providing an equal opportunity to access either the relevant and not otherwise impermissible evidence or an accurate description of such evidence

If an accurate description is provided, the district shall, upon request of any party, provide the parties with an equal opportunity to access the relevant and permissible evidence.

b. Providing a reasonable opportunity to respond to the evidence or to the accurate description of the evidence

c. Taking reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures

2. ~~4.~~ Not Take reasonable steps to protect the privacy of parties and witnesses which do not restrict the ability of either party to discuss the allegations under investigation or to gather the parties to obtain and present relevant evidence
3. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney
4. Not limit the choice, by speaking to witnesses; consulting with family members, confidential resources, or presence of an advisor advisors; or otherwise preparing for either the complainant or respondent or participating in any meeting or the grievance proceeding, although the district may establish restrictions regarding the extent to which the advisor may participate in the proceedings as long as the restrictions apply equally to both parties procedures
5. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings, with sufficient time for the party to prepare to participate
6. Send in an electronic format or hard copy to both parties and their advisors, if any, the evidence obtained as part of the investigation that is directly related to the allegations raised in the complaint, and provide the parties at least 10 days to submit a written response for the investigator to consider prior to the completion of the investigative report
7. 5. Objectively evaluate all evidence that is relevant evidence and not otherwise impermissible, including both inculpatory and exculpatory evidence, and determine including that credibility in a manner that is determinations will not be based on a person's person's status as a complainant, respondent, or witness
8. Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to the determination of responsibility, send to the parties and their advisors, if any, the investigative report in an electronic format or a hard copy, for their review and written response
6. Exclude as impermissible the following types of evidence, and questions seeking that evidence:

- a. Evidence that is protected under a privilege recognized by state or federal law or evidence that is provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege
- b. A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the district obtains that party's or witness's voluntary, written consent for use in its grievance procedures
- c. Questions and Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct alleged by the complainant or if the questions and is evidence concern about specific incidents of the complainant's complainant's prior sexual behavior conduct with respect to the respondent and are that is offered to prove consent to the alleged sex-based harassment.

The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

CSBA NOTE: The following paragraph should be amended to reflect district practice regarding the process established to enable the decisionmaker to question parties and witnesses adequately to assess a party's or witness's credibility.

The district shall ensure that the decisionmaker is able to question parties and witnesses adequately to assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex-based harassment. (34 CFR 106.45)

Privacy rights of all parties to the complaint shall be maintained in accordance with applicable state and federal laws.

CSBA NOTE: Districts with questions about the application of a collective bargaining agreement in the context of a Title IX investigation should consult CSBA's District and County Office of Education Legal Services or district legal counsel.

If the complaint is against an employee, rights conferred under an applicable collective bargaining agreement shall be applied to the extent they do not conflict with the Title IX requirements.

Written Decision

CSBA NOTE: Pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, the district is required to establish reasonably prompt timeframes for the major stages of the grievance procedures. The district should revise the following paragraph to reflect the timeline established by the district.

The investigator shall complete the investigation within 30 Business days after the Title IX Coordinator determines to proceed with an investigation, unless such timeline is extended in accordance with this administrative regulation.

Written Decision

CSBA NOTE: Pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, the person designated as the ~~decision-maker~~ decisionmaker of the determination of responsibility ~~cannot~~ may be the same person designated as the Title IX Coordinator, ~~an~~ or designee and/or investigator, ~~or the person who considers appeals~~ so long as there is no conflict of interest or bias. The following paragraph may be revised to reflect the position designated by the district to provide a written determination of responsibility. While designation decisions will depend on the size of the district, a best practice is to designate an upper-level administrator as the ~~decision-maker~~ decisionmaker and designate the Superintendent as the person to consider appeals.

The Superintendent shall designate an employee as the ~~decision-maker~~ decisionmaker to determine responsibility for the alleged conduct, who shall ~~not~~ may be the Title IX Coordinator or a person involved in designee or the investigation investigator so long as there is no conflict of the matter interest or bias. (34 CFR 106.45)

~~After~~ Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, the district shall: (34 CFR 106.45)

1. Use the investigative report preponderance of the evidence standard of proof to determine whether sex discrimination, including sex-based harassment, has been ~~sent to~~ occurred
2. Notify the parties ~~but before reaching a~~ in writing of the determination regarding responsibility, the ~~decision-maker~~ of whether sex discrimination, including sex-based harassment, occurred

The notification shall afford each party the opportunity include the rationale for such determination and the procedures and permissible bases for the complainant and respondent to ~~submit~~ appeal, if applicable.

CSBA NOTE: Pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, the district is required to establish reasonably prompt timeframes for the major stages of the grievance procedures. The district should revise the following paragraph to reflect the timeline established by the district.

The written, relevant questions that the party wants asked of any party or witness; provide each party with the answers; and allow for additional, limited follow-up questions from each party

The decision-maker decision shall issue; and simultaneously provide to both parties, a written decision as to whether the respondent is responsible for the alleged conduct. (34 CFR 106.45) be issued within days after the investigation is completed, unless such time is extended in accordance with this administrative regulation.

Appeal of the Decision

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CSBA NOTE: 34 CFR 106.45 requires that the district's complaint process include a "reasonably prompt" timeframe for concluding the complaint process; but does not specify the number of days within which the final decision must be issued. Districts may revise the following paragraph to

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include a different timeline as long as it would satisfy the requirement to act promptly. CSBA NOTE: 34 CFR 106.45 allows either the complainant or respondent to appeal the district's decision, and requires the district to offer the parties an appeal process that at a minimum is the same as it offers in all other comparable proceedings, if any, including proceedings relating to other discrimination complaints, such as AR 4030 – Nondiscrimination in Employment. The district may revise the following section to reflect applicable timelines and appeal process established by the district.

The following section should also be revised to identify the person who has been designated as the decisionmaker(s) for the appeal. Pursuant to 34 CFR 106.45, the decisionmaker for the appeal cannot be the same person as the decisionmaker that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.

The written decision shall be issued within 60 calendar days of the receipt of the complaint.

The timeline may be temporarily extended for good cause with written notice to the complainant and respondent of the extension and the reasons for the action. (34 CFR 106.45)

CSBA NOTE: 34 CFR 106.45 mandates that the district's complaint procedures state whether the district's determination of responsibility will be based on a "preponderance of evidence" standard or "clear and convincing evidence" standard. The following paragraph reflects the "preponderance of evidence" standard, which is a less stringent standard to prove misconduct, and should be revised if the district chooses to use a "clear and convincing evidence" standard. The standard selected by the district must be applied uniformly for all Title IX sexual harassment complaints. The district should consult with legal counsel in determining which standard to use.

In making this determination, the decision-maker shall use the "preponderance of the evidence" standard for all formal complaints of sexual harassment. (34 CFR 106.45)

The written decision shall include the following: (34 CFR 106.45)

- 1.—Identification of the allegations potentially constituting sexual harassment as defined in 34 CFR 106.30
- 2.—A description of the procedural steps taken from receipt of the formal complaint through the written decision, including any notifications to the parties; interviews with parties and witnesses; site visits; methods used to gather other evidence; and hearings held if the district includes hearings as part of the grievance process
- 3.—Findings of fact supporting the determination
- 4.—Conclusions regarding the application of the district's code of conduct or policies to the facts
- 5.—A statement of, and rationale for, the result as to each allegation, including a decision regarding responsibility; any disciplinary sanctions the district imposes on the respondent; and whether remedies designed to restore or preserve equal access to the district's educational program or activity will be provided by the district to the complainant
- 6.—The district's procedures and permissible bases for the complainant and respondent to appeal

Appeals

CSBA NOTE: 34 CFR 106.45 allows either the complainant or respondent to appeal the district's decision. The district may revise the following section to reflect applicable timelines established by the district.

The following section should also be revised to identify the person who has been designated as the decision-maker(s) for the appeal. Pursuant to 34 CFR 106.45, the decision-maker for the appeal cannot be the same person as the decision-maker that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.

Either party may appeal the district's decision or dismissal of a formal complaint or any allegation in the complaint, if the party believes that a procedural irregularity affected the outcome, new evidence is available that could affect the outcome, or a conflict of interest or bias by the Title IX Coordinator, investigator(s), or decision-maker(s) affected the outcome. If an appeal is filed, the district shall: (34 CFR 106.45)

- 1.—Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties
- 2.—Ensure that the decision-maker(s) for the appeal is trained in accordance with 34 CFR 106.45 and is not the same decision-maker(s) who reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator
- 3.—Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome
- 4.—Issue a written decision describing the result of the appeal and the rationale for the result
- 5.—Provide the written decision simultaneously to both parties

An appeal must be filed in writing within 10 calendar days of receiving the notice of the decision or dismissal, stating the grounds for the appeal and including any relevant documentation in support of the appeal. Appeals submitted after this deadline are not timely and shall not be considered.

A written decision shall be provided to the parties within 20 calendar days from the receipt of the appeal.

Either party may appeal the district's decision of a complaint or any allegation in the complaint. (34 CFR 106.45)

When conducting an appeal, the district shall follow the appeal process as specified in Administrative Regulation 4030 – Nondiscrimination in Employment.

Either party has the right to file a complaint with the U.S. Department of Education's Office for Civil Rights within 180 days of the date of the most recently alleged misconduct.

The complainant shall be advised of any civil law remedies, including, but not limited to, injunctions, restraining orders, or other remedies or orders that may be available under state or federal antidiscrimination laws, if applicable.

Remedies Extension of Timelines

CSBA NOTE: Pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, the district is required to establish a process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause, with notice to the parties that includes the reason for the delay.

Any timelines specified in this administrative regulation may be extended by the district for good cause, with written notice to the parties. The written notice shall specify the reasons for the extension. (34 CFR 106.45)

Remedies CSBA NOTE: 34 CFR 106.45 mandates that the district's Title IX complaint process list, or describe the range of possible remedies that the district may implement following any determination of responsibility. The following section may be revised to reflect district practice.

When a determination of responsibility for sexual harassment has been made against the respondent, the district shall provide remedies to the complainant. Such remedies may include the same individualized services described above in the section "Supportive Measures," but need not be nondisciplinary or nonpunitive and need not avoid burdening the respondent.

When there is a determination that sex discrimination, including sex-based harassment, has occurred, the Title IX Coordinator shall coordinate the provision and implementation of remedies to the complainant and other persons the district identifies as having had equal access to the district's education program or activity limited or denied by sex discrimination, including sex-based harassment; coordinate the imposition of any disciplinary sanctions on a respondent as described in "Disciplinary Actions" below, including notification to the complainant of any such disciplinary sanctions; and take other appropriate prompt and effective steps to ensure that sex discrimination, including sex-based harassment, does not continue or recur within the district's education program or activity. (34 CFR 106.45)

Disciplinary Actions

The district shall not impose any disciplinary sanctions or other actions against a respondent, other than supportive measures as described above in the section "Supportive Measures," until the complaint procedure has been completed and a determination of responsibility has been made. (34 CFR 106.44, 106.45)

When an employee is found to have committed ~~sexual~~ sex discrimination, including sex-based harassment, or retaliation, the district shall take appropriate disciplinary action, up to and including dismissal, in accordance with applicable law and collective bargaining agreement.

Record-Keeping

The Superintendent or designee shall maintain, for a period of seven years: (34 CFR 106.45)

- 1.—A record of all reported cases and Title IX investigations of sexual harassment; any determinations of responsibility; any audio or audiovisual recording and transcript if

applicable, any disciplinary sanctions imposed, any remedies provided to the complainant, and any appeal or informal resolution and the results therefrom.

- 2.—A record of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment, including the district's basis for its conclusion that its response was not deliberately indifferent, the measures taken that were designed to restore or preserve equal access to the education program or activity, and, if no supportive measures were provided to the complainant, the reasons that such a response was not unreasonable in light of the known circumstances.

All materials used to train the Title IX Coordinator, investigator(s), decision-maker(s), The district shall not discipline a party, witness, or others participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the district's determination of whether sex discrimination, including sex-based harassment, occurred. (34 CFR 106.45)

Record-Keeping

CSBA NOTE: The following paragraph reflects Title IX record-keeping requirements pursuant to 34 CFR 106.8, as amended by 89 Fed. Reg. 33474.

The Superintendent or designee shall maintain, for at least a period of seven years: (34 CFR 106.45)

1. For each complaint of sex discrimination, including sex-based harassment, records documenting any informal resolution process or formal investigation procedures
2. For each notification the Title IX Coordinator or designee receives of information about conduct that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, records documenting the actions taken to fulfill the district's obligations as specified in 34 CFR 106.44, including supportive measures offered and implemented
3. All materials used to train district employees; the Title IX Coordinator and designee(s); investigator(s), decisionmaker(s), and other person(s) who are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures; and any person who facilitates an informal resolution process.
3. _____ The district shall make such training materials publicly available on its web site, or if the district does not maintain a web site, available upon request by members of the public.

For complaints containing allegations of childhood sexual assault, the Superintendent or designee shall also indefinitely maintain the following: (Code of Civil Procedure 340.1):

1. A record of the allegation(s)
2. A record of the investigation procedures followed
3. A record of the written determination
4. A record of the corrective action implemented, if any

5. A record of any appeals and the outcome of the same

6. All training materials addressing the prohibition and investigation of childhood sexual assault

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Policy Reference Disclaimer:

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State	Description
5 CCR 4600-4670	Uniform complaint procedures
5 CCR 4900-4965	Nondiscrimination in elementary and secondary educational programs receiving state or federal financial assistance
Civ. Code 1714.1	Liability of parent or guardian for act of willful misconduct by a minor
Civ. Code 51.9	Liability for sexual harassment; business, service and professional relationships
Ed. Code 200- 262.4 <u>270</u>	Prohibition of discrimination
Ed. Code 48900	Grounds for suspension or expulsion
Ed. Code 48900.2	Additional grounds for suspension or expulsion; sexual harassment
Ed. Code 48985	Notices to parents in language other than English
Gov. Code 12950.1	Sexual harassment training
Federal	Description
20 USC 1092	Definition of sexual assault
20 USC 1221	Application of laws
20 USC 1681-1688	Title IX of the Education Amendments of 1972; discrimination based on sex
34 CFR 106.1-106.82	Nondiscrimination on the basis of sex in education programs
34 CFR 99.1-99.67	Family Educational Rights and Privacy
34 USC 12291	Definition of dating violence, domestic violence, and stalking
42 USC 1983	Civil action for deprivation of rights
42 USC 2000d-2000d-7	Title VI, Civil Rights Act of 1964
42 USC 2000e-2000e-17	Title VII, Civil Rights Act of 1964, as amended
Management Resources	Description
Court Decision	Reese v. Jefferson School District (2001 <u>2000</u> , 9th Cir.) 208 F.3d 736

Court Decision	Davis v. Monroe County Board of Education (1999) 526 U.S. 629
Court Decision	Gebser v. Lago Vista Independent School District (1998) 524 U.S. 274
Court Decision	Oona by Kate S. v. McCaffrey (1998, 9th Cir.) 143 F.3d 473
Court Decision	Doe v. Petaluma City School District (1995, 9th Cir.) 54 F.3d 1447
Court Decision	Donovan v. Poway Unified School District (2008) 167 Cal.App.4th 567
Court Decision	Flores v. Morgan Hill Unified School District (2003, 9th Cir.) 324 F.3d 1130

Federal Register

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, April 29, 2024, Vol. 89, No. 83, pages 33474-33896

(<https://www.federalregister.gov/documents/2024/04/29/2024-07915/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>)

U.S. Department of Justice, Federal Bureau of Investigation Publication

National Incident-Based Reporting System

(https://ucr.fbi.gov/nibrs/2018/resource-pages/nibrs_offense_definitions-2018.pdf)

Website	CSBA District and County Office of Education Legal Services
Website	CSBA
Website	California Department of Education
Website	U.S. Department of Education, Office for Civil Rights
<u>Website</u>	<u>U.S. Department of Justice, Federal Bureau of Investigation</u> <u>(https://www.justice.gov/doj/federal-bureau-investigation)</u>

Cross References

Code	Description
1313	Civility
3580	District Records
3580	District Records
3600	Consultants
4030	Nondiscrimination In Employment
4030	Nondiscrimination In Employment
4117.7	Employment Status Reports
4118	Dismissal/Suspension/Disciplinary Action

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4118	Dismissal/Suspension/Disciplinary Action
4119.11	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>
4119.11	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>
4131	Staff Development
4218	Dismissal/Suspension/Disciplinary Action
4218	Dismissal/Suspension/Disciplinary Action
4219.11	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>
4219.11	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>
4317.7	Employment Status Reports
4319.11	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>
4319.11	Sexual Harassment <u>Sex Discrimination and Sex-Based Harassment</u>

Exhibit 4319.12-E(1): Title IX Sexual Sex Discrimination and Sex-Based Harassment Complaint Procedures Status: ADOPTED

Original Adopted Date: 10/01/2020 | Last Revised Date: 07/01/2024 | Last Reviewed Date:
10/01/20202024

CSBA NOTE: 34 CFR 106.8 requires the district to provide notice to employees, bargaining units, and job applicants of its policy prohibiting sexual harassment and its grievance procedures that provide for the prompt and equitable resolution of sexual harassment complaints. The following exhibit presents a sample notification that meets these requirements and may be modified to reflect district practice. For a sample notice for students and parents/guardians, see E 5145.71 - Title IX Sexual Harassment Complaint Procedures.

Pursuant to 34 CFR 106.8, the district must provide the Title IX Coordinator's contact information on its web site and in any employee handbook. In addition, state law (Education Code 231.5) requires that the district's sexual harassment policy be provided to employees at the beginning of the school year and when newly hired, displayed in district and school offices, and included in any publication that sets forth standards of employee conduct.

CSBA NOTE: 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, requires the district to provide notice to employees, bargaining units, and job applicants that the district does not discriminate on the basis of sex as required by Title IX; that inquiries about the application of Title IX may be referred to the district's Title IX Coordinator and/or to the U.S. Department of Education, Office for Civil Rights; the Title IX Coordinator's contact information; how to locate the district's policy prohibiting sex discrimination, including sex-based harassment, the district's grievance procedures that provide for the prompt and equitable resolution of sex discrimination and sex-based harassment complaints; how to report information about conduct that may constitute sex discrimination, including sex-based harassment; and how to make a complaint of sex discrimination, including sex-based harassment. The following exhibit presents a sample notification that meets these requirements.

Pursuant to 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, the notice is required to be prominently included on the district's website, and in each handbook, catalog, announcement, bulletin, and application that it makes available to employees, bargaining units, and job applicants. If necessary due to the format or size of any publication specified above, the Superintendent or designee may include in the publication a statement that the district prohibits sex discrimination in any education program or activity that it operates and that individuals may report concerns or questions to the district's Title IX Coordinator, and provide the website location of the notice of nondiscrimination.

Additionally, Education Code 231.5 requires that the district's sexual harassment policy be provided to employees at the beginning of the school year and when newly hired, prominently displayed in

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district and school offices, and included in any publication that sets forth standards of employee conduct.

NOTICE OF TITLE IX ~~SEXUAL HARASSMENT POLICY~~ NONDISCRIMINATION

The Code of Federal Regulations, Title 34, Section 106.8 requires the district to issue the following notification to employees, job applicants, and employee organizations:

The district does not discriminate on the basis of sex and prohibits sex discrimination, including sex-based harassment, in any education program or activity that it operates. The prohibition against discrimination on the basis of sex is required by federal law (20 USC 1681-1688; 34 CFR Part 106) and extends to employment. The district also prohibits retaliation against any employee for filing a complaint or exercising any right granted under Title IX.

Title IX requires a school The district is required, as specified in Title IX, to take immediate prompt and appropriate equitable action to address any potential Title IX violations that are brought to its attention. Any inquiries about the application of Title IX, this notice, and who is protected by Title IX may be referred to the district's Title IX Coordinator, to the Assistant Secretary for Civil Rights of the U.S. Department of Education, or both.

CSBA NOTE: The district should enter the name/title and contact information of the district's Title IX Coordinator below. Such information should be consistent with the person/position identified in AR 5145.7 - Sexual 4119.11/4219.11/4319.11 - Sex Discrimination and Sex-Based Harassment.

The district has designated and authorized the following employee(s) as the district's Title IX Coordinator, to address concerns or inquiries regarding discrimination on the basis of sex, including sexual harassment, sexual assault, dating violence, domestic violence, and stalking sex-based harassment:

(name and/or title/position)

(address)

(telephone number)

(email address)

CB or Designee
15305 Rockwood Rd
Exton, CA 92027
760-418-4031

sdsde@sanpascualunion.net

CSBA NOTE: The district may expand the following paragraph to include other means of contact or reporting methods available in the district, such as online submission forms or mobile applications.

Pursuant to 34 CFR 106.8, the district must provide notice to employees, bargaining units, and job applicants of the district's grievance procedures, and process, including how to report or file a formal complaint of sexual conduct that may constitute sex discrimination and/or, including sex-based harassment, and how the district will respond or file a complaint of sex discrimination, including sex-based harassment.

Any individual may report sex discrimination, including ~~sexual~~sex-based harassment, to the Title IX Coordinator or any other school employee at any time, including during non-business hours, by mail, phone, or email. During district business hours, reports may also be made in person. Upon receiving an allegation of ~~sexual~~sex discrimination, including sex-based harassment, the Title IX Coordinator will promptly notify the parties, in writing, of the applicable district complaint procedure.

To view an electronic copy of the district's policies and administrative regulations on ~~sexual~~sex discrimination, including sex-based harassment, including the grievance process that complies with 34 CFR 106.45, please see BP/AR Board Policy/Administrative Regulation 4119.11/4219.11/4319.11 - Sexual - Sex Discrimination and Sex-Based Harassment, and AR Administrative Regulation 4119.12/4219.12/4319.12 - Title IX Sexual Sex Discrimination and Sex-Based Harassment Complaint Procedures on the district's web site website at _____ (insert website link) _____. *www.sanragsunion.net*

To inspect or obtain a copy of the district's ~~sexual~~sex discrimination and sex-based harassment policies and administrative regulations, please contact: _____ (insert location/phone/email of contact person) _____. *CBO in District Office*

Materials used to train employees; the Title IX Coordinator; investigator(s), ~~decision-maker~~decisionmaker(s), and other person(s) who are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures; and any person (s) who facilitates an informal resolution process, are also publicly available on the district's web site or at the district office upon request.

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Ed. Code 48900.2	Additional grounds for suspension or expulsion; sexual harassment
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Court Decision	Donovan v. Poway Unified School District (2008) 167 Cal.App.4th 567
Court Decision	Flores v. Morgan Hill Unified School District (2003, 9th Cir.) 324 F.3d 1130
<u>Federal Register</u>	<u>Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, April 29, 2024, Vol. 89, No. 83, pages 33474-33896</u> <u>(https://www.federalregister.gov/documents/2024/04/29/2024-07915/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal)</u>
<u>U.S. Department of Justice, Federal Bureau of Investigation Publication</u>	<u>National Incident-Based Reporting System</u> <u>(https://ucr.fbi.gov/nibrs/2018/resource-pages/nibrs_offense_definitions-2018.pdf)</u>

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Website	CSBA
Website	California Department of Education
Website	U.S. Department of Education, Office for Civil Rights
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4317.7	Employment Status Reports

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4319.11

Sexual HarassmentSex Discrimination and Sex-Based Harassment

4319.11

Sexual HarassmentSex Discrimination and Sex-Based Harassment

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Policy 5145.3: Nondiscrimination/Harassment

Status: ADOPTED

Original Adopted Date: 10/01/2014 | **Last Revised Date:** 10/07/01/2023 **2024** | **Last Reviewed Date:** 10/07/01/2023 **2024**

CSBA NOTE: The following mandated policy reflects various provisions of state and federal law which prohibit discrimination against students in educational programs and activities based on certain actual or perceived characteristics of an individual. Education Code 220 prohibits discrimination based on disability, race, nationality, immigration status, ethnicity, gender, gender identity, gender expression, sexual orientation, religion, or any other characteristic contained in the definition of hate crimes in Penal Code 422.55. Government Code 11135 prohibits discrimination based on most of the foregoing characteristics and on sex, color, ancestry, age, medical condition, marital status, and an individual's genetic information. Title VI of the Civil Rights Act of 1964 (42 USC 2000d-2000d-7) prohibits discrimination based on race, color, or national origin. Title IX (20 USC 1681-1688; 34 CFR 106.1-106.82, as amended by 89 Fed. Reg. 33474) prohibits discrimination based on sex; sex stereotypes; sex characteristics; gender; gender identity; sexual orientation; pregnancy, childbirth, termination of pregnancy, or lactation; and, parental, marital, and family status. The Age Discrimination Act of 1975 (42 USC 6101-6107) prohibits discrimination based on age. The Americans with Disabilities Act (ADA) (20 USC 12101-12213) and Section 504 (29 USC 794) prohibit discrimination based on disability. Education Code 260 gives the Governing Board primary responsibility for ensuring that district programs and activities are free from discrimination based on age or any of the characteristics listed in Education Code 220. See also For more information regarding the requirement for district programs and activities to be free from discrimination, see BP 0410 - Nondiscrimination in District Programs and Activities.

Moreover, this sample Board For policy and the accompanying administrative regulation reflect the statutory right of a transgender addressing student to participate in sex-segregated educational programs and use facilities consistent with one's gender identity as specified in Education Code 221.5; discrimination and sex-based harassment, see BP/AR 5145.7 - Sex Discrimination and best practices based on existing state Sex-Based Harassment, and federal law. Districts with questions about the rights of transgender for language regarding Title IX sex discrimination, including sex-based harassment, complaint procedures, see AR/E(1) 5145.71 - Title IX Sex Discrimination and gender-nonconforming students should consult CSBA's District and County Office of Education Legal Services or district legal counsel. For more information on the rights of transgender students, see CSBA's, "Legal Guidance on Rights of Transgender and Gender Nonconforming Students in Schools." Sex-Based Harassment Complaint Procedures.

Education Code 234.1 mandates that districts adopt policy as well as a process for prohibiting discrimination, harassment, intimidation, and bullying based on the actual or perceived characteristics listed above, which applies to all acts related to school activity or school attendance occurring within a school or under the authority jurisdiction of the district, including discriminatory harassment, intimidation, and bullying, based on the foregoing characteristics. a process for receiving and investigating such complaints. The California Department of Education; (CDE).

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through its Federal Program Monitoring process, reviews districts' uniform complaint procedures (UCP) and other anti-discrimination policies and processes to ensure compliance with these requirements. In addition, the U.S. Department of Education's Office for Civil Rights (OCR) is responsible for the administrative enforcement of federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, sex, disability, and age in programs and activities that receive federal financial assistance from the department, and requires the adoption of nondiscrimination policies and complaint procedures.

Education Code 234.1, as amended by AB 1078 (Ch. 229, Statute of 2023), also requires that the district's nondiscrimination policy include a statement that the policy applies to all acts related to a school activity or school attendance and, as amended by AB 1078 (Ch. 229, Statute of 2023), all acts of the Board and the Superintendent in enacting policies and procedures that govern the district. Education Code 234.1, as amended by AB 1078, contains similar language regarding the County Board of Education and the County Superintendent of Schools.

Education Code 243, as added by AB 1078, clarifies when it is unlawful discrimination for the Board to (1) refuse to approve the use of any textbook, instructional material, supplemental instructional material, or other curriculum for classroom instruction, or any book or resource in a school library or (2) prohibit the use of any textbook, instructional material, supplemental instructional material, or other curriculum for classroom instruction, or any book or resource in a school library. The Board may not refuse to approve such use on the basis that the material includes a study of the role and contributions of specified individuals or groups, unless the study of the role and contributions reflects adversely upon legally protected groups. Additionally, the Board may not prohibit such use on the basis that the study of the role and contributions contain inclusive or diverse perspectives.

In addition, the Board's action to ban or censor a textbook, instructional material, supplemental instructional material, or other curriculum for classroom instruction on any of the bases described above may also constitute unlawful discrimination pursuant to Education Code 220. And, pursuant to Education Code 244, as added by SB 153 (Ch. 38, Statutes of 2024), the Board is prohibited from adopting or approving the use of any textbook, instructional material, supplemental instructional material, or curriculum for classroom instruction if the use would subject a student to unlawful discrimination pursuant to Education Code 220. For more information regarding instructional materials adoption, see BP/AR/E(1) 6161.1 – Selection and Evaluation of Instructional materials, CSBA's publication, "Instructional Materials Adoptions: State and local governing board processes, roles, and responsibilities," and corresponding Fact Sheet and Reference, and the California Attorney General's, "Guidance to School Officials re: Legal Requirements for Providing Inclusive Curricula and Books."

OCR has clarified in several publications that conduct that occurs off campus may have an adverse effect on a student at school (e.g., create a "hostile environment" for the student). When that happens, the district has an obligation to investigate and to take steps to protect the student.

This policy shall apply to all acts constituting unlawful discrimination or harassment related to school activity or to school attendance occurring within a district school, to acts which occur off campus or outside of school-related or school-sponsored activities but which may have an impact

or create a hostile environment at school, and to all acts of the Governing Board and the Superintendent in enacting policies and procedures that govern the district.

CSBA NOTE: 34 CFR 106.2 and 106.10, as amended by 89 Fed. Reg. 33474, clarify that discrimination on the basis of sex for the purpose of Title IX includes discrimination on the basis of sex stereotypes; sex characteristics; sexual orientation; gender identity; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions or recovery; and parental, marital, and family status.

The Board desires to provide a welcoming, safe, and supportive school environment that allows all students equal access to and opportunities in the district's academic, extracurricular, and other educational support programs, services, and activities. The Board prohibits, at any district school or school activity, unlawful discrimination, including discriminatory harassment, intimidation, and bullying, targeted at ~~of~~ any student by anyone, based on the student's actual or perceived race;_i color;_i ancestry;_i nationality;_i national origin;_i immigration status;_i ethnic group identification;_i ethnicity;_i age;_i religion;_i marital status;_i pregnancy, childbirth, termination of pregnancy or lactation, including related medical conditions or recovery; parental, marital, and family status;_i physical or mental disability;_i medical condition;_i sex;_i sex stereotypes; sex characteristics; sexual orientation;_i gender;_i gender identity;_i gender expression;_i or genetic information;_i or, association with a person or group with one or more of these actual or perceived characteristics.

CSBA NOTE: CSBA NOTE: OCR's May 2024 Dear Colleague Letter, "Protecting Students from Discrimination, such as Harassment, Based on Race, Color, or National Origin, Including Shared Ancestry or Ethnic Characteristics," which expands and clarifies the U.S. Department of Education's 2023, "Guidance on Constitutionally Protected Prayer and Religious Expression in Public Schools," provides that Title VI's protections from race, color, and national origin discrimination extends to students who experience discrimination based on actual or perceived (1) shared ancestry or ethnic characteristics or (2) citizenship or residency in a country with a dominant religion or distinct religious identity. While Title VI does not protect individuals based solely on religious discrimination, it does apply to antisemitism and other forms of discrimination when based on shared ancestry or ethnic characteristics. The guidance includes clarifying examples regarding existing legal requirements under Title VI.

Additionally, OCR's November 2023 Dear Colleague Letter, "Discrimination, Including Harassment, Based on Shared Ancestry or Ethnic Characteristics," states that all students, including students who are or are perceived to be Jewish, Israeli, Muslim, Arab, or Palestinian, as well as students who come from, or are perceived to come from, all regions of the world, are entitled to a school environment free from discrimination based on race, color, or national origin. The Dear Colleague Letter provides that Title VI also protects students from discrimination which is based on (1) actual or perceived citizenship or residency in a country with a dominant religion or distinct religious identity, including Jewish, Muslim, Sikh, Hindu, Christian, and Buddhist students, when the discrimination involves racial, ethnic, or ancestral slurs or stereotypes, (2) a student's skin color, physical features, or style of dress that reflects both ethnic and religious traditions, and (3) where a student came from or is perceived to have come from. Discrimination based on a student's foreign accent, foreign name, or a student speaking a foreign language may also violate Title VI's prohibitions against discrimination.

OCR's August 2023 Dear Colleague Letter, "Race and School Programming," states that a district may not separate students based on race, but may include group discussions or activities that focus

on race as part of the curriculum, courses, or programs so long as access or participation is not permitted or limited based on race. OCR's guidance also provides that a school-sponsored program with emphasis on race, such as a student club, that is open to all students, typically would not violate Title VI solely because of its race-related theme.

Unlawful discrimination, including discriminatory harassment, intimidation, or bullying, may result from physical, verbal, nonverbal, or written conduct based on any of the categories listed above. Unlawful discrimination also occurs when prohibited conduct is so severe, persistent, or pervasive that it affects a student's ability to participate in or benefit from an educational program or activity; creates an intimidating, threatening, hostile, or offensive educational environment; has the effect of substantially or unreasonably interfering with a student's academic performance; or otherwise adversely affects a student's educational opportunities.

CSBA NOTE: In addition to the types of prohibited student conduct described above, unlawful discrimination includes different treatment of students with respect to the provision of opportunities to participate in school programs or activities or the provision or receipt of educational benefits or services. See BP 0410 - Nondiscrimination in District Programs and Activities.

Unlawful discrimination also includes disparate treatment of students based on one of the categories above with respect to the provision of opportunities to participate in school programs or activities or the provision or receipt of educational benefits or services.

CSBA NOTE: Unlawful discrimination may occur when disciplining students. OCR's guidance, "Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973," "Resource on Confronting Racial Discrimination in Student Discipline," and "Creating Inclusive and Nondiscriminatory School Environments for LGBTQI Students," address discrimination in the use of discipline based on disability, race, and gender expression.

For more information regarding student discipline, see BP/AR 5144 - Discipline, BP/AR 5144.1 - Suspension and Expulsion/Due Process, and AR 5144.2 - Suspension and Expulsion/Due Process (Students With Disabilities).

Because unlawful discrimination ~~may~~could occur when disciplining students, including suspension and expulsion, the Superintendent or designee shall ensure that staff enforce discipline rules fairly, consistently and in a non-discriminatory manner, as specified in Board Policy and Administrative Regulation 5144 - Discipline, Board Policy and Administrative Regulation 5144.1 - Suspension and Expulsion/Due Process, and Administrative Regulation 5144.2 - Suspension and Expulsion/Due Process (Students With Disabilities).

The Board also prohibits any form of retaliation against any individual who reports or participates in the reporting of unlawful discrimination, files or participates in the filing of a complaint, or investigates ~~or~~ participates, or refuses to participate in the investigation of a complaint or report alleging unlawful discrimination. Retaliation complaints shall be investigated and resolved in the same manner as a discrimination complaint.

CSBA NOTE: Pursuant to Education Code 234.1 and 34 CFR 106.8, a district is required to publicize its nondiscrimination policies to the school community. ~~In addition~~Additionally, Education Code 234.1, as amended by SB 153, and 234.6 ~~requires~~require the district to make readily

accessible on its website its nondiscrimination, sexual harassment, intimidation, bullying, sex-based harassment, suicide prevention, and other specified policies and information related to specified state and federal laws and resources. In addition, 34 CFR 104.8 requires districts to take "continuing steps" to notify students, parents/guardians, applicants for admission, and employees that it does not discriminate on the basis of disability in its education programs or activities.

For further information regarding specific posting requirements, see "Measures to Prevent Discrimination" in the accompanying administrative regulation.

The Superintendent or designee shall facilitate students' access to the educational program by publicizing the district's nondiscrimination policy and related complaint procedures to students, parents/guardians, and employees. In addition, the Superintendent or designee shall post the district's policies prohibiting discrimination, harassment, intimidation, and bullying and other required information on the district's website in a manner that is easily accessible to parents/guardians and students, in accordance with law and the accompanying administrative regulation. (Education Code 234.1, 234.6) ; 34 CFR 106.8)

The Superintendent or designee shall provide training and/or information on the scope and use of the policy and complaint procedures and take other measures designed to increase the school community's understanding of the requirements of law related to discrimination. The Superintendent or designee shall regularly review the implementation of the district's nondiscrimination policies and practices and, as necessary, shall take action to remove any identified barrier to student access to or participation in the district's educational program. The Superintendent or designee shall report the findings and recommendations to the Board after each review.

Regardless of whether a complainant complies with the writing, timeline, and/or other formal filing requirements, all complaints alleging unlawful discrimination, including discriminatory harassment, intimidation, or bullying, shall be investigated and prompt action taken to stop the discrimination, prevent recurrence, and address any continuing effect on students.

CSBA NOTE: Policies related to discrimination must be consistent with the First Amendment right to free speech. Education Code 48950 prohibits a district from subjecting a high school student to disciplinary sanctions solely on the basis of speech or other communication that would be constitutionally protected if engaged in outside of campus. However, Education Code 48950 also specifies that the law does not prohibit discipline for harassment, threats, or intimidation unless constitutionally protected. Whether such speech might be entitled to constitutional protection would be determined on a case-by-case basis, with consideration for the specific words used and the circumstances involved. The district should It is recommended that districts consult CSBA's District and County Office of Education Legal Services or district legal counsel as necessary.

Students who engage in unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, in violation of law, Board policy, or administrative regulation shall be subject to appropriate consequence or discipline, which may include suspension or expulsion when the behavior is severe or pervasive as defined in Education Code 48900.4. Any employee who permits or engages in prohibited discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, shall be subject to disciplinary action, up to and including dismissal.

CSBA NOTE: The following paragraph may be revised to reflect district practice. Pursuant to Education Code 48900.5, as amended by AB 1165 (Ch. 22, Statutes of 2023), the district is

encouraged to have a student who has been suspended, or for whom other means of correction have been implemented pursuant to Education Code 48900.5 for an incident of racist bullying, harassment, or intimidation, as well as the victim, to engage in a restorative justice practice suitable to address the needs of both the victim and the perpetrator, in addition to the other measures specified in the following paragraph; see BP/AR 5131.2 – Bullying.

When a student has been suspended, or other means of correction have been implemented against the student for an incident of racist bullying, harassment, or intimidation, the principal or designee shall engage both the victim and perpetrator in a restorative justice practice suitable to the needs of the students. The principal or designee shall also require the perpetrator to engage in a culturally sensitive program that promotes racial justice and equity and combats racism and ignorance and shall regularly check on the victim to ensure that the victim is not in danger of suffering from any long-lasting mental health issues. (Education Code 48900.5)

When appropriate based on the severity or pervasiveness of the bullying, the Superintendent or designee shall notify the parents/guardians of victims and perpetrators and may contact law enforcement.

CSBA NOTE: Education Code 234.1 requires that districts adopt a process **CSBA NOTE:** Pursuant to 34 CFR 106.11 and 106.44, as amended by 89 Fed. Reg. 33474, a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, is required to follow the Title IX grievance procedures when investigating and resolving the complaint. A complaint may also fall within the complaint process adopted by the district pursuant to Education Code 234.1 for receiving and investigating complaints of unlawful discrimination, including discriminatory harassment, intimidation, retaliation, and bullying that is consistent with the district's UCP specified in 5 CCR 4600-4670. It is unclear whether districts would additionally be required to follow the UCP when investigating and resolving such a complaint. Due to this uncertainty, it is recommended that districts consult CSBA's District and County Office of Education Legal Services or district legal counsel prior to utilizing the UCP for this purpose. For more information regarding the Title IX grievance procedures, see AR 5145.71 – Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

All allegations of unlawful discrimination in district programs and activities shall be brought, investigated, and resolved in accordance with Board Policy 1312.3 - Uniform Complaint Procedures, when required by law. However, complaints alleging sex discrimination, including sex-based harassment, under Title IX shall be investigated and resolved in accordance with the procedures specified in 34 CFR 106.44 and 106.45 and Administrative Regulation 5145.71 – Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

Record-Keeping

The Superintendent or designee shall maintain a record of all reported cases of unlawful discrimination, including discriminatory harassment, intimidation, or bullying, to enable the district to monitor, address, and prevent repetitive prohibited behavior in district schools.

Policy Reference UPDATE Service

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Policy Reference Disclaimer:

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These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State	Description
5 CCR 432	Student records
5 CCR 4600-4670	Uniform complaint procedures
5 CCR 4900-4965	Nondiscrimination in elementary and secondary educational programs receiving state or federal financial assistance
Civ. Code 1714.1	Liability of parent or guardian for act of willful misconduct by a minor
<u>Ed. Code 17585</u>	<u>School modernization project; all-gender restroom</u>
Ed. Code 200-262.4	Prohibition of discrimination
<u>Ed. Code 33353</u>	<u>California Interscholastic Federation; standardized incident form</u>
<u>Ed. Code 35292.5</u>	<u>School restrooms; all-gender restrooms</u>
Ed. Code 48900.3	Suspension or expulsion for act of hate violence
Ed. Code 48900.4	Suspension or expulsion for harassment, threats, or intimidation
<u>Ed. Code 48900.5</u>	<u>Suspension; other means of correction</u>
Ed. Code 48904	Liability of parent/guardian for willful student misconduct
Ed. Code 48907	Exercise of free expression; time, place, and manner rules and regulations
Ed. Code 48950	Speech and other communication
Ed. Code 48985	Notices to parents in language other than English
Ed. Code 49020-49023	Athletic programs
Ed. Code 49060-49079	Student records
Ed. Code 51204.5	Social sciences instruction; contributions of specified groups
Ed. Code 51500	Prohibited instruction or activity
Ed. Code 51501	Nondiscriminatory subject matter
Ed. Code 60010	Instructional materials; definition
Ed. Code 60040-60052	Requirements for instructional materials
Gov. Code 11135	Prohibition of discrimination
Pen. Code 422.55	Definition of hate crime
Pen. Code 422.6	Crimes; harassment

Federal

20 USC 1681-1688

28 CFR 35.107

29 USC 794

34 CFR 100.3

34 CFR 104.7

34 CFR 104.8

34 CFR 106.45

34 CFR 106.81-106.82

34 CFR 110.25

34 CFR 99.31

42 USC 12101-12213

42 USC 2000d-2000e-17

42 USC 2000h-2-2000h-6

42 USC 6101-6107

Management Resources

34 CFR 106.30

CA Office of the Attorney General
Publication

CA Office of the Attorney General
Publication

CSBA Publication

CSBA Publication

Description

Title IX of the Education Amendments of 1972;
discrimination based on sex

Nondiscrimination on basis of disability; complaints

Rehabilitation Act of 1973; Section 504

Prohibition of discrimination on basis of race, color or
national origin

Section 504; Designation of responsible employee and
adoption of grievances procedures

Notice of Nondiscrimination on the Basis of Handicap

Grievance process for formal complaints of sexual harassment

Designation of coordinator; dissemination of policy; and
adoption of grievance procedures Discrimination on the basis
of sex; effectuating Title IX

Prohibition of discrimination based on age

Disclosure of personally identifiable information

Americans with Disabilities Act

Title VI and Title VII Civil Rights Act of 1964, as amended

Title IX of the Civil Rights Act of 1964

Age Discrimination Act of 1975

Description

Discrimination on the basis of sex; definitions

Promoting a Safe and Secure Learning Environment for All:
Guidance and Model Policies to Assist California's K-12
Schools in Responding to Immigration Issues, April 2018

Guidance to School Officials re: Legal Requirements for
Providing Inclusive Curricula and Books, January 2024
([https://oag.ca.gov/system/files/attachments/press-
docs/Legal%20Alert%20Re%20Inclusive%20Curricula.1.9.24.
1157CLEAN.pdf](https://oag.ca.gov/system/files/attachments/press-docs/Legal%20Alert%20Re%20Inclusive%20Curricula.1.9.24.1157CLEAN.pdf))

Instructional Materials Adoptions: State and local governing
board processes, roles, and responsibilities, February 2024
([https://www.csba.org/-
/media/CSBA/Files/GovernanceResources/GovernanceBriefs/
2024-REPD-instructional-materials-
brief.ashx?la=en&rev=9880900e6d334c81a7f64d637e40dc
56](https://www.csba.org/-/media/CSBA/Files/GovernanceResources/GovernanceBriefs/2024-REPD-instructional-materials-brief.ashx?la=en&rev=9880900e6d334c81a7f64d637e40dc56))

Fact Sheet: Instructional Materials Adoption: Local governing
board responsibilities, February 2024 (<https://www.csba.org/>-

	/media/CSBA/Files/GovernanceResources/GovernanceBriefs/2024-REPD- IM-LocalRoles.ashx?la=en&rev=94453dc92df043379995b07589a4d558)
<u>CSBA Publication</u>	<p>Reference: <u>State Roles, Responsibilities, and Process for Instructional Materials Adoption, February 2024</u></p> <p>(https://www.csba.org/-/media/CSBA/Files/GovernanceResources/GovernanceBriefs/2024-REPD- IM-StateRoles.ashx?la=en&rev=f00baf9bd1af4844b94f99135ca65588)</p>
California Department of Education Publication	California Longitudinal Pupil Achievement Data System (CALPADS) Update FLASH #158: Guidance for Changing a Student's Gender in CALPADS, July 2019
Court Decision	Donovan v. Poway Unified School District (2008) 167 Cal.App.4th 567
Court Decision	Flores v. Morgan Hill Unified School District (2003, 9th Cir.) 324 F.3d 1130
<u>Federal Register</u>	<p><u>Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, April 29, 2024, Vol. 89, No. 83, pages 33474-33896</u></p> <p>(https://www.federalregister.gov/documents/2024/04/29/2024-07915/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal)</p>
CSBA Publication	Legal Guidance on Rights of Transgender and Gender Nonconforming Students in Schools, October 2022
U.S DOE, Office for Civil Rights Publication	Resolution Agreement Between the Arcadia USD, US Dept of Ed, OCR, & the US DOJ, CRD (2013) OCR 09-12-1020, DOJ 169-12C-70
U.S. Department of Education Publication	Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools, May 2023
U.S. Dept. of Health & Human Services Publication	Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, August 2013
<u>U.S. DOE Publication</u>	<p><u>Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools, May 2023</u></p> <p>(https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html)</p>

U.S. DOE, Office for Civil Rights
Publication

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Dear Colleague Letter: Protecting Students from
Discrimination, such as Harassment, Based on Race, Color, or
National Origin, Including Shared Ancestry or Ethnic
Characteristics, May 2024
(<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-202405-shared-ancestry.pdf>)

Dear Colleague Letter: Discrimination, including Harassment,
Based on Shared Ancestry or Ethnic Characteristics,
November 2023
(<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-202311-discrimination-harassment-shared-ancestry.pdf>)

Dear Colleague Letter: Resource on Confronting Racial
Discrimination in Student Discipline, May 2023

Enforcement of Title IX of the Education Amendments of
1972 With Respect to Discrimination Based on Sexual
Orientation and Gender Identity in Light of Bostock v.
Clayton County, June 2021

Dear Colleague Letter: Addressing Discrimination Against
Jewish Students, May 2023

U.S. Department of Education Toolkit: Creating Inclusive and
Nondiscriminatory School Environments for LGBTQI+
Students, June 2023

Questions and Answers on the Title IX Regulations on Sexual
Harassment, June 2022

Supporting Students with Disabilities and Avoiding the
Discriminatory Use of Student Discipline under Section 504
of the Rehabilitation Act of 1973

Dear Colleague Letter: Race and School Programming, August
2023

Examples of Policies and Emerging Practices for Supporting
Transgender Students, May 2016

CSBA District and County Office of Education Legal Services

First Amendment Center

California Interscholastic Federation

(<https://www.cifstate.org/landing/index>)

California Office of the Attorney General

California Safe Schools Coalition

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California Department of Education

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Cross References

Code	Description
0410	Nondiscrimination In District Programs And Activities
0415	Equity
0450	Comprehensive Safety Plan
0450	Comprehensive Safety Plan
1114	District-Sponsored Social Media
1114	District-Sponsored Social Media
1240	Volunteer Assistance
1240	Volunteer Assistance
1312.1	Complaints Concerning District Employees
1312.1	Complaints Concerning District Employees
1312.2	Complaints Concerning Instructional Materials
1312.2	Complaints Concerning Instructional Materials
1312.2-E(1)	Complaints Concerning Instructional Materials
1312.3	Uniform Complaint Procedures
1312.3	Uniform Complaint Procedures
1312.3-E(1)	Uniform Complaint Procedures
1312.3-E(2)	Uniform Complaint Procedures
1312.4	Williams Uniform Complaint Procedures
1312.4-E(1)	Williams Uniform Complaint Procedures
1312.4-E(2)	Williams Uniform Complaint Procedures
1313	Civility
1340	Access To District Records
1340	Access To District Records
3515.4	Recovery For Property Loss Or Damage
3515.4	Recovery For Property Loss Or Damage
3530	Risk Management/Insurance
3530	Risk Management/Insurance
3553	Free And Reduced Price Meals

3553	Free And Reduced Price Meals
3580	District Records
3580	District Records
4112.6	Personnel Files
4112.9	Employee Notifications
4112.9-E(1)	Employee Notifications
4118	Dismissal/Suspension/Disciplinary Action
4118	Dismissal/Suspension/Disciplinary Action
<u>4119.11</u>	<u>Sex Discrimination and Sex-Based Harassment</u>
4119.21	Professional Standards
4119.21-E(1)	Professional Standards
4119.23	Unauthorized Release Of Confidential/Privileged Information
4131	Staff Development
4212.6	Personnel Files
4212.9	Employee Notifications
4212.9-E(1)	Employee Notifications
4218	Dismissal/Suspension/Disciplinary Action
4218	Dismissal/Suspension/Disciplinary Action
<u>4219.11</u>	<u>Sex Discrimination and Sex-Based Harassment</u>
4219.21	Professional Standards
4219.21-E(1)	Professional Standards
4219.23	Unauthorized Release Of Confidential/Privileged Information
4231	Staff Development
4312.6	Personnel Files
4312.9	Employee Notifications
4312.9-E(1)	Employee Notifications
<u>4319.11</u>	<u>Sex Discrimination and Sex-Based Harassment</u>
4319.21	Professional Standards
4319.21-E(1)	Professional Standards
4319.23	Unauthorized Release Of Confidential/Privileged Information
4331	Staff Development

5000	Concepts And Roles
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5111	Admission
5113.1	Chronic Absence And Truancy
5113.1	Chronic Absence And Truancy
5113.12	District School Attendance Review Board
5113.12	District School Attendance Review Board
5116.2	Involuntary Student Transfers
5125	Student Records
5125	Student Records
5125.1	Release Of Directory Information
5125.1	Release Of Directory Information
5125.1-E(1)	Release Of Directory Information
5125.3	Challenging Student Records
5131	Conduct
5131.2	Bullying
5131.2	Bullying
5131.5	Vandalism And Graffiti
5132	Dress And Grooming
5132	Dress And Grooming
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5138	Conflict Resolution/Peer Mediation
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5141.27	Food Allergies/Special Dietary Needs
5141.27	Food Allergies/Special Dietary Needs
5141.4	Child Abuse Prevention And Reporting
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5144	Discipline
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5144.1	Suspension And Expulsion/Due Process
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5145.12	Search And Seizure
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6145	Extracurricular And Cocurricular Activities
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6153	School-Sponsored Trips
6159.4	Behavioral Interventions For Special Education Students
6161.1	Selection And Evaluation Of Instructional Materials
6161.1	Selection And Evaluation Of Instructional Materials
6161.1-E(1)	Selection And Evaluation Of Instructional Materials
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6164.2	Guidance/Counseling Services
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6173.1	Education For Foster Youth
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Regulation 5145.3: Nondiscrimination/Harassment

Status: ADOPTED

Original Adopted Date: 09/01/2016 | Last Revised Date: 12/07/01/2024 | Last Reviewed Date: 12/07/01/2024

CSBA NOTE: The following mandated administrative regulation provides measures that may be implemented by a district to comply with state and federal laws and regulations prohibiting unlawful discrimination at school or in school-sponsored or school-related activities, including discriminatory harassment, intimidation, and bullying, of any student based on the student's actual or perceived race, color, ancestry, nationality, national origin, immigration status, ethnic group identification, ethnicity, age, religion, marital status, pregnancy, parental status, physical or mental disability, medical condition, sex, sexual orientation, gender, gender identity, gender expression, genetic information, or any other legally protected category or association with a person or group with one or more of these actual or perceived characteristics. 34 CFR 106.2 and 106.10, as amended by 89 Fed. Reg. 33474, clarify that discrimination on the basis of sex for the purpose of Title IX includes discrimination on the basis of sex stereotypes; sex characteristics; sexual orientation; gender identity; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions or recovery; and parental, marital, and family status. Federal and state law also prohibit retaliation against those who engage in activity to protect civil rights.

5 CCR 4621 mandates the district to identify in its policies and procedures the person(s), position(s), or unit(s) responsible for ensuring compliance with applicable state and federal laws and regulations governing educational programs, including the receiving and investigating of complaints alleging unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying. In addition Additionally, 34 CFR 106.8 and other federal regulations mandate districts that receive federal financial assistance to adopt procedures for the "prompt and equitable" resolution of student and employee discrimination complaints, including the designation of one or more responsible employees to ensure district compliance with federal laws and regulations governing the district's educational programs.

During the Federal Program Monitoring process, California Department of Education (CDE) staff will check to ensure that the district's procedures list the specific title(s) of the employee(s) responsible for investigating complaints. The U.S. Department of Education's (USD OE) Office for Civil Rights (OCR) is the agency responsible for the administrative enforcement of federal antidiscrimination laws and regulations in programs and activities that receive federal financial assistance from the department. In reviewing a district's discrimination policies and procedures, OCR will examine whether the district has identified the employee(s) responsible for coordinating compliance with federal civil rights laws, including the investigation of complaints.

The following paragraph identifies the employee(s) designated to coordinate the district's efforts to comply with state and federal civil rights laws as the same person designated to ensure district compliance, and receive, investigate and resolve discrimination complaints under AR 1312.3 - Uniform Complaint Procedures. Districts may modify the following paragraph to designate different district employees to serve these functions. Note also that a district may designate more than one

employee to coordinate compliance and/or receive and investigate complaints, although each employee designated as a coordinator/compliance officer must be properly trained.

34 CFR 106.8, as amended by 85 Fed. 30026, requires that the employee designated by the district to coordinate its responsibilities under Title IX be referred to as the Title IX Coordinator. The district has more than one Title IX Coordinator is responsible for receiving complaints, it must designate one of sexual harassment and determining whether the complaint should be appropriately addressed through AR 1312.3 or the federal Title IX complaint procedures pursuant to 34 CFR 106.44-106.45. The Coordinators to retain ultimate oversight over those responsibilities and ensure the district's consistent compliance with its responsibilities under Title IX. It is recommended that the Title IX Coordinator may be the same person designated below and in AR 1312.3. - Uniform Complaint Procedures, and, if the district wishes to separate out these responsibilities, for one individual to designate designees and maintain oversight. See AR 5145.7 - SexualSex Discrimination and Sex-Based Harassment and AR 5145.71 - Title IX Sexual Harassment Complaint Procedures.

The district designates the individual(s) identified below as the Compliance Officer(s). The employee(s) is responsible for coordinating the district's efforts to comply with applicable state and federal civil rights laws and to answer inquiries regarding the district's nondiscrimination policies. The individual(s) shall also serve as the compliance officer Compliance Officer(s) specified in AR Administrative Regulation 1312.3 - Uniform Complaint Procedures as the responsible employee to handle complaints alleging unlawful discrimination targeting a student, including discriminatory harassment, intimidation, or bullying, based on the student's actual or perceived race, color, ancestry, nationality, national origin, immigration status, ethnic group identification, ethnicity, age, religion, marital status, pregnancy, parental status, physical or mental disability, medical condition, sex, sexual orientation, gender, gender identity, gender expression, genetic information, or any other legally protected status or association with a person or group with one or more of these actual or perceived characteristics. The coordinator/compliance officer of a student, and the Title IX Coordinator specified in Administrative Regulation 5145.7 - Sex Discrimination and Sex-Based Harassment as the responsible employee to handle complaints alleging unlawful sex discrimination and sex-based harassment, as permitted by law. The Compliance Officer(s) may be contacted at: (Education Code 234.1; 5 CCR 4621)

(title or position)

(address)

(telephone number)

(email)

CBD or Designee

15305 Rockwood Rd, Escondido, CA 92027

760.745.4931

SPUSD@sanpaulunion.net

Measures to Prevent Discrimination

To prevent unlawful discrimination, including discriminatory harassment, intimidation, retaliation, and bullying, of students at district schools or in school activities and to ensure equal access of all students to the educational program, the Superintendent or designee shall implement the following measures:

CSBA NOTE: As part of its responsibility to monitor district compliance with legal requirements concerning discrimination pursuant to Education Code 234.1, as amended by SB 153 (Ch. 38, Statutes of 2024), CDE is required to ensure that the district ~~posts~~prominently and conspicuously displays its nondiscrimination policies in all ~~schools, offices~~areas that are accessible to, and commonly frequented by, school site employees, students, and members of the public at each school site and district office, including, but not limited to, in school office lobbies, staff lounges, and student government meeting rooms, and on the district's website.

In addition, federal regulations enforced by OCR require the district to notify students, parents/guardians, and employees of its policies prohibiting discrimination on the basis of sex (34 CFR 106.8, 106.9), disability (34 CFR 104.8 and 28 CFR 35.107), and age (34 CFR 110.25) and of related complaint procedures.

For additional notification requirements ~~specifically pertaining~~specific to ~~sexual~~sex discrimination and sex-based harassment, see BP/AR 5145.7 - SexualSex Discrimination and Sex-Based Harassment.

1. Publicize the district's nondiscrimination policy and related complaint procedures, including the ~~coordinator/compliance officer's~~Compliance Officer's contact information, to students, parents/guardians, employees, volunteers, and the general public by posting them in prominent locations and providing easy access to them through district-supported communications

CSBA NOTE: Education Code 234.1, as amended by SB 153, and 234.6 requires a district to post its nondiscrimination policies on its ~~web site~~website as specified below. In addition to the policies listed below, if the district has a policy in regard to the prevention and response to hate violence, it is also required to be posted, and the following item should be modified accordingly. See BP 5145.9 - Hate-Motivated Behavior.

2. Post the district's policies and procedures prohibiting discrimination, harassment, student ~~sexual~~sex-based harassment, intimidation, bullying, and cyberbullying, including a section on social media bullying that includes all of the references described in Education Code 234.6 as possible forums for social media, in a prominent location on the district's ~~web site~~website in a manner that is easily accessible to parents/guardians and students (Education Code 234.1, 234.6)
3. Post the definition of sex discrimination and harassment as described in Education Code 230, including the rights set forth in Education Code 221.8, in a prominent location on the district's ~~web site~~website in a manner that is easily accessible to parents/guardians and students (Education Code 234.6)

CSBA NOTE: Education Code 221.61 requires districts and public schools to post on their ~~web sites~~websites information related to Title IX (20 USC 1681-1688). Education Code 234.6 requires districts to post the Title IX information required pursuant to 221.61 in a prominent location on the district's ~~web site~~website in a manner that is easily accessible to parents/guardians and students. Additionally, districts are required to provide a link to the Title IX information included on CDE's website pursuant to Education Code 221.6, in the same manner. A comprehensive list of rights based on the federal regulations implementing Title IX can be found in Education Code 221.8. A district that does not maintain a ~~web site~~website may comply by posting the information below on

the web site website of its county office of education. A school without a web site website may comply by posting the information on the web site website of the district or county office of education.

4. Post in a prominent location on the district web site website in a manner that is easily accessible to parents/guardians and students information regarding Title IX prohibitions against discrimination based on a student's sex; sex characteristics; sexual orientation; gender; gender identity; pregnancy, childbirth, termination of pregnancy or lactation, including related medical conditions or recovery; and parental, marital, and family status, including the following: (Education Code 221.6, 221.61, 234.6)
 - a. The name and contact information of the district's Title IX Coordinator, including the phone number and email address
 - b. The rights of students and the public and the responsibilities of the district under Title IX, including a list of rights as specified in Education Code 221.8 and web links to information about those rights and responsibilities located on the web sites websites of the Office for Equal Opportunity and the U.S. Department of Education's Office for Civil Rights (OCR)
 - c. A description of how to file a complaint of noncompliance under Title IX, which shall include:
 - i. An explanation of the statute of limitations within which a complaint must be filed after an alleged incident of discrimination has occurred and how a complaint may be filed beyond the statute of limitations
 - ii. An explanation of how the complaint will be investigated and how the complainant may further pursue the complaint, including web links to this information on the OCR's web site website
 - iii. A web link to the OCR complaints form and the contact information for the office, including the phone number and email address for the office
 - d. A link to the Title IX information included on the California Department of Education's Education's (CDE) web site website

CSBA NOTE: Item #5 is for districts that participate in the California Interscholastic Federation (CIF). In order to track racial discrimination, harassment, or hazing that occurs at high school sporting games or events, Education Code 33353, as amended by AB 1327 (Ch. 366, Statutes of 2023), requires a district that participates in CIF to post on its website, by April 1, 2025, a standardized incident form developed by CDE, including information on how to submit a completed incident form to the district. The district is required to submit information related to any completed standardized incident form to CDE, if requested.

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5. By April 1, 2025, post CDE's standardized incident form to track racial discrimination, harassment, or hazing that occurs at high school sporting games or events, including information on how to submit a completed incident form to the district (Education Code 33353)

CSBA NOTE: Pursuant to Title IX and its implementing regulation 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, districts are required to provide a notice of nondiscrimination on the basis of sex, as specified below.

6. Post in a prominent location on the district's website and include in each handbook, catalog, announcement, bulletin, and application form for students, parents/guardians or other authorized legal representative, and employees, the Title IX notice of nondiscrimination which includes the following: (34 CFR 106.8)

- a. The district does not discriminate on the basis of sex in any education program or activity that it operates
- b. Inquiries about the application of Title IX may be referred to the district's Title IX Coordinator and/or OCR
- c. The name or title, office and email address, and telephone number of the district's Title IX Coordinator
- d. How to locate the district's nondiscrimination policy and the district's grievance procedures for Title IX complaints
- e. How to report conduct that may constitute sex discrimination under Title IX
- f. How to make a complaint of Title IX sex discrimination

If necessary due to the format or size of any publication specified above, the district may include only the statement that the district prohibits sex discrimination in any education program or activity that it operates, that individuals may report concerns or questions to the Title IX Coordinator, and the location of the complete notice on the district's website.

The district shall not distribute a publication stating that the district treats students, employees or applicants differently on the basis of sex, unless such treatment is permitted by Title IX.

6. 7. Post a link to statewide CDE-compiled resources, including community-based organizations, that provide support to youth who have been subjected to school-based discrimination, harassment, intimidation, or bullying and to their families. Such resources shall be posted in a prominent location on the district's web site in a manner that is easily accessible to parents/guardians and students. (Education Code 234.5, 234.6) (Education Code 234.5)

Such resources shall be posted in a prominent location on the district's website in a manner that is easily accessible to parents/guardians and students. (Education Code 234.6)

7. 8. Provide to students a handbook that contains age-appropriate information that clearly describes the district's nondiscrimination policy, procedures for filing a complaint, and resources available to students who feel that they have been the victim of any such behavior.

8. 7. ~~9.~~ Annually notify all students and parents/guardians of the district's nondiscrimination policy, including its responsibility to provide a safe, nondiscriminatory school environment for all students.

The notice shall inform students and parents/guardians that they may request to meet with the ~~compliance officer~~ **Compliance Officer** to determine how best to accommodate or resolve concerns that may arise from the district's implementation of its nondiscrimination policies. The notice shall also inform all students and parents/guardians that, to the extent possible, the district will address any individual student's interests and concerns in private.

CSBA NOTE: Both federal and state laws contain requirements for translation of certain information and documents. Title VI of the Civil Rights Act of 1964 requires school districts to ensure meaningful access to their programs and activities by persons with limited English proficiency. OCR has interpreted this to require that, whenever information is provided to parents/guardians, districts must notify limited-English-proficient (LEP) parents/guardians in a language other than English in order to be adequate. OCR enforces this requirement consistent with the Department of Justice's 2003, "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons." Under the Guidance, a recipient of federal funds has an obligation to provide language assistance to LEP individuals based on balancing four factors: (1) the number or proportion of LEP individuals likely to encounter or be served by the program, (2) the frequency with which LEP individuals come in contact with the program, (3) the nature and importance of the services provided by the program, and (4) the resources available to the recipient and costs. State law is more specific than federal law. Education Code 48985 requires translation of certain information and documents if 15 percent or more of students enrolled in the school speak a single primary language other than English.

9. 8. 10. Ensure that students and parents/guardians, including those with limited English proficiency, are notified of how to access the relevant information provided in the district's nondiscrimination policy and related complaint procedures, notices, and forms in a language they can understand.

If 15 percent or more of students enrolled in a particular district school speak a single primary language other than English, the district's policy, regulation, forms, and notices concerning nondiscrimination shall be translated into that language in accordance with Education Code 234.1 and 48985. In all other instances, the district shall ensure meaningful access to all relevant information for parents/guardians with limited English proficiency.

10. 11. Provide to students, employees, volunteers, and parents/guardians age-appropriate training and/or information regarding the district's nondiscrimination policy; what constitutes prohibited discrimination, including discriminatory harassment, intimidation, retaliation, or bullying; how and to whom a report of an incident should be made; and how to guard against segregating or stereotyping students when providing instruction, guidance, supervision, or other services to them.

Such training and information shall include details of guidelines the district may use to provide a discrimination-free environment for all district students.

CSBA NOTE: Item #12 applies to districts that serve students in any of grades 7-12. Pursuant to Education Code 234.1, as amended by SB 153, a district is required to provide certificated school employees serving students in any of grades 7-12 information on existing

school and community resources related to the support of lesbian, gay, bisexual, transgender, queer, and questioning (LGBTQ+) students, or related to the support of students who may face bias or bullying as specified below.

- 11 ~~12~~ ⁸ Provide to certificated employees serving students in grades 7-12 information on existing school and community resources related to the support of lesbian, gay, bisexual, transgender, queer, and questioning (LGBTQ+) students, or related to the support of students who may face bias or bullying on the basis of any of the actual or perceived characteristics in Penal Code 422.55, including immigration status; Education Code 220; and disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation; or association with a person or group with one or more of these actual or perceived characteristics (Education Code 234.1)

CSBA NOTE: Item #13 applies to districts that serve students in any of grades 7-12. Starting in the 2025-26 school year through the 2029-2030 school year, Education Code 218.3, as added by AB 5 (Ch. 220, Statutes of 2023), requires a district serving students in any of grades 7-12 to provide at least one hour of training annually to all teachers and certificated employees serving students in grades 7-12 which incorporates CDE's online training curriculum to support LGBTQ+ cultural competency. The district is required to maintain records documenting the date that each employee completed the training and the name of the entity that provided the training.

- 12 ~~13~~ ⁸ For the 2025-2026 school year through the 2029-2030 school year, provide annually to certificated employees serving students in grades 7-12 at least one hour of training to support LGBTQ+ cultural competency in accordance with Education Code 218.3

- 13 ~~14~~ ¹⁰ At the beginning of each school year, inform school employees that any employee who witnesses any act of unlawful discrimination, including discriminatory harassment, intimidation, or bullying, against a student is required to intervene if it is safe to do so: (Education Code 234.1)

CSBA NOTE: Item #11~~14~~¹⁵ below may be revised to reflect district practice. In some situations, the district may need to provide assistance to a student to protect the student from harassment or bullying. Each situation will need to be analyzed to determine the most appropriate course of action to meet the needs of the student, based on the circumstances involved.

- 14 ~~11~~ ¹⁵ At the beginning of each school year, inform each principal or designee of the district's responsibility to provide appropriate assistance or resources to protect students from threatened or potentially discriminatory behavior and ensure their privacy rights:

Enforcement of District Policy

The Superintendent or designee shall take appropriate actions to reinforce BP 5145.3 - Nondiscrimination/Harassment. As needed, these actions may include any of the following:

- 1.—Removing vulgar or offending graffiti
- 2.—Providing training to students, staff, and parents/guardians about how to recognize unlawful discrimination, how to report it or file a complaint, and how to respond
- 3.—Disseminating and/or summarizing the district's policy and regulation regarding unlawful discrimination

4. Consistent with laws regarding the confidentiality of student and personnel records, communicating to students, parents/guardians, and the community the school's response plan to unlawful discrimination or harassment
5. Taking appropriate disciplinary action against students, employees, and anyone determined to have engaged in wrongdoing in violation of district policy, including any student who is found to have filed a complaint of discrimination that the student knew was not true

Process for Initiating and Responding to Complaints

CSBA NOTE: Education Code 234.1 requires that districts adopt a process for receiving and investigating complaints of unlawful discrimination, including discriminatory harassment, intimidation, retaliation, and bullying. Such a process, which is required to be consistent with the uniform complaint procedures (UCP) specified in 5 CCR 4600-4670, must include (1) a requirement that school personnel who witness an act take immediate steps to intervene when safe to do so, (2) a timeline for investigating and resolving complaints, (3) an appeal process, and (4) translation of forms when required by Education Code 48985. In addition, federal regulations require districts to adopt procedures providing for the prompt and equitable resolution of complaints of discrimination on the basis of sex (34 CFR 106.8), disability (34 CFR 104.7 and 28 CFR 35.107), and age (34 CFR 110.25). OCR guidance on federal civil rights requirements notes that districts may have a responsibility to respond to notice of discrimination whether or not a formal complaint is filed.

Complaints of sexual harassment must be addressed through the federal Title IX complaint procedures established pursuant to 34 CFR 106.44-106.45, as added by 85 Fed. Reg. 30026, if the alleged conduct meets the federal definition of sexual harassment. Pursuant to 34 CFR 106.30, sexual harassment includes (1) a district employee conditioning the provision of a district aid, benefit, or service on an individual's participation in unwelcome sexual conduct; (2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity; or (3) sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 and 34 USC 12291. Allegations that do not meet this definition should be addressed through the district's UCP. See BP/AR 5145.7 - Sexual Harassment and AR 5145.71 - Title IX Sexual Harassment Complaint Procedures.

Students who feel that they have been subjected to unlawful discrimination described above or in district policy are strongly encouraged to immediately contact the compliance officer Compliance Officer, Title IX Coordinator, principal, or any other staff member. In addition, students who observe any such incident are strongly encouraged to report the incident to the compliance officer Compliance Officer, Title IX Coordinator, or principal, regardless of whether or not the alleged victim files a complaint.

CSBA NOTE: The following paragraph related to employee reporting of unlawful discrimination should be revised to reflect the district's timeline.

Any school employee who observes an incident of unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, or to whom such an incident is reported shall report the incident to the compliance officer Compliance Officer, Title IX Coordinator, or principal within a ~~school day~~ one workday, regardless of whether or not the alleged victim files a complaint.

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Any school employee who witnesses an incident of unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, shall immediately intervene to stop the incident when it is safe to do so. (Education Code 234.1)

CSBA NOTE: Though a formal complaint must be in writing pursuant to 5 CCR 4600, the district's obligation to provide a safe school environment for its students overrides the need to comply with formalities. Thus, once the district receives notice of an incident, whether verbally or in writing, it is good practice to begin the investigation of the report and to take steps to stop any prohibited conduct and address any effect on students. The following paragraph reflects such practice.

Pursuant to 34 CFR 106.11 and is consistent 106.44, as amended by 89 Fed. Reg. 33474, a district with OCR recommendation knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, is required to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct. As such a complaint may also fall within the scope of the UCP, it is unclear whether districts would additionally be required to follow the UCP. Due to this uncertainty, districts are advised to consult CSBA's District and County Office of Education Legal Services or district legal counsel prior to utilizing the UCP for this purpose. For more information regarding the Title IX grievance procedures, see AR 5145.71 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

When a report of unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, is made to or received by the principal, Compliance Officer, or ~~compliance officer~~, Title IX Coordinator, the principal, Compliance officer, or ~~compliance officer~~ Title IX Coordinator shall notify the student or parent/guardian of the right to file a formal complaint in accordance with ~~AR~~ Administrative Regulation 1312.3 - Uniform Complaint Procedures or, for complaints of ~~sexual~~ sex discrimination, including sex-based harassment that meet, the federal right to initiate the Title IX definition, AR grievance procedures as specified in Administrative Regulation 5145.71 - Title IX Sexual Sex Discrimination and Sex-Based Harassment Complaint Procedures. Once notified verbally or in writing, the ~~compliance officer~~ Compliance Officer or Title IX Coordinator shall begin the investigation and shall implement immediate measures necessary to stop the discrimination and ensure that all students have access to the educational program and a safe school environment. Any interim measures adopted to address unlawful discrimination shall, to the extent possible, not disadvantage the complainant or a student who is the victim of the alleged unlawful discrimination.

Any report or complaint alleging unlawful discrimination by the principal, ~~compliance officer~~ Compliance Officer, Title IX Coordinator, or any other person to whom a report would ordinarily be made or complaint filed shall instead be made to or filed with the Superintendent or designee who shall determine how the complaint will be investigated.

Issues Unique to Intersex, Nonbinary, Transgender and Gender-Nonconforming Students

CSBA NOTE: The terms and definitions used below are consistent with California law, case law, and generally accepted terms within academia and in publications issued by state and federal agencies such as CDE and OCR, including provisions in the California Gender Recognition Act that recognize three gender options, female, male, and nonbinary, and define "nonbinary" and other

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related terms such as "intersex" and "transgender". In addition to consistency with the above, the definition of "gender identity" below is consistent with the Resolution Agreement between the Arcadia Unified School District, OCR, and the U.S. Department of Justice, Civil Rights Division, which defines "gender identity" as "one's internal sense of gender, which may be different from one's assigned sex, and which is consistently and uniformly asserted, or for which there is other evidence that the gender identity is sincerely held as part of the student's core identity."

The following section is also consistent with OCR's fact sheet "Supporting Intersex Students: A Resource for Students, Families, and Educators," issued in October 2021 and CDE's "Update FLASH #158, Guidance for Changing a Student's Gender in CALPADS," which provides guidance on changing a student's gender and/or legal name on the student's mandatory permanent record.

Gender identity of a student means the student's gender-related identity, appearance, or behavior as determined from the student's internal sense, whether or not that gender-related identity, appearance, or behavior is different from that traditionally associated with the student's physiology or assigned sex at birth.

Gender expression means a student's gender-related appearance and behavior, whether stereotypically associated with the student's assigned sex at birth. (Education Code 210.7)

Gender transition refers to the process in which a student changes from living and identifying as the sex assigned to the student at birth to living and identifying as the sex that corresponds to the student's gender identity.

Gender-nonconforming student means a student whose gender expression differs from stereotypical expectations.

Intersex student means a student with natural bodily variations in anatomy, hormones, chromosomes, and other traits that differ from expectations generally associated with female and male bodies.

Nonbinary student means a student whose gender identity falls outside of the traditional conception of strictly either female or male, regardless of whether or not the student identifies as transgender, was born with intersex traits, uses gender-neutral pronouns, or uses agender, genderqueer, pangender, gender nonconforming, gender variant, or such other more specific term to describe their gender.

Transgender student means a student whose gender identity is different from the gender assigned at birth.

The district prohibits acts of verbal, nonverbal, or physical aggression, intimidation, or hostility that are based on sex, gender identity, or gender expression, or that have the purpose or effect of producing a negative impact on the student's academic performance or of creating an intimidating, hostile, or offensive educational environment, regardless of whether the acts are sexual in nature. Examples of the types of conduct which are prohibited in the district and which may constitute gender-based harassment include, but are not limited to:

- 1.—Refusing to address a student by a name and the pronouns consistent with the student's gender identity
- 2.—Disciplining or disparaging a student or excluding the student from participating in activities, for behavior or appearance that is consistent with the student's gender identity or that does not conform to stereotypical notions of masculinity or femininity, as applicable
- 3.—Blocking a student's entry to the restroom that corresponds to the student's gender identity
- 4.—Taunting a student because the student participates in an athletic activity more typically favored by a student of the other sex
- 5.—Revealing a student's gender identity to individuals who do not have a legitimate need for the information, without the student's consent
- 6.—Using gender-specific slurs
- 7.—Physically assaulting a student motivated by hostility toward the student because of the student's gender, gender identity, or gender expression

The district's uniform complaint procedures (AR 1312.3) or Title IX sexual harassment procedures (AR 5145.71), as applicable, shall be used to report and resolve complaints alleging discrimination against intersex, nonbinary, transgender, and gender-nonconforming students.

Examples of bases for complaints include, but are not limited to, the above list, as well as improper rejection by the district of a student's asserted gender identity, denial of access to facilities that correspond with a student's gender identity, improper disclosure of a student's gender identity, discriminatory enforcement of a dress code, and other instances of gender-based harassment.

To ensure that intersex, nonbinary, transgender, and gender-nonconforming students are afforded the same rights, benefits, and protections provided to all students by law and Board policy, the district shall address each situation on a case-by-case basis, in accordance with the following guidelines:

CSBA NOTE: Timelines included in items #1–2 below may be modified to reflect district practice.

Pursuant to state and federal law, a district has the responsibility to ensure a safe, nondiscriminatory school environment for all students and equal access to the educational program for intersex, nonbinary, transgender, or gender non-conforming students. As part of its obligation, the district must keep a student's private information, including a student's gender, gender identity, or gender expression, confidential. CDE's "School Success and Opportunity Act (Assembly Bill 1266) Frequently Asked Questions," references a transgender student's informational privacy right under Article I, Section I of the California Constitution as protecting the student's gender identity from disclosure. However, CDE specifies that, pursuant to 34 CFR 99.36, disclosure of such information to appropriate parties is permitted in connection with an emergency, as necessary to protect the health or safety of the student or other individuals. Therefore, a district is required to take measures such as those specified in the following paragraph, to prevent unintentional release of students' private information and should contact legal counsel before disclosing a student's gender identity without the student's consent.

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- 1.—**Right to privacy:** A student's intersex, nonbinary, transgender, or gender-nonconforming status is the student's private information. The district shall develop strategies to prevent unauthorized disclosure of students' private information. Such strategies may include, but are not limited to, collecting or maintaining information about student gender only when relevant to the educational program or activity; protecting or revealing a student's gender identity as necessary to protect the health or safety of the student; and keeping a student's unofficial record separate from the official record.

The district shall only disclose the information to others with the student's prior written consent, except when the disclosure is otherwise required by law or when the district has compelling evidence that disclosure is necessary to preserve the student's physical or mental well-being. In any case, the district shall only allow disclosure of a student's personally identifiable information to employees with a legitimate educational interest as determined by the district pursuant to 34 CFR 99.31. Any district employee to whom a student's intersex, nonbinary, transgender, or gender-nonconforming status is disclosed shall keep the student's information confidential. When disclosure of a student's gender identity is made to a district employee by a student, the employee shall seek the student's permission to notify the compliance officer. If the student refuses to give permission, the employee shall keep the student's information confidential, unless the employee is required to disclose or report the student's information pursuant to this administrative regulation, and shall inform the student that honoring the student's request may limit the district's ability to meet the student's needs related to the student's status as an intersex, nonbinary, transgender, or gender-nonconforming student. If the student permits the employee to notify the compliance officer, the employee shall do so within three school days.

As appropriate given the student's need for support, the compliance officer may discuss with the student any need to disclose the student's intersex, nonbinary, transgender, or gender-nonconformity status or gender identity or gender expression to the student's parents/guardians and/or others, including other students, teacher(s), or other adults on campus. The district shall offer support services, such as counseling, to students who wish to inform their parents/guardians of their status and desire assistance in doing so.

- 2.—**Determining a Student's Gender Identity:** The compliance officer shall accept the student's assertion of gender identity and begin to treat the student consistent with that gender identity unless district personnel present a credible and supportable basis for believing that the student's assertion is for an improper purpose.
- 3.—**Addressing a Student's Transition Needs:** The compliance officer shall arrange a meeting with the student and, if appropriate, the student's parents/guardians to identify and develop strategies for ensuring that the student's access to educational programs and activities is maintained. The meeting shall discuss the intersex, nonbinary, transgender, or gender-nonconforming student's rights and how those rights may affect and be affected by the rights of other students and shall address specific subjects related to the student's access to facilities and to academic or educational support programs, services, or activities, including, but not limited to, sports and other competitive endeavors. In addition, the compliance officer shall identify specific school site employee(s) to whom the student may report any problem related to the student's status as an intersex, nonbinary, transgender, or gender-nonconforming individual, so that prompt action can be taken to address it. Alternatively, if appropriate and desired by the student, the school may form a support team for the student that will meet periodically to assess whether the arrangements for the student are meeting the student's educational needs and providing equal access to programs and activities, educate appropriate staff about the student's transition, and serve as a resource to the student to better protect the student from gender-based discrimination.

CSBA NOTE: Pursuant to Education Code 221.5, a district is required to permit a student to use facilities and participate in sex-segregated school programs and activities consistent with the student's gender identity, regardless of the gender listed on the student's educational records. In implementing state law, districts may review recommended practices in the USDOE's Office of Elementary and Secondary Education's Examples of Policies and Emerging Practices for Supporting Transgender Students. For more information on the rights of transgender students, see CSBA's Updated Legal Guidance: Protecting Transgender and Gender Nonconforming Students Against Discrimination.

4. **Accessibility to Sex-Segregated Facilities, Programs, and Activities:** When the district maintains sex-segregated facilities, such as restrooms and locker rooms, or offers sex-segregated programs and activities, such as physical education classes, intermural sports, and interscholastic athletic programs, students shall be permitted to access facilities and participate in programs and activities consistent with their gender identity. To address any student's privacy concerns in using sex-segregated facilities, the district shall offer available options such as a gender-neutral or single-use restroom or changing area, a bathroom stall with a door, an area in the locker room separated by a curtain or screen, or use of the locker room before or after the other students. However, the district shall not require a student to utilize these options because the student is intersex, nonbinary, transgender, or gender-nonconforming. In addition, a student shall be permitted to participate in accordance with the student's gender identity in other circumstances where students are separated by gender, such as for class discussions, yearbook pictures, and field trips. A student's right to participate in a sex-segregated activity in accordance with the student's gender identity shall not render invalid or inapplicable any other eligibility rule established for participation in the activity.

CSBA NOTE: Education Code 49062.5 and 49070 require districts to update a former student's records to change the student's name and/or gender as specified below. See AR 5125 - Student Records. Pursuant to 5 CCR 432, a district is required to maintain for each student a mandatory permanent student record that includes the student's legal name, sex, and other specified details. While 5 CCR 4910 refers to "sex" as the "biological condition or quality of being a female or male human being," it also defines "gender" to mean "sex," which includes "a person's gender identity and gender related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth." When responding to a request to change the gender or legal name of intersex, nonbinary, transgender, or gender non-conforming students, districts should be mindful of laws prohibiting gender-based discrimination. In CALPADS' "Update FLASH #158, Guidance for Changing a Student's Gender in CALPADS", CDE distinguishes the process for updating a student's legal name from the process for updating a student's gender. According to CDE, a district must receive formal documentation that a student's name has been legally changed before the student's recorded legal name may be changed in the student's mandatory permanent student record (official record). When documentation is not provided, CDE states the district should nonetheless update all other school records (unofficial records such as attendance sheets, report cards, and school identification) to reflect the name change. On the other hand, to change a student's gender in the student's official records, CDE states that there is no specific requirement regarding formal documentation or process that a district should review or require in determining the gender to be recorded in the official records. Pursuant to Education Code 49061, only a parent/guardian may authorize a change to a student's gender in the student's official record. The district should consult legal counsel in developing a policy in this regard.

5. **Student Records:** Upon each student's enrollment, the district is required to maintain a mandatory permanent student record (official record) that includes the student's gender and legal name.

A student's legal name as entered on the mandatory student record required pursuant to 5 CCR 432 shall only be changed with proper documentation. A student's gender as entered on the student's official record required pursuant to 5 CCR 432 shall only be changed with written authorization of a parent/guardian having legal custody of the student. (Education Code 49061)

However, when proper documentation or authorization, as applicable, is not submitted with a request to change a student's legal name or gender, any change to the student's record shall be limited to the student's unofficial records such as attendance sheets, report cards, and school identification.

6. **Names and Pronouns:** If a student so chooses, district personnel shall be required to address the student by a name and the pronoun(s) consistent with the student's gender identity, without the necessity of a court order or a change to the student's official district record. However, inadvertent slips or honest mistakes by district personnel in the use of the student's name and/or consistent pronouns will, in general, not constitute a violation of this administrative regulation or the accompanying district policy.

7. **Uniforms/Dress Code:** A student has the right to dress in a manner consistent with the student's gender identity, subject to any dress code adopted on a school site.

Policy Reference UPDATE Service

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Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State	Description
5 CCR 432	Student records
5 CCR 4600-4670	Uniform complaint procedures
5 CCR 4900-4965	Nondiscrimination in elementary and secondary educational programs receiving state or federal financial assistance
Civ. Code 1714.1	Liability of parent or guardian for act of willful misconduct by a minor
Ed. Code 17585	School modernization project; all-gender restroom
Ed. Code 200-262.4	Prohibition of discrimination
Ed. Code 33353	California Interscholastic Federation; standardized incident form
Ed. Code 35292.5	School restrooms; all-gender restrooms
Ed. Code 48900.3	Suspension or expulsion for act of hate violence

Ed. Code 48900.4	Suspension or expulsion for harassment, threats, or intimidation
<u>Ed. Code 48900.5</u>	<u>Suspension; other means of correction</u>
Ed. Code 48904	Liability of parent/guardian for willful student misconduct
Ed. Code 48907	Exercise of free expression; time, place, and manner rules and regulations
Ed. Code 48950	Speech and other communication
Ed. Code 48985	Notices to parents in language other than English
Ed. Code 49020-49023	Athletic programs
Ed. Code 49060-49079	Student records
Ed. Code 51204.5	Social sciences instruction; contributions of specified groups
Ed. Code 51500	Prohibited instruction or activity
Ed. Code 51501	Nondiscriminatory subject matter
Ed. Code 60010	Instructional materials; definition
Ed. Code 60040-60052	Requirements for instructional materials
Gov. Code 11135	Prohibition of discrimination
Pen. Code 422.55	Definition of hate crime
Pen. Code 422.6	Crimes; harassment
Federal	Description
20 USC 1681-1688	Title IX of the Education Amendments of 1972; discrimination based on sex
28 CFR 35.107	Nondiscrimination on basis of disability; complaints
29 USC 794	Rehabilitation Act of 1973; Section 504
34 CFR 100.3	Prohibition of discrimination on basis of race, color or national origin
34 CFR 104.7	Section 504; Designation of responsible employee and adoption of grievances procedures
34 CFR 104.8	Notice of Nondiscrimination on the Basis of Handicap
34 CFR 106.45	Grievance process for formal complaints of sexual harassment
34 CFR 106.81-106.82	Designation of coordinator; dissemination of policy; and adoption of grievance procedures <u>Discrimination on the basis of sex; effectuating Title IX</u>
34 CFR 110.25	Prohibition of discrimination based on age
34 CFR 99.31	Disclosure of personally identifiable information

42 USC 12101-12213

42 USC 2000d-2000e-17

42 USC 2000h-2-2000h-6

42 USC 6101-6107

Management Resources

34 CFR 106.30

CA Office of the Attorney General
Publication

CA Office of the Attorney General
Publication

CSBA Publication

CSBA Publication

CSBA Publication

California Department of Education
Publication

Court Decision

Court Decision

Americans with Disabilities Act

Title VI and Title VII Civil Rights Act of 1964, as amended

Title IX of the Civil Rights Act of 1964

Age Discrimination Act of 1975

Description

Discrimination on the basis of sex; definitions

Promoting a Safe and Secure Learning Environment for All:
Guidance and Model Policies to Assist California's K-12
Schools in Responding to Immigration Issues, April 2018

Guidance to School Officials re: Legal Requirements for
Providing Inclusive Curricula and Books, January 2024
([https://oag.ca.gov/system/files/attachments/press-
docs/Legal%20Alert%20Re%20Inclusive%20Curricula.1.9.24.
1157CLEAN.pdf](https://oag.ca.gov/system/files/attachments/press-docs/Legal%20Alert%20Re%20Inclusive%20Curricula.1.9.24.1157CLEAN.pdf))

Instructional Materials Adoptions: State and local governing
board processes, roles, and responsibilities, February 2024
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/2024-REPD-instructional-materials-
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(<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-202405-shared-ancestry.pdf>)

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Dear Colleague Letter: Discrimination, including Harassment, Based on Shared Ancestry or Ethnic Characteristics, November 2023

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Cross References

Code

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1312.1

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Students, June 2023

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Supporting Students with Disabilities and Avoiding the
Discriminatory Use of Student Discipline under Section 504
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Examples of Policies and Emerging Practices for Supporting
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First Amendment Center

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California Office of the Attorney General

California Safe Schools Coalition

CSBA

California Department of Education

U.S. Department of Education, Office for Civil Rights

Description

Nondiscrimination In District Programs And Activities

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Comprehensive Safety Plan

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District-Sponsored Social Media

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Volunteer Assistance

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Complaints Concerning District Employees

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7110	Facilities Master Plan

Policy 5145.7: Sexual~~Sex~~ Discrimination and Sex-Based Harassment Status: ADOPTED

Original Adopted Date: 03/01/2012 | Last Revised Date: 1007/01/20202024 | Last Reviewed
Date: 1007/01/20202024

CSBA NOTE: Education Code 231.5 and 34 CFR 106.8 mandate the district to have written policies on ~~sexual~~sex discrimination and sex-based harassment. The following policy addresses sex discrimination and sex-based harassment by and of ~~against~~ students in the school setting. As part of this mandate, the district should also adopt a ~~sexual~~sex discrimination and sex-based harassment policy related to employees; see BP/AR 4119.11/4219.11/4319.11 - ~~Sexual~~ Sex Discrimination and Sex-Based Harassment and AR 4119.12/4219.12/4319.12 - Title IX ~~Sexual~~Sex Discrimination and Sex-Based Harassment Complaint Procedures.

Moreover, this Board policy and the accompanying administrative regulation reflect the right of a transgender student to participate in sex-segregated educational programs and use facilities consistent with one's gender identity, as specified in Education Code 221.5 and 34 CFR 106.31, as amended by 89 Fed. Reg. 33474, and best practices based on existing state and federal law.

Both federal law (Title IX of the Education Amendments of 1972) (20 USC 1681-1688; 34 CFR 106.1-106.82), and state law (Education Code 220, 231.5), prohibit ~~sexual~~sex discrimination, including sex-based harassment and require districts to establish procedures for the prompt and equitable resolution of ~~sexual~~ sex discrimination, including sex-based harassment complaints. Pursuant to 34 CFR 106.11 and 106.44, as amended by 89 Fed. Reg. ~~Whether~~33474, a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, is required to follow Title IX grievance procedures when investigating and resolving a complaint is addressed through ~~based on~~ the federal Title IX alleged conduct. As such a complaint procedures adopted pursuant to 34 CFR 106.44-106.45, as added by 85 Fed. may also fall within 30026, or the state scope of the uniform complaint procedures adopted pursuant to 5 CCR 4600-4670 (UCP) as specified in BP/AR 1312.3 - Uniform Complaint Procedures, it is dependent on unclear whether the alleged conduct ~~meets~~ districts would additionally be required to follow the process specified in BP/AR 1312.3 - Uniform Complaint Procedures. Due to this uncertainty, it is recommended that districts consult CSBA's District and County Office of Education Legal Services or district legal counsel prior to utilizing the UCP for this purpose. For more stringent federal definition or the state definition of sexual harassment. In order to ~~meet~~ information regarding the applicable timelines, in some instances it may be necessary to review a complaint under both Title IX grievance procedures concurrently. See the accompanying administrative regulation, BP/AR 1312.3 - Uniform Complaint Procedures, and , see AR 5145.71 -- Title IX ~~Sexual~~Sex Discrimination and Sex-Based Harassment Complaint Procedures.

34 CFR 106.2 and 106.10, as amended by 89 Fed. Reg. 33474, clarify that discrimination on the basis of sex for the purpose of Title IX includes discrimination on the basis of sex stereotypes; sex characteristics; sexual orientation; gender identity; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions or recovery; and parental, marital, and family status.

A Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, a district can be held liable for civil damages for the sexual~~sexual~~ sex discrimination, including sex-based harassment of students pursuant to Title IX if the district is found to have been "deliberately indifferent" in its response to known sexual~~sexual~~ has knowledge of conduct that reasonably may constitute sex-based harassment. Pursuant to 34 CFR 106.30, a district is deliberately indifferent if its response to Title IX sexual harassment is clearly unreasonable in light of the known circumstances. in its education program or activity and does not respond promptly and effectively.

In addition to filing a private civil lawsuit, an alleged victim of sexual~~sexual~~ sex discrimination, including sex-based harassment, may file a complaint with the California Department of Education (CDE) and/or the U.S. Department of Education's Office for Civil Rights (OCR), the federal agency responsible for administrative enforcement of federal laws and regulations that prohibit discrimination in programs and activities that receive federal financial assistance from the U.S. Department of Education.

The Governing Board is committed to maintaining a welcoming, safe, and supportive school environment that is free from harassment and discrimination. and harassment. The Board prohibits, at school or at school-sponsored or school-related activities, sexual sex discrimination and sex-based harassment, as defined in the accompanying administrative regulation, targeted at any student, based on the student's actual or perceived sex; sex stereotypes; sex characteristics; sexual orientation; gender; gender identity; gender expression; pregnancy, childbirth, termination of pregnancy or lactation, including related medical conditions or recovery; and, parental, marital, and family status.

CSBA NOTE: Districts are required to prohibit retaliation when a right or privilege secured by anyone. The Title IX is interfered with, including when a person reports possible sex discrimination, made a sex-discrimination complaint, or participated or refused to participate in any way in the district's Title IX process. Pursuant to 34 CFR 106.71, as amended by 89 Fed. Reg. 33474, when the district has information about conduct that reasonably may constitute retaliation under Title IX, including peer retaliation, the district is required to respond to such conduct using the procedures used for other forms of sex discrimination as specified in 34 CFR 106.44 and 106.45; see AR/E(1) 5145.71 – Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

Pursuant to Education Code 220.1, as added by AB 1955 (Ch. 95, Statutes of 2024), a district, including a Governing Board also member, may not retaliate or otherwise take adverse action against an employee, including by placing the employee on administrative leave, on the basis that the employee supported a student exercising rights specified in Education Code 220.1, performed work in a manner consistent with the district's legal obligations related to educational equity, or provided instruction to students consistent with current content standards, curriculum frameworks, instructional materials adopted by the state board, and state law.

Additionally, the Board prohibits retaliatory behavior or action against any person who reports, files a complaint complains or testifies about, or otherwise supports a complainant in alleging sexual conduct that reasonably may constitute sex discrimination, including sex-based harassment, reports such conduct, or otherwise participates or refuses to participate in the complaint process established for the purpose of this policy. (Education Code 220.1; 34 CFR 106.71)

CSBA NOTE: 34 CFR 106.44, as added by 85 Fed. The following two paragraphs relate 30026, requires the district, when there is actual knowledge of sexual harassment in an education

program or activity, to respond promptly in a manner that is not unreasonable in light of the known circumstances. 34 CFR 106.30, as added, defines "actual knowledge" as notice of sexual harassment or allegations of sexual harassment being submitted to the district's Title IX Coordinator, any official of the district who has authority to institute corrective measures, or any student and employee of an elementary or secondary school. reporting of sex discrimination, including sex-based harassment. It is important to note that a referral reporting to law enforcement and/or child protective services does not relieve a school district of its responsibility to investigate the complaint as a matter of sex discrimination, including sex-based harassment.

The district strongly encourages students who feel that they are being or have been sexually harassed experienced sex discrimination, including sex-based harassment, on school grounds or at a school-sponsored or school-related activity by another student, or an adult, or who have experienced off-campus sexual harassment that when the conduct has a continuing effect on campus, to immediately contact their teacher, the principal, the district's Title IX Coordinator, or any other available school employee.

CSBA NOTE: 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, requires a district to respond promptly and effectively when it has knowledge of conduct that reasonably may constitute sex discrimination or sex-based harassment in its education program or activity. 34 CFR 106.44 further obligates a district to require its Title IX Coordinator to monitor the district's programs and activities for barriers to reporting information of such conduct and its employees to notify the Title IX Coordinator when they have such information.

The following paragraph should be revised to reflect the district's timeline.

Any employee who receives a report or observes an incident of sexual harassment sex discrimination, including sex-based harassment, by or against a student in a district education program or activity shall notify/report the incident to the Title IX Coordinator: within one workday.

Once notified, the Title IX Coordinator shall ensure the complaint or allegation is addressed through AR 5145.71 - Title IX Sexual Harassment Complaint Procedures or BP/AR 1312.3 - Uniform Complaint Procedures, as applicable. Because a complaint or allegation that is dismissed or denied under the Title IX complaint procedure may still be subject to consideration under state law, the Title IX Coordinator shall ensure that any implementation of AR 5145.71 concurrently meets the requirements of BP/AR 1312.3.

The Title IX Coordinator shall offer supportive measures to the complainant and respondent, as deemed appropriate under the circumstances. Administrative Regulation 5145.71 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

CSBA NOTE: Education Code 234.6, as added by AB 34 (Ch. 282, Statutes of 2019), requires districts, beginning in the 2020-21 school year, to post the district's written policy on sexual harassment in a prominent location on the district's web site in a manner that is easily accessible to parents/guardians and students.

Education Code 231.6, as added by AB 543 (Ch. 428, Statutes of 2019), requires districts serving students in grades 9-12 to create a poster that notifies students of the district's sexual harassment policy, and to display it prominently and conspicuously in each bathroom and locker room on campus.

Education Code 231.5, as amended by AB 543, requires the district to provide a copy of the district's sexual harassment policy as part of any orientation program conducted for new and continuing students.

Pursuant to 34 CFR 106.8, the district is required to notify students, parents/guardians, employees, and bargaining units of its policy to not discriminate on the basis of sex as well as its complaint procedures and processes, and to post this information in a prominent location on the district's web site and in student and staff handbooks.

Requirements related to the dissemination of the district's sexual harassment policy and procedures and best practices for reinforcing the policy are addressed in the accompanying administrative regulation.

The Superintendent or designee shall inform students and parents/guardians of the district's sexual harassment policy by disseminating it through parent/guardian notifications, publishing it on the district's web site, and including it in student and staff handbooks. All district staff shall be trained regarding the policy.

Instruction/Information

CSBA NOTE: Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, when the Title IX Coordinator is notified of conduct that reasonably may constitute sex discrimination, including sex-based harassment, the Title IX Coordinator is required to offer and coordinate supportive measures to the complainant, and, if the district has begun grievance procedures or offered an informal resolution process to the respondent, offer and coordinate supportive measures to the respondent, as appropriate.

The Title IX Coordinator shall offer and coordinate supportive measures to be provided to the complainant and, if the district has begun grievance procedures or offered an informal resolution process to the respondent, offer and coordinate supportive measures to be provided to the respondent as deemed appropriate under the circumstances.

CSBA NOTE: 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, requires that all employees receive training related to their duties under Title IX promptly upon hire or change of position that alters their duties under Title IX, and annually thereafter. The training provided to all employees is required to include the district's obligation to address sex discrimination, the scope of conduct that constitutes sex discrimination under Title IX, including the definition of sex-based harassment, and the applicable notice and information requirements. 34 CFR 106.8, as amended 89 Fed. Reg. 33474, requires additional training for (1) investigators, decisionmakers, and other persons who are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures, (2) facilitators of an informal resolution process, and (3) Title IX Coordinators and designees.

The Superintendent or designee shall ensure that all district staff are trained regarding the district's sex discrimination and sex-based harassment policy, and that all employees receive training related to their duties under Title IX as specified in Administrative Regulation 4119.11/4219.11/4319.11 - Sex Discrimination and Sex-Based Harassment. (34 CFR 106.8)

Instruction/Information

CSBA NOTE: Pursuant to Education Code 231.7, as added by AB 1071 (Ch. 65, Statutes of 2023), CDE is required to make available on its website (1) resources on abuse, including sexual, emotional, and physical abuse, and teen dating violence prevention for professional learning purposes, (2) information about local and national hotlines and services for youth experiencing teen dating violence, and (3) other relevant materials for parents/guardians, and other caretakers of students.

The Superintendent or designee shall ensure that all district students receive age-appropriate information on ~~sexual~~sex discrimination and sex-based harassment. Such instruction and information shall include:

1. What acts and behavior constitute ~~sexual~~sex discrimination and sex-based harassment, including the fact that ~~sexual~~sex discrimination and sex-based harassment could occur between people of the same sex and could involve sexual violence
2. A clear message that students do not have to endure ~~sexual~~sex discrimination or sex-based harassment under any circumstance
3. Encouragement to report observed incidents of ~~sexual~~sex discrimination and sex-based harassment even when the alleged victim of the discrimination or harassment has not complained

CSBA NOTE: Where ~~sexual~~sex discrimination, or sex-based harassment or violence, occurs in the context of other possible rule violations, students may be reluctant to report ~~sexual harassment or violence: such conduct.~~ For example, a student who is ~~sexually harassed~~experiences sex-based harassment while away from school without permission may be reluctant to file a complaint if the student believes discipline will be imposed for the violation. As such, ~~item~~Item #4 below clarifies that any other rule violation will be addressed separately from the ~~sexual~~sex discrimination and/or sex-based harassment complaint in order to encourage students to report the harassment.

4. A clear message that student safety is the district's primary concern, and that any separate rule violation involving an alleged victim or any other person reporting a ~~sexual~~sex discrimination or sex-based harassment incident will be addressed separately and will not affect the manner in which the ~~sexual~~sex discrimination or sex-based harassment complaint will be received, investigated, or resolved
5. A clear message that, regardless of a complainant's noncompliance with the writing, timeline, or other formal filing requirements, every ~~sexual~~sex discrimination and sex-based harassment allegation that involves a student, whether as the complainant, respondent, or victim of the discrimination or harassment, shall be investigated and action shall be taken to respond to harassment, prevent recurrence, and address any continuing effect on students
6. Information about the district's procedures for investigating complaints and the person(s) to whom a report of ~~sexual~~sex discrimination and/or sex-based harassment should be made
7. Information about the rights of students and parents/guardians to file a civil or criminal complaint, as applicable, including the right to file a civil or criminal complaint while the district investigation of a ~~sexual~~sex discrimination or sex-based harassment complaint continues

8. A clear message that, when needed, the district will implement supportive measures to ensure a safe school environment for a student who is the complainant or victim of sexual~~sex~~ discrimination or sex-based harassment and/or other students during an investigation

Disciplinary Actions

CSBA NOTE: Pursuant to Education Code 48900.2, a student in grades 4-12 may be suspended and/or expelled from school for sexual~~sex~~-based harassment. Education Code 48915(c) requires the Superintendent or ~~designee~~ or designee to recommend expulsion for any student, irrespective of grade, who commits sexual assault or battery as defined in the Penal Code. See For more information regarding suspension and expulsion, see AR 5144.1 - Suspension and Expulsion/Due Process and AR 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities).

When there is an allegation of Title IX sex discrimination, including sex-based harassment, 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, prohibits the district from imposing any disciplinary sanctions against a respondent for the allegedly discriminatory behavior until the grievance procedures are completed.

Upon completion of an investigation of a sexual~~sex~~ discrimination and/or sex-based harassment ~~complaint~~, any student found to have engaged in sexual~~sex~~ discrimination, and/or sex-based harassment or sexual violence, in violation of this policy, shall be subject to disciplinary action. For students in grades 4-12, disciplinary action may include suspension and/or expulsion, provided that, in imposing such discipline, the entire circumstances of the incident(s) shall be taken into account.

Upon investigation of a sexual~~sex~~ discrimination and/or sex-based harassment ~~complaint~~, any employee found to have engaged in sexual~~sex~~ discrimination against, and/or sex-based harassment or sexual violence toward, any student, shall be subject to disciplinary action, up to and including dismissal, in accordance with law and the applicable collective bargaining agreement.

Record-Keeping

CSBA NOTE: Pursuant to 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, the district is required to keep the following records for at least seven years: (1) for each complaint of sex discrimination, including sex-based harassment, records documenting any informal resolution process implemented in accordance with 34 CFR 106.44 or grievance procedures implemented in accordance with 34 CFR 106.45, (2) for each notification the Title IX Coordinator receives of information about conduct that may reasonably constitute sex discrimination under Title IX, actions taken to fulfill the district's obligations as specified in 34 CFR 106.44, including supportive measures, and (3) all materials used to train district employees; the Title IX Coordinator and designees; investigators, decisionmakers, and other persons who are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures; and any person who facilitates an informal resolution process.

In accordance with law and district policies and regulations, the Superintendent or designee shall maintain a record of all reported cases of sexual The Superintendent or designee shall maintain records in accordance with law, including in accordance with 34 CFR 106.8 as specified in Administrative Regulation 5145.71 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures, and district policies and regulations, of all reported cases of sex-based

harassment to enable the district to monitor, address, and prevent repetitive harassing behavior in district schools.

Policy Reference UPDATE Service

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Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State	Description
5 CCR 432	Student records
5 CCR 4600-4670	Uniform complaint procedures
5 CCR 4900-4965	Nondiscrimination in elementary and secondary educational programs receiving state or federal financial assistance
Civ. Code 1714.1	Liability of parent or guardian for act of willful misconduct by a minor
Civ. Code 51.9	Liability for sexual harassment; business, service and professional relationships
Ed. Code 200-262.4	Prohibition of discrimination
Ed. Code 220.1	Prohibition of retaliation related to educational equity
Ed. Code 220.3	Prohibition of disclosure of information related to student's sexual orientation, gender identity, or gender expression
Ed. Code 220.5	Prohibition of policies requiring disclosure of information related to student's sexual orientation, gender identity, or gender expression
Ed. Code 35292.5	School restrooms: all-gender restrooms
Ed. Code 48900	Grounds for suspension or expulsion
Ed. Code 48900.2	Additional grounds for suspension or expulsion; sexual harassment
Ed. Code 48904	Liability of parent/guardian for willful student misconduct
Ed. Code 48980	Parent/Guardian notifications
Ed. Code 48985	Notices to parents in language other than English
Ed. Code 49060-49079	Student records
Gov. Code 12950.1	Sexual harassment training
Federal	Description
20 USC 1092	Definition of sexual assault
20 USC 1221	Application of laws
20 USC 1232g	Family Educational Rights and Privacy Act (FERPA) of 1974
20 USC 1681-1688	Title IX of the Education Amendments of 1972; discrimination based on sex

34 CFR 106.1-106.82	Nondiscrimination on the basis of sex in education programs
34 CFR 99.1-99.67	Family Educational Rights and Privacy
34 USC 12291	Definition of dating violence, domestic violence, and stalking
42 USC 1983	Civil action for deprivation of rights
42 USC 2000d-2000d-7	Title VI, Civil Rights Act of 1964
42 USC 2000e-2000e-17	Title VII, Civil Rights Act of 1964, as amended
Management Resources	Description
Court Decision	Gebser v. Lago Vista Independent School District (1998) 524 U.S. 274
Court Decision	Oona by Kate S. v. McCaffrey (1998, 9th Cir.) 143 F.3d 473
Court Decision	Reese v. Jefferson School District (2001, 9th Cir.) 208 F.3d 736
Court Decision	Davis v. Monroe County Board of Education (1999) 526 U.S. 629
Court Decision	Doe v. Petaluma City School District (1995, 9th Cir.) 54 F.3d 1447
Court Decision	Donovan v. Poway Unified School District (2008) 167 Cal.App.4th 567
Court Decision	Flores v. Morgan Hill Unified School District (2003, 9th Cir.) 324 F.3d 1130
<u>Federal Register</u>	<u>Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, April 29, 2024, Vol. 89, No. 83, pages 33474-33896</u> <u>(https://www.federalregister.gov/documents/2024/04/29/2024-07915/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal)</u>
<u>CSBA Publication</u>	<u>Legal Guidance on Rights of Transgender and Gender Nonconforming Students in Schools, October 2022</u>
CSBA Publication	Safe Schools: Strategies for Governing Boards to Ensure Student Success, 2011
CSBA Publication	Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students, Policy Brief, February 2014
U.S. DOE, Office for Civil Rights <u>California Department of Education</u> Publication	<u>Q&A on Campus Sexual Misconduct, September 2017</u> <u>California Longitudinal Pupil Achievement Data System (CALPADS) Update FLASH #158: Guidance for Changing a Student's Gender in CALPADS, July 2019</u>
U.S. DOE, Office for Civil Rights Publication	Sexual Harassment: It's Not Academic, September 2008
U.S. DOE, Office for Civil Rights Publication	Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, January 2001

U.S. DOE, Office for Civil Rights Examples of Policies and Emerging Practices for Supporting Transgender Students, May 2016
Publication

~~U.S. DOE, Office for Civil Rights Dear Colleague Letter: Title IX Coordinators, April 2015~~
Publication

Website CSBA District and County Office of Education Legal Services

Website California Department of Education

Website CSBA

Website U.S. Department of Education, Office for Civil Rights

Cross References

Code	Description
0410	Nondiscrimination In District Programs And Activities
0450	Comprehensive Safety Plan
0450	Comprehensive Safety Plan
1114	District-Sponsored Social Media
1114	District-Sponsored Social Media
1312.1	Complaints Concerning District Employees
1312.1	Complaints Concerning District Employees
1312.3	Uniform Complaint Procedures
1312.3	Uniform Complaint Procedures
1312.3-E(1)	Uniform Complaint Procedures
1312.3-E(2)	Uniform Complaint Procedures
1313	Civility
3515.4	Recovery For Property Loss Or Damage
3515.4	Recovery For Property Loss Or Damage
3530	Risk Management/Insurance
3530	Risk Management/Insurance
3580	District Records
3580	District Records
4117.7	Employment Status Reports
4118	Dismissal/Suspension/Disciplinary Action
4118	Dismissal/Suspension/Disciplinary Action
4119.11	<u>Sex Discrimination and Sexual</u> Sex-Based Harassment

4119.11	<u>Sex Discrimination and SexualSex-Based Harassment</u>
<u>4119.12</u>	<u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4131	Staff Development
4218	Dismissal/Suspension/Disciplinary Action
4218	Dismissal/Suspension/Disciplinary Action
4219.11	<u>Sex Discrimination and SexualSex-Based Harassment</u>
4219.11	<u>Sex Discrimination and SexualSex Harassment</u>
<u>4219.12</u>	<u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4219.21	Professional Standards
4219.21-E(1)	Professional Standards
4231	Staff Development
4317.7	Employment Status Reports
4319.11	<u>Sex Discrimination and SexualSex-Based Harassment</u>
4319.11	<u>Sex Discrimination and SexualSex-Based Harassment</u>
<u>4319.12</u>	<u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4319.21	Professional Standards
4319.21-E(1)	Professional Standards
5125	Student Records
5125	Student Records
5131	Conduct
5131.2	Bullying
5131.2	Bullying
5131.5	Vandalism And Graffiti
5132	Dress And Grooming
5132	Dress And Grooming
5137	Positive School Climate
5138	Conflict Resolution/Peer Mediation
5141.4	Child Abuse Prevention And Reporting
5141.4	Child Abuse Prevention And Reporting

5141.52	Suicide Prevention
5141.52	Suicide Prevention
5144	Discipline
5144	Discipline
5144.1	Suspension And Expulsion/Due Process
5144.1	Suspension And Expulsion/Due Process
5144.2	Suspension And Expulsion/Due Process (Students With Disabilities)
5145.2	Freedom Of Speech/Expression
5145.2	Freedom Of Speech/Expression
5145.3	Nondiscrimination/Harassment
5145.3	Nondiscrimination/Harassment
5145.6	Parent/Guardian Notifications
5145.6-E(1)	Parent/Guardian Notifications
5145.71	Title IX Sexual Sex Discrimination and Sex-Based Harassment Complaint Procedures
5145.71-E(1)	Title IX Sexual Sex Discrimination and Sex-Based Harassment Complaint Procedures
5145.9	Hate-Motivated Behavior
6142.1	Sexual Health And HIV/AIDS Prevention Instruction
6142.1	Sexual Health And HIV/AIDS Prevention Instruction
6142.8	Comprehensive Health Education
6142.8	Comprehensive Health Education
6145	Extracurricular And Cocurricular Activities
6145	Extracurricular And Cocurricular Activities
6145.2	Athletic Competition
6145.2	Athletic Competition
6163.4	Student Use Of Technology
6163.4-E(1)	Student Use Of Technology

Regulation 5145.7: Sexual~~Sex~~ Discrimination and Sex-Based Harassment

Status: ADOPTED

Original Adopted Date: 10/01/2014 | Last Revised Date: 10~~07~~7/01/2020~~2024~~ | Last Reviewed Date: 10~~07~~7/01/2020~~2024~~

CSBA NOTE: Education Code 231.5 and Title IX of the Education Amendments of 1972 (20 USC 1681-1688; 34 CFR 106.1-106.82) prohibit discrimination based on sex, including sexual~~sex-based~~ harassment, and mandate that the district adopt and publish complaint procedures. Also~~For more~~ information regarding Title IX complaint procedures, see AR 5145.71 - Title IX Sexual~~Sex~~ Discrimination and Sex-Based Harassment Complaint Procedures.

The district does not discriminate on the basis of sex in any of its programs or activities and complies with Title IX of the Education Amendments of 1972 and its implementing regulations. Sex discrimination, including sex-based harassment, is prohibited in district education programs and activities.

Definitions

CSBA NOTE: Education Code 212.5 defines sexual harassment as any unwelcome sexual advance, request for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone in the educational setting. For purposes of suspension and expulsion, Education Code 48900.2 defines sexual harassment as conduct, when considered from the perspective of a reasonable person of the same gender as the victim, that is sufficiently severe or pervasive as to have a negative impact upon the victim's academic performance or to create an intimidating, hostile, or offensive educational environment for the victim; see AR 5144.1 - Suspension and Expulsion/Due Process. Conduct that meets the federal definition of sexual harassment in 34 CFR 106.30 (i.e., (1) a district employee conditioning the provision of a district aid, benefit, or service on an individual's participation in unwelcome sexual conduct; (2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity; or (3) sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 and 34 USC 12291) requires investigation and resolution through Title IX regulations; see AR 5145.71 - Title IX Sexual Harassment Complaint Procedures. CSBA NOTE: 34 CFR 106.2 and 106.10, as amended by 89 Fed. Reg. 33474, clarify that sex discrimination includes discrimination on the basis of sex stereotypes; sex characteristics; sexual orientation; gender identity; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions or recovery; and parental, marital, and family status. Those provisions further clarify that sex-based harassment includes harassment on the basis of a sex stereotype, sex characteristic, any of the other specified bases, and when sex-based harassment may create a hostile environment.

Sex discrimination includes treating a student differently with respect to the provision of opportunities to participate in school programs or activities or the provision or receipt of educational benefits or services based on the student's sex, sex stereotypes; sex characteristics; sexual orientation; gender; gender identity; gender expression; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions and recovery; parental, family, or

marital status; or the student's association with a person or group with one or more of these actual or perceived characteristics.

Sex discrimination, including sex-based harassment, intimidation, or bullying, may result from physical, verbal, nonverbal, or written conduct and occurs when prohibited conduct is so severe, persistent, or pervasive that it affects a student's ability to participate in or benefit from an educational program or activity; creates an intimidating, threatening, hostile, or offensive educational environment; has the effect of substantially or unreasonably interfering with a student's academic performance; or otherwise adversely affects a student's educational opportunities.

CSBA NOTE: Education Code 212.5 defines sexual harassment as any unwelcome sexual advance, request for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone in the educational setting. For purposes of suspension and expulsion, Education Code 48900.2 defines sexual harassment as conduct, when considered from the perspective of a reasonable person of the same gender as the victim, that is sufficiently severe or pervasive as to have a negative impact upon the victim's academic performance or to create an intimidating, hostile, or offensive educational environment for the victim; see AR 5144.1 - Suspension and Expulsion/Due Process.

Pursuant to 34 CFR 106.2, as amended by 89 Fed. Reg. 33474, sex-based harassment includes (1) a district employee, agent, or other individual authorized by the district to provide an aid, benefit, or service under the district's education program or activity explicitly or impliedly conditioning the provision of a district aid, benefit, or service on an individual's participation in unwelcome sexual conduct, (2) "hostile environment harassment," defined as unwelcome sex-based conduct that, based on the totality of the circumstance, 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, or (3) sexual assault, dating violence, domestic violence, or stalking, as defined in 34 CFR 106.2.

Sex-based harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, sex stereotypes, sex characteristics, or other bases specified above. Conduct will constitute sex-based harassment when it takes the form of: (34 CFR 106.2, 106.11)

1. Quid pro quo harassment: A district employee, agent, or other individual authorized by the district to provide an aid, benefit, or service in the district's education program or activity conditioning the provision of district aid, benefit, or service on a student's participation in unwelcome sexual conduct

CSBA NOTE: Pursuant to 34 CFR 106.11, as amended by 89 Fed. Reg. 33474, Title IX grievance procedures are required for Title IX sex discrimination complaints, including sex-based harassment complaints, for conduct which occurs on or after August 1, 2024 under the district's education program or activity, which includes conduct alleged to be contributing to a hostile environment that occurred outside the district's education program or activity or outside the United States. Item #2 below reflects "hostile environment harassment" as defined by 34 CFR 106.2, as amended by 89 Fed. Reg. 33474.

2. Hostile environment harassment: Unwelcome sex-based conduct that, based on the totality of the circumstances, 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

Any prohibited conduct that occurs off campus or outside of school-related or school-sponsored programs or activities will be regarded as sex-based harassment in violation of district policy if it has a continuing effect on a student's ability to participate in or benefit from district educational programs or activities.

3. Sexual assault, dating violence, domestic violence, or stalking as defined in 34 CFR 106.2

Sexual harassment includes, but is not limited to, unwelcome sexual advances, unwanted requests for sexual favors, or other unwanted verbal, visual, or physical conduct of a sexual nature made against another person of the same or opposite sex in the educational setting, under any of the following conditions: (Education Code 212.5; 5 CCR 4916)

1. Submission to the conduct is explicitly or implicitly made a term or condition of a student's academic status or progress:
2. Submission to or rejection of the conduct by a student is used as the basis for academic decisions affecting the student:
3. The conduct has the purpose or effect of having a negative impact on the student's academic performance or of creating an intimidating, hostile, or offensive educational environment:
4. Submission to or rejection of the conduct by the student is used as the basis for any decision affecting the student regarding benefits and services, honors, programs, or activities available at or through any district program or activity:

Any prohibited conduct that occurs off campus or outside of school-related or school-sponsored programs or activities will be regarded as sexual harassment in violation of district policy if it has a continuing effect on or creates a hostile school environment for the complainant or victim of the conduct.

For purposes of applying the complaint procedures specified in Title IX of the Education Amendments of 1972, sexual harassment is defined as any of the following forms of conduct that occurs in an education program or activity in which a district school exercises substantial control over the context and respondent: (34 CFR 106.30, 106.44)

- 1.—A district employee conditioning the provision of a district aid, benefit, or service on the student's participation in unwelcome sexual conduct
- 2.—Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a student equal access to the district's education program or activity
- 3.—Sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 or 34 USC 12291

Examples of ~~Sexual~~ **Sex Discrimination and Sex-Based** Harassment

CSBA NOTE: The following list contains common examples of sexual harassment from the U.S. Department of Education's Office for Civil Rights (OCR) January 2001 Revised Sexual Harassment

Guidance, which has been rescinded, and definitions specified in 5 CCR 4916. Some items on this list have been modified to make them applicable to sex-based harassment in general, not just sexual harassment.

Examples of types of conduct which are prohibited in the district and which may constitute ~~sexual~~sex- based harassment, under state and/or federal law, in accordance with the definitions above, include, but are not limited to:

1. Unwelcome leering, sexual flirtations, or propositions
2. Unwelcome ~~sexual~~sex-based slurs, epithets, threats, verbal abuse, derogatory comments, or sexually degrading descriptions
3. Graphic verbal comments about an individual's body or overly personal conversation
4. ~~Sexual~~ Sex-based jokes, derogatory posters, notes, stories, cartoons, drawings, pictures, obscene gestures, or computer-generated images of a sexual nature
5. Spreading ~~sexual~~sex-based rumors
6. Teasing or sexual remarks about students enrolled in a predominantly single-sex class
7. Massaging, grabbing, fondling, stroking, or brushing the body
8. Touching an individual's body or clothes in a sexual way
9. Impeding or blocking movements or any physical interference with school activities when directed at an individual on the basis of sex
10. Displaying sexually suggestive objects
11. Sexual assault, sexual battery, or sexual coercion
12. Electronic communications containing comments, words, or images described above

Title IX Coordinator/Compliance Officer

CSBA NOTE: Pursuant to 34 CFR 106.8, districts that receive federal financial assistance are mandated to designate an employee to ensure district compliance with Title IX and its implementing regulations. If the district has more than one Title IX Coordinator, it must designate one of its Title IX Coordinators to retain ultimate oversight over those responsibilities. The following paragraph specifies that the Title IX Coordinator will be the same person(s) designated to serve as the ~~compliance officer~~Compliance Officer(s) for the district's uniform complaint procedures (UCP)

pursuant to AR 1312.3 - Uniform Complaint Procedures. Districts may modify this regulation to designate separate district employees to serve these functions.

The district designates the following individual(s) as the responsible employee(s) to coordinate its efforts to comply with Title IX of . The individual(s) shall also serve as the Education Amendments of 1972 Compliance Officer(s) specified in accordance with AR 5145.71 - Title IX Sexual Harassment Complaint Procedures, as well as to oversee investigate, and/or resolve sexual harassment complaints processed under AR Administrative Regulation 1312.3 - Uniform Complaint Procedures. and Administrative Regulation 5145.3 - Nondiscrimination/Harassment as the responsible employee(s) to handle student complaints alleging unlawful discrimination, as permitted by law. The Title IX Coordinator(s) may be contacted at:

(title or position)

(address)

(telephone number)

(email)

CB
15305 Rockwood Rd, Escondido, CA
92027
762-7115-4931
SPUSDE@sanpascualunison.net

Notifications

The Superintendent or designee shall notify students and parents/guardians that the district does not discriminate on the basis of sex as required by Title IX and that inquiries about the application of Title IX to the district may be referred to the district's Title IX Coordinator and/or to the Assistant Secretary for Civil Rights, U.S. Department of Education. (34 CFR 106.8)

The district shall notify students and parents/guardians of the name or title, office address, email address, and telephone number of the district's Title IX Coordinator. (34 CFR 106.8)

A copy of the district's sexual harassment policy and regulation shall:

- 1.—Be included in the notifications that are sent to parents/guardians at the beginning of each school year (Education Code 48980; 5 CCR 4917)

CSBA NOTE: As part of its responsibility to monitor district compliance with legal requirements concerning discrimination pursuant to Education Code 234.1, as amended by SB 153 (Ch. 38, Statutes of 2024), the California Department of Education (CDE) is required to ensure that the district prominently and conspicuously displays its nondiscrimination policies in all areas that are accessible to, and commonly frequented by, school site employees, students, and members of the public at each school site and district office, including, but not limited to, in school office lobbies, staff lounges, student government meeting rooms, and on the district's website. Additionally, Title IX, and its implementing regulations, 34 CFR 106.1-106.82, as amended by 89 Fed. Reg. 33474, require the district to provide notifications and take specified actions to prevent sex discrimination, including sex-based harassment. For more information regarding measures to prevent discrimination, see AR 5145.3 - Nondiscrimination/Harassment.

To prevent unlawful sex discrimination and sex-based harassment in district programs and activities, the Superintendent or designee shall provide notifications and implement measures to prevent

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discrimination and harassment as specified in Administrative Regulation 5145.3 - Nondiscrimination/Harassment.

In addition to the measures to prevent discrimination specified in Administrative Regulation 5145.3 - Nondiscrimination/Harassment, the Superintendent or designee shall ensure that a copy of the district's sex discrimination and sex-based harassment policy and regulation:

2. 1. Be is displayed in a prominent location in the main administrative building or other area where notices of district rules, regulations, procedures, and standards of conduct are posted (Education Code 231.5)

CSBA NOTE: Education Code 231.6, as added by AB 543 (Ch. 428, Statutes of 2019), requires districts serving students in grades 9-12 to create a poster that notifies students of the district's sexual harassment policy, and to display it, as specified below. The district may partner with local, state, or federal agencies, or nonprofit organizations, for the purposes of the design and content of the poster.

3. 2. Be is summarized on a poster, which shall be prominently and conspicuously displayed in each bathroom and locker room at each school:

 The poster may be displayed in public areas that are accessible to and frequented by students, including, but not limited to, classrooms, hallways, gymnasiums, auditoriums, and cafeterias. The poster shall display the rules and procedures for reporting a charge of sexual harassment; the name, phone number, and email address of an appropriate school employee to contact to report a charge of sexual harassment; the rights of the reporting student, the complainant, and the respondent; and the responsibilities of the school. (Education Code 231.6)

CSBA NOTE: Education Code 234.6, as added by AB 34 (Ch. 282, Statutes of 2019), requires districts, beginning in the 2020-21 school year, to post on the district's web site the district's written policy on sexual harassment as well as other state and federal law requirements, in the manner specified below. 34 CFR 106.8 also requires districts that have web sites to prominently display the contact information for the Title IX Coordinator and the district's nondiscrimination policy on its web site.

3. Be posted, along with the name or title and contact information of the Title IX Coordinator, in a prominent location on the district's web site in a manner that is easily accessible to parents/guardians and students. (Education Code 234.6; 34 CFR 106.8)

CSBA NOTE: Education Code 231.5, as amended by AB 543, requires the district to provide a copy of the district's sexual harassment policy as part of any orientation program conducted for new and continuing students.

4. Be 3. Is provided as part of any orientation program conducted for new and continuing students at the time the student is enrolled or at the beginning of each quarter, semester, or summer session (Education Code 231.5)
5. Appear 4. Appears in any school or district publication that sets forth the school's or district's comprehensive rules, regulations, procedures, and standards of conduct (Education Code 231.5)

6. Be included, along with the name or title and contact information of the Title IX Coordinator, in any handbook provided to students or parents/guardians (34 CFR 106.8)

CSBA NOTE: Education Code 234.6, as added by AB 34, requires a district, starting in the 2020-21 school year, to post the definitions specified below. Also see AR 5145.3 - Nondiscrimination/Harassment for language reflecting this requirement and other notifications related to sex discrimination.

Reporting Complaints Reports and Complaints

CSBA NOTE: The Superintendent or designee shall also post the definition following paragraph relates to student and employee reporting of sex discrimination and harassment as described in Education Code 230, including the rights set forth in Education Code 221.8, in a prominent location on the district's web site in a manner that is easily accessible to parents/guardians and students. (Education Code 234.6) sex-based harassment, and should be revised to reflect the district's timeline.

A student or a student's parent/(s)/guardian(s) who believes that the student has been subjected to sexual sex discrimination, including sex-based harassment by another student, an employee, or a third party, in a district program or activity or who has witnessed sexual sex discrimination, including sex-based harassment, is strongly encouraged to report the incident to the district's Title IX Coordinator, a teacher, the principal, the district's Title IX Coordinator, or any other available school employee. Within one school day workday of receiving such a report, the principal or other school employee shall forward the report to the district's Title IX Coordinator. Any school employee who observes an incident of sexual sex discrimination or sex-based harassment involving a student shall, within one school day workday, report the observation to the principal or Title IX Coordinator: as specified in the accompanying board policy. The report shall be made regardless of whether the alleged victim files a formal complaint or requests confidentiality.

When a report or complaint of sexual sex discrimination or sex-based harassment involves off-campus conduct, the Title IX Coordinator shall assess whether the conduct may create or contribute to the creation of a hostile school environment. If the Title IX Coordinator determines that a hostile environment may be created, the complaint shall be investigated and resolved in the same manner as if the prohibited conduct occurred at school.

When a verbal or informal report of sexual harassment is submitted, the Title IX Coordinator shall inform the student or parent/guardian of the right to file a formal written complaint in accordance with applicable district complaint procedures.

Complaint Procedures

All complaints and allegations of sexual harassment by and against students shall be investigated and resolved in accordance with law and district procedures. The Title IX Coordinator shall review the allegations to determine the applicable procedure for responding to the complaint. All complaints that meet the definition of sexual harassment under Title IX shall be investigated and resolved in accordance with AR 5145.71 - Title IX Sexual Harassment Complaint Procedures. Other sexual harassment complaints shall be investigated and resolved pursuant to BP/AR 1312.3 - Uniform Complaint Procedures.

If sexual harassment is found following an investigation, the Title IX Coordinator, or designee in consultation with the Coordinator, shall take prompt action to stop the sexual harassment, prevent recurrence, implement remedies, and address any continuing effects.

Complaint Procedures

CSBA NOTE: Pursuant to 34 CFR 106.11 and 106.44, as amended by 89 Fed. Reg. 33474, a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, is required to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct. As such a complaint may also fall within the scope of the UCP as specified in BP/AR 1312.3 – Uniform Complaint Procedures, it is unclear whether districts would additionally be required to follow the process specified in BP/AR 1312.3 – Uniform Complaint Procedures. Due to this uncertainty, it is recommended that districts consult CSBA's District and County Office of Education Legal Services or district legal counsel prior to utilizing the UCP for this purpose. For more information regarding the Title IX grievance procedures, see AR 5145.71 – Sex Discrimination and Sex-Based Harassment Complaint Procedures.

All complaints and allegations of sex discrimination and sex-based harassment shall be investigated and resolved in accordance with 34 CFR 106.44 and 106.45 and Administrative Regulation 5145.71 – Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

Issues Unique to Intersex, Nonbinary, Transgender and Gender-Nonconforming Students

CSBA NOTE: The terms and definitions used below are consistent with California law, case law, and generally accepted terms within academia and in publications issued by state and federal agencies such as CDE and OCR, including provisions in the California Gender Recognition Act that recognize three gender options, female, male, and nonbinary, and define "nonbinary" and other related terms such as "intersex" and "transgender". In addition to consistency with the above, the definition of "gender identity" below is consistent with the Resolution Agreement between the Arcadia Unified School District, OCR, and the U.S. Department of Justice, Civil Rights Division, which defines "gender identity" as "one's internal sense of gender, which may be different from one's assigned sex, and which is consistently and uniformly asserted, or for which there is other evidence that the gender identity is sincerely held as part of the student's core identity."

The following section is also consistent with OCR's fact sheet "Supporting Intersex Students: A Resource for Students, Families, and Educators," issued in October 2021 and CDE's "Update FLASH #158, Guidance for Changing a Student's Gender in CALPADS," which provides guidance on changing a student's gender and/or legal name on the student's mandatory permanent record.

Gender identity of a student means the student's gender-related identity, appearance, or behavior as determined from the student's internal sense, regardless of whether that gender-related identity, appearance, or behavior is different from that traditionally associated with the student's physiology or assigned sex at birth.

Gender expression means a student's gender-related appearance and behavior, whether stereotypically associated with the student's assigned sex at birth. (Education Code 210.7)

Gender transition refers to the process in which a student changes from living and identifying as the sex assigned to the student at birth to living and identifying as the sex that corresponds to the student's gender identity.

Gender-nonconforming student means a student whose gender expression differs from stereotypical expectations.

Intersex student means a student with natural bodily variations in anatomy, hormones,

chromosomes, and other traits that differ from expectations generally associated with female and male bodies.

Nonbinary student means a student whose gender identity falls outside of the traditional conception of strictly either female or male, regardless of whether the student identifies as transgender, was born with intersex traits, uses gender-neutral pronouns, or uses agender, genderqueer, pangender, gender nonconforming, gender variant, or such other more specific term to describe their gender.

Transgender student means a student whose gender identity is different from the gender assigned at birth.

CSBA NOTE: 34 CFR 106.2 and 106.10, as amended by 89 Fed. Reg. 33474, clarify that discrimination on the basis of sex for the purpose of Title IX includes discrimination on the basis of sex stereotypes; sex characteristics; sexual orientation; gender identity; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions or recovery; and parental, marital, and family status.

Starting in the 2025-26 school year through the 2029-2030 school year, Education Code 218.3, as added by AB 5 (Ch. 220, Statutes of 2023), requires a district serving students in any of grades 7-12 to provide at least one hour of training annually to all teachers and certificated employees serving students in grades 7-12 which incorporates CDE's online training curriculum to support lesbian, gay bisexual, transgender, queer, and questioning (LGBTQ+) cultural competency. The district is required to maintain records documenting the date that each employee completed the training and the name of the entity that provided the training; see AR 5145.3 – Nondiscrimination/Harassment.

Pursuant to Education Code 219, as added by SB 857 (Ch. 228, Statutes of 2023), the State Superintendent of Public Instruction has established the LGBTQ+ Statewide Advisory Task Force (LGBTQ+SAT) to identify the needs of LGBTQ+ students and to make recommendations to assist in implementing supportive policies and initiatives including: (1) mental health and feelings of safety and support, (2) inclusive and safe access to school facilities, (3) inclusive instructional material and school curriculum, (4) prevention of, response to, and oversight of, bullying and harassment to determine the effectiveness of policies and programs, and (5) inclusive participation in school activities. For more information on the LGBTQ+SAT, see CDE's website.

Districts with questions about the rights of transgender and gender-nonconforming students should consult CSBA's District and County Office of Education Legal Services or district legal counsel. For more information on the rights of transgender students, see CSBA's, "Legal Guidance on Rights of Transgender and Gender Nonconforming Students in Schools."

The district prohibits acts of verbal, nonverbal, or physical aggression, intimidation, or hostility that are based on sex, sex stereotypes, sex characteristics, sexual orientation, gender identity, or gender expression, or that have the purpose or effect of producing a negative impact on the student's academic performance or of creating an intimidating, hostile, or offensive educational environment, regardless of whether the acts are sexual in nature. Examples of the types of conduct that are prohibited in the district and which may constitute sex-based hostile environment harassment include, but are not limited to:

1. Refusing to address a student by a name and the pronouns consistent with the student's gender identity

2. Disciplining or disparaging a student or excluding the student from participating in activities, for behavior or appearance that is consistent with the student's gender identity or that does not conform to stereotypical notions of masculinity or femininity, as applicable
3. Blocking a student's entry to the restroom that corresponds to the student's gender identity
4. Taunting a student because the student participates in an athletic activity more typically favored by a student of the other sex
5. Revealing a student's gender identity to individuals who do not have a legitimate need for the information, without the student's consent
6. Using gender-specific slurs
7. Assaulting a student because of the student's gender, sex characteristic, sexual orientation, gender identity, or gender expression

To ensure that intersex, nonbinary, transgender, and gender-nonconforming students are afforded the same rights, benefits, and protections provided to all students by law and Board policy, the district shall address each situation on a case-by-case basis, in accordance with the following guidelines:

CSBA NOTE: Timelines included in Items #1-2 below may be modified to reflect district practice.

Pursuant to state and federal law, a district has the responsibility to ensure a safe, nondiscriminatory school environment for all students and equal access to the educational program for intersex, nonbinary, transgender, or gender non-conforming students. As part of its obligation, the district must keep a student's private information, including a student's gender, gender identity, or gender expression, confidential. CDE's "School Success and Opportunity Act (Assembly Bill 1266) Frequently Asked Questions," available on its website, references a transgender student's informational privacy right under Article I, Section I of the California Constitution as protecting the student's gender identity from disclosure. However, CDE specifies that, pursuant to 34 CFR 99.36, disclosure of such information to appropriate parties is permitted in connection with an emergency, as necessary to protect the health or safety of the student or other individuals.

Education Code 220.3 and 220.5, as added by AB 1955 (Ch. 95, Statutes of 2024), clarify that under existing law a district, including a Governing Board member, may not require an employee or contractor to disclose any information related to a student's sexual orientation, gender identity, or gender expression to any other person, or enact or enforce any policy, rule, or administrative regulation that would require the same, without the student's consent unless otherwise required by state or federal law.

Therefore, a district is required to take measures such as those specified in the following paragraph, to prevent unintentional release of students' private information and should contact CSBA's District and County Office of Education Legal Services or district legal counsel before disclosing a student's gender identity without the student's consent.

1. Right to privacy: A student's intersex, nonbinary, transgender, or gender-nonconforming status is the student's private information

Parental
Disclosure?

The district shall develop strategies to prevent unauthorized disclosure of students' private information. Such strategies may include, but are not limited to, collecting or maintaining information about student gender only when relevant to the educational program or activity, protecting or revealing a student's gender identity as necessary to protect the health or safety of the student, and keeping a student's unofficial record separate from the official record.

The district shall only disclose the information to others with the student's prior written consent, except when the disclosure is otherwise required by law or when the district has compelling evidence that disclosure is necessary to preserve the student's physical or mental well-being. (Education Code 220.3, 220.5; 34 CFR 99.31, 99.36)

The district shall only allow disclosure of a student's personally identifiable information to employees in accordance with law. Any district employee to whom a student's intersex, nonbinary, transgender, or gender-nonconforming status is disclosed shall keep the student's information confidential. When disclosure of a student's gender identity is made to a district employee by a student, the employee shall seek the student's permission to notify the Compliance Officer. If the student refuses to give permission, the employee shall keep the student's information confidential, unless the employee is required to disclose or report the student's information pursuant to this administrative regulation, and shall inform the student that honoring the student's request may limit the district's ability to meet the student's needs related to the student's status as an intersex, nonbinary, transgender, or gender-nonconforming student. If the student permits the employee to notify the Compliance Officer, the employee shall do so within three school days.

As appropriate given the student's need for support, the Compliance Officer may discuss with the student any need to disclose the student's intersex, nonbinary, transgender, or gender-nonconformity status or gender identity or gender expression to the student's parents/guardians and/or others, including other students, teacher(s), or other adults on campus. The district shall offer support services, such as counseling, to students who wish to inform their parents/guardians of their status and request assistance in doing so.

2. Determining a Student's Gender Identity: The Compliance Officer shall accept the student's assertion of gender identity and begin to treat the student consistent with that gender identity unless district personnel present a credible and supportable basis for believing that the student's assertion is for an improper purpose
3. Addressing a Student's Transition Needs: The Compliance Officer shall arrange a meeting with the student and, if appropriate, the student's parents/guardians to identify and develop strategies for ensuring that the student's access to educational programs and activities is maintained

The meeting shall discuss the intersex, nonbinary, transgender, or gender-nonconforming student's rights and how those rights may affect and be affected by the rights of other students and shall address specific subjects related to the student's access to facilities and to academic or educational support programs, services, or activities, including, but not limited to, sports and other competitive endeavors. In addition, the Compliance Officer shall identify specific school site employee(s) to whom the student may report any problem related to the student's status as an intersex, nonbinary, transgender, or gender-nonconforming individual, so that prompt action can be taken to address it. Alternatively, if appropriate and desired by the student, the school may form a support team for the student that will meet periodically to assess whether the arrangements for the student are meeting the student's educational needs and providing equal access to programs and activities, educate appropriate staff about the student's transition, and serve as a resource to the student to better protect the student from gender-based discrimination.

CSBA NOTE: Pursuant to Education Code 221.5, a district is required to permit a student to use facilities and participate in sex-segregated school programs and activities consistent with the student's gender identity, regardless of the gender listed on the student's educational records. Additionally, 34 CFR 106.31, as amended by 89 Fed. Reg. 33474, provides that a district (1) may not exclude a student from participation in, deny a student the benefits of, or otherwise subject a student to discrimination on the basis of sex in any education program or activity, (2) that in the limited circumstances in which different treatment or separation on the basis of sex is permitted, a district may not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a student to more than de minimis harm, and (3) that preventing a student from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex. In commentary accompanying the Final Rule, the U.S. Department of Education (USDOE) clarifies that Title IX protects students from sex discrimination, including sex-based harassment, when they access sex-separate facilities. This protection applies with equal force to all students, including transgender and nonbinary students, requiring districts to provide access to sex-separate facilities, including bathrooms, in a manner that does not cause more than de minimis harm. USDOE intends to issue a separate final rule to address Title IX's application to sex-separate athletic teams which is governed by 34 CFR 106.41, rather than 34 CFR 106.31 as described above.

Beginning July 1, 2026, Education Code 35292.5, as amended by SB 760 (Ch. 227, Statutes of 2023), requires each school maintaining any of grades 1-12 with more than one female student restroom and more than one male student restroom to provide and maintain at least one all-gender restroom for student use that meets the requirements of law.

For more information on the rights of transgender students, see CSBA's updated, "Legal Guidance on Rights of Transgender and Gender Nonconforming Students in Schools."

4. Accessibility to Sex-Segregated Facilities, Programs, and Activities: When the district maintains sex-segregated facilities, such as restrooms and locker rooms, or offers sex-segregated programs and activities, such as physical education classes, intermural sports, and interscholastic athletic programs, students shall be permitted to access facilities and participate in programs and activities consistent with their gender identity

To address any student's privacy concerns in using sex-segregated facilities, the district shall offer available options such as a gender-neutral or single-use restroom or changing area, a bathroom stall with a door, an area in the locker room separated by a curtain or screen, or use of the locker room before or after the other students. However, the district shall not require a student to utilize these options because the student is intersex, nonbinary, transgender, or gender-nonconforming. In addition, a student shall be permitted to participate in accordance with the student's gender identity in other circumstances where students are separated by gender, such as for class discussions, yearbook pictures, and field trips. A student's right to participate in a sex-segregated activity in accordance with the student's gender identity shall not render invalid or inapplicable any other eligibility rule established for participation in the activity.

Beginning July 1, 2026, each school shall provide and maintain at least one all-gender restroom for student use that meets the requirements of Education Code 35292.5.

CSBA NOTE: Education Code 49062.5 and 49070 require districts to update a former student's records to change the student's name and/or gender as specified below. See AR 5125 - Student

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Records. Pursuant to 5 CCR 432, a district is required to maintain for each student a mandatory permanent student record that includes the student's legal name, sex, and other specified details. While 5 CCR 4910 refers to "sex" as the "biological condition or quality of being a female or male human being," it also defines "gender" to mean "sex," which includes "a person's gender identity and gender related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth." When responding to a request to change the gender or legal name of intersex, nonbinary, transgender, or gender non-conforming students, districts should be mindful of laws prohibiting gender-based discrimination. In "Update FLASH #158, Guidance for Changing a Student's Gender in CALPADS," CDE distinguishes the process for updating a student's legal name from the process for updating a student's gender. According to CDE, a district must receive formal documentation that a student's name has been legally changed before the student's recorded legal name may be changed in the student's mandatory permanent student record (official record). When documentation is not provided, CDE states the district should nonetheless update all other school records (unofficial records such as attendance sheets, report cards, and school identification) to reflect the name change. On the other hand, to change a student's gender in the student's official records, CDE states that there is no specific requirement regarding formal documentation or process that a district should review or require in determining the gender to be recorded in the official records. Pursuant to Education Code 49061, only a parent/guardian may authorize a change to a student's gender in the student's official record. The district should consult CSBA's District and County Office of Education Legal Services or district legal counsel in developing a policy in this regard.

5. Student Records: Upon each student's enrollment, the district is required to maintain a mandatory permanent student record (official record) that includes the student's gender and legal name

A student's legal name as entered on the mandatory student record required pursuant to 5 CCR 432 shall only be changed with proper documentation. A student's gender as entered on the student's official record required pursuant to 5 CCR 432 shall only be changed with written authorization of a parent/guardian having legal custody of the student. (Education Code 49061)

However, when proper documentation or authorization, as applicable, is not submitted with a request to change a student's legal name or gender, any change to the student's record shall be limited to the student's unofficial records such as attendance sheets, report cards, and school identification.

6. Names and Pronouns: If a student so chooses, district personnel shall be required to address the student by a name and the pronoun(s) consistent with the student's gender identity, without the necessity of a court order or a change to the student's official district record

However, inadvertent slips or honest mistakes by district personnel in the use of the student's name and/or consistent pronouns will, in general, not constitute a violation of this administrative regulation or the accompanying board policy.

7. Uniforms/Dress Code: A student has the right to dress in a manner consistent with the student's gender identity, subject to any dress code adopted on a school site

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Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State	Description
<u>5 CCR 432</u>	<u>Student records</u>
5 CCR 4600-4670	Uniform complaint procedures
5 CCR 4900-4965	Nondiscrimination in elementary and secondary educational programs receiving state or federal financial assistance
Civ. Code 1714.1	Liability of parent or guardian for act of willful misconduct by a minor
Civ. Code 51.9	Liability for sexual harassment; business, service and professional relationships
Ed. Code 200-262.4	Prohibition of discrimination
<u>Ed. Code 220.1</u>	<u>Prohibition of retaliation related to educational equity</u>
<u>Ed. Code 220.3</u>	<u>Prohibition of disclosure of information related to student's sexual orientation, gender identity, or gender expression</u>
<u>Ed. Code 220.5</u>	<u>Prohibition of policies requiring disclosure of information related to student's sexual orientation, gender identity, or gender expression</u>
<u>Ed. Code 35292.5</u>	<u>School restrooms; all-gender restrooms</u>
Ed. Code 48900	Grounds for suspension or expulsion
Ed. Code 48900.2	Additional grounds for suspension or expulsion; sexual harassment
Ed. Code 48904	Liability of parent/guardian for willful student misconduct
Ed. Code 48980	Parent/Guardian notifications
Ed. Code 48985	Notices to parents in language other than English
<u>Ed. Code 49060-49079</u>	<u>Student records</u>
Gov. Code 12950.1	Sexual harassment training
Federal	Description
20 USC 1092	Definition of sexual assault
20 USC 1221	Application of laws
20 USC 1232g	Family Educational Rights and Privacy Act (FERPA) of 1974
20 USC 1681-1688	Title IX of the Education Amendments of 1972; discrimination based on sex
34 CFR 106.1-106.82	Nondiscrimination on the basis of sex in education programs
34 CFR 99.1-99.67	Family Educational Rights and Privacy
34 USC 12291	Definition of dating violence, domestic violence, and stalking

42 USC 1983	Civil action for deprivation of rights
42 USC 2000d-2000d-7	Title VI, Civil Rights Act of 1964
42 USC 2000e-2000e-17	Title VII, Civil Rights Act of 1964, as amended
Management Resources	Description
Court Decision	Gebser v. Lago Vista Independent School District (1998) 524 U.S. 274
Court Decision	Oona by Kate S. v. McCaffrey (1998, 9th Cir.) 143 F.3d 473
Court Decision	Reese v. Jefferson School District (2001, 9th Cir.) 208 F.3d 736
Court Decision	Davis v. Monroe County Board of Education (1999) 526 U.S. 629
Court Decision	Doe v. Petaluma City School District (1995, 9th Cir.) 54 F.3d 1447
Court Decision	Donovan v. Poway Unified School District (2008) 167 Cal.App.4th 567
Court Decision	Flores v. Morgan Hill Unified School District (2003, 9th Cir.) 324 F.3d 1130
<u>Federal Register</u>	<u>Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, April 29, 2024, Vol. 89, No. 83, pages 33474-33896</u> <u>(https://www.federalregister.gov/documents/2024/04/29/2024-07915/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal)</u>
<u>CSBA Publication</u>	<u>Legal Guidance on Rights of Transgender and Gender Nonconforming Students in Schools, October 2022</u>
CSBA Publication	Safe Schools: Strategies for Governing Boards to Ensure Student Success, 2011
CSBA Publication	Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students, Policy Brief, February 2014
U.S. DOE, Office for Civil Rights <u>California Department of Education</u> Publication	<u>Q&A on Campus Sexual Misconduct, September 2017</u> <u>California Longitudinal Pupil Achievement Data System (CALPADS) Update FLASH #158: Guidance for Changing a Student's Gender in CALPADS, July 2019</u>
U.S. DOE, Office for Civil Rights Publication	Sexual Harassment: It's Not Academic, September 2008
U.S. DOE, Office for Civil Rights Publication	Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, January 2001
U.S. DOE, Office for Civil Rights Publication	Examples of Policies and Emerging Practices for Supporting Transgender Students, May 2016
U.S. DOE, Office for Civil Rights Publication	Dear Colleague Letter: Title IX Coordinators, April 2015
Website	CSBA District and County Office of Education Legal Services

Website	California Department of Education
Website	CSBA
Website	U.S. Department of Education, Office for Civil Rights

Cross References

Code	Description
0410	Nondiscrimination In District Programs And Activities
0450	Comprehensive Safety Plan
0450	Comprehensive Safety Plan
1114	District-Sponsored Social Media
1114	District-Sponsored Social Media
1312.1	Complaints Concerning District Employees
1312.1	Complaints Concerning District Employees
1312.3	Uniform Complaint Procedures
1312.3	Uniform Complaint Procedures
1312.3-E(1)	Uniform Complaint Procedures
1312.3-E(2)	Uniform Complaint Procedures
1313	Civility
3515.4	Recovery For Property Loss Or Damage
3515.4	Recovery For Property Loss Or Damage
3530	Risk Management/Insurance
3530	Risk Management/Insurance
3580	District Records
3580	District Records
4117.7	Employment Status Reports
4118	Dismissal/Suspension/Disciplinary Action
4118	Dismissal/Suspension/Disciplinary Action
4119.11	<u>Sex Discrimination and SexualSex-Based</u> Harassment
4119.11	<u>Sex Discrimination and SexualSex-Based</u> Harassment
<u>4119.12</u>	<u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4131	Staff Development

4218	Dismissal/Suspension/Disciplinary Action
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4219.11	<u>Sex Discrimination and SexualSex Harassment</u>
<u>4219.12</u>	<u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4219.21	Professional Standards
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4319.11	<u>Sex Discrimination and SexualSex-Based Harassment</u>
<u>4319.12</u>	<u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
4319.21	Professional Standards
4319.21-E(1)	Professional Standards
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5125	Student Records
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5131.2	Bullying
5131.2	Bullying
5131.5	Vandalism And Graffiti
5132	Dress And Grooming
5132	Dress And Grooming
5137	Positive School Climate
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5141.4	Child Abuse Prevention And Reporting
5141.4	Child Abuse Prevention And Reporting
5141.52	Suicide Prevention
5141.52	Suicide Prevention
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5144	Discipline

5144.1	Suspension And Expulsion/Due Process
5144.1	Suspension And Expulsion/Due Process
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Regulation 5145.71: Title IX Sexual ~~Sex Discrimination and Sex-Based~~ Harassment Complaint Procedures Status: ADOPTED

Original Adopted Date: 07/01/2020 | Last Revised Date: ~~10~~07/01/2020 2024 | Last Reviewed
Date: ~~10~~07/01/2020 2024

CSBA NOTE: Title IX of the Education Amendments of 1972 (20 USC 1681-1688; 34 CFR 106.1-106.82) prohibits discrimination based on sex, including sexual harassment, and mandates that the district adopt and publish complaint procedures.

The following administrative regulation reflects the Title IX complaint procedure detailed in 34 CFR 106.44-106.45, as added by 85 Fed. Reg. 30026, which must be used, effective August 14, 2020, to address any complaint of sexual harassment that meets the definition in 34 CFR 106.30. Pursuant to 34 CFR 106.30, allegations of sexual harassment governed by these regulations include (1) a district employee conditioning the provision of a district aid, benefit, or service on an individual's participation in unwelcome sexual conduct; (2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity; or (3) sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 and 34 USC 12291. Alleged sexual harassment that does not meet this definition should be addressed through the district's uniform complaint procedures (UCP); see BP/AR 1312.3 - Uniform Complaint Procedures.

34 CFR 106.44 requires the district, when there is actual knowledge of sexual harassment in an education program or activity, to respond promptly in a manner that is not deliberately indifferent. 34 CFR 106.30 defines "actual knowledge" as notice of sexual harassment or allegations of sexual harassment being submitted to the district's Title IX Coordinator, any official of the district who has authority to institute corrective measures, or any employee of the district. A district is deliberately indifferent only if its response to Title IX sexual harassment is clearly unreasonable in light of the known circumstances.

Application of the Title IX complaint procedures to the facts of a specific complaint may implicate complicated questions about the intersection of state law, federal law, and, in cases involving employees, the applicable collective bargaining agreement. Districts with questions about specific complaints are strongly encouraged to consult legal counsel.

See BP/AR 5145.7 - Sexual Harassment for information about prohibited conduct, student instruction, required notifications, and processes for reporting sexual harassment.

CSBA NOTE: Title IX of the Education Amendments of 1972 (20 USC 1681-1688; 34 CFR 106.1-106.82) prohibits discrimination based on sex, including sex-based harassment, and mandates that the district adopt and publish complaint procedures. The following administrative regulation reflects the Title IX grievance procedures detailed in 34 CFR 106.44-106.45, as amended by 89 Fed. Reg. 33474.

Application of the Title IX complaint procedures to the facts of a specific complaint may implicate complicated questions about the intersection of state and federal law. Pursuant to 34 CFR 106.11

and 106.44, as amended by 89 Fed. Reg. 33474, a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, is required to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct. As such a complaint may also fall within the complaint process as specified in AR 1312.3 – Uniform Complaint Procedures, it is unclear whether districts would additionally be required to follow the procedures specified in AR 1312.3 – Uniform Complaint Procedures. Due to this uncertainty, it is recommended that districts consult CSBA's District and County Office of Education Legal Services or district legal counsel prior to utilizing the procedures specified in AR 1312.3 – Uniform Complaint Procedures for this purpose.

See AR 1312.3 – Uniform Complaint Procedures. Also see AR 5145.3 Nondiscrimination/Harassment and BP/AR 5145.7 – Sex Discrimination and Sex-Based Harassment for information about prohibited conduct, training and instruction, required notifications, and processes for reporting sex discrimination and sex-based harassment.

The complaint procedures described in this administrative regulation shall be used to address any complaint governed by Title IX of the Education Amendments of 1972 alleging that a district student, while in an education program or activity in which a district school exercises substantial control over the context and respondent, was subjected to one or more acts of sexual conduct on or more after August 1, 2024, including, but not limited to, conduct that is under the authority of the following forms of sexual district, that constitutes sex discrimination, including sex-based harassment: (34 CFR 106.30, 106.44) . For conduct that occurred prior to this date, the district should utilize its policies in place at the time the alleged sex discrimination, including sex-based harassment, occurred, so long as they are in accordance with the applicable statutes and regulations.

- 1.—A district employee conditioning the provision of a district aid, benefit, or service on the student's participation in unwelcome sexual conduct
- 2.—Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a student equal access to the district's education program or activity
- 3.—Sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 or 34 USC 12291

All other sexual harassment complaints or allegations brought by or on behalf of students shall be investigated and resolved in accordance with BP/AR 1312.3 - Uniform Complaint Procedures. The determination of whether the allegations meet the definition of sexual harassment under Title IX shall be made by the district's Title IX Coordinator.

Because the complainant has a right to pursue a complaint under BP/AR 1312.3 for any allegation that is dismissed or denied under the Title IX complaint procedure, the Title IX Coordinator shall ensure that all requirements and timelines for BP/AR 1312.3 are concurrently met while implementing the Title IX procedure.

Sex discrimination and sex-based harassment include, but are not limited to, sex-based conduct as specified in Administrative Regulation 5145.7 - Sex Discrimination and Sex-Based Harassment.

Basic Requirements

CSBA NOTE: 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, requires that the district's grievance procedures follow specified basic requirements, which are reflected below.

When implementing Title IX grievance procedures, the district shall: (34 CFR 106.45)

1. Treat complainants and respondents equitably
2. Ensure that the Title IX Coordinator or designee, investigator, or decisionmaker not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent

The investigator and the decisionmaker may be the same person as the Title IX Coordinator or designee.

3. Presume that the respondent is not responsible for the alleged sex discrimination, including sex-based harassment, until a determination is made at the conclusion of the grievance procedures
4. Establish reasonably prompt timeframes for the major stages of the grievance procedures, such as evaluation of whether to dismiss or investigate a complaint, investigation, decision, and appeals if any
5. Establish a process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the parties that includes the reason for the delay

CSBA NOTE: Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, the district may not disclose personally identifiable information obtained while complying with the Title IX complaint procedures, except as provided below.

Additionally, the district shall not disclose personally identifiable information obtained while implementing Title IX complaint procedures unless the district has obtained prior written consent from a person with the legal right to consent to the disclosure; the information is disclosed to a parent/guardian or other authorized legal representative with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue; to take action to address conduct that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, in the district's education program or activity; as required by federal law, regulations, or as a condition to a federal award; as required by state or local law; or to the extent such disclosures are not otherwise in conflict with Title IX. (34 CFR 106.44)

If either party is a student with a disability, the Title IX Coordinator or designee shall consult with one or more members, as appropriate, of the student's individualized education program or 504 team, to determine how to comply with the requirements of the Individuals with Disabilities Education Act (IDEA) or Section 504 of the Rehabilitation Act of 1973.

Reporting Allegations/Filing a Formal Complaint

Upon receiving information from an allegation of sex discrimination, include sex-based harassment, the Title IX Coordinator or designee shall notify the individual(s) specified in law of the Title IX grievance procedures, and of the informal resolution process, if available and appropriate.

CSBA NOTE: Pursuant to 34 CFR 106.2, as amended by 89 Fed. Reg. 33474, a "complaint" is defined as an oral or written request to the district that objectively can be understood as a request for the district to investigate and make a determination about alleged discrimination under Title IX.

A complaint is an oral or written request that can objectively be understood by the Title IX Coordinator or designee as a request for the district to investigate and make a determination about alleged sex discrimination, including sex-based harassment. (34 CFR 106.21)

Complaints of sex discrimination and sex-based harassment may only be brought by a student, or former student, who was participating or attempting to participate in the district's education program or activity at the time of the alleged sex-based harassment, a parent/guardian or other authorized legal representative with the legal right to act on behalf of the student, or the Title IX Coordinator or designee. (34 CFR 106.45)

CSBA NOTE: Pursuant to 34 CFR 106.30, the timeline for resolving a sexual harassment complaint begins when the district has actual knowledge of sexual harassment, defined as the receipt of a report by the Title IX Coordinator or other employee of an elementary or secondary school. The following paragraph reflects the requirement for any employee to forward the report to the Title IX Coordinator as stated in AR 5145.7 - Sexual Harassment and may be revised to reflect district practice.
CSBA NOTE: Given the district's duty pursuant to 34 CFR 106.44 to respond to reports of sex discrimination, including sex-based harassment, promptly and effectively, the Title IX Coordinator or designee should file a complaint even when the victim chooses not to do so, when, based on the considerations described below, the Title IX Coordinator or designee determines that a health or safety threat exists or when the district would be prevented from ensuring equal access based on sex in its programs and activities. In such cases, the alleged victim must receive notices as required by the Title IX regulations at specific points in the complaint process.

A student who is If the alleged victim chooses not to bring a complaint, or withdraws any or all of sexual the allegations in a complaint, and in the absence or termination of an information resolution process, the Title IX Coordinator or designee shall consider whether to initiate a complaint. To do so, the Title IX Coordinator or designee shall first consider the following factors: (34 CFR 106.44)

1. The victim's request not to proceed with initiation of a complaint
2. The victim's reasonable safety concerns regarding initiation of a complaint
3. The risk that additional acts of sex discrimination, including sex-based harassment or the student's parent/guardian may submit a report of sexual, would occur if a complaint is not initiated
4. The severity of the alleged sex discrimination or sex-based harassment to the district's Title IX Coordinator using the contact information listed in AR 5145.7 - Sexual Harassment or to any other available school, including whether the discrimination, if established, would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence
5. The age and relationship of the parties, including whether the respondent is an employee, who shall forward of the report district

6. The scope of the alleged sex discrimination, including information suggesting a pattern; ongoing sex discrimination, including sex-based harassment; or sex discrimination, including sex-based harassment, alleged to have impacted multiple individuals
7. The availability of evidence to assist a decisionmaker in determining whether sex discrimination, including sex-based harassment, occurred
8. Whether the district could end the alleged sex discrimination, including sex-based harassment, and prevent its recurrence without initiating the Title IX Coordinator within one day of receiving the report.

Upon receiving such a ~~report~~grievance procedures

If, after considering these factors, the Title IX Coordinator shall ~~inform~~determine that the alleged conduct presents an imminent and serious threat to the health and safety of the complainant of the right to file a formal complaint and the process for filing a formal complaint. (34 CFR 106.44)

A formal complaint, with the complainant's physical or digital signature, may be filed with or another person, or that the conduct as alleged prevents the district from ensuring equal access to a district program or activity on the basis of sex, the Title IX Coordinator in person, by mail, by email, or by any other method ~~authorized by the district.~~ (34 CFR 106.30)may initiate a complaint.

CSBA NOTE: Given the district's duty pursuant to 34 CFR 106.44 to respond to reports of sexual harassment in a manner that is not deliberately indifferent, the Title IX Coordinator should file a complaint in certain situations even when the victim chooses not to do so, including, but not limited to, when a safety threat exists. In such cases, the Title IX Coordinator and the alleged victim are not named parties to the case, but the alleged victim must receive notices as required by the Title IX regulations at specific points in the complaint process.

Even if the alleged victim chooses not to file a formal complaint, the Title IX Coordinator shall file a formal complaint in situations when a safety threat exists. In addition, the Title IX Coordinator may file a formal complaint in other situations as permitted under the Title IX regulations, including as part of the district's obligation to not be deliberately indifferent to known allegations of sexual harassment. In such cases, the Title IX Coordinator shall provide the alleged victim notices as required by the Title IX regulations at specific points in the complaint process.

The Title IX Coordinator, investigator, decision-maker, or a facilitator of an informal resolution process shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. Such persons shall receive training in accordance with 34 CFR 106.45. (34 CFR 106.45)

CSBA NOTE: Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, the Title IX Coordinator or designee is required to take the steps described below upon initiating a complaint.

If the Title IX Coordinator initiates a complaint, the Title IX Coordinator shall provide the alleged victim notice of the complaint, as well as other notices as required by the Title IX regulations at specific points in the complaint process. The Title IX Coordinator shall also address reasonable concerns about the victim's safety or the safety of others, including providing supportive measures as described in "Supportive Measures" below, and taking other appropriate prompt and effective

steps to ensure that sex discrimination, including sex-based harassment, does not continue or recur within the district. (34 CFR 106.44)

CSBA NOTE: Pursuant to 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, in addition to Title IX Coordinators or designees, investigators, and decisionmakers, persons who are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures may not have a conflict of interest or bias for or against complainants or respondents generally, or an individual complainant or respondent, and are required to receive specified training.

The Title IX Coordinator or designee, investigator, decisionmaker, other person who is responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures, or a facilitator of an informal resolution process shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. Such persons shall receive training in accordance with 34 CFR 106.8. (34 CFR 106.44)

CSBA NOTE: Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, the Title IX Coordinator is required to monitor the district for barriers to reporting information about conduct that reasonably may constitute sex discrimination, including sex-based harassment, under Title IX, as specified below.

The Title IX Coordinator shall monitor the district for barriers to reporting information about conduct that reasonably may constitute sex discrimination, including sex-based harassment, under Title IX, and take steps reasonably calculated to address such barriers. (34 CFR 106.44, 106.45)

Supportive Measures

CSBA NOTE: 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, requires districts to offer and coordinate supportive measures as described below. Pursuant to 34 CFR 106.2, as amended by 89 Fed. Reg. 33474, "supportive measures" are defined as individualized measures offered as appropriate, reasonably available and without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without charging a fee to the complainant or respondent to (1) restore or preserve the party's access to the district's education program or activity, including measures that are designed to protect the safety of the parties or the district's educational environment, or (2) provide support during the recipients' grievance procedures specified in 34 CFR 106.45 or during any informal resolution process as specified in 34 CFR 106.44.

Upon receipt of a report of Title IX sexual harassment, the Title IX Coordinator shall promptly contact the complainant to discuss the availability of supportive measures and shall consider the complainant's wishes with respect to the supportive measures implemented. Supportive measures shall be offered as appropriate, as reasonably available, and without charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures shall be nondisciplinary, nonpunitive, and designed to restore or preserve equal access to the district's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the district's educational environment or to deter sexual harassment. Supportive measures may include, but are not limited to, counseling, course-related adjustments, modifications of class schedules, mutual restrictions on contact, increased security, and monitoring of certain areas of the campus. (34 CFR 106.30, 106.44)

The district shall maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the district's ability to provide the supportive measures. (34 CFR 106.30)

Upon receipt of a report of Title IX sex discrimination or sex-based harassment, the Title IX Coordinator or designee shall offer and coordinate supportive measures. Supportive measures may vary depending on what the district determines to be reasonably available and shall not unreasonably burden either the complainant or respondent. Supportive measures shall be provided without charging a fee to the complainant or respondent and be designed to protect the safety of the complainant, respondent, and the district's educational environment, and to provide support during any grievance procedures implemented as specified in 34 CFR 106.45 or informal resolution process as specified in 34 CFR 106.44. The district shall not impose such measures for punitive or disciplinary reasons. Supportive measures may include, but are not limited to, counseling; extensions of deadlines and other course-related adjustments; changes in class, work, housing, or extracurricular or any other activity regardless of whether there is a comparable alternative; campus escort services; modifications of class schedules; mutual restrictions on contact; changes in class locations; increased security; monitoring of certain areas of the campus; and, training and education programs related to sex-based harassment. (34 CFR 106.2, 106.44)

CSBA NOTE: Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, the district's provision of supportive measures does not require the district, its employees, or any other persons authorized to provide aid, benefit, or service on the district's behalf to alter the alleged discriminatory conduct for the purpose of providing the supportive measures unless there is an allegation of sex-based harassment or retaliation.

Unless there is an allegation of sex-based harassment or retaliation, the district may provide supportive measures without altering the alleged discriminatory conduct. (34 CFR 106.44)

Upon the conclusion of any grievance procedures implemented as specified in 34 CFR 106.45 or informal resolution process as specified in 34 CFR 106.44, the district may continue with the supportive measures, or modify or terminate such measures, as appropriate. (34 CFR 106.44)

CSBA NOTE: Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, the district is required to provide both parties for whom supportive measures have been implemented with the opportunity to challenge, to an impartial employee, the implementation of such measures. An "impartial employee" must be someone other than the employee who made the decision to provide the supportive measures which are being challenged, but who has the authority to modify or reverse the decision if the employee determines that the decision to provide, deny, modify, or terminate the supportive measures was inconsistent with the definition of supportive measures as specified in 34 CFR 106.2.

The district shall provide a complainant or respondent for whom supportive measures have been implemented with a timely opportunity to seek, from an impartial employee with authority to modify or reverse the supportive measures, modification or reversal of the district's decision to provide, deny, modify, or terminate such measures, and to seek additional modification or termination of the supportive measures if circumstances materially change. (34 CFR 106.44)

The district shall not disclose information about supportive measures to any person other than the person to whom they apply, including informing one party of supportive measures provided to another party, unless the disclosure is necessary to providing the supportive measures, or restoring or preserving a party's access to the district's education program or activity. (34 CFR 106.44)

Emergency Removal from School

~~CSBA NOTE: Pursuant to Education Code 48900.2, a student in grades 4-12 may be suspended and/or expelled from school for sexual harassment. Districts should also note that Education Code 48915(c) requires the Superintendent or designee to recommend expulsion for any student, irrespective of grade, who commits sexual assault or battery as defined in the Penal Code. See AR 5144.1 - Suspension and Expulsion/Due Process.~~

~~34 CFR 106.44 allows a student to be removed in emergency situations as described below, but requires that a student should not be "disciplined" prior to a finding being made pursuant to the grievance process established by 34 CFR 106.45. Due to this inconsistency in state and federal law, districts are advised to consult legal counsel as to the manner of imposing an emergency removal.~~

CSBA NOTE: Pursuant to Education Code 48900.2, a student in grades 4-12 may be suspended and/or expelled from school for sexual harassment. Districts should also note that Education Code 48915(c) requires the Superintendent or designee to recommend expulsion for any student, irrespective of grade, who commits sexual assault or battery as defined in the Penal Code. See AR 5144.1 - Suspension and Expulsion/Due Process.

34 CFR 106.44 allows a student to be removed in emergency situations as described below, but 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, requires that a student not be "disciplined" prior to a finding being made pursuant to the Title IX grievance process. Due to this inconsistency in state and federal law, districts are advised to consult CSBA's District and County Office of Education Legal Services or district legal counsel as to the manner of imposing an emergency removal.

A student shall not be disciplined for alleged ~~sexual~~sex discrimination, including sex-based harassment, under Title IX until the investigation has been completed. However, on an emergency basis, the district may remove a student from the district's education program or activity, provided that the district conducts an individualized safety and risk analysis, determines that removal is justified due to an ~~immediate~~imminent and serious threat to the physical health or safety of a complainant or any student, employee, or other individual arising from the allegations, and provides the ~~student~~respondent with notice and an opportunity to challenge the decision immediately following the removal. This authority to remove a student does not modify a student's rights under the Individuals with Disabilities Education Act~~IDEA~~ or Section 504 of the Rehabilitation Act of 1973. (34 CFR 106.44)

If a district employee is the respondent, the employee may be placed on administrative leave during the pendency of the formal complaint process. (34 CFR 106.44)

Dismissal of Complaint

The Title IX Coordinator shall dismiss a formal complaint if the alleged conduct would not constitute

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sexual harassment as defined in 34 CFR 106.30 even if proved. The Title IX Coordinator shall also dismiss any complaint in which the alleged conduct did not occur in the district's education program or activity or did not occur against a person in the United States, and may dismiss a formal complaint if the complainant notifies the district in writing that the complainant would like to withdraw the complaint or any allegations in the complaint, the respondent is no longer enrolled or employed by the district, or sufficient circumstances prevent the district from gathering evidence sufficient to reach a determination with regard to the complaint. (34 CFR 106.45)

Upon dismissal, the Title IX Coordinator shall promptly send written notice of the dismissal and the reasons for the dismissal simultaneously to the parties, and shall inform them of their right to appeal the dismissal of a formal complaint or any allegation in the complaint in accordance with the appeal procedures described in the section "Appeals" below. (34 CFR 106.45)

If a complaint is dismissed, the conduct may still be addressed pursuant to BP/AR 1312.3 - Uniform Complaint Procedures as applicable.

CSBA NOTE: The following section describes when the Title IX Coordinator or designee may dismiss a Title IX complaint and actions the Title IX Coordinator or designee is required to take when a complaint is dismissed pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474.

The Title IX Coordinator or designee may dismiss a complaint if: (34 CFR 106.45)

1. The district is unable to identify the respondent after taking reasonable steps to do so
2. The respondent is not participating in the district's education program or activity and is not employed by the district
3. The district determines that the conduct alleged in the complaint, even if proven, would not constitute sex discrimination, including sex-based harassment, under Title IX

Before dismissing the complaint, the Title IX Coordinator shall make reasonable efforts to clarify the allegations with the complainant.

4. The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and the Title IX Coordinator determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination, including sex-based harassment, under Title IX, even if proven

CSBA NOTE: Pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, the district is required to establish reasonably prompt timeframes for the major stages of the grievance procedures. The following paragraph should be revised to reflect the timeline established by the district.

The Title IX Coordinator shall determine whether to dismiss or investigate any complaint of sex discrimination, including sex-based harassment, within [redacted] days, unless such timeline is extended in accordance with this administrative regulation. 10 business

Upon dismissal, the Title IX Coordinator shall promptly notify the complainant of the dismissal and the reasons for the dismissal. Additionally, if the dismissal occurs after the respondent has been notified of the allegations, the Title IX Coordinator shall provide such notification to the respondent.

which shall occur simultaneously to both parties if the notification is in writing. The Title IX Coordinator shall also inform the complainant, and the respondent if the dismissal occurs after the respondent has been notified of the allegations, of their right to appeal. Dismissals may be appealed on the following bases: (34 CFR 106.45)

1. A procedural irregularity that would change the outcome
2. New evidence that would change the outcome and that was not reasonably available when dismissal was made
3. The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome

If the dismissal is appealed, the district shall: (34 CFR 106.45)

1. Notify the parties of any appeal, including notice of the allegations, if notice was not previously provided to the respondent
2. Implement appeal procedures equally for the parties
3. Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint
4. Ensure that the decisionmaker for the appeal has been trained consistent with the Title IX regulations
5. Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome
6. Notify the parties of the result of the appeal and the rationale for the result

If a complaint is dismissed, the Title IX Coordinator or designee shall offer supportive measures as described above in "Supportive Measures" to the complainant. Additionally, the respondent shall be offered supportive measures if the complaint was dismissed because the complainant voluntarily withdrew any or all of the allegations in the complaint and the district determined that without the withdrawn allegations the conduct, even if proven, would not constitute sex discrimination, including sex-based harassment, under Title IX, or if the complaint was dismissed because the district determined, after taking reasonable efforts to clarify the allegations of the complaint, that the alleged conduct would not constitute sex discrimination, including sex-based harassment, even if proven. The Title IX Coordinator shall also take other appropriate prompt and effective steps to ensure that sex discrimination, including sex-based harassment, does not continue or recur within the district's education program or activity. (34 CFR 106.45)

If a complaint is dismissed, the conduct may still be addressed pursuant to Board Policy/Administrative Regulation 1312.3 - Uniform Complaint Procedures as applicable.

Informal Resolution Process

CSBA NOTE: As part of an informal resolution, the parties may agree upon discipline, including suspension or expulsion, without the need for an investigation (Analysis of Comments and Changes, 85 Fed. Reg. 30026, pages 30232, 30406-30407). This is an exception to the general rule provided in 34 CFR 106.44 which prohibits the district from imposing discipline on a respondent for sexual

harassment until the full investigation process is complete. Also see the section "Stipulated Expulsion" in AR 5144.1 - Suspension and Expulsion/Due Process. CSBA NOTE: The following section reflects when the district may offer an informal resolution process, notification and consent requirements, criteria for the facilitator of the informal resolution process, and other required steps when an informal resolution process is implemented, as specified in 34 CFR 106.44, as amended by 89 Fed. Reg. 33474.

Additionally, 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, provides potential terms that may be included in an informal resolution agreement. Because such agreements will be fact-specific and reflective of sensitive topics, it is recommended that districts consult CSBA's District and County Office of Education Legal Services or district legal counsel when drafting informal resolution agreements.

When a formal complaint of sexual harassment is filed, at any time prior to determining whether sex discrimination, including sex-based harassment, occurred under the complaint procedures specified in 34 CFR 106.45, the district may offer, if it is determined to be appropriate upon receiving information about conduct that reasonably may constitute sex discrimination under Title IX or when a complaint of sex discrimination is made, an informal resolution process, such as mediation, at any time prior to reaching a determination regarding responsibility to the complainant and respondent. However, the district shall not offer an informal resolution process if the complaint alleges that an employee engaged in sex-based harassment of an elementary or secondary school student or that such process would conflict with federal, state, or local law. (34 CFR 106.44)

The district shall not require or pressure a party to participate in the informal resolution process, or to waive the right to an investigation and adjudication determination of a complaint as a formal complaint. (34 CFR 106.45) condition of participation in the district's education program or activity, or exercise of any other right. The district may decline to offer an informal resolution process including, but not limited to, when the district determines that the alleged conduct would present a future risk of harm to others. (34 CFR 106.44)

The district may facilitate an informal resolution process provided that the district, prior to initiating such process: (34 CFR 106.45)

1. Provides the parties with written notice disclosing the allegations; the requirements of the informal resolution process; the right to withdraw from the informal process and resume the formal complaint process; and any consequences resulting from participating in the same allegations once the informal resolution process is concluded; the potential terms that may be requested or offered in an informal resolution agreement, including that records of the agreement would only be binding on the parties; and the information that the district will be maintained or maintain and whether and how the district could be shared. disclose such information for use in Title IX grievance procedures if such procedures are initiated or resumed
2. Obtains the parties' voluntary, written consent to the informal resolution process
3. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student

The Title IX Coordinator or designee shall ensure that the facilitator of the informal resolution process is not the same person as the investigator or decisionmaker of any ongoing or newly initiated complaint process specified in 34 CFR 106.45, does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent, and receives training in accordance with 34 CFR 106.8. (34 CFR 106.44)

If the district facilitates an informal resolution process, the Title IX Coordinator shall, to the extent necessary, take other appropriate prompt and effective steps to ensure that sex discrimination, including sex-based harassment, does not continue or recur within the district's education program or activity. (34 CFR 106.45)

Written Notice Notice of Allegations

CSBA NOTE: The following section reflects the notice districts are required to provide to the parties pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474.

If a formal complaint is filed, the Title IX Coordinator If the district initiates a formal Title IX investigation, the Title IX Coordinator or designee shall provide the known parties with written notice of the following: (34 CFR 106.45)

1. The district's complaint process, including any informal resolution process
2. The allegations potentially constituting sexual harassment with sufficient details knownSufficient information, available at the time, including to allow parties to respond to the allegations, including, to the extent available, the identity of parties involved in the incident if known, (s), the conduct allegedly constituting sexual sex discrimination, including sex-based harassment, and the date (s) and location (s) of the alleged incident if known.

2. Such notice shall be provided with sufficient time for the parties to prepare a response before any initial interview.

If, during the course of the investigation, new Title IX allegations arise about the complainant or respondent that are not included in the initial notice, the Title IX Coordinator shall provide notice of the additional allegations to the parties.

3. A statement that retaliation is prohibited

3.—A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the complaint process

4.—The opportunity for the parties are entitled to have an advisor of their choice who may be, but is not required equal opportunity to be, an attorney, and the ability to inspect and review access the relevant and not otherwise impermissible evidence

5.4. The prohibition against knowingly making false statements or knowingly submitting false information during the complaint process an accurate description of such evidence, as specified

CSBA NOTE: The following paragraph is optional. Although not required by law, a best practice is to provide notice to the parties of the name of the investigator, facilitator, and ~~decision-maker~~ decisionmaker in order to give the parties an opportunity to raise concerns of conflict of interest or bias as prohibited by 34 CFR 106.45.

The above notice shall may also include the name of the investigator, facilitator of an informal process, and ~~decision-maker~~ decisionmaker and shall inform the parties that, if at any time a party has concerns regarding conflict of interest or bias regarding any of these persons, the party should immediately notify the Title IX Coordinator: or designee.

Consolidation of Complaints

CSBA NOTE: The following section reflects the district's authority to consolidate complaints of sex discrimination, including sex-based harassment, as specified in 34 CFR 106.45, as amended by 89 Fed. Reg. 33474.

The district may consolidate complaints of sex discrimination, including sex-based harassment, against more than one respondent; by more than one complainant against one or more respondents; or by one party against another party, when the allegations of sex discrimination, including sex-based harassment, arise out of the same facts or circumstances. (34 CFR 106.45)

Investigation Procedures

CSBA NOTE: Pursuant to 34 CFR 106.45, when investigating a formal complaint, the burden of proof rests on the district and not on the parties. However, the district must obtain the party's voluntary, written consent to access, consider, disclose, or otherwise use a party's records that are maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional, which are made and maintained in connection with the provision of treatment to the party.

34 CFR 106.45 authorizes, but does not require, the district to conduct a live hearing at which each party's advisor may ask the other party and any witnesses all relevant questions and follow-up questions. If the district chooses to include such a hearing as a component of its complaint procedure, the following list should be modified to include requirements for the hearing in accordance with 34 CFR 106.45:

The district shall provide for adequate, reliable, and impartial investigation of complaints. (34 CFR 106.45)

During the investigation process, the district's designated investigator shall: (34 CFR 106.45)

1. Provide an equal opportunity for the parties to present ~~witnesses, including fact and expert~~fact witnesses, and other inculpatory and exculpatory evidence that is relevant and not otherwise impermissible
2. ~~Not~~Review all evidence gathered through the investigation and determine which evidence is relevant and which evidence is impermissible regardless of relevance
3. Provide each party with an equal opportunity to access evidence that is relevant, and not otherwise impermissible, to the allegations of sex discrimination, including sex-based harassment, by:
 - a. Providing an equal opportunity to access either the relevant and not otherwise impermissible evidence or an accurate description of such evidence

If an accurate description is provided, the district shall, upon request of any party, provide the parties with an equal opportunity to access the relevant and permissible evidence.
 - b. Providing a reasonable opportunity to respond to the evidence or to the accurate description of the evidence

- c. Taking reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures
2. Take reasonable steps to protect the privacy of parties and witnesses which do not restrict the ability of either party to discuss the allegations under investigation or to gather the parties to obtain and present relevant evidence
 3. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney
 4. Not limit the choice, by speaking to witnesses; consulting with family members, confidential resources, or presence of an advisor; or otherwise preparing for either the complainant or respondent or participating in any meeting or the grievance proceeding, although the district may establish restrictions regarding the extent to which the advisor may participate in the proceedings as long as the restrictions apply equally to both parties procedures
 5. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings, with sufficient time for the party to prepare to participate
 6. Send in an electronic format or hard copy to both parties and their advisors, if any, the evidence obtained as part of the investigation that is directly related to the allegations raised in the complaint, and provide the parties at least 10 days to submit a written response for the investigator to consider prior to the completion of the investigative report
 7. Objectively evaluate all evidence that is relevant evidence and not otherwise impermissible, including both inculpatory and exculpatory evidence, and determine including that credibility in a manner that is determinations will not be based on a person's person's status as a complainant, respondent, or witness
 8. Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to the determination of responsibility, send to the parties and their advisors, if any, the investigative report in an electronic format or a hard copy, for their review and written response
6. Questions and Exclude as impermissible the following types of evidence, and questions seeking that evidence:
- a. Evidence that is protected under a privilege recognized by state or federal law or evidence that is provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege
 - b. A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the district obtains that party's or witness's voluntary, written consent for use in its grievance procedures
 - c. Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant; unless such questions and evidence are complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct alleged by the complainant or if the questions and is evidence concern about specific incidents of the complainant's complainant's prior

sexual behavior conduct with respect to the respondent and are that is offered to prove consent: to the alleged sex-based harassment

The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

CSBA NOTE: The following paragraph should be amended to reflect district practice regarding the process established to enable the decisionmaker to question parties and witnesses adequately to assess a party's or witness's credibility.

The district shall ensure that the decisionmaker is able to question parties and witnesses adequately to assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex-based harassment. (34 CFR 106.45)

Privacy rights of all parties to the complaint shall be maintained in accordance with applicable state and federal laws.

CSBA NOTE: Districts with questions about the application of a collective bargaining agreement in the context of a Title IX investigation should consult CSBA's District and County Office of Education Legal Services or district legal counsel.

If the complaint is against an employee, rights conferred under an applicable collective bargaining agreement shall be applied to the extent they do not conflict with the Title IX requirements.

CSBA NOTE: Pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, the district is required to establish reasonably prompt timeframes for the major stages of the grievance procedures. The district should revise the following paragraph to reflect the timeline established by the district.

The investigator shall complete the investigation within ^{30 ~~15~~ business days} days after the Title IX Coordinator determines to proceed with an investigation, unless such timeline is extended in accordance with this administrative regulation.

Written Decision

CSBA NOTE: Pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, the person designated as the ~~decision-maker~~ decisionmaker of the determination of responsibility ~~cannot~~ may be the same person designated as the Title IX Coordinator; ~~an~~ or designee and/or investigator, ~~or the person who considers appeals~~ so long as there is no conflict of interest or bias. The following paragraph may be revised to reflect the position designated by the district to provide a written determination of responsibility. While designation decisions will depend on the size of the district, a best practice is to designate an upper-level administrator as the ~~decision-maker~~ decisionmaker and designate the Superintendent as the person to consider appeals.

The Superintendent shall designate an employee as the ~~decision-maker~~ decisionmaker to determine responsibility for the alleged conduct, who shall ~~not~~ may be the Title IX Coordinator or a person involved in designee or the investigation investigator so long as there is no conflict of the ~~matter~~ interest or bias. (34 CFR 106.45)

~~After~~ Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, the district shall: (34 CFR 106.45)

1. Use the ~~investigative report~~ preponderance of the evidence standard of proof to determine whether sex discrimination, including sex-based harassment, has been sent to occurred
2. Notify the parties but before reaching a in writing of the determination regarding responsibility, the decision-maker of whether sex discrimination, including sex-based harassment, occurred

The notification shall afford each party the opportunity include the rationale for such determination and the procedures and permissible bases for the complainant and respondent to submit appeal, if applicable.

CSBA NOTE: Pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, the district is required to establish reasonably prompt timeframes for the major stages of the grievance procedures. The district should revise the following paragraph to reflect the timeline established by the district.

The written, relevant questions that the party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party

The decision-maker decision shall issue, and simultaneously provide to both parties, a written decision as to whether the respondent is responsible for the alleged conduct. (34 CFR 106.45) be issued within 15 business days after the investigation is completed, unless such time is extended in accordance with this administrative regulation.

CSBA NOTE: 34 CFR 106.45 requires that the district's complaint process include a "reasonably prompt" timeframe for concluding the complaint process, but does not specify the number of days within which the final decision must be issued. The following paragraph specifies a 60-day period in order to align with the requirements of the UCP which are simultaneously triggered when a complaint of sexual harassment is received. Districts may revise the following paragraph to include a different timeline as long as it would satisfy the requirement to act promptly.

The written decision shall be issued within 60 calendar days of the receipt of the complaint.

The timeline may be temporarily extended for good cause with written notice to the complainant and respondent of the extension and the reasons for the action. (34 CFR 106.45)

CSBA NOTE: 34 CFR 106.45 mandates that the district's complaint procedures state whether the district's determination of responsibility will be based on a "preponderance of evidence" standard or "clear and convincing evidence" standard. The following paragraph reflects the "preponderance of evidence" standard, which is a less stringent standard to prove misconduct, and should be revised if the district chooses to use a "clear and convincing evidence" standard. The standard selected by the district must be applied uniformly for all Title IX sexual harassment complaints. The district should consult with legal counsel in determining which standard to use.

In making this determination, the decision-maker shall use the "preponderance of the evidence" standard for all formal complaints of sexual harassment. The same standard of evidence shall be used for formal complaints against students as for complaints against employees. (34 CFR 106.45)

The written decision shall include the following: (34 CFR 106.45)

- 1.—Identification of the allegations potentially constituting sexual harassment as defined in 34 CFR 106.30
- 2.—A description of the procedural steps taken from receipt of the formal complaint through the written decision, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held if the district includes hearings as part of the grievance process
- 3.—Findings of fact supporting the determination
- 4.—Conclusions regarding the application of the district's code of conduct or policies to the facts
- 5.—A statement of, and rationale for, the result as to each allegation, including a decision regarding responsibility, any disciplinary sanctions the district imposes on the respondent, and whether remedies designed to restore or preserve equal access to the district's educational program or activity will be provided by the district to the complainant
- 6.—The district's procedures and permissible bases for the complainant and respondent to appeal

Appeals

CSBA NOTE: 34 CFR 106.45 allows either the complainant or respondent to appeal the district's decision. The district may revise the following section to reflect applicable timelines established by the district.

The following section should also be revised to identify the person who has been designated as the decision-maker(s) for the appeal. Pursuant to 34 CFR 106.45, the decision-maker for the appeal cannot be the same person as the decision maker that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.

Either party may appeal the district's decision or dismissal of a formal complaint or any allegation in the complaint, if the party believes that a procedural irregularity affected the outcome, new evidence is available that could affect the outcome, or a conflict of interest or bias by the Title IX Coordinator, investigator(s), or decision-maker(s) affected the outcome. If an appeal is filed, the district shall: (34 CFR 106.45)

- 1.—Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties
- 2.—Ensure that the decision-maker(s) for the appeal is trained in accordance with 34 CFR 106.45 and is not the same decision-maker(s) who reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator
- 3.—Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome
- 4.—Issue a written decision describing the result of the appeal and the rationale for the result
- 5.—Provide the written decision simultaneously to both parties

An appeal must be filed in writing within 10 calendar days of receiving the notice of the decision or dismissal, stating the grounds for the appeal and including any relevant documentation in support of the appeal. Appeals submitted after this deadline are not timely and shall not be considered.

A written decision shall be provided to the parties within 20 calendar days from the receipt of the appeal.

CSBA NOTE: 5 CCR 4632-4633 provide that complainants may appeal to CDE if they disagree with the district's decision on any matter within the scope of the UCP. As amended by Register 2020, No. 21, 5 CCR 4632 changes the timeline for filing an appeal with CDE from 15 calendar days to 30 calendar days.

The district's decision may be appealed to the California Department of Education within 30 days of the written decision in accordance with BP/AR 1312.3.

Appeal of the Decision

CSBA NOTE: 34 CFR 106.45 allows either the complainant or respondent to appeal the district's decision, and requires the district to offer the parties an appeal process that at a minimum is the same as it offers in all other comparable proceedings, if any, including proceedings related to other discrimination complaints, such as AR 1312.3 – Uniform Complaint Procedures and AR 4030 – Nondiscrimination in Employment. The district may revise the following section to reflect applicable timelines and appeals process established by the district.

The following section should also be revised to identify the person who has been designated as the decisionmaker(s) for the appeal. Pursuant to 34 CFR 106.45, the decisionmaker for the appeal cannot be the same person as the decisionmaker that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.

Either party may appeal the district's decision of a complaint or any allegation in the complaint. (34 CFR 106.45)

When conducting an appeal, the district shall permit a final appeal to the Governing Board using a process that is in accordance with law and otherwise consistent with the appeal process as specified in Administrative Regulation 1312.3 – Uniform Complaint Procedures.

Either party has the right to file a complaint with the U.S. Department of Education's Office for Civil Rights within 180 days of the date of the most recently alleged misconduct.

CSBA NOTE: The following paragraph is consistent with requirements under Education Code 262.3; 5 CCR 4622; and the California Department of Education's Federal Program Monitoring instrument to provide notice regarding civil law remedies in the annual UCP notice and in the final written decision in the UCP process.

The complainant shall be advised of any civil law remedies, including, but not limited to, injunctions, restraining orders, or other remedies or orders that may be available under state or federal antidiscrimination laws, if applicable.

Extension of Timelines

CSBA NOTE: Pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, the district is required to establish a process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause, with notice to the parties that includes the reason for the delay.

Any timelines specified in this administrative regulation may be extended by the district for good cause, with written notice to the parties. The written notice shall specify the reasons for the extension. (34 CFR 106.45)

Remedies

CSBA NOTE: 34 CFR 106.45 mandates that the district's Title IX complaint process list, or describe the range of, possible remedies that the district may implement following any determination of responsibility. The following section may be revised to reflect district practice.

When a determination of responsibility for sexual harassment has been made against the respondent, the district shall provide remedies to the complainant. Such remedies may include the same individualized services described above in the section "Supportive Measures," but need not be nondisciplinary or nonpunitive and need not avoid burdening the respondent.

When there is a determination that sex discrimination, including sex-based harassment, has occurred, the Title IX Coordinator shall coordinate the provision and implementation of remedies to the complainant and other persons the district identifies as having had equal access to the district's education program or activity limited or denied by sex discrimination, including sex-based harassment; coordinate the imposition of any disciplinary sanctions on a respondent described in "Disciplinary Actions" below, including notification to the complainant of any such disciplinary actions; and take other appropriate prompt and effective steps to ensure that sex discrimination, including sex-based harassment, does not continue or recur within the district's education program or activity. (34 CFR 106.45)

Corrective/Disciplinary Actions

The district shall not impose any disciplinary sanctions or other actions against a respondent, other than supportive measures as described above in the section "Supportive Measures," until the complaint procedure has been completed and a determination of responsibility has been made. (34 CFR 106.44, 106.45)

For students in grades 4-12, discipline for sexual harassment may include suspension and/or expulsion. After the completion of the complaint procedure, if it is determined that a student at any grade level has committed sexual assault or sexual battery at school or at a school activity off school grounds, the principal or Superintendent shall immediately suspend the student and shall recommend expulsion. (Education Code 48900.2, 48915)

Other actions that may be taken with a student who is determined to be responsible for ~~sexual~~sex discrimination and/or sex-based harassment include, but are not limited to:

1. Transfer from a class or school as permitted by law
2. Parent/guardian conference
3. Education of the student regarding the impact of the conduct on others
4. Positive behavior support
5. Referral of the student to a student success team

6. Denial of participation in extracurricular or cocurricular activities or other privileges as permitted by law

When an employee is found to have committed sexual sex discrimination, including sex-based harassment, or retaliation, the district shall take appropriate disciplinary action, up to and including dismissal, in accordance with applicable law and collective bargaining agreement.

Record-Keeping

The Superintendent or designee shall maintain, for a period of seven years: (34 CFR 106.45)

1. A record of all reported cases and Title IX investigations of sexual harassment, any determinations of responsibility, any audio or audiovisual recording and transcript if applicable, any disciplinary sanctions imposed, any remedies provided to the complainant, and any appeal or informal resolution and the results therefrom
2. A record of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment, including the district's basis for its conclusion that its response was not deliberately indifferent, the measures taken that were designed to restore or preserve equal access to the education program or activity, and, if no supportive measures were provided to the complainant, the reasons that such a response was not unreasonable in light of the known circumstances

All materials used to train the Title IX Coordinator, investigator(s), decision-maker(s), The district shall not discipline a party, witness, or others participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the district's determination of whether sex discrimination, including sex-based harassment, occurred. (34 CFR 106.45)

CSBA NOTE: The following paragraph reflects Title IX record-keeping requirements pursuant to 34 CFR 106.8, as amended by 89 Fed. Reg. 33474.

The Superintendent or designee shall maintain, for at least a period of seven years: (34 CFR 106.45)

1. For each complaint of sex discrimination, including sex-based harassment, records documenting any informal resolution process or formal investigation procedures
2. For each notification the Title IX Coordinator or designee receives of information about conduct that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, records documenting the actions taken to fulfill the district's obligations as specified in 34 CFR 106.44, including supportive measures offered and implemented
3. All materials used to train district employees; the Title IX Coordinator and designee(s); investigator(s), decisionmaker(s), and other person(s) who are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures; and any person who facilitates an informal resolution process.

3. The district shall make such training materials publicly available on its web site, or if the district does not maintain a web site, available upon request by members of the public.

For complaints containing allegations of childhood sexual assault, the Superintendent or designee shall also indefinitely maintain the following: (Code of Civil Procedure 340.1):

1. A record of the allegation(s)
2. A record of the investigation procedures followed
3. A record of the written determination
4. A record of the corrective action implemented, if any
5. A record of any appeals and the outcome of the same
6. All training materials addressing the prohibition and investigation of childhood sexual assault

Policy Reference UPDATE Service

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Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State	Description
5 CCR 4600-4670	Uniform complaint procedures
5 CCR 4900-4965	Nondiscrimination in elementary and secondary educational programs receiving state or federal financial assistance
Civ. Code 1714.1	Liability of parent or guardian for act of willful misconduct by a minor
Civ. Code 51.9	Liability for sexual harassment; business, service and professional relationships
Ed. Code 200-262.4 270	Prohibition of discrimination on the basis of sex
Ed. Code 200-262.4	Prohibition of discrimination
Ed. Code 48900	Grounds for suspension or expulsion
Ed. Code 48900.2	Additional grounds for suspension or expulsion; sexual harassment
Ed. Code 48985	Notices to parents in language other than English
Gov. Code 12950.1	Sexual harassment training
Federal	Description
20 USC 1092	Definition of sexual assault
20 USC 1221	Application of laws
20 USC 1232g	Family Educational Rights and Privacy Act (FERPA) of 1974
20 USC 1681-1688	Title IX of the Education Amendments of 1972; discrimination based on sex
34 CFR 106.1-106.82	Nondiscrimination on the basis of sex in education programs

34 CFR 99.1-99.67

34 USC 12291

42 USC 1983

42 USC 2000d-2000d-7

42 USC 2000e-2000e-17

Management Resources

Court Decision

Court Decision

Court Decision

Court Decision

Court Decision

Court Decision

Court Decision

Federal Register

U.S. Department of Justice, Federal
Bureau of Investigation Publication

CSBA Publication

CSBA Publication

Family Educational Rights and Privacy

Definition of dating violence, domestic violence, and stalking

Civil action for deprivation of rights

Title VI, Civil Rights Act of 1964

Title VII, Civil Rights Act of 1964, as amended

Description

Davis v. Monroe County Board of Education (1999) 526 U.S. 629

Doe v. Petaluma City School District (1995, 9th Cir.) 54 F.3d 1447

Gebser v. Lago Vista Independent School District (1998) 524 U.S. 274

Oona by Kate S. v. McCaffrey (1998, 9th Cir.) 143 F.3d 473

Reese v. Jefferson School District (2001, 9th Cir.) 208 F.3d 736

Donovan v. Poway Unified School District (2008) 167 Cal.App.4th 567

Flores v. Morgan Hill Unified School District (2003, 9th Cir.) 324 F.3d 1130

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance ~~May 19, 2020, Vol. 85, No. 97, pages 30026-30579~~ April 29, 2024, Vol. 89, No. 83, pages 33474-33896

(<https://www.federalregister.gov/documents/2024/04/29/2024-07915/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>)

National Incident-Based Reporting System

(https://ucr.fbi.gov/nibrs/2018/resource-pages/nibrs_offense_definitions-2018.pdf)

Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students, Policy Brief, February 2014

(<https://www.csba.org/~media/E68E16A652D34EADA2BFDCD9668B1C8F.ashx>)

Safe Schools: Strategies for Governing Boards to Ensure Student Success, 2011

(<https://www.csba.org/GovernanceAndPolicyResources/ConditionsOfChildren/~media/722EF232A117447F9711112F75FBC212.ashx>)

U.S. DOE, Office for Civil Rights

Sexual Harassment: It's Not Academic, September 2008
(<https://www2.ed.gov/about/offices/list/ocr/docs/ocrshpam.html>)

U.S. DOE, Office for Civil Rights
Publication

Q&A on Campus Sexual Misconduct, September 2017

U.S. DOE, Office for Civil Rights
Publication

Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, January 2001
(<https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>)

U.S. DOE, Office for Civil Rights
Publication

Dear Colleague Letter: Title IX Coordinators, April 2015

U.S. DOE, Office for Civil Rights
Publication

Examples of Policies and Emerging Practices for Supporting Transgender Students, May 2016
(https://www2.ed.gov/about/offices/list/oese/oshs/emerging_practices.pdf)

Website

CSBA District and County Office of Education Legal Services

Website

California Department of Education

Website

CSBA

Website

U.S. Department of Education, Office for Civil Rights

Website

U.S. Department of Justice, Federal Bureau of Investigation
(<https://www.justice.gov/doj/federal-bureau-investigation>)

Cross References

Code

Description

0410

Nondiscrimination In District Programs And Activities

1312.3

Uniform Complaint Procedures

1312.3

Uniform Complaint Procedures

1312.3-E(1)

Uniform Complaint Procedures

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Nondiscrimination in Employment

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MR

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4118	Dismissal/Suspension/Disciplinary Action
4119.11	Sexual Harassment
4119.11	Sexual Harassment
4131	Staff Development
4218	Dismissal/Suspension/Disciplinary Action
4218	Dismissal/Suspension/Disciplinary Action
4219.11	Sexual Harassment
4219.11	Sexual Harassment
4317.7	Employment Status Reports
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5145.9	Hate-Motivated Behavior
6145	Extracurricular And Cocurricular Activities
6145	Extracurricular And Cocurricular Activities
6159	Individualized Education Program
6159	Individualized Education Program
6164.5	Student Success Teams

6164.5

Student Success Teams

6164.6

Identification And Education Under Section 504

6164.6

Identification And Education Under Section 504

Exhibit 5145.71-E(1): Title IX Sexual ~~Sex Discrimination and Sex-Based~~ Harassment Complaint Procedures Status: ADOPTED

Original Adopted Date: 10/01/2020 | Last ~~Revised~~ Date: 07/01/2024 | Last Reviewed Date: 10/07/01/2020 ~~2024~~

CSBA NOTE: 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, requires the district to provide notice to students and, parents/guardians of its, or other authorized legal representatives of elementary and secondary school students, that the district does not discriminate on the basis of sex as required by Title IX; that inquiries about the application of Title IX may be referred to the district's Title IX Coordinator and/or the U.S. Department of Education, Office of Civil Rights; the Title IX Coordinator's contact information; how to locate the district's policy prohibiting sexual sex discrimination, including sex-based harassment and its; the district's grievance procedures that provide for the prompt and equitable resolution of sexual sex discrimination, including sex-based harassment complaints; ; how to report information about conduct that may constitute sex discrimination, including sex-based harassment; and how to make a complaint of sex discrimination, including sex-based harassment. The following exhibit presents a sample notification that meets these requirements and may be modified to reflect district practice. For a sample notice for employees, bargaining units, and applicants for employment, see E 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures.

Pursuant to 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, the notice is required to be prominently included on the district's website, and in each handbook, catalog, announcement, bulletin, and application that it makes available to students, parents/guardians, or other authorized legal representative of students. If necessary due to the format or size of any publication specified above, the Superintendent or designee may include in the publication a statement that the district must prohibits sex discrimination in any education program or activity that it operates and that individuals may report concerns or questions to the district's Title IX Coordinator, and provide the Title IX Coordinator's contact information on its web site and in any handbook for students or parents/guardians. In addition website location of the notice of nondiscrimination.

Additionally, state law, (Education Code 231.5, 231.6, 234.6, and 48980), requires require distribution of the district's sexual harassment policy through the parental notification at the beginning of the school year, in any orientation program for new and continuing students, in any publication of rules of student conduct, and by posting the policy on the district's web site, website, displaying prominently in school offices, and in a poster displayed in locker rooms and bathrooms.

NOTICE OF TITLE IX SEXUAL HARASSMENT POLICY NONDISCRIMINATION

The Code of Federal Regulations, Title 34, Section 106.8 requires the district to issue the following notification to students at all grade levels, and their parents/guardians or other authorized legal representative:

The district does not discriminate on the basis of sex and prohibits sex discrimination, including sex-

based harassment, in any education program or activity that it operates. The prohibition against discrimination on the basis of sex is required by federal law (20 USC 1681-1688; 34 CFR Part 106) and extends to employment. The district also prohibits retaliation against any student for filing a complaint or exercising any right granted under Title IX.

Title IX requires a school. The district is required, as specified in Title IX, to take immediate prompt and appropriate equitable action to address any potential Title IX violations that are brought to its attention. Any inquiries about the application of Title IX, this notice, and who is protected by Title IX may be referred to the district's Title IX Coordinator, to the Assistant Secretary for Civil Rights of the U.S. Department of Education, or both.

CSBA NOTE: The district should enter the name/title and contact information of the district's Title IX Coordinator below. Such information should be consistent with the person/position identified in AR 5145.7 - Sexual - Sex Discrimination and Sex-Based Harassment.

The district has designated and authorized the following employee(s) as the district's Title IX Coordinator to address concerns or inquiries regarding discrimination on the basis of sex, including sexual harassment, sexual assault, dating violence, domestic violence, and stalking sex-based harassment:

(name and/or title/position)

(address)

(telephone number)

(email address)

CB or Des'gree
15305 Rockwood Rd
Escondido, CA 92021
760-745-4931
spused esanp gualunoy ref

CSBA NOTE: The district may expand the following paragraph to include other means of contact or reporting methods available in the district, such as online submission forms or mobile applications.

Pursuant to 34 CFR 106.8, the district must provide notice to employees, bargaining units, and job applicants students, parents/guardians, or other authorized legal representatives of students, of the district's grievance procedures and process, including how to report or file a formal complaint of sexual conduct that may constitute sex discrimination and/or, including sex-based harassment, and how the district will respond or file a complaint of sex discrimination, including sex-based harassment.

Any individual may report sex discrimination, including sexual sex-based harassment, to the Title IX Coordinator or any other school employee at any time, including during non-business hours, by mail, phone, or email. During district business hours, reports may also be made in person. Upon receiving an allegation of sexual sex harassment, including sex-based harassment, the Title IX Coordinator will promptly notify the parties, in writing, of the applicable district complaint procedure.

To view an electronic copy of the district's policies and administrative regulations on sexual sex discrimination, including sex-based harassment, including the grievance process that complies with 34 CFR 106.45, please see BP/AR Board Policy/Administrative Regulation 5145.7 - Sexual - Sex

ms

Discrimination and Sex-Based Harassment and ARAdministrative Regulation 5145.71 - Title IX
SexualSex Discrimination and Sex-Based Harassment Complaint Procedures on the district's web
site website at _____ (insert website link) _____. *www.sanpascualunion.net*

To inspect or obtain a copy of the district's sexualsex discrimination and sex-based harassment
policies and administrative regulations, please contact: _____ (insert location/phone/email of
contact person) _____. *spusde sanpascualunion.net*

Materials used to train employees; the Title IX Coordinator; investigator(s), ~~decision-~~
~~maker~~decisionmaker(s), and other person(s) who are responsible for implementing the district's
grievance procedures or have the authority to modify or terminate supportive measures; and any
person(s) who facilitates an informal resolution process, are also publicly available on the district's
web site or at the district office upon request.

Policy Reference UPDATE Service

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Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for
the board to enact this policy. Instead, they are provided as additional resources for those interested in the
subject matter of the policy.

State

5 CCR 4600-4670

Description

Uniform complaint procedures

5 CCR 4900-4965

Nondiscrimination in elementary and secondary educational
programs receiving state or federal financial assistance

Civ. Code 1714.1

Liability of parent or guardian for act of willful misconduct by
a minor

Civ. Code 51.9

Liability for sexual harassment; business, service and
professional relationships

Ed. Code 200-~~262.4~~270

Prohibition of discrimination on the basis of sex

Ed. Code 200-262.4

Prohibition of discrimination

Ed. Code 48900

Grounds for suspension or expulsion

Ed. Code 48900.2

Additional grounds for suspension or expulsion; sexual
harassment

Ed. Code 48985

Notices to parents in language other than English

Gov. Code 12950.1

Sexual harassment training

Federal

Description

20 USC 1092

Definition of sexual assault

20 USC 1221

Application of laws

20 USC 1232g

Family Educational Rights and Privacy Act (FERPA) of 1974

ME

20 USC 1681-1688

Title IX of the Education Amendments of 1972;
discrimination based on sex

34 CFR 106.1-106.82

Nondiscrimination on the basis of sex in education programs

34 CFR 99.1-99.67

Family Educational Rights and Privacy

34 USC 12291

Definition of dating violence, domestic violence, and stalking

42 USC 1983

Civil action for deprivation of rights

42 USC 2000d-2000d-7

Title VI, Civil Rights Act of 1964

42 USC 2000e-2000e-17

Title VII, Civil Rights Act of 1964, as amended

Management Resources

Description

Court Decision

Davis v. Monroe County Board of Education (1999) 526 U.S. 629

Court Decision

Doe v. Petaluma City School District (1995, 9th Cir.) 54 F.3d 1447

Court Decision

Gebser v. Lago Vista Independent School District (1998) 524 U.S. 274

Court Decision

Oona by Kate S. v. McCaffrey (1998, 9th Cir.) 143 F.3d 473

Court Decision

Reese v. Jefferson School District (2001, 9th Cir.) 208 F.3d 736

Court Decision

Donovan v. Poway Unified School District (2008) 167 Cal.App.4th 567

Court Decision

Flores v. Morgan Hill Unified School District (2003, 9th Cir.) 324 F.3d 1130

Federal Register

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance May 19, 2020, Vol. 85, No. 97, pages 30026-30579 April 29, 2024, Vol. 89, No. 83, pages 33474-33896

<https://www.federalregister.gov/documents/2024/04/29/2024-07915/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>

U.S. Department of Justice, Federal Bureau of Investigation Publication

National Incident-Based Reporting System

https://ucr.fbi.gov/nibrs/2018/resource-pages/nibrs_offense_definitions-2018.pdf

CSBA Publication

Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students, Policy Brief, February 2014

<https://www.csba.org/~media/E68E16A652D34EADA2BFD9668B1C8F.ashx>

CSBA Publication

Safe Schools: Strategies for Governing Boards to Ensure Student Success, 2011

<https://www.csba.org/GovernanceAndPolicyResources/ConditionsOfChildren/~/~/media/722EF232A117447F9711112F75FBC212.ashx>

U.S. DOE, Office for Civil Rights

Sexual Harassment: It's Not Academic, September 2008

<https://www2.ed.gov/about/offices/list/ocr/docs/ocrshpam.html>

U.S. DOE, Office for Civil Rights
Publication

Q&A on Campus Sexual Misconduct, September 2017

U.S. DOE, Office for Civil Rights
Publication

Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, January 2001

<https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>

U.S. DOE, Office for Civil Rights
Publication

Dear Colleague Letter: Title IX Coordinators, April 2015

U.S. DOE, Office for Civil Rights
Publication

Examples of Policies and Emerging Practices for Supporting Transgender Students, May 2016

<https://www2.ed.gov/about/offices/list/oese/oshs/emergingpractices.pdf>

Website

CSBA District and County Office of Education Legal Services

Website

California Department of Education

Website

CSBA

Website

U.S. Department of Education, Office for Civil Rights

[Website](#)

[U.S. Department of Justice, Federal Bureau of Investigation](#)

<https://www.justice.gov/doj/federal-bureau-investigation>

Cross References

Code

0410

Description

Nondiscrimination In District Programs And Activities

1312.3

Uniform Complaint Procedures

1312.3

Uniform Complaint Procedures

1312.3-E(1)

Uniform Complaint Procedures

1312.3-E(2)

Uniform Complaint Procedures

1313

Civility

3552

Summer Meal Program

3552

Summer Meal Program

3580	District Records
3580	District Records
<u>4030</u>	<u>Nondiscrimination in Employment</u>
4117.7	Employment Status Reports
4118	Dismissal/Suspension/Disciplinary Action
4118	Dismissal/Suspension/Disciplinary Action
4119.11	Sexual Harassment
4119.11	Sexual Harassment
4131	Staff Development
4218	Dismissal/Suspension/Disciplinary Action
4218	Dismissal/Suspension/Disciplinary Action
4219.11	Sexual Harassment
4219.11	Sexual Harassment
4317.7	Employment Status Reports
4319.11	Sexual Harassment
4319.11	Sexual Harassment
5030	Student Wellness
5141.4	Child Abuse Prevention And Reporting
5141.4	Child Abuse Prevention And Reporting
5141.52	Suicide Prevention
5141.52	Suicide Prevention
5144	Discipline
5144	Discipline
5144.1	Suspension And Expulsion/Due Process
5144.1	Suspension And Expulsion/Due Process
5145.3	Nondiscrimination/Harassment
5145.3	Nondiscrimination/Harassment
5145.7	Sexual Harassment
5145.7	Sexual Harassment
5145.9	Hate-Motivated Behavior
6145	Extracurricular And Cocurricular Activities

6145	Extracurricular And Cocurricular Activities
6159	Individualized Education Program
6159	Individualized Education Program
6164.5	Student Success Teams
6164.5	Student Success Teams
6164.6	Identification And Education Under Section 504
6164.6	Identification And Education Under Section 504

DELETE N/A

Policy 5146: Married/Pregnant/Parenting Students

Status: ADOPTED

Original Adopted Date: 12/01/2013 | **Last Revised Date:** 12/07/01/2018 **2024** | **Last Reviewed**
Date: 12/07/01/2018 **2024**

CSBA NOTE: The following optional policy may be revised to reflect district practice.

Pursuant to Education Code 48410, students may be exempted from compulsory attendance in continuing education classes if they must render personal services to a dependent. See AR 5112.1 - Exemptions from Attendance.

The Governing Board recognizes that responsibilities related pertaining to marriage, pregnancy, or parenting and, including related responsibilities obligations, medical conditions, or recovery, may disrupt a student's education and increase the chance of a student dropping out of school. The Board therefore desires to support minimize interruption to such students' educational progress by supporting married, pregnant, and parenting students to continue in their continued education, assisting them to attain strong academic and parenting skills, and promote promoting the healthy development of their children child(ren).

CSBA NOTE: Pursuant to Education Code 221.51, as added by AB 2289 (Ch. 942, Statutes of 2018), codifies federal and state regulations that prohibit districts are prohibited from applying any rule concerning a student's actual or potential parental, family, or marital status that treats students differently on the basis of sex, or from excluding or denying any student from any educational program or activity, including extracurricular activity, solely on the basis of a student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from such conditions. Additionally, 34 CFR 106.1-106.82, as amended by 89 Fed. Reg. 33474, prohibits discrimination on the basis of sex in the district's education program or activity, including current, potential, or past pregnancy, childbirth, termination of pregnancy, or lactation, and related medical conditions or recovery, and parental, marital, and family status; see BP/AR 5145.7 - Sex Discrimination and Sex-Based Harassment.

The district shall not exclude or deny any student from any educational program or activity, including any class or extracurricular activity, solely on the basis of the student's current, potential, or past pregnancy, childbirth, false pregnancy, termination of pregnancy, lactation, or related medical conditions or recovery. In addition, the district shall not adopt any rule concerning a student's actual or, potential, or past parental, family, or marital status that discriminates against and/or treats students a student differently on the basis of sex. (Education Code 221.51, 230; 5 CCR 4950; 34 CFR 106.40)

CSBA NOTE: Education Code 222.5, as added by AB 2289, requires the following annual notifications.

The Superintendent or designee shall annually notify parents/guardians at the beginning of the school year of the rights and options available to pregnant and parenting students under the law. In addition, pregnant and parenting students shall be notified of the rights and options available to ~~them~~ under the law through annual school year welcome packets and through independent study packets. (Education Code 222.5, 48980)

CSBA NOTE: Pursuant to 34 CFR 106.40, as amended by 89 Fed. Reg. 33474, when a student or a person who has a legal right to act on behalf of a student, informs any employee of the student's pregnancy or related conditions, the employee is required to provide that person with the Title IX Coordinator's contact information and inform that person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination, including sex-based harassment, and ensure the student's equal access to the district's education program or activity.

Any employee who is informed by a student, or a person who has a legal right to act on behalf of a student, of a student's pregnancy or related conditions shall provide that person with the Title IX Coordinator's contact information and inform the person that the Title IX Coordinator can coordinate specific acts to prevent sex discrimination, including sex-based harassment, and ensure the student's equal access to the district's education program or activity. (34 CFR 106.8)

CSBA NOTE: Pursuant to 34 CFR 106.40, as amended by 89 Fed. Reg. 33474, once notified of a student's pregnancy or related conditions, the district is required to take specified actions, as described below, to protect the student against sex discrimination.

When notified of a student's pregnancy or related conditions, the Title IX Coordinator shall provide the student, and if applicable the person who has a legal right to act on behalf of the student and who notified the Title IX Coordinator of the student's pregnancy or related conditions, with the district's notice of nondiscrimination, as specified in Administrative Regulation 5145.3 – Nondiscrimination/Harassment and Exhibit (1) 5145.71 – Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures. The Title IX Coordinator shall also coordinate actions specified in 34 CFR 106.40 to prevent discrimination against, and ensure equal access to, the student, including the following: (34 CFR 106.44)

1. Notifying the student that the district is required to not discriminate in its education program or activity against any student based on the student's current, potential, or past pregnancy or related conditions

However, a student's voluntary participation in a separate portion of the district's education program or activity does not constitute prohibited discrimination if the district ensures that the separate portion is comparable to that offered to students who are not pregnant and do not have related conditions.

2. To the extent consistent with 34 CFR 106.40(b)(3), ensuring that pregnancy or related conditions are treated in the same manner and under the same policies as any other temporary medical condition with respect to any medical or hospital benefit, service, plan, or policy the district administers, operates, offers, or participates in with respect to students admitted to the district's education program or activity
3. Informing the student that the district may not require the student who is pregnant or has related conditions to provide certification from a healthcare provider or any other person verifying that the student is physically able to participate in the district's class, program, or extracurricular activity unless the certified level of physical ability of health is necessary for participation in the class, program, or extracurricular activity; the district requires such certification of all participating students; and, the information obtained is not used as a basis for Title IX discrimination

CSBA NOTE: Pursuant to Family Code 7002, any person under the age of 18 years who enters into a valid marriage is an emancipated minor and therefore has the same rights as an adult. Such rights include, but are not limited to, those related to the verification of student absences (see AR 5113 - Absences and Excuses), application for a work permit (see AR 5113.2 - Work Permits), and access to student records (see AR 5125 - Student Records).

For school-related purposes, a student under the age of 18 years who enters into a valid marriage shall have all the rights and privileges of students who are 18 years ~~old~~ of age or older, even if the marriage has been dissolved. (Family Code 7002)

Education and Support Services for Pregnant and Parenting Students

Pregnant and parenting students shall retain the right to participate in the regular education program or an alternative education program. The classroom setting shall be the preferred instructional strategy unless an alternative is necessary to meet the needs of the student and/or the student's child.

CSBA NOTE: Both federal law (34 CFR 106.40) and state law (Education Code 221.51; 5 CCR 4950) prohibit districts from requiring a student to take a course or participate in a separate program or school for pregnant and parenting students. When students voluntarily participate in such alternative programs, federal law requires that the alternative program be "comparable" to the regular education program, and state law requires that the program be "equal" to the regular education program. The following paragraph reflects the state standard which is more stringent and thus would prevail.

The California Women's Law Center, in *Educational Rights of Pregnant and Parenting Teens: Title IX and California State Law Requirements*, describes the difficulty in ensuring that alternative programs are comparable or equal to the regular education program, and cites factors that districts should consider. Such factors may include, but are not limited to, the educational benefits provided (i.e., quality, range, and content of curriculum and other services; quality and availability of instructional materials and technology); extracurricular offerings; staff qualifications; geographic accessibility; and the quality, accessibility, and availability of facilities and resources. Because of the difficulty in meeting this standard, the California Women's Law Center cautions that districts must ensure that pregnant students are not pushed or lured into alternative programs through either overt or subtle practices.

Any alternative education program, activity, or course that is offered separately to pregnant or parenting students, including any class or extracurricular activity, shall be equal to that offered to other district students. A student's participation in such programs shall be voluntary. (Education Code 221.51; 5 CCR 4950)

CSBA NOTE: Education Code 221.51, as added by AB 2289, authorizes districts to require certification by a physician or nurse practitioner that a student is physically and emotionally able to participate in the regular education program or activity. ~~However~~ However, 34 CFR 106.40, as amended by 89 Fed. Reg. 33474, prohibits districts from requiring a student who is pregnant or has related conditions to provide certification from a healthcare provider or any other person verifying that the student is physically able to participate in the district's class, program, or extracurricular activity unless the certified level of physical ability of health is necessary for participation in the class, program, or extracurricular activity; the district requires such certification of all participating students; and, the information obtained is not used as a basis for sex

discrimination. Additionally, Education Code 221.51 and 34 CFR 106.40 require that pregnancy, childbirth, false pregnancy, termination of pregnancy, lactation, or related recovery conditions be treated in the same manner as any other temporary disabling condition. Thus, the district cannot require a student who is pregnant student or has related conditions to provide a physician's note to participate in physical education classes unless the certified level of physical ability is necessary for participation and such certification is required of all students with temporary medical conditions, but a A student who is pregnant student or who has related conditions who cannot accomplish the requirements of the regular physical education curriculum may be offered an alternative physical education curriculum accommodations, as specified in "Accommodations" below, or voluntary access to a comparable program, as described above. Education Code 48206.3 defines a "temporary disability" as a physical, mental, or emotional disability after which the student can reasonably be expected to return to regular day classes or an alternative education program; see AR 6183 - Home and Hospital Instruction.

If required for students with any other temporary disabling condition, ~~the~~The Superintendent or designee may shall not require a student, based on pregnancy, childbirth, false pregnancy, termination of pregnancy, lactation, or related medical conditions or recovery, to obtain certification from a physician or nurse practitioner indicating that the student is physically and emotionally able to continue participation in the regular district's education program or activity, including an extracurricular activity, unless the certified level of physical ability is necessary for participation and such certification is required of all students. (Education Code 221.51; 5 CCR 4950; 34 CFR 106.40)

CSBA NOTE: Items #1-7 below are optional and may be revised to reflect district practice.

To the extent feasible, the district shall provide educational and related support services, either directly or in collaboration with community agencies and organizations, to meet the needs of pregnant and parenting students and their children. Such services may include, but are not limited to:

CSBA NOTE: The district may choose to offer child care and development services as an incentive to encourage the school attendance of parenting students, as provided in ~~item~~Item #1 below. ChildFor more information about child care and development services are subject to applicable sections of Education Code 8200-8498 and the health and safety requirements of 22 CCR 101151-101239.2 and 101351-101439.1; see BP/AR 5148 - Child Care and Development.

1. Child care and development services for the children of parenting students on or near school site(s) during the school day and during school-sponsored activities
2. Parenting education and life skills instruction

CSBA NOTE: The federal Women, Infants, and Children grant program (42 USC 1786; 7 CFR 246.1-246.28) provides funding that may be used for special school nutrition supplements for low-income pregnant and lactating students as provided in ~~item~~Item #3 below; see the U.S. Department of Agriculture's web sitewebsite. Education Code 49553 specifies nutritional standards for these special school nutrition supplements.

3. Special school nutrition supplements for pregnant and lactating students pursuant to Education Code 49553, 42 USC 1786, and 7 CFR 246.1-246.28
4. Health care services, including prenatal care

CSBA NOTE: Health and Safety Code 104460 requires districts receiving Tobacco-Use Prevention Education funds to provide access to tobacco-use prevention and intervention services to pregnant and parenting students; see AR 5131.62 - Tobacco.

5. Tobacco, alcohol, and/or drug prevention and intervention services
6. Academic and personal counseling
7. Supplemental instruction to assist students in achieving grade-level academic standards and progressing toward graduation

As appropriate, teachers, administrators, and/or other personnel who work with pregnant and parenting students shall receive related professional development.

Absences

Pregnant or parenting students may be excused for absences for medical appointments and other purposes specified in BP/AR 5113 - Absences and Excuses.

CSBA NOTE: Education Code 48205, as amended by AB 2289, authorizes an excused absence without a note from a physician for a parenting student to care for a sick child. Also For more information regarding excused absences, see AR 5113 - Absences and Excuses.

A student shall be excused for absences to care for a sick child for whom the student is the custodial parent. A note from a physician shall not be required for such an absence. (Education Code 48205)

Parental Leave

CSBA NOTE: Education Code 46015, as added by AB 2289, provides that a pregnant or parenting student is entitled to eight weeks of parental leave, or longer if deemed medically necessary by the student's physician. Pursuant to Education Code 46015, the student's failure to notify the school as required below does not abridge the student's rights. Additionally, 34 CFR 106.40, as amended by 89 Fed. Reg. 33474, requires the district to allow a student who is pregnant or who has related conditions to voluntarily take a leave of absence to cover, at a minimum, the period of time deemed medically necessary by the student's licensed healthcare provider. If the district has a leave policy that allows for a greater period of time than the medically necessary period, and the student qualifies for leave under such policy, the district is required to permit the student to take leave under that policy.

A student who is pregnant or parenting student, or has a related condition, shall be entitled to eight weeks of parental leave in order to protect the health of the student who gives or expects to give birth and and/or the infant, and to allow the pregnant or parenting student to care for and bond with the infant. The period of the leave shall be the greater of eight weeks, or the length of time deemed medically necessary by the student's healthcare provider, or, if the district has a leave policy for which the student qualifies, the amount of time provided for in such policy. Such leave may be taken before the birth of the student's infant if there is a medical necessity and after childbirth during the school year in which the birth takes place, inclusive of any mandatory summer instruction. The Superintendent or designee may grant parental leave beyond eight weeks if deemed medically necessary by the student's physician. (Education Code 46015; 34 CFR 106.40)

The student, if age 18 years or older, or the student's parent/guardian shall notify the school of the student's intent to take parental leave. (Education Code 46015)

No student shall be required to take all or part of the parental leave. (Education Code 46015; 34 CFR 106.40)

When a student takes parental leave, the attendance supervisor shall ensure that absences from the regular school program are excused until the student is able to return to the regular school program or an alternative education program. A student who is pregnant or parenting student, or has related conditions, shall not be required to complete academic work or other school requirements during the period of the parental leave. (Education Code 46015)

CSBA NOTE: Pursuant to 34 CFR 106.40, as amended by 89 Fed. Reg. 33474, when a student returns to school after taking parental leave, the district is required to reinstate the student to the academic status and, as practicable, to the extracurricular status that the student held when the voluntary leave began.

Following the leave, a pregnant or parenting student Following the leave, a student who is pregnant or parenting, or has related conditions, may elect to return to the school and the course of study in which the student was enrolled before taking parental leave or to an alternative education option provided by the district. (Education Code 46015; 34 CFR 106.40)

Upon return to school, a pregnant or parenting student shall have opportunities to make up work missed during the leave, including, but not limited to, makeup work plans and reenrollment in courses. (Education Code 46015)

When necessary to complete high school graduation requirements, the student may remain enrolled in school for a fifth year of instruction, unless the Superintendent or designee makes a finding that the student is reasonably able to complete district graduation requirements in time to graduate by the end of the fourth year of high school. (Education Code 46015)

Accommodations

CSBA NOTE: According to the U.S. Department of Education (USDOE) pamphlet Supporting the Academic Success of Pregnant and Parenting Students under Title IX of the Education Amendments of 1972, when necessary to ensure a pregnant student's access to the educational program, the district must make adjustments to the regular program that are reasonable and responsive to the student's pregnancy status. Examples in the USDOE pamphlet include providing a larger desk, allowing frequent trips to the restroom, or permitting temporary access to elevators as necessary. Pursuant to 34 CFR 106.40, the school also must
CSBA NOTE: Pursuant to 34 CFR 106.40, as amended by 89 Fed. Reg. 33474, the district is required to provide reasonable accommodations for students who are pregnant or parenting, or have related conditions, as specified below. Additionally, pursuant to 34 CFR 106.40, as amended by 89 Fed. Reg. 33474, the school is required to provide any services to pregnant students that it provides to other students with temporary medical conditions, such as at-home instruction or tutoring for students who miss school because of such medical conditions. The USDOE publication lists additional programs and strategies that, although not required by federal law, may assist in addressing the needs of pregnant and parenting students.

When necessary, the district shall provide reasonable accommodations to enable a student who is pregnant or parenting student, or with related conditions, to access the educational program. The district shall consult with the student when identifying potential modifications. Any modification accepted by the student shall be implemented. Any proposed modification that would fundamentally alter the nature of the district's education program or activity shall not be implemented. (34 CFR 106.40)

Reasonable modifications may include, but are not limited to: (34 CFR 106.40)

1. Breaks during class to express breast milk, breastfeed, or attend to health needs associated with pregnancy or related conditions, including eating, drinking, or using the restroom
2. Intermittent absences to attend medical appointments
3. Access to online or homebound education
4. Changes in schedule or course sequence
5. Extensions of time for coursework and rescheduling of tests and examinations
6. Allowing a student to sit or stand, or carry or keep water nearby
7. Counseling
8. Changes in physical space or supplies, such as access to a larger desk or a footrest
9. Elevator access
10. Any other change to policies, practices, or procedures

A student who is pregnant student or who has a related condition shall have access to any services available to other students with temporary disabilities or medical conditions. (34 CFR 106.40)

CSBA NOTE: In addition to lactation accommodations required by state law, 34 CFR 106.40, as amended by 89 Fed. Reg. 33474, requires that a student who is lactating has access to a lactation space other than a bathroom, that is clean, shielded from view, and free from intrusion from others that may be used to express breast milk or breastfeed.

The school shall provide reasonable accommodations to any lactating student to express breast milk, breastfeed an infant child, or address other needs related to breastfeeding. A student shall not incur an academic penalty for using any of these reasonable accommodations, and shall be provided the opportunity to make up any work missed due to such use. Reasonable accommodations include, but are not limited to: (Education Code 222; 34 CFR 106.40)

1. Access to a private and secure room, other than a restroom, that is clean, shielded from view, and free from intrusion by others to express breast milk or breastfeed an infant child
2. Permission to bring onto a school campus a breast pump and any other equipment used to express breast milk
3. Access to a power source for a breast pump or any other equipment used to express breast milk
4. Access to a place to store expressed breast milk safely

5. A reasonable amount of time to accommodate the student's need to express breast milk or breastfeed an infant child

Complaints

CSBA NOTE: Since a student's current, potential, or past parental, family, or marital status is protected from discrimination pursuant to Title IX and its implementing regulations, as amended by 89 Fed. Reg. 33474, districts are required to follow Title IX grievance procedures when investigating and resolving a complaint based on alleged conduct that occurred on or after August 1, 2024. As such a complaint may also fall within Education Code 46015, as added by AB 2289, which authorizes the use of the district's uniform complaint procedures (UCP) established pursuant to 5 CCR 4600-4670 for complaints alleging, it is unclear whether districts would additionally be required to follow the district's noncompliance with requirements related to the provision of parental leave or other requirements UCP. Due to this uncertainty, it is recommended that districts consult CSBA's District and County Office of Education Code 46015 Legal Services or district legal counsel prior to utilizing the UCP for this purpose. For more information regarding the Title IX grievance procedures, see AR 5145.71 – Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

Any complaint alleging discrimination on the basis of a student's current, potential, or past pregnancy, family, or marital or parental status, district noncompliance with the requirements of Education Code 46015 or 34 CFR 106.40, or district noncompliance with the requirement to provide reasonable accommodations for lactating students, shall be addressed through the district's uniform complaint procedures investigated and resolved in accordance with 5 CCR 4600-4670 and BP/AR 1312.3 - Uniform the Title IX grievance procedures as specified in 34 CFR 106.44 and 106.45 and Administrative Regulation 5145.71 – Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures. A complainant who is not satisfied with the district's decision may appeal the decision to the California Department of Education (CDE). If the district or CDE finds merit in an appeal, the district shall provide a remedy to the affected student. (Education Code 222, 46015; 5 CCR 4600- 4670; 34 CFR 106.44, 106.45)

Program Evaluation

The Superintendent or designee shall periodically report to the Board regarding the effectiveness of district strategies to support current, potential, and past married, pregnant, and parenting students, which may include data on student participation in district programs and services, academic achievement, school attendance, graduation rate, and/or student feedback on district programs and services.

Policy Reference UPDATE Service

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Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State	Description
22 CCR 101151-101239.2	General requirements; licensed child care centers
22 CCR 101351-101439.1	Infant care centers

5 CCR 4600-4670

Uniform complaint procedures

5 CCR 4950

Nondiscrimination; marital and parental status

Civ. Code 51

Unruh Civil Rights Act

Ed. Code 221.51

Nondiscrimination; married, pregnant, and parenting students

Ed. Code 222

Reasonable accommodations; lactating students

Ed. Code 222.5

Pregnant and parenting students; notification of rights

Ed. Code 230

Sex discrimination

Ed. Code 46015

Parental leave

Ed. Code 48050

Residents of adjoining states

Ed. Code 48205

Excused absences

Ed. Code 48206.3

Temporary disability; definition

Ed. Code 48220

Compulsory education requirement

Ed. Code 48410

Persons exempted from continuation classes

Ed. Code 48980

Parent/Guardian notifications

Ed. Code 49553

Nutrition supplements for pregnant/lactating students

Ed. Code 51220.5

Parenting skills and education

Ed. Code 51745

Independent study

Ed. Code 52610.5

Enrollment of pregnant and parenting students in adult education

Ed. Code 8200-8490

Child Care and Development Services Act

Fam. Code 7002

Description of emancipated minor

H&S Code 104460

Tobacco prevention services for pregnant and parenting students

Federal

Description

20 USC 1681-1688

Title IX of the Education Amendments of 1972; discrimination based on sex

34 CFR 106.1-106.82

Discrimination on the basis of sex; effectuating Title IX

34 CFR 106.40

Marital or parental status

42 USC 1786

Special supplemental nutrition program for women, infants, and children

7 CFR 246.1-246.28

Special supplemental nutrition program for women, infants, and children

Management Resources

Description

Attorney General Opinion

87 Ops.Cal.Atty.Gen. 168 (2004)

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California Women's Law Center Publication	Educational Rights of Pregnant and Parenting Teens: Title IX and California State Law Requirements, 2012
California Women's Law Center Publication	The Civil Rights of Pregnant and Parenting Teens in California Schools, 2002 (https://www.cwlc.org/dev2019/download/the-civil-rights-of-pregnant-and-parenting-teens-in-california-schools/)
Court Decision	American Academy of Pediatrics et al v. Lungren et al (1997) 16 Cal.4th 307
U.S. Department of Education Publication	Supporting the Academic Success of Pregnant and Parenting Students under Title IX of the Education Amendments of 1972, rev. June 2013 (https://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.html)
<u>Federal Register</u>	<u>Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, April 29, 2024, Vol. 89, No. 83, pages 33474-33896</u> (https://www.federalregister.gov/documents/2024/04/29/2024-07915/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal)
Website	CSBA District and County Office of Education Legal Services
Website	California Women's Law Center
Website	U.S. Department of Agriculture, Women, Infants, and Children Program
Website	U.S. Department of Education
Website	California Department of Education

Cross References

Code	Description
0410	Nondiscrimination In District Programs And Activities
1312.3	Uniform Complaint Procedures
1312.3	Uniform Complaint Procedures
1312.3-E(1)	Uniform Complaint Procedures
1312.3-E(2)	Uniform Complaint Procedures
1400	Relations Between Other Governmental Agencies And The Schools
4131	Staff Development

5030	Student Wellness
5112.1	Exemptions From Attendance
5112.1	Exemptions From Attendance
5113	Absences And Excuses
5113	Absences And Excuses
5113.1	Chronic Absence And Truancy
5113.1	Chronic Absence And Truancy
5113.11	Attendance Supervision
5113.12	District School Attendance Review Board
5113.12	District School Attendance Review Board
5131.6	Alcohol And Other Drugs
5131.6	Alcohol And Other Drugs
5131.62	Tobacco
5131.62	Tobacco
5141.25	Availability Of Condoms
5141.6	School Health Services
5141.6	School Health Services
5145.3	Nondiscrimination/Harassment
5145.3	Nondiscrimination/Harassment
5145.6	Parent/Guardian Notifications
5145.6-E(1)	Parent/Guardian Notifications
<u>5145.7</u>	<u>Sex Discrimination and Sex-Based Harassment</u>
<u>5145.71</u>	<u>Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures</u>
5147	Dropout Prevention
5148	Child Care And Development
5148	Child Care And Development
6142.1	Sexual Health And HIV/AIDS Prevention Instruction
6142.1	Sexual Health And HIV/AIDS Prevention Instruction
6142.8	Comprehensive Health Education
6142.8	Comprehensive Health Education
6143	Courses Of Study

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Courses Of Study

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Independent Study

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Independent Study

6164.5

Student Success Teams

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Student Success Teams

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Continuation Education

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Continuation Education

