

## **Fresno Unified Board Policy (BP) 5145.7**

### **Sex Discrimination and Sex-Based Harassment**

The Governing Board is committed to maintaining a welcoming, safe, and supportive school environment that is free from harassment and discrimination. The Board prohibits, at school or at school-sponsored or school-related activities, sexual 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.

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)

The district strongly encourages students who feel that they are being or have experienced sex discrimination, including sex-based harassment, on school grounds or at a school-sponsored or school-related activity, or off-campus 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.

Any employee who receives a report or observes an incident of sexual discrimination, including sex-based harassment, by or against a student in a district education program or activity shall 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 Administration Regulation 5145.71 – Title IX Sexual Discrimination and Sex-Based Harassment Complaint Procedures.

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.

*(cf. 0410 – Nondiscrimination in District Programs and Activities)*

*(cf. 1312.1 - Complaints Concerning District Employees)*

*(cf. 1312.3 – Uniform Complaint Procedures)*

*(cf. 5131 – Conduct)*

*(cf. 5131.2 – Bullying)*

*(cf. 5137 – Positive School Climate)*

*(cf. 5141.4 - Child Abuse Prevention and Reporting)*

*(cf. 5145.3 – Nondiscrimination/Harassment)*

*(cf. 5145.71 – Title IX Sexual Harassment Complaint Procedures)*

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

The Superintendent or designee shall ensure that all district students receive age-appropriate information on sex discrimination and sex-based harassment. Such instruction and information shall include:

1. What acts and behavior constitute sex discrimination and sex-based harassment, including the fact that 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 sex discrimination and sex-based harassment under any circumstance
3. Encouragement to report observed incidents of sex discrimination and sex-based harassment even when the alleged victim of the discrimination or harassment has not complained
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 sex discrimination and sex-based harassment incident will be addressed separately and will not affect the manner in which the sex discrimination and 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 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 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 sex discrimination and 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 sex discrimination and sex-based harassment and/or other students during an investigation.

### Disciplinary Actions

Upon completion of an investigation of sex discrimination and/or sex-based harassment, any student found to have engaged in 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.

*(cf. 5144 - Discipline)*

*(cf. 5144.1 - Suspension and Expulsion/Due Process)*

*(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))*

Upon investigation of a sex discrimination and/or sex-based harassment, any employee found to have engaged in 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.

*(cf. 4117.7/4317.7 - Employment Status Report)*

*(cf. 4118 - Dismissal/Suspension/Disciplinary Action)*

*(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)*

*(cf. 4218 - Dismissal/Suspension/Disciplinary Action)*

### Record-Keeping

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.

*(cf. 3580 - District Records)*

Legal Reference:

EDUCATION CODE

200-270 Prohibition of discrimination

220.1 Prohibition of retaliation related to educational equity

220.3 Prohibition of disclosure of information related to student's sexual orientation, gender identity, or gender expression

220.5 Prohibition of policies requiring disclosure of information related to student's sexual orientation, gender identity, or gender expression

35292.5 School restrooms; all-gender restrooms

48900 Grounds for suspension or expulsion

48900.2 Additional grounds for suspension or expulsion; sexual harassment

48904 Liability of parent/guardian for willful student misconduct

48980 Parent/Guardian notifications

48985 Notices to parents, in language other than English

49060-49079 Students Records

CIVIL CODE

51.9 Liability for sexual harassment; business, service and professional relationships

1714.1 Liability of parents or guardians for act of willful misconduct by a minor

GOVERNMENT CODE

12950.1 Sexual harassment training

CODE OF REGULATIONS, TITLE 5

432 Student Records

4600-4670 Uniform Complaint Procedures

4900-4965 Nondiscrimination in elementary and secondary education programs receiving state or federal financial assistance

UNITED STATES CODE, TITLE 20

1092 Definition of sexual assault

1221 Application of laws

1232g Family Educational Rights and Privacy Act (FERPA) of 1974

1681-1688 Title IX of the Education Amendments of 1972; discrimination based on sex

UNITED STATES CODE, TITLE 34

99.1-99.67 Family Educational Rights and Privacy

106.1-106.71 Nondiscrimination on the basis of sex in education programs

12291 Definition of dating violence, domestic violence, and stalking

UNITED STATES CODE, TITLE 42

1983 Civil action for deprivation of rights

2000d-2000d-7 Title VI, Civil Rights Act of 1964

2000e-2000e-17 Title VII, Civil Rights Act of 1964 as amended

COURT DECISIONS

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

Reese v. Jefferson School District, (2001, 9th Cir.) 208 F.3d 736

Davis v. Monroe County Board of Education, (1999) 526 U.S. 629

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

Doe v. Petaluma City School District, (1995, 9th Cir.) 54 F.3d 1447

Management Resources:

CSBA PUBLICATIONS

Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students, Policy Brief, February 2014

U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS

Q&A on Campus Sexual Misconduct, September 2017

Examples of Policies and Emerging Practices for Supporting Transgender Students, May 2016

Dear Colleague Letter: Title IX Coordinators, April 2015

Sexual Harassment: It's Not Academic, September 2008

Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, January 2001

WEB SITES

California Department of Education: <http://www.cde.ca.gov>

U.S. Department of Education, Office for Civil Rights: <http://www.ed.gov/about/offices/list/ocr>

Policy FRESNO UNIFIED SCHOOL DISTRICT

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