

**San Bernardino County Superintendent of Schools**  
**Exhibit 5145.71 – E (1)**

**Title IX Sexual Harassment Complaint Procedure**

The complaint procedures described in this exhibit shall be used to address any complaint governed by Title IX of the Education Amendments of 1972 alleging that a student, while in an education program or activity in which the San Bernardino County Superintendent of Schools (SBCSS) 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)

1. A SBCSS employee conditioning the provision of SBCSS 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 SBCSS's education program or activity
3. Sexual assault as defined in 20 USC 1092 and as operationalized through the FBI Uniform Crime Reporting (UCR)/NIBRS offense categories incorporated by reference into the Clery Act.

For purposes of Title IX, 'sexual assault' incorporates the FBI Uniform Crime Reporting/NIBRS offense categories as referenced in the Clery Act (20 U.S.C. 1092(f)(6)(A)(v)). Effective June 23, 2025, these categories include rape, statutory rape, incest, and criminal sexual contact (formerly 'fondling') pursuant to the 2025 NIBRS User Manual. 'Criminal sexual contact' includes intentional touching of the clothed or unclothed body parts without consent for purposes of sexual gratification, degradation, or humiliation; forced touching of the actor's body parts by the victim; and circumstances where the victim is incapable of consent due to age, disability, or intoxication

For a complaint governed by Title IX based on conduct that occurred, in whole or in part, between August 1, 2024, and January 9, 2025, or prior to August 14, 2020, legal counsel shall be consulted to determine the appropriate which procedures to use.

All other complaints alleging sexual harassment brought by or on behalf of students not falling within the definitions of this regulation shall be investigated and resolved in accordance with SBCSS Policy/Exhibit(1) 1312.3 - Uniform Complaint Procedures. The determination over which process shall be used to resolve a complaint shall be made by the SBCSS Title IX Coordinator.

SBCSS shall apply the updated 2025 NIBRS sexual assault definitions to any Title IX complaint received on or after June 25, 2025. Complaints received before this date may be evaluated under the definitions then in effect, consistent with guidance from legal counsel

## Basic Requirements

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

1. Treat complainants and respondents equitably by providing remedies to a complainant only after a determination of responsibility for sexual harassment has been made against the respondent and by following a grievance process in accordance with 34 CFR 106.45 before the imposition of any disciplinary sanctions or other actions that are not supportive measures, as defined in 34 CFR 106.30, against a respondent

Remedies following a determination of responsibility for sexual harassment shall be designed to restore or preserve equal access to the SBCSS's education program or activity, and shall be provided in accordance with "Remedies", below.

2. Require an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence, and provide that credibility determination may not be based on a person's status as complainant, respondent, or witness
3. Ensure that the Title IX Coordinator, investigator, decisionmaker, or any person that facilitates an informal resolution process, does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent, and that such individuals receive training in accordance with 34 CFR 106.45
4. Presume that the respondent is not responsible for the conduct until a determination regarding responsibility is made at the conclusion of the grievance process
5. Investigations will be completed within 60 calendar days of issuance of the Notice of Allegations, appeals will be resolved within 15 calendar days of filing, and informal resolution processes (if offered) will be concluded within 30 calendar days

The SBCSS's procedures shall also include a process that allows for the temporary delay of the grievance procedures or the limited extension of timeframes for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities

6. The Notice of Allegations shall include notification of the policies governing any disciplinary sanctions that SBCSS may implement following any determination of responsibility. Potential remedies shall be included in policies, notices, or other documents
7. The standard of evidence used to determine responsibility is the preponderance of the evidence standard
8. Include a process and standards for complainant and respondent to appeal

9. Includes clear explanation of supportive measures available to complainants and respondents
10. Does not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege

Additionally, the SBCSS shall not disclose the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy Act statute or regulations, as required by law, or to carry out the purposes of Title IX, including the conduct of any investigation, hearing, or judicial proceeding arising under Title IX. (34 CFR 106.30, 106.71)

### **Reporting Allegations/Filing a Formal Complaint**

A student who is the alleged victim of sexual harassment or the student's parent/guardian may submit a report of sexual harassment to the SBCSS's Title IX Coordinator using the contact information listed in Exhibit(1) 5145.7 - Sexual Harassment, or to any other available school employee, who shall forward the report to the Title IX Coordinator within one schoolday of receiving the report.

Upon receiving such a report, the Title IX Coordinator shall inform 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 shall include the complainant's physical or digital signature, or another indication that the complainant is the person filing the complaint, and be filed with the Title IX Coordinator in person, by mail, by email, or by any other method authorized by SBCSS. (34 CFR 106.30)

If the SBCSS has actual knowledge of sexual harassment or allegations of sexual harassment but the alleged victim does not file a formal complaint, the Title IX Coordinator may file a formal complaint and, in situations when an imminent safety threat exists, a formal complaint shall be filed. In such cases, the alleged victim shall be provided with notices as required by the Title IX regulations at specific points in the complaint process.

### **Supportive Measures**

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 even if no formal complaint has been filed. Such measures shall be nondisciplinary, nonpunitive, and designed to restore or preserve equal access to the SBCSS's education program or activity without unreasonably burdening the other party, including measures

designed to protect the safety of all parties or the SBCSS's educational environment or to deter sexual harassment.

Supportive measures may include, but are not limited to, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact, changes in work or housing locations, leaves of absence, increased security, and monitoring of certain areas of the campus. (34 CFR 106.30, 106.44)

The SBCSS shall maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the SBCSS's ability to provide the supportive measures. (34 CFR 106.30)

### **Emergency Removal from School**

If a student is the respondent, the SBCSS may remove the student from the SBCSS's education program or activity on an emergency basis, provided that the SBCSS conducts an individualized safety and risk analysis, determines that removal is justified due to an immediate threat to the health or safety of any student, or other individual arising from the allegations, and provides the student with notice and an opportunity to challenge the decision immediately following the removal. Any such removal may not constitute discipline for student record purposes. Additionally, 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)

If a SBCSS 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**

A formal complaint shall be dismissed if the alleged conduct would not constitute sexual harassment as defined in 34 CFR 106.30. Additionally, a formal complaint shall be dismissed if the alleged conduct did not occur in the SBCSS's education program or activity or did not occur against a person in the United States.

In addition, a formal complaint may be dismissed if the complainant notifies the SBCSS 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 SBCSS, or specific circumstances prevent the SBCSS from gathering evidence sufficient to reach a determination with regard to the complaint. (34 CFR 106.45)

Upon dismissal, written notice of the dismissal and the reasons for the dismissal shall simultaneously be sent to the parties, and the parties shall be informed of their right to appeal the dismissal 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 SBCSS Policy 1312.3 - Uniform Complaint Procedures, as applicable.

## **Informal Resolution Process**

When a formal complaint of sexual harassment is filed the SBCSS may offer an informal resolution process, such as mediation, at any time prior to reaching a determination regarding responsibility subject to the limitations in this section. (34 CFR 106.45)

The SBCSS 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, including that the SBCSS shall not require such waiver as a condition of enrollment or employment or continuing enrollment or employment. (34 CFR 106.45)

As part of an informal resolution, the parties may agree upon discipline such as suspension or expulsion without the need for an investigation.

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

1. Provides the parties with written notice disclosing the allegations; the requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations; the right to withdraw from the informal process and resume the formal complaint process at any time prior to agreeing to a resolution; and any consequences resulting from the informal resolution process, including that records will be maintained or could be shared
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

## **Written Notice**

If a formal complaint is filed, the known parties shall be provided written notice of the following: (34 CFR 106.45)

1. The SBCSS's complaint process, including any informal resolution process
2. The allegations potentially constituting sexual harassment with sufficient details known at the time, including the identity of parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location 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, written notice of the additional allegations shall be provided to the parties.

3. A statement that 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 to have an advisor of their choice who may be, but is not required to be, an attorney, and the ability to inspect and review evidence
5. The prohibition against knowingly making false statements or knowingly submitting false information during the complaint process

The above notice may also include the name of the investigator, facilitator of an informal process, and decisionmaker and 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.

### **Consolidation of Complaints**

When the allegations of sexual harassment arise out of the same facts or circumstances, the SBCSS may consolidate formal complaints of sexual harassment against more than one respondent; by more than one complainant against one or more respondents; or by one party against another party. (34 CFR 106.45)

### **Investigation Procedures**

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

1. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence
2. Not restrict the ability of either party to discuss the allegations under investigation or to gather 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 or presence of an advisor for either the complainant or respondent in any meeting or grievance proceeding, although the SBCSS 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
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. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint including evidence that the SBCSS does not intend to rely on in reaching a determination regarding responsibility and inculpatory and exculpatory evidence whether obtained from a party or other

source so that each party can meaningfully respond to the evidence prior to conclusion of the investigation

7. Provide for review (in an electronic format or hard copy) by 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
8. Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to the determination of responsibility, provide for review and response by both parties and their advisors, if any.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged by the complainant or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

During investigations involving allegations of sexual assault, investigators shall use the updated definitions of rape, statutory rape, incest, and criminal sexual contact adopted in the 2025 NIBRS User Manual.

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

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**

The SBCSS's designated decisionmaker, who shall determine responsibility for the alleged conduct, shall not be the Title IX Coordinator or a person involved in the investigation. (34 CFR 106.45)

After the investigative report has been sent to the parties but before reaching a determination regarding responsibility, the decisionmaker shall afford each party the opportunity to submit 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 decisionmaker shall issue, and simultaneously provide to both parties, a written decision as to the scope of the respondent's responsibility for the alleged conduct, if any. (34 CFR 106.45) such decision shall be issued within 30 days of initiation of the decision-making process.

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

In making this determination, the decisionmaker 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. For allegations involving sexual assault, the written decision shall identify the specific NIBRS offense category applied (rape, statutory rape, incest, or criminal sexual contact).
3. 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 SBCSS includes hearings as part of the grievance process
4. Findings of fact supporting the determination
5. Conclusions regarding the application of the SBCSS's code of conduct or policies to the facts
6. A statement of, and rationale for, the result as to each allegation, including a decision regarding responsibility, any disciplinary sanctions the SBCSS imposes on the respondent, and whether remedies designed to restore or preserve equal access to the SBCSS's educational program or activity will be provided by the SBCSS to the complainant
7. The SBCSS's procedures and permissible bases for the complainant and respondent to appeal

## **Appeals**

Either party may appeal the written 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 was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome, or a conflict of interest or bias by the Title IX Coordinator, investigator(s), or decisionmaker(s) affected the outcome.

If an appeal is filed, the SBCSS 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 decisionmaker(s) for the appeal is trained in accordance with 34 CFR 106.45 and is not the same decisionmaker(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 shall 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 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**

When a determination of responsibility for sexual harassment has been made against the respondent, the SBCSS shall provide remedies to the complainant as appropriate. 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. (34 CFR 106.45)

### **Corrective/Disciplinary Actions**

The SBCSS may impose disciplinary sanctions or other actions after 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. (Education Code 48900.2, 48915)

Other actions that may be taken with a student who is determined to be responsible for sexual harassment include, but are not limited to:

1. Transfer from a class or school as permitted by law
2. Conference with parent/guardian
3. Educating the student regarding the impact of the student's 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

An employee found to have committed sexual harassment or retaliation shall be subject to disciplinary action, up to and including dismissal, in accordance with applicable law and collective bargaining agreement.

### **Record-Keeping**

The SBCSS 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 SBCSS'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
3. All materials used to train the Title IX Coordinator, investigator(s), decisionmaker(s), and any person who facilitates an informal resolution process
4. The SBCSS shall make such training materials publicly available on its website, or if the SBCSS does not maintain a website, available upon request by members of the public.
5. Training materials shall reflect the updated 2025 NIBRS definitions of sexual assault, including the replacement of "fondling" with "criminal sexual contact".

For complaints containing allegations of childhood sexual assault, the San Bernardino County Superintendent of Schools 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

Additionally, the Superintendent or designee shall indefinitely maintain a record of insurance which evidences the SBCSS's coverage for acts of sexual assault.

**Policy Reference Disclaimer:**

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

<b>State</b>	<b>Description</b>
5 CCR 4600-4670	Uniform complaint procedures
5 CCR 4900-4965	Nondiscrimination in elementary and secondary education programs
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 200-262.1	Educational equity; prohibition of discrimination on the basis of sex
Ed. Code 48900	Grounds for suspension and/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
<b>Federal</b>	<b>Description</b>
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	Tennessee v. Cardona (2024) 737 F.Supp.3d 510
Court Decision	Reese v. Jefferson School District, (2001, 9th Cir.) 208 F.3d 736
Court Decision	Oona by Kate S. v. McCaffrey, (1998, 9th Cir.) 143 F.3d 473
Court Decision	Gebser v. Lago Vista Independent School District, (1998) 524 U.S. 274
Court Decision	Flores v. Morgan Hill Unified School District (2003) 324 F.3d 1130
Court Decision	Donovan v. Poway Unified School District (2008) 167 Cal.App.4th 567
Court Decision	Doe v. Petaluma City School District, (1995, 9th Cir.) 54 F.3d 1447
Court Decision	Davis v. Monroe County Board of Education, (1999) 526 U.S. 629
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
U.S. DOJ Publication	Dear Colleague Letter: Enforcement of Title IX under the provisions of the 2020 Title IX Rule, February 4, 2025
U.S. DOJ, FBI Publication	National Incident-Based Reporting System
Website	U.S. Department of Justice, Federal Bureau of Investigation
Website	CSBA District and County Office of Education Legal Services
Website	U.S. Department of Education, Office for Civil Rights
Website	CSBA
Website	California Department of Education

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