San Bernardino County Superintendent of Schools
Procedure 4119.12, 4219.12, 4319.12

TITLE IX SEXUAL HARASSMENT COMPLAINT

The complaint procedures described in this administrative procedure shall be used to address any complaint governed by Title IX of the Education Amendments of 1972 alleging that an employee, while in an education program or activity, in which the Superintendent exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred, was subjected to one or more of the following forms of sexual harassment: (34 CFR 106.30, 106.44)

1. A Superintendent employee conditioning the provision of a Superintendent 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's equal access to the superintendent's education program or activity; or

3. Sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 or 34 USC 12291.

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)), in effect at the time of the alleged conduct.

Effective June 25, 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. 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.

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, the Title IX Coordinator shall consult with Superintendent legal counsel to determine which procedures to use.

All other complaints alleging sexual harassment brought by or against employees shall be investigated and resolved in accordance with Administrative Procedure 4030.1 - Nondiscrimination in Employment Procedures. The determination over which process shall be used to investigate and resolve a complaint shall be made by the Superintendent's Title IX Coordinator.

The Title IX Coordinator shall ensure that all requirements for notification of rights and responsibilities under Administrative Procedure 4030.1 - Nondiscrimination in Employment Procedures are met while implementing the Title IX procedure and that timelines for investigation under that process is tolled during the Title IX grievance procedures for complaints that are governed by this process.

Basic Requirements

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

1. Treat complainants and respondents equitably by providing remedies to a complainant where 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 superintendent'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 determinations may not be based on a person's status as complainant, respondent, or witness.

3. Ensure that the Title IX Coordinator, investigator, decision-maker, 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 alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

5. Include reasonably prompt timeframes for the conclusion of the grievance procedures, including reasonably prompt timeframes for filing and resolving

appeals, and informal resolution processes if appropriate and offered by the Superintendent.

The Superintendent'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. Describe the range of, or list, the possible disciplinary sanctions and remedies that the superintendent may implement following any determination of responsibility.

7. In determining responsibility, apply the preponderance of the evidence standard.

8. Include the procedures and permissible bases for the complainant and respondent to appeal.

9. Describe the range of supportive measures available to complainants and respondents.

10. 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 Superintendent 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

An employee who is the alleged victim of sexual harassment may submit a report of sexual harassment to the Superintendent's Title IX Coordinator using the contact information listed in Administrative Procedure 4119.11/4219.11/4319.11 - Sexual Harassment Policy, or to any other available Superintendent employee, who shall forward the report to the Title IX Coordinator within one workday 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 the Superintendent. (34 CFR 106.30)

If the Superintendent 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 must file a formal complaint and, in situations when an imminent safety threat exists, shall file a formal complaint. 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.

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 non-disciplinary, nonpunitive, and designed to restore or preserve equal access to the Superintendent's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the Superintendent'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 locations, leaves of absence, increased security, and monitoring of certain areas of the campus. (34 CFR 106.30, 106.44)

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

Emergency Removal from School

If a Superintendent employee is the respondent, the employee may be placed on administrative leave. Placement on administrative leave is non-disciplinary interim measure and does not constitute a determination of responsibility.

If a student is the respondent, the Superintendent may remove the student from the Superintendent's education program or activity, on an emergency basis, provided that the Superintendent conducts an individualized safety and risk analysis, determines that removal is justified due to an immediate threat to the physical 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 or Policy 5144 - Discipline. 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)

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. Additionally, the Title IX Coordinator shall dismiss a formal complaint in which the alleged conduct did not occur in the Superintendent's education program or activity or did not occur against a person in the United States. In addition, the Title IX Coordinator may dismiss a formal complaint if the complainant notifies the Superintendent 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 Superintendent, or specific circumstances prevent the Superintendent 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 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 Administrative Procedure 4030.1 - Nondiscrimination in Employment Procedures, as applicable.

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

The Superintendent 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 Superintendent shall not require such waiver as a condition of enrollment or employment or continuing employment. (34 CFR 106.45)

An informal resolution may include mutually agreed-upon remedies or other measures consistent with law, SBCSS policy, and CBA.

The Superintendent may facilitate an informal resolution process provided that the Superintendent: (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; and

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 Title IX Coordinator shall provide the known parties with written notice of the following: (34 CFR 106.45)

1. The Superintendent'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

   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 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 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 Superintendent may consolidate formal complaints alleging 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 Superintendent'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 Superintendent 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 Superintendent 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. 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

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

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.

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.

The Superintendent shall designate an employee as the decisionmaker to determine responsibility for the alleged conduct, who 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)

The final investigation report shall be issued within 60 calendar days of the issuance of the Notice of Allegations, and the decision-making will be completed within 30 days of the decision-maker's receipt of the final investigation report.

The Superintendent 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. 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 Superintendent includes hearings as part of the grievance process.

3. Findings of fact supporting the determination.

4. Conclusions regarding the application of the Superintendent'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 Superintendent imposes on the respondent, and whether remedies designed to restore or preserve equal access to the Superintendent's educational program or activity will be provided by the Superintendent to the complainant.

6. The Superintendent'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 Superintendent 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 anti-discrimination laws, if applicable.

Remedies

When a determination of responsibility for sexual harassment has been made against the respondent, the Superintendent 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 non-disciplinary or nonpunitive and need not avoid burdening the respondent. (34 CFR 106.45)

Disciplinary Actions

The Superintendent 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)

When an employee is found to have committed sexual harassment or retaliation, the Superintendent 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 Superintendent'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.

   The Superintendent shall make such training materials publicly available on its website, or if the Superintendent does not maintain a website, 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

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

Approved: September 25, 2026