

Regulation 4319.11: Sex Discrimination and Sex-Based Sexual Harassment

Status: ADOPTED

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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 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 sex-based harassment as applicable to employees.

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

For information related to sex discrimination and sex-based harassment involving 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. 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.

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 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 harassment as applicable to employees.

Title IX of the Education Amendments of 1972 (20 USC 1681-1688) prohibits discrimination based on sex in district programs and activities. Although the Title IX regulations were amended by 89 Fed.Reg. 33474, effective August 1, 2024, these amendments were vacated nationwide by the United States District Court in *Tennessee v. Cardona* on January 9, 2025. Following this decision, the U.S. Department of Education's Office for Civil Rights (OCR) February 4, 2025 Dear Colleague Letter clarified that OCR will enforce Title IX based on the regulations as they existed prior to August 1, 2024. Therefore, references in this administrative regulation to Title IX and its implementing regulations are to the Title IX regulations as they existed prior to August 1, 2024.

For information related to sexual harassment involving students, see BP/AR 5145.7 - Sexual Harassment and AR 5145.71 - Title IX Sexual 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.

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

CSBA NOTE: Government Code 12920 and 12926, as amended by SB 1137 (Ch. 779, Statutes of 2024), provide that prohibited discrimination or harassment includes discrimination or harassment not just because of one protected class under state law, but also because of the combination of two or more protected bases.

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.

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: A Pursuant to 34 CFR 106.2, 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. 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.

34 CFR 106.2 and 106.10, as amended by 89 Fed. Reg. 33474, clarify that sex-based harassment for the purpose of Title IX includes harassment on the basis of sex stereotypes; sex characteristics; gender identity; sexual orientation; pregnancy, childbirth, termination of pregnancy, or lactation; including related conditions; and, parental, marital, and family status. Additionally, in *Oncale v. Sundowner Offshore Services, Inc.*, the U.S. Supreme Court held that same-sex 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) *Sexual harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of one, or a combination of two or more protected characteristics, which include, but may not be limited to, sex; gender; gender identity; gender expression; sexual orientation; sex stereotypes; pregnancy, false pregnancy, childbirth, or related conditions or recovery; reproductive health decision-making; breastfeeding or related medical conditions; and parental, marital, and family status. (Government Code 11135, 12920, 12926, 12940; 20 USC 1681-1688)*

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 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

CSBA NOTE: 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.

For purposes of applying the complaint procedures specified in Title IX, 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 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 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 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 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 sex-based flirtations or propositions; graphic comments about an individual's body; overly personal conversations or pressure for sex-based activity; sex-based jokes or stories; unwelcome sex-based slurs, epithets, threats, innuendoes; derogatory comments; sex-based degrading descriptions; or the spreading of 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

CSBA NOTE: Pursuant to 34 CFR 106.8, districts that receive federal financial assistance are mandated to designate an employee as the Title IX Coordinator to ensure district compliance with Title IX and its implementing regulations. 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 the following to designate separate district employees to serve these functions. However, if the district

wishes to separate these responsibilities, it is recommended that one individual be responsible for oversight of the complaint process for the district; see AR 4030 – Nondiscrimination in Employment.

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

[redacted]
(title or position)

[redacted]
(address)

[redacted]
(telephone number)

[redacted]
(email)

Training

CSBA NOTE: Government Code 12950.1 requires districts with five or more employees to provide sexual harassment training and education to supervisory and nonsupervisory employees once every two years. 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 sex-based harassment training. Districts should consult 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:

CSBA NOTE: Government Code 12950.1 requires districts to provide sexual harassment training and education to supervisory and nonsupervisory employees once every two years. 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, 34 CFR 106.45 requires that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment specified in 34 CFR 106.30, the scope of the district's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. 34 CFR 106.45 requires additional training for investigators and decisionmakers.

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 harassment training. It is recommended that districts consult 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 sexual 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 ~~sexual~~ 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 sex, 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~~others 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, type of training, and name of the training provider. (2 CCR 11024)

The Superintendent or designee shall retain for at least two years the records of any training provided to employees. Such records shall include, but are not limited to, the names of trained employees, date of the training, the sign in sheet, a copy of all certificates of attendance or completion issued, the type of training, a copy of all written or recorded materials that comprise the training, and name of the training provider. (2 CCR 11024)

Additionally, the Superintendent or designee shall ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training in accordance with 34 CFR 106.45, including the definition of sexual harassment specified in 34 CFR 106.30, the scope of the district's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable,

and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

In addition, the district's Title IX sexual harassment training shall include additional training for investigators and decisionmakers. (34 CFR 106.45)

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)

The Superintendent or designee shall retain for seven years the materials used to provide training as specified in 34 CFR 106.45, make these materials publicly available on its website, or, if the district does not maintain a website make these materials available upon request, to members of the public.

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

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)

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:

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)

The Superintendent or designee shall ensure that a copy of the accompanying 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)

CSBA NOTE: Government Code 12950 requires the California Civil Rights Department (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 CRD's website. This list has been modified to make it applicable to sex-based harassment in general, not just sexual harassment.

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 website (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 (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 CRD's website.

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

1. The illegality of ~~sex-based~~sexual harassment
2. The definition of ~~sex-based~~sexual harassment under applicable state and federal law
3. A description of ~~sex-based~~sexual harassment, with examples
4. The district's complaint process available to the employee

5. The legal remedies and complaint process available through CRD and the Equal Employment Opportunity Commission (EEOC)
6. Directions on how to contact 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 CRD and the EEOC

Additionally, the district shall post, in a prominent and accessible location, the CRD poster on discrimination in employment and the illegality of sex-based sexual harassment, and the 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.

CSBA NOTE: Alleged conduct that meets the federal definition of sexual harassment in 34 CFR 106.30 is required to be investigated and resolved in accordance with AR 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures. Conduct that does not meet the definition of sexual harassment in 34 CFR 106.30 is required to be investigated and resolved in accordance with AR 4030 - Nondiscrimination in Employment.

All complaints and allegations of sex discrimination and sex-based harassment by and against employees 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.

If 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 sex discrimination or sex-based harassment, prevent recurrence, and address any continuing effects.

All complaints alleging sexual harassment by and against employees shall be investigated and resolved in accordance with law and district procedures. The district's 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 Administrative Regulation 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures. Other sexual harassment complaints shall be investigated and resolved in accordance with Administrative Regulation 4030 - Nondiscrimination in Employment.

If sexual 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 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 ~~Governing Board~~ **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	<u>Terms, conditions, and privileges of employment</u>
5 CCR 201	<u>Admission to high school</u>
5 CCR 4900-4965	Nondiscrimination in elementary and secondary educational programs receiving state or federal financial assistance
Ed. Code 200-270 262.4	Prohibition of discrimination
Ed. Code 220.1	Prohibition of retaliation related to educational equity
Ed. Code 220.3	Prohibition of disclosure of No requirement to disclose 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 11135	<u>Prohibition of discrimination</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
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
29 CFR 1636	Implementation of the Pregnant Workers Fairness Act
34 CFR 106.1-106.82	Nondiscrimination on the basis of sex in education 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	Tennessee v. Cardona (2024) 737 F.Supp.3d 510
Court Decision	John T. D. v. River Delta Joint Unified School District (2021) WL 5176356
Court Decision	Olmstead v. L.C. ex rel. Zimring (1999) 527 U.S. 581
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 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

(<https://www.federalregister.gov/documents/2020/05/19/2020-10512/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

U.S. DOE, Office for Civil Rights
Publication

Dear Colleague Letter: Enforcement of Title IX under the provisions of the 2020 Title IX Rule, February 4, 2025

(<https://www.ed.gov/media/document/title-ix-enforcement-directive-dcl-109477.pdf>)

Website

CSBA District and County Office of Education Legal Services

Website

California Civil Rights Department

Website

California Department of Education

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
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 Sex Discrimination and Sex-Based Harassment Complaint Procedures Title IX Sexual Harassment Complaint Procedures
4119.12-E(1)	Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures Title IX Sexual Harassment Complaint Procedures
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 Sex Discrimination and Sex-Based Harassment Complaint Procedures Title IX Sexual Harassment Complaint Procedures
4219.12-E(1)	Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures Title IX Sexual Harassment Complaint Procedures
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 Sex Discrimination and Sex-Based Harassment Complaint Procedures <u>Title IX Sexual Harassment Complaint Procedures</u>
4319.12-E(1)	Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures <u>Title IX Sexual Harassment Complaint Procedures</u>
4319.21	Professional Standards
4319.21-E(1)	Professional Standards
4319.22	Dress And Grooming
4344	Complaints
4344	Complaints
5145.3	Nondiscrimination/Harassment
5145.3	Nondiscrimination/Harassment
5145.7	Sex Discrimination and Sex-Based Harassment <u>Sexual Harassment</u>
5145.7	Sex Discrimination and Sex-Based Harassment <u>Sexual Harassment</u>
5145.71	Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures <u>Title IX Sexual Harassment Complaint Procedures</u>
5145.71-E(1)	Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures <u>Title IX Sexual Harassment Complaint Procedures</u>
5146	Married/Pregnant/Parenting Students

Regulation 4319.12: Title IX Sex Discrimination and Sex-Based ~~Sexual~~ Harassment Complaint Procedures **Status:** ADOPTED

Original Adopted Date: 07/01/2020 | **Last Revised Date:** 07~~06~~/01/2024~~2025~~ | **Last Reviewed Date:** 07~~06~~/01/2024~~2025~~

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.

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.

Although the Title IX regulations were amended by 89 Fed.Reg. 33474, effective August 1, 2024, these amendments were vacated nationwide by the United States District Court in *Tennessee v. Cardona* on January 9, 2025. Following this decision, the U.S. Department of Education's Office for Civil Rights (OCR) February 4, 2025 Dear Colleague Letter clarified that OCR will enforce Title IX based on the regulations as they existed prior to August 1, 2024. Therefore, references in this administrative regulation to Title IX and its implementing regulations are to the Title IX regulations as they existed prior to August 1, 2024.

The complaint procedures specified in the Title IX regulations (34 CFR 106.44- 106.45, as added by 85 Fed.Reg. 30026) are required to be used to address any complaint of sexual harassment, as defined in 34 CFR 106.30, based on conduct that occurred between August 14, 2020 and July 31, 2024, and after January 9, 2025. For complaints initiated between August 1, 2024 and January 9,

2025, it is recommended that districts consult CSBA's District and County Office of Education Legal Services or district legal counsel.

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 procedures specified in AR 4030 – Nondiscrimination in Employment.

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. It is recommended that districts with questions about specific complaints consult with CSBA's District and County Office of Education Legal Services or district legal counsel.

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.

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, 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.

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.

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)

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's 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

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 district 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 Regulation 4030 – Nondiscrimination in Employment. The determination over which process shall be used to investigate and resolve a complaint shall be made by the district's Title IX Coordinator.

The Title IX Coordinator shall ensure that all requirements and timelines for Administrative Regulation 4030 – Nondiscrimination in Employment are concurrently met while implementing the Title IX procedure.

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.

CSBA NOTE: 34 CFR 106.45 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 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 district'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 information 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 district

The district'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 district may implement following any determination of responsibility
7. State whether the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard, and apply the same standard of evidence to formal complaints against students and employees and to all formal complaints of sexual harassment
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 district 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)

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: 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.

If the alleged victim chooses not to bring a complaint, or withdraws any or all of the 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, would occur if a complaint is not initiated
- 4.—The severity of the alleged sex discrimination or sex-based harassment, 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 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 grievance procedures

If, after considering these factors, the Title IX Coordinator determines that the alleged conduct presents an imminent and serious threat to the health and safety of the complainant 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

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:

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 monitor the district for barriers to reporting and take steps reasonably calculated to address such barriers. (34 CFR 106.44, 106.45)

Reporting Allegations/Filing a Formal Complaint

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 an employee to forward the report to the Title IX Coordinator as specified in BP 4119.11 – Sexual Harassment, and may be revised to reflect district practice.

An employee who is the alleged victim of sexual harassment may submit a report of sexual harassment to the district's Title IX Coordinator using the contact information listed in Administrative Regulation 4119.11/4219.11/4319.11 – Sexual Harassment, or to any other available school 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 district. (34 CFR 106.30)

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 may file a complaint even when the victim chooses not to do so. 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.

The following paragraph generally permits the Title IX Coordinator to file a formal complaint, requires the Title IX Coordinator to do so when an imminent safety threat exists, and should be modified to reflect district practice.

If the district 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, 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

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 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; 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)

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 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, 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 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)

Emergency Removal from School

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. 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 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 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 imminent and serious threat to the health or safety of a complainant or any student, employee, or other individual arising from the allegations, and provides the 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 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)

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 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, it is recommended that districts consult CSBA's District and County Office of Education Legal Services or district legal counsel as to the manner of imposing an emergency removal.

If a student is the respondent, the district may remove the student from the district's education program or activity, on an emergency basis, provided that the district 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 Board 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

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 _____ days, unless such timeline is extended in accordance with this administrative regulation.

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.~~

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 district'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 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 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 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; the inability to initiate or resume complaint procedures arising from 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 the agreement would only be binding on the parties; and the information that the district will maintain and whether and how the district could disclose such information for use in Title IX grievance procedures if such procedures are initiated or resumed
2. Obtains the parties' voluntary 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)

CSBA NOTE: The following section reflects when the district may offer an informal resolution process, notification and consent requirements, and other required steps when an informal resolution process is implemented, as specified in 34 CFR 106.45.

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 "Stipulated Expulsion" in AR 5144.1 - Suspension and Expulsion/Due 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. (34 CFR 106.45)

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

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

The district may facilitate an informal resolution process provided that the district: (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

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 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. Sufficient information, available at the time, to allow the parties to respond to the allegations, including, to the extent available, the identity of parties involved in the incident(s), the conduct allegedly constituting sex discrimination, including sex-based harassment, and the date(s) and location(s) 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 retaliation is prohibited

4. A statement that the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or 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 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 may also include the name of the investigator, facilitator of an informal process, and 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.

Written Notice

CSBA NOTE: The following section reflects the notice districts are required to provide to the parties pursuant to 34 CFR 106.45.

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 district'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

CSBA NOTE: The following paragraph is optional. Although not required by law, it is recommended that the district provide notice to the parties of the name of the investigator, facilitator, and 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 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

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)

CSBA NOTE: The following section reflects the district's authority to consolidate complaints of sexual harassment as specified in 34 CFR 106.45.

When the allegations of sexual harassment arise out of the same facts or circumstances, the district 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

CSBA NOTE: Pursuant to 34 CFR 106.45, when investigating a 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.

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 fact 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
- 4. Take reasonable steps to protect the privacy of parties and witnesses which do not restrict the ability of the parties to obtain and present evidence, including, by speaking to witnesses; consulting with family members, confidential resources, or advisors; or otherwise preparing for or participating in the grievance procedures
- 5. Objectively evaluate all evidence that is relevant and not otherwise impermissible, including both inculpatory and exculpatory evidence, including that credibility determinations will not be based on a person's status as complainant, respondent, or witness
- 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

Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent 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)

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 days after the Title IX Coordinator determines to proceed with an investigation, unless such timeline is extended in accordance with this administrative regulation.

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.

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 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 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
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 district 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.

CSBA NOTE: It is recommended that districts with questions about the application of a collective bargaining agreement in the context of a Title IX investigation 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 person designated as the decisionmaker of the determination of responsibility may be the same person designated as the Title IX Coordinator or designee and/or investigator, 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 decisionmaker and designate the Superintendent as the person to consider appeals.~~

~~The Superintendent shall designate an employee as the decisionmaker to determine responsibility for the alleged conduct, who may be the Title IX Coordinator or designee or the investigator so long as there is no conflict of interest or bias. (34 CFR 106.45)~~

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

- ~~1. Use the preponderance of the evidence standard of proof to determine whether sex discrimination, including sex-based harassment, has occurred~~
- ~~2. Notify the parties in writing of the determination of whether sex discrimination, including sex-based harassment, occurred~~

~~The notification shall include the rationale for such determination and the procedures and permissible bases for the complainant and respondent to 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 decision shall be issued within _____ days after the investigation is completed, unless such time is extended in accordance with this administrative regulation.

CSBA NOTE: Pursuant to 34 CFR 106.45, the person designated as the decisionmaker of the determination of responsibility may not be the same person designated as the Title IX Coordinator, investigator, or the person who considers the appeal. 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, it is recommended that the district, where feasible, designate an upper-level administrator as the decisionmaker. The following paragraphs should be modified to reflect district practice.

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)

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.

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

The district 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)

CSBA NOTE: 34 CFR 106.45 requires the district's complaint procedures to 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. It is recommended that the district consult with CSBA's District and County Office of Education Legal Services or district counsel in determining which standard to use.

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 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

Appeal of the Decision Appeals

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.

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.

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 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. It is recommended that the Superintendent serve as the decisionmaker for appeals.

34 CFR 106.45 allows either the complainant or respondent to appeal the district's decision based on any of the reasons specified in the following paragraph, or if the district has any other additional bases for an appeal that it offers equally to both parties.

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 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 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

CSBA NOTE: The timeframes in the following two paragraphs are optional and may be revised to reflect district practice.

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.

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

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)

CSBA NOTE: 34 CFR 106.45 requires the district's Title IX complaint process to 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 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)

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 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.

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)

The district 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 district shall

take appropriate disciplinary action, up to and including dismissal, in accordance with applicable law and collective bargaining agreement.

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

The district shall make such training materials 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

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

3. All materials used to train the Title IX Coordinator, investigator(s), decisionmaker(s), and any person who facilitates an informal resolution process

The district shall make such training materials publicly available on its website, or if the district 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 which evidences the district's coverage for acts of 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 Governing 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 200-270 <u>262.4</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

Gov. Code 12950.1

Federal

20 USC 1092

20 USC 1221

[20 USC 1232g](#)

20 USC 1681-1688

34 CFR 106.1-106.82

34 CFR 99.1-99.67

34 USC 12291

42 USC 1983

42 USC 2000d-2000d-7

42 USC 2000e-2000e-17

U.S. DOJ, FBI Publication

Management Resources

[Court Decision](#)

Court Decision

Court Decision

Court Decision

Court Decision

Court Decision

Court Decision

Court Decision

[Federal Register](#)

Notices to parents in language other than English

Sexual harassment training

Description

Definition of sexual assault

Application of laws

[Family Educational Rights and Privacy Act \(FERPA\) of 1974](#)

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

Nondiscrimination on the basis of sex in education programs

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

[National Incident-Based Reporting System](#)

Description

[Tennessee v. Cardona \(2024\) 737 F.Supp.3d 510](#)

Reese v. Jefferson School District (2000, 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

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
\(<https://www.federalregister.gov/documents/2020/05/19/20-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>\)](#)

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

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)

U.S. DOE, Office for Civil Rights Publication

Dear Colleague Letter: Enforcement of Title IX under the provisions of the 2020 Title IX Rule, February 4, 2025 (https://www.ed.gov/media/document/title-ix-enforcement-directive-dcl-109477.pdf)

Website

U.S. Department of Justice, Federal Bureau of Investigation

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

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

1313

Civility

3580

District Records

3580

District Records

3600

Consultants

4030

Nondiscrimination In Employment

4030

Nondiscrimination In Employment

4033

Lactation Accommodation

4117.7

Employment Status Reports

4118

Dismissal/Suspension/Disciplinary Action

4118

Dismissal/Suspension/Disciplinary Action

4119.11

Sex Discrimination and Sex-Based ~~Sexual~~ Harassment

4119.11	Sex Discrimination and Sex-Based Sexual Harassment
4131	Staff Development
4218	Dismissal/Suspension/Disciplinary Action
4218	Dismissal/Suspension/Disciplinary Action
4219.11	Sex Discrimination and Sex-Based Sexual Harassment
4219.11	Sex Discrimination and Sex-Based Sexual Harassment
4317.7	Employment Status Reports
4319.11	Sex Discrimination and Sex-Based Sexual Harassment
4319.11	Sex Discrimination and Sex-Based Sexual Harassment
5145.7	Sex Discrimination and Sex-Based Sexual Harassment
5145.7	Sex Discrimination and Sex-Based Sexual Harassment
<u>5145.71</u>	<u>Title IX Sexual Harassment Complaint Procedures</u>

Exhibit 4319.12-E(1): Title IX Sex Discrimination and Sex-Based~~Sexual~~ Harassment Complaint Procedures Status: ADOPTED

Original Adopted Date: 10/01/2020 | Last Revised Date: 0706/01/20242025 | Last Reviewed Date: 0706/01/20242025

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.

CSBA NOTE: Title IX of the Education Amendments of 1972 (20 USC 1681-1688) prohibits discrimination based on sex in district programs and activities. Although the Title IX regulations were amended by 89 Fed.Reg. 33474, effective August 1, 2024, these amendments were vacated nationwide by the United States District Court in *Tennessee v. Cardona* on January 9, 2025. Following this decision, the U.S. Department of Education's Office for Civil Rights (OCR) February 4, 2025 Dear Colleague Letter clarified that OCR will enforce Title IX based on the regulations as they existed prior to August 1, 2024. Therefore, references in this exhibit to Title IX and its implementing regulations are to the Title IX regulations as they existed prior to August 1, 2024.

34 CFR 106.8 requires the district to provide notice to students, parents/guardians, employees, bargaining units, and applicants for admission and employment, which includes (1) that the district does not discriminate on the basis of sex, which extends to admission and employment, (2) 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's Office for Civil Rights Assistant Secretary, (3) the Title IX Coordinator's contact information, (4) the district's policy prohibiting sexual harassment, (5) the district's grievance procedures that provide for the prompt and equitable resolution of sexual harassment complaints, and (6) how to report or file a complaint of sex discrimination and/or sexual harassment, and how the district will respond. 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(1) 5145.71 - Title IX Sexual Harassment Complaint Procedures. Pursuant to 34 CFR 106.8, the district is also required to provide the Title IX Coordinator's contact information and the accompanying policy on its website and in any handbook, for employees, bargaining units, and job applicants.

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 NONDISCRIMINATION SEXUAL HARASSMENT POLICY

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~~shall 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 admission and employment. The district also prohibits retaliation against any employee for filing a complaint or exercising any right granted under Title IX.

The district is ~~required,~~ as specified in Title IX, ~~to~~shall take prompt and 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 4119.11/4219.11/4319.11 - ~~Sex Discrimination and Sex-Based~~Sexual Harassment.

It is recommended that the Title IX Coordinator be the same person(s) designated to serve as the coordinator for nondiscrimination in employment specified in AR 4030 – Nondiscrimination in Employment, as the responsible employee(s) to handle complaints alleging unlawful discrimination. However, if the district wishes to separate these responsibilities, it is recommended that one individual be responsible for oversight of the complaint process for the district.

The district has designated and authorized the following employee(s) serves as the district's Title IX Coordinator; ~~to address~~ and is responsible for addressing concerns or inquiries regarding discrimination on the basis of sex, including ~~sex-based~~sexual harassment:

(name and/or title/position)

(address)

(telephone number)

(email address)

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 is required to provide notice to students, parents/guardians, employees, bargaining units, and job applicants for admission and employment of the district's grievance procedures, and process, including how to report conduct that may constitute sex discrimination, including sex-based harassment, or file a formal complaint of sex discrimination, including sex-based and/or sexual harassment, and how the district will respond.

Any individual may report sex discrimination, including ~~sex-based~~sexual 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 sex discrimination, including ~~sex-based~~sexual harassment, the Title IX Coordinator ~~will~~shall 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 sex discrimination, including ~~sex-based~~sexual harassment, including the grievance process that complies with 34 CFR 106.45, please see Board Policy/Administrative Regulation 4119.11/4219.11/4319.11 - Sex Discrimination and Sex-Based Sexual Harassment, and Administrative Regulation 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-Based Sexual Harassment Complaint Procedures, on the district's website at _____ ((insert website link) _____).

To inspect or obtain a copy of the district's ~~sex discrimination and sex-based~~sexual harassment policies and administrative regulations, please contact: _____; (insert location/phone/email of contact person) _____.

Materials used to train employees; the Title IX Coordinator; 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(s) who facilitates an informal resolution process, are also publicly available on the district's website or at the district office upon request.

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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 200-270 262.4	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	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
U.S. DOJ, FBI Publication	National Incident-Based Reporting System
Management Resources	Description
Court Decision	Tennessee v. Cardona (2024) 737 F.Supp.3d 510
Court Decision	Reese v. Jefferson School District (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, May 19, 2020, Vol. 85, No. 97, pages 30026-30579</u> (https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal)
Federal Register	<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>U.S. Department of Justice, Federal Bureau of Investigation Publication</u>	<u>National Incident-Based Reporting System</u> (https://ucr.fbi.gov/nibrs/2018/resource-pages/nibrs_offense_definitions-2018.pdf)
<u>U.S. DOE, Office for Civil Rights Publication</u>	<u>Dear Colleague Letter: Enforcement of Title IX under the provisions of the 2020 Title IX Rule, February 4, 2025</u> (https://www.ed.gov/media/document/title-ix-enforcement-directive-dcl-109477.pdf)
Website	U.S. Department of Justice, Federal Bureau of Investigation
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

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
1313	Civility
3580	District Records

3580	District Records
3600	Consultants
4030	Nondiscrimination In Employment
4030	Nondiscrimination In Employment
4033	Lactation Accommodation
4117.7	Employment Status Reports
4118	Dismissal/Suspension/Disciplinary Action
4118	Dismissal/Suspension/Disciplinary Action
4119.11	Sex Discrimination and Sex-Based <u>Sexual</u> Harassment
4119.11	Sex Discrimination and Sex-Based <u>Sexual</u> Harassment
4131	Staff Development
4218	Dismissal/Suspension/Disciplinary Action
4218	Dismissal/Suspension/Disciplinary Action
4219.11	Sex Discrimination and Sex-Based <u>Sexual</u> Harassment
4219.11	Sex Discrimination and Sex-Based <u>Sexual</u> Harassment
4317.7	Employment Status Reports
4319.11	Sex Discrimination and Sex-Based <u>Sexual</u> Harassment
4319.11	Sex Discrimination and Sex-Based <u>Sexual</u> Harassment
5145.7	Sex Discrimination and Sex-Based <u>Sexual</u> Harassment
5145.7	Sex Discrimination and Sex-Based <u>Sexual</u> Harassment
<u>5145.71</u>	<u>Title IX Sexual Harassment Complaint Procedures</u>

Policy 5125.1: Release Of Directory Information

Status: ADOPTED

Original Adopted Date: 11/01/2001 | Last Revised Date: 07/06/01/20052025 | Last Reviewed
Date: 07/6/01/20052025

CSBA NOTE: The following mandated policy and accompanying administrative regulation reflect the requirements of Education Code 49073 and the Family Educational Rights and Privacy Act (FERPA) (20 USC 1232g), which require districts to adopt a policy identifying those categories of student records considered to be "directory information" and that may generally be released, unless a student's parent/guardian notifies the district of a refusal.

The Governing Board recognizes the importance of maintaining the confidentiality of directory information and therefore authorizes the release of such information only in accordance with law, Board policy, and administrative regulation.

The Superintendent or designee may release student directory information to representatives of the news media or nonprofit organizations in accordance with law, Board policy and administrative regulation.

The Superintendent or designee may limit or deny the release of specific categories of directory information to any public or private nonprofit organization based on his/her a determination of the best interests of district students. (Education Code 49073)

CSBA NOTE: Pursuant to Education Code 49073.2, the district is prohibited from including in the Governing Board's meeting minutes a student's directory information, when the student or parent/guardian requests that such information be excluded. For further information about the Board's minutes, see BB 9324 – Minutes and Recordings.

A student's directory information shall only be included in the minutes of the Board's meeting in accordance with Board Bylaw 9324 – Minutes and Recordings.

CSBA NOTE: The options below are for use only by districts maintaining grades 9-12.

20 USC 7908 requires districts receiving funds under the Elementary and Secondary Education Act (ESEA) to provide military recruiters with access to student names, addresses and telephone numbers, except when the parent/guardian requests that the information not be released. See the accompanying administrative regulation. According to Guidance issued by the U.S. Department of Education and Department of Defense, even if a district does not disclose directory information to any third party, such as employers or colleges, 20 USC 7908 provides that military recruiters must still be provided access to student names, addresses, and telephone numbers, except when the parent/guardian requests that the information not be released. Districts that do not grant access may lose their ESEA funds.

10 USC 503 requires districts that do not receive ESEA funds to grant the same access to directory information to military recruiters and employers. Pursuant to 10 USC 503, districts may refuse

military access only if the Governing Board has adopted a policy denying access by the military. Districts that do not grant access and have not adopted a policy denying access may be subject to specific interventions such as notification of the Governor and Congress, so that public officials can work with the district. In addition, Education Code 49603 provides that military service recruiters may not be denied on-campus access to students in grades 9–12 if the district provides such access to other employers; see BP 6164.2 - Guidance/Counseling Services. It is likely that this law also applies to directory information.

Option 1 is for use by districts that receive ESEA funds and grant access to directory information to employers, colleges, and military recruiters. Option 1 is also for use by districts that do not receive ESEA funds but choose to grant such access to employers and colleges and therefore are required to grant access to military recruiters. Option 2 is mandated for those districts that do not receive ESEA funds and wish to deny access to military recruiters. In order to deny access to military recruiters, Education Code 49603 requires that these districts must also deny access to all other employers. **CSBA NOTE: The options below are for use only by districts maintaining grades 9-12.**

10 USC 503 and 20 USC 7908 require districts receiving funds under the Elementary and Secondary Education Act (ESEA) to provide the names, addresses, email addresses, and telephone numbers of secondary school students to military recruiters upon request, except when the parent/guardian, or student, if 18 years of age or older, requests that the information not be released. Districts that do not grant military recruiters access to such student directory information may lose those funds, and may be subject to the interventions specified in 10 USC 503. Additionally, Education Code 49073.5 declares the intent of the Legislature that a district, including a district that does not receive ESEA funds, not purposefully exclude military recruiters from access to student directory information when adopting the required release of student directory information policy. See "Notification to Parents/Guardians" and "Parent/Guardian Consent" in the accompanying administrative regulation.

OPTION 1:

Colleges and prospective employers, including military recruiters, shall have access to directory information. Military recruiters shall have access to a student's name, address, email address, and telephone number, unless the student's parent/guardian, or the student, if the student is 18 years of age or older, has specified that the information not be released in accordance with law and administrative regulation. (10 USC 503, 20 USC 7908; 10 USC 503; Education Code 49603)

OPTION 1 ENDS HERE

OPTION 2: Colleges and prospective employers, including military recruiters, shall not have access to directory information. (10 USC 503; Education Code 49603)

OPTION 2 ENDS HERE

CSBA NOTE: Districts should It is recommended that districts carefully consider whether to place items containing student directory information, such as home addresses, email addresses, or telephone numbers, on the district's web site website since release of such information may put students and the district at risk and may also be a violation of Education Code 49073 as specified below.

Under no circumstances shall directory information be disclosed to a private profit-making entity, except for representatives of the news media and prospective employers, in accordance with [law](#), Board policy, [and administrative regulation](#). Private schools and colleges may be given the names and addresses of 12th-grade students and students who are no longer enrolled, provided that they use this information only for purposes directly related to the institution's academic or professional goals. (Education Code 49073)

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State

Ed. Code 234.7

Description

Student protections relating to immigration and citizenship status

[Ed. Code 48985](#)

[Notices to parents in language other than English](#)

Ed. Code 49061

Definitions; directory information

Ed. Code 49063

Notification of parents of their rights

Ed. Code 49073

Release of directory information

[Ed. Code 49073.2](#)

[Privacy of student and parent/guardian personal information; minutes of board meeting](#)

Ed. Code 49073.5

Directory information; military representatives; telephone numbers

Ed. Code 49603

On campus access to employers and military services

Federal

10 USC 503

Description

Military recruiter access to directory information

20 USC 1232g

Family Educational Rights and Privacy Act (FERPA) of 1974

20 USC 7908

Armed forces recruiter access to students and student recruiting information

34 CFR 99.1-99.67

Family Educational Rights and Privacy

42 USC 11434a

McKinney-Vento Homeless Assistance Act; definitions

Management Resources

CA Office of the Attorney General
Publication

Description

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, [December 2024](#)

U.S. Department of Education
Publication

Access to High School Students and Information on Students by Military Recruiters, 2002

U.S. Department of Education
Publication

U.S. Department of Education
Publication

Website

Website

Website

Dear Colleague Letter Regarding Military Recruiter Provisions
of ESEA, November 2016

([https://studentprivacy.ed.gov/resources/dear-colleague-
letter-regarding-military-recruiter-provisions-esea](https://studentprivacy.ed.gov/resources/dear-colleague-letter-regarding-military-recruiter-provisions-esea))

Model Notice for Directory Information, March 2011

([https://studentprivacy.ed.gov/resources/model-notice-
directory-information](https://studentprivacy.ed.gov/resources/model-notice-directory-information))

CSBA District and County Office of Education Legal Services

California Attorney General's Office

U.S. Department of Education, Office of the Chief Privacy
Officer

Cross References

Code

1100

1113

1113

1113-E(1)

1114

1114

1260

1340

1340

3515

3515

3580

3580

4040

4040-E(1)

4119.23

4135

4219.21

4219.21-E(1)

4219.23

Description

Communication With The Public

District And School Websites

District And School Websites

District And School Websites

District-Sponsored Social Media

District-Sponsored Social Media

Educational Foundation

Access To District Records

Access To District Records

Campus Security

Campus Security

District Records

District Records

Employee Use Of Technology

Employee Use Of Technology

Unauthorized Release Of Confidential/Privileged Information

Soliciting And Selling

Professional Standards

Professional Standards

Unauthorized Release Of Confidential/Privileged Information

4235	Soliciting And Selling
4319.21	Professional Standards
4319.21-E(1)	Professional Standards
4319.23	Unauthorized Release Of Confidential/Privileged Information
4335	Soliciting And Selling
5020	Parent Rights And Responsibilities
5020	Parent Rights And Responsibilities
5022	Student And Family Privacy Rights
5022	Student And Family Privacy Rights
5125	Student Records
5125	Student Records
5131.1	Bus Conduct
5131.1	Bus Conduct
5145.12	Search And Seizure
5145.12	Search And Seizure
5145.13	Response To Immigration Enforcement
5145.13	Response To Immigration Enforcement
5145.3	Nondiscrimination/Harassment
5145.3	Nondiscrimination/Harassment
5145.6	Parent/Guardian Notifications
5145.6-E(1)	Parent/Guardian Notifications
6164.2	Guidance/Counseling Services
6173	Education For Homeless Children
6173	Education For Homeless Children
6173-E(1)	Education For Homeless Children
6173-E(2)	Education For Homeless Children
9324	Minutes And Recordings

Regulation 5125.1: Release Of Directory Information

Status: ADOPTED

Original Adopted Date: 11/01/2011 | Last Revised Date: 05/06/01/20182025 | Last Reviewed
Date: 05/06/01/20182025

Definition

CSBA NOTE: Education Code 49073 and 20 USC 1232g, the Family Educational Rights and Privacy Act (FERPA) (20 USC 1232g), mandate that school districts adopt a policy identifying those categories of student records considered to be "directory information," which may generally be released unless the parent/guardian notifies the district of his/her refusal to release such information. "Directory information" is defined in Education Code 49061 and 34 CFR 99.3 and listed in the following section. The district may not expand the list, but may modify it to remove any items the district does not intend to release as directory information. Also see AR 5125 - Student Records.

Education Code 49061 does not include three types of information defined that are included as directory information in 34 CFR 99.3: (1) the student's place of birth, (2) grade level, and (3) photograph. Thus, these types of information are not reflected in the following list. Districts It is recommended that districts that receive any request for such information about student(s) based on federal law should consult CSBA's District and County Office of Education Legal Services or district legal counsel prior to releasing the information.

Directory information means information contained in a student record that would not generally be considered harmful or an invasion of privacy if disclosed. Such student information includes: (Education Code 49061; 20 USC 1232g; 34 CFR 99.3)

1. Name
2. Address
3. Telephone number
4. Email address
5. Date of birth
6. Major field of study

7. Participation record in officially recognized activities and sports
8. Weight and height of athletic team members
9. Dates of attendance
10. Degrees and awards received
11. Most recent previous school attended

Directory information does not include a student's social security number or student identification number. However, for purposes of accessing or communicating in electronic systems, directory information may include a student identification number, user identification, or other personal identifier used by the student provided that the identifier cannot be used to gain access to education records except when used in conjunction with a personal identification number, password, or other factor known or possessed only by the authorized user. (34 CFR 99.3)

CSBA NOTE: The following paragraph reflects a Pursuant to Education Code 234.7, districts were mandated to adopt policies with language that is equivalent to the model policy language developed by the California Attorney General pursuant to Education Code 234.7, as added by AB 699 (Ch. 493, Statutes of 2017). See the Office of the Attorney General's in, "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: Also see the section "Notification to Parents/Guardians" below." first published in April 2018 (2018 Guidance), by July 1, 2018. The Attorney General Updated the 2018 Guidance in December 2024 and has stated that districts "should" adopt or update their policies by May 1, 2025. For additional language fulfilling this mandate, see BP/AR 5125 - Student Records and BP/AR 5145.13 - Response to Immigration Enforcement. Also see "Notification to Parents/Guardians" below.

Directory information also does not include a student's the citizenship status, immigration status, place of birth, or any other information indicating national origin of a student or the student's family member.

Notification to Parents/Guardians

CSBA NOTE: Pursuant to Education Code 49063 and 20 USC 1232g, the district must annually notify parents/guardians and students who are 18 years of age 18 or older, in writing, of the categories of records considered to be "directory information." The Attorney General's model policy developed pursuant to Education Code 234.7 requires that this notification also describe the manner in which parents/guardians may refuse the release of directory information. Pursuant to Education Code 48985, whenever 15 percent or more of the students in a school speak a single primary language other than English, notifications sent to parents/guardians of such students are

required to be written in the primary language as well as in English. See the accompanying Exhibit for a sample parent/guardian notification.

At the beginning of each school year, all parents/guardians shall be notified as to the categories of directory information the district plans to release and the recipients of the information. The notification shall also inform parents/guardians of their right to refuse to let the district designate any or all types of information as directory information, how to refuse release, and the period of time within which a parent/guardian must notify the district in writing that ~~he/she~~the parent/guardian does not want a certain category of information designated as directory information. (Education Code 49063, 49073; 20 USC 1232g; 34 CFR 99.37)

CSBA NOTE: Pursuant to Education Code 234.7, districts are **mandated** to adopt the following paragraph consistent with the Attorney General's model policy.

~~In addition~~Additionally, the annual parental notification shall include a statement that directory information does not include citizenship status, immigration status, place of birth, or any other information indicating national origin and that the district will not release such information without ~~parental~~parent/guardian consent or a court order.

CSBA NOTE: The following paragraph applies to districts that maintain secondary schools and receive funds under the federal Elementary and Secondary Education Act (ESEA). 10 USC 503 and 20 USC 7908 requiresrequire those districts to notify parents/guardians that they may request that the district not release their child's name, address, email address, and telephone number to military recruiters, employers, or colleges without their prior written consent. ~~According to Guidance issued by the~~The U.S. Department of Education (USDOE) (Access to High School Students and Information on Students by Education's, "Dear Colleague Letter Regarding Military Recruiters),Recruiter Provisions of ESEA," provides that a single notice ~~provided through a mailing, student handbook, or other method~~ that is reasonably calculated to inform parents/guardians of the above information is sufficient. The law does not specify whether parents/guardians may request that the district not release their child's information to certain third parties, such as military recruiters, but authorize the release to other parties, such as private employers. ~~Districts should consult legal counsel as appropriate.~~It is recommended that districts with questions about disclosure of student directory information consult CSBA's District and County Office of Education Legal Services or district legal counsel.

The Superintendent or designee shall notify parents/guardians that they may request that the district not release the name, address, email address, and telephone number of their child to military recruiters, employers, or institutions of higher education without prior written consent. (10 USC 503, 20 USC 7908)

Parent/Guardian Consent

CSBA NOTE: Education Code 49073 specifies that parents/guardians may request that their child's directory information not be released (an "opt-out" process). Similarly, 20 USC 7908 requires an "opt-out" process by which parents/guardians may request that their child's information not be released to military recruiters, employers, or institutions of higher education. However, pursuant to Education Code 49073, in the case of a ~~homeless~~ student experiencing

homelessness, as defined in 42 USC 11434a, directory information may only be released if the parent/guardian or student 18 years of age 18 or older has provided written consent for its release ("opt-in process").

No A student's directory information shall not be released if the student's parent/guardian has notified the district in writing that such information shall not be disclosed. (Education Code 49073; 20 USC 1232g, 7908)

The directory information of a student identified as a homeless child or youth as defined in 42 USC 11434a student experiencing homelessness shall not be released, unless the student's parent/guardian, or the student if he/she is 18 years of age or older, has provided written consent that directory information may be released. For any other student, directory information shall not be released if his/her parent/guardian notifies the district in writing that such information not be disclosed without the parent/guardian's prior consent. (Education Code 49073; 20 USC 1232g, 7908)

For a former student, the district shall continue to honor any valid request to opt out of the disclosure of directory information made while the student was in attendance at the district, unless the opt-out request has been rescinded. (34 CFR 99.37)

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 Governing Board board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State

Ed. Code 234.7

Description

Student protections relating to immigration and citizenship status

Ed. Code 48985

Notices to parents in language other than English

Ed. Code 49061

Definitions; directory information

Ed. Code 49063

Notification of parents of their rights

Ed. Code 49073

Release of directory information

Ed. Code 49073.2

Privacy of student and parent/guardian personal information; minutes of board meeting

Ed. Code 49073.5

Directory information; military representatives; telephone numbers

Ed. Code 49603

On campus access to employers and military services

Federal

Description

10 USC 503

20 USC 1232g

20 USC 7908

34 CFR 99.1-99.67

42 USC 11434a

Management Resources

CA Office of the Attorney General
Publication

U.S. Department of Education
Publication

[U.S. Department of Education
Publication](#)

[U.S. Department of Education
Publication](#)

Website

Website

Website

Cross References

Code

1100

1113

1113

1113-E(1)

1114

1114

1260

1340

Military recruiter access to directory information

Family Educational Rights and Privacy Act (FERPA) of 1974

Armed forces recruiter access to students and student
recruiting information

Family Educational Rights and Privacy

McKinney-Vento Homeless Assistance Act; definitions

Description

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, [December 2024](#)

~~Access to High School Students and Information on
Students by Military Recruiters, 2002~~

[Dear Colleague Letter Regarding Military Recruiter Provisions
of ESEA, November 2016](#)

[https://studentprivacy.ed.gov/resources/dear-colleague-
letter-regarding-military-recruiter-provisions-esea](https://studentprivacy.ed.gov/resources/dear-colleague-letter-regarding-military-recruiter-provisions-esea)

[Model Notice for Directory Information, March 2011](#)

[https://studentprivacy.ed.gov/resources/model-notice-
directory-information](https://studentprivacy.ed.gov/resources/model-notice-directory-information)

CSBA District and County Office of Education Legal Services

California Attorney General's Office

U.S. Department of Education, Office of the Chief Privacy
Officer

Description

Communication With The Public

District And School Websites

District And School Websites

District And School Websites

District-Sponsored Social Media

District-Sponsored Social Media

Educational Foundation

Access To District Records

1340	Access To District Records
3515	Campus Security
3515	Campus Security
3580	District Records
3580	District Records
4040	Employee Use Of Technology
4040-E(1)	Employee Use Of Technology
4119.23	Unauthorized Release Of Confidential/Privileged Information
4135	Soliciting And Selling
4219.21	Professional Standards
4219.21-E(1)	Professional Standards
4219.23	Unauthorized Release Of Confidential/Privileged Information
4235	Soliciting And Selling
4319.21	Professional Standards
4319.21-E(1)	Professional Standards
4319.23	Unauthorized Release Of Confidential/Privileged Information
4335	Soliciting And Selling
5020	Parent Rights And Responsibilities
5020	Parent Rights And Responsibilities
5022	Student And Family Privacy Rights
5022	Student And Family Privacy Rights
5125	Student Records
5125	Student Records
5131.1	Bus Conduct
5131.1	Bus Conduct
5145.12	Search And Seizure
5145.12	Search And Seizure
5145.13	Response To Immigration Enforcement
5145.13	Response To Immigration Enforcement

5145.3	Nondiscrimination/Harassment
5145.3	Nondiscrimination/Harassment
5145.6	Parent/Guardian Notifications
5145.6-E(1)	Parent/Guardian Notifications
6164.2	Guidance/Counseling Services
6173	Education For Homeless Children
6173	Education For Homeless Children
6173-E(1)	Education For Homeless Children
6173-E(2)	Education For Homeless Children
9324	Minutes And Recordings

Exhibit 5125.1-E(1): Release Of Directory Information

Status: ADOPTED

Original Adopted Date: 07/01/2005 | **Last Revised Date:** 05/06/01/2018/2025 | **Last Reviewed Date:** 05/06/01/2018/2025

CSBA NOTE: The following exhibit is based on a model notice prepared by the U.S. Department of Education and should be modified to reflect district practice. It has been updated to reflect Education Code 49061 and to include provisions required by the California Attorney General's model policy developed pursuant to Education Code 234.7, as added by AB 699 (Ch. 493, Statutes of 2017); see the accompanying administrative regulation; see the accompanying administrative regulation. Pursuant to Education Code 234.7, districts were mandated to adopt policies with language that is equivalent to the model policy language developed by the California Attorney General in "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," first published in April 2018 ("2018 Guidance"), by July 1, 2018. The Attorney General updated the 2018 Guidance in December 2024 ("2024 Guidance") and has stated that districts "should" adopt or update their policies based on the 2024 Guidance by May 1, 2025. The 2024 Guidance is available on the website of the Office of the Attorney General. For additional language fulfilling this mandate, see the accompanying administrative regulation and BP/AR 5125 - Student Records and BP/AR 5145.13 - Immigration Enforcement.

Pursuant to Education Code 48985, whenever 15 percent or more of the students in a school speak a single primary language other than English, notifications sent to parents/guardians of such students are required to be written in the primary language as well as in English.

**PARENT/GUARDIAN NOTICE
RELEASE OF DIRECTORY INFORMATION**

The Family Educational Rights and Privacy Act (FERPA), a federal law, requires that _____ (district name), with certain exceptions, obtain your written consent prior to the disclosure of personally identifiable information from your child's education records. However, the district may disclose appropriately designated "directory information" without written consent, unless you have advised the district to the contrary in accordance with district procedures. The primary purpose of directory information is to allow the district to include this type of information from your child's education records in certain school and/or district publications. Examples include:

- a playbill, showing your child's role in a drama production
- the annual yearbook
- honor roll or other recognition lists
- graduation programs
- sports activity sheets, such as for wrestling, showing weight and height of team members

Directory information, which is information that is generally not considered harmful or an invasion of privacy if released, can also be disclosed to outside organizations without a parent/guardian's prior written consent. Outside organizations include, but are not limited to, companies that manufacture class rings or publish yearbooks. In addition, two federal laws require districts receiving assistance under the Elementary and Secondary Education Act of 1965 (ESEA), as amended, to provide military recruiters, upon request, with students' names, addresses, and telephone listings, unless parents/guardians have advised the district that they do not want their child's information disclosed without their prior written consent.

If you do not want the district to disclose any or all of the information designated below as directory information from your child's education records without your prior written consent, you must notify the district in writing by _____ (insert date). The district has designated the following information as directory information:

CSBA NOTE: CSBA NOTE: The following list reflects "directory information" pursuant to Education Code 49061. The district should modify the following list to specify those categories of information defined by the district as "directory information" in the accompanying administrative regulation. Those items the district does not intend to release as directory information should be deleted.

1. ~~Name~~ Student's name
2. Address
3. Telephone number
4. Email address
5. Date of birth
6. Major field of study
7. Participation in officially recognized activities and sports
8. Weight and height of athletic team members
9. Dates of attendance

10. Degrees and awards received

11. Most recent previous school attended

The ~~Additionally, the~~ district ~~also~~ may disclose your child's student identification number, user identification, or other unique personal identifier used to communicate in electronic systems, ~~provided it~~ but only if the identifier cannot be used to gain access to education records without except when used in conjunction with one or more factors that authenticate the user's identity, such as a personal identification number (PIN), password, or other factor that known or possessed only by the authorized user knows. Your child's social security.

In addition, the district may disclose a student identification number will not or other unique personal identifier that is displayed on a student identification badge, but only if the identifier cannot be used for this purpose to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity, such as a PIN, password, or other factor known or possessed only by the authorized user.

CSBA NOTE: The following paragraph reflects the 2024 Guidance.

The district may not disclose a student's Social Security number. Directory information does not include your child's citizenship status, immigration status, place of birth, or any other information indicating national origin. ~~The district will not disclose such information without your consent or a court order.~~

Policy Reference UPDATE Service

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Description

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Ed. Code 49073.2

Privacy of student and parent/guardian personal information; minutes of board meeting

Ed. Code 49073.5	Directory information; military representatives; telephone numbers
Ed. Code 49603	On campus access to employers and military services
Federal	Description
10 USC 503	Military recruiter access to directory information
20 USC 1232g	Family Educational Rights and Privacy Act (FERPA) of 1974
20 USC 7908	Armed forces recruiter access to students and student recruiting information
34 CFR 99.1-99.67	Family Educational Rights and Privacy
42 USC 11434a	McKinney-Vento Homeless Assistance Act; definitions
Management Resources	Description
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, December 2024
U.S. Department of Education Publication	Access to High School Students and Information on Students by Military Recruiters, 2002
U.S. Department of Education Publication	Dear Colleague Letter Regarding Military Recruiter Provisions of ESEA, November 2016 (https://studentprivacy.ed.gov/resources/dear-colleague-letter-regarding-military-recruiter-provisions-esea)
U.S. Department of Education Publication	Model Notice for Directory Information, March 2011 (https://studentprivacy.ed.gov/resources/model-notice-directory-information)
Website	CSBA District and County Office of Education Legal Services
Website	California Attorney General's Office
Website	U.S. Department of Education, Office of the Chief Privacy Officer
Cross References	
Code	Description
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
1260	Educational Foundation
1340	Access To District Records
1340	Access To District Records
3515	Campus Security
3515	Campus Security
3580	District Records
3580	District Records
4040	Employee Use Of Technology
4040-E(1)	Employee Use Of Technology
4119.23	Unauthorized Release Of Confidential/Privileged Information
4135	Soliciting And Selling
4219.21	Professional Standards
4219.21-E(1)	Professional Standards
4219.23	Unauthorized Release Of Confidential/Privileged Information
4235	Soliciting And Selling
4319.21	Professional Standards
4319.21-E(1)	Professional Standards
4319.23	Unauthorized Release Of Confidential/Privileged Information
4335	Soliciting And Selling
5020	Parent Rights And Responsibilities
5020	Parent Rights And Responsibilities
5022	Student And Family Privacy Rights
5022	Student And Family Privacy Rights
5125	Student Records
5125	Student Records
5131.1	Bus Conduct
5131.1	Bus Conduct
5145.12	Search And Seizure

5145.12	Search And Seizure
5145.13	Response To Immigration Enforcement
5145.13	Response To Immigration Enforcement
5145.3	Nondiscrimination/Harassment
5145.3	Nondiscrimination/Harassment
5145.6	Parent/Guardian Notifications
5145.6-E(1)	Parent/Guardian Notifications
6164.2	Guidance/Counseling Services
6173	Education For Homeless Children
6173	Education For Homeless Children
6173-E(1)	Education For Homeless Children
6173-E(2)	Education For Homeless Children
9324	Minutes And Recordings

Regulation 5131.41: Use Of Seclusion And Restraint

Status: ADOPTED

Original Adopted Date: 12/01/2018 | Last Revised Date: 03/06/01/2023/2025 | Last Reviewed

Date: 03/06/01/2023/2025

CSBA NOTE: Pursuant to Education Code 49005-49006.4, seclusion and behavioral restraint, as defined below, are prohibited as a means of student discipline. Seclusion and restraint must be avoided whenever possible and may be used only to control behavior that poses a clear and present danger of serious physical harm to a student or others and that cannot be immediately prevented by a less restrictive response.

Pursuant to Education Code 49005.1 and 49006.4, these requirements apply to all students in grades preK-12 and students with disabilities. For additional procedures applicable to students with disabilities, see AR 6159.4 - Behavioral Interventions for Special Education Students.

District staff shall enforce standards of appropriate student conduct in order to provide a safe and secure environment for students and staff on campus, but are prohibited from using seclusion and behavioral restraint to control student behavior except as authorized by law when the behavior poses a clear and present danger of serious physical harm to the student, other students, or others on campus, and that cannot be immediately prevented by a less restrictive response.

Definitions

Behavioral restraint includes mechanical restraint or physical restraint used as an intervention when a student presents an immediate danger to self or to others. Behavioral restraint does not include postural restraints or devices used to improve a student's mobility and independent functioning rather than to restrict movement. (Education Code 49005.1)

Mechanical restraint means the use of a device or equipment to restrict a student's freedom of movement. Mechanical restraint does not include the use of devices as prescribed by an appropriate medical or related services professional, including, but not limited to, adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment; vehicle safety restraints during the transport of a student; restraints for medical immobilization; or orthopedically prescribed devices which permit a student to participate in activities without risk of harm. Mechanical restraint also does not include the use of devices by peace officers or security personnel for detention or for public safety purposes. (Education Code 49005.1)

Physical restraint means a personal restriction that immobilizes or reduces the ability of a student to move the torso, arms, legs, or head freely. Physical restraint does not include a physical escort in which a staff member temporarily touches or holds the student's hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is acting out to walk to a safe location. Physical restraint also does not include the use of force by peace officers or security personnel for detention or for public safety purposes. (Education Code 49005.1)

Prone restraint means the application of a behavioral restraint on a student in a facedown position. (Education Code 49005.1)

Seclusion means the involuntary confinement of a student alone in a room or an area from which the student is physically prevented from leaving. Seclusion does not include a timeout involving the monitored separation of the student in an unlocked setting, which is implemented for the purpose of calming the student. (Education Code 49005.1)

Prohibitions

Seclusion and behavioral restraint of students shall not be used in any form as a means of coercion, discipline, convenience, or retaliation. (Education Code 49005.8)

In addition Additionally, staff shall not take any of the following actions: (Education Code 49005.2, 49005.8)

1. Administer a drug that is not a standard treatment for a student's medical or psychiatric condition in order to control the student's behavior or restrict the student's freedom of movement
2. Use locked seclusion, unless it is in a facility otherwise licensed or permitted by state law to use as a locked room
3. Use a physical restraint technique that obstructs a student's respiratory airway or impairs a student's breathing or respiratory capacity, including a technique in which a staff member places pressure on the student's back or places the staff member's body weight against the student's torso or back
4. Use a behavioral restraint technique that restricts breathing, including, but not limited to, the use of a pillow, blanket, carpet, mat, or other item to cover a student's face

CSBA NOTE: Education Code 49005.8, as amended by SB 483 (Ch. 857, Statutes of 2024), prohibits the use of prone restraint and prone containment.

5. Place Use prone restraint, defined as the application of a behavioral restraint on a student in a facedown position ~~with the student's hands held or restrained behind the student's back~~ for any period of time and includes prone containment (Education Code 49005.1)
6. Use a behavioral restraint for longer than is necessary to contain the behavior that poses a clear and present danger of serious physical harm to the student or others

Limited Use of Seclusion or Restraint

Staff shall avoid the use of seclusion and behavioral restraint of students whenever possible. Seclusion or behavioral restraint may be used only to control student behavior that poses a clear and present danger of serious physical harm to the student or others, which cannot be immediately prevented by a response that is less restrictive. (Education Code 49005.4, 49005.6, 49005.8)

When used, seclusion or restraint shall not be applied for longer than is necessary to contain the