

Policy 5145.7: Sex Discrimination and Sex-Based Harassment

Status: ADOPTED

Original Adopted Date: 03/01/2012 | **Last Revised Date:** 07/01/2024 | **Last Reviewed Date:** 07/01/2024

CSBA NOTE: Education Code 231.5 and 34 CFR 106.8 mandate the district to have written policies on sex discrimination and sex-based harassment. The following policy addresses sex discrimination and sex-based harassment against students in the school setting. As part of this mandate, the district should also adopt a sex discrimination and sex-based harassment policy related to employees; see BP/AR 4119.11/4219.11/4319.11 - Sex Discrimination and Sex-Based Harassment and AR 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

Moreover, this Board policy and the accompanying administrative regulation reflect the right of a transgender student to participate in sex-segregated educational programs and use facilities consistent with one's gender identity, as specified in Education Code 221.5 and 34 CFR 106.31, as amended by 89 Fed. Reg. 33474, and best practices based on existing state and federal law.

Both federal law, Title IX of the Education Amendments of 1972 (20 USC 1681-1688; 34 CFR 106.1-106.82), and state law (Education Code 220, 231.5), prohibit sex discrimination, including sex-based harassment and require districts to establish procedures for the prompt and equitable resolution of sex discrimination, including sex-based harassment complaints. Pursuant to 34 CFR 106.11 and 106.44, as amended by 89 Fed. Reg. 33474, a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, is required to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct. As such a complaint may also fall within the scope of the uniform complaint procedures (UCP) as specified in BP/AR 1312.3 - Uniform Complaint Procedures, it is unclear whether districts would additionally be required to follow the process specified in BP/AR 1312.3 - Uniform Complaint Procedures. Due to this uncertainty, it is recommended that districts consult CSBA's District and County Office of Education Legal Services or district legal counsel prior to utilizing the UCP for this purpose. For more information regarding the Title IX grievance procedures, see AR 5145.71 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

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

Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, a district can be held liable for civil damages for sex discrimination, including sex-based harassment of students pursuant to Title IX if the district has knowledge of conduct that reasonably may constitute sex-based harassment in its education program or activity and does not respond promptly and effectively.

In addition to filing a private civil lawsuit, an alleged victim of sex discrimination, including sex-based harassment, may file a complaint with the California Department of Education (CDE) and/or the U.S. Department of Education's Office for Civil Rights (OCR), the federal agency responsible for administrative enforcement of federal laws and regulations that prohibit discrimination in programs and activities that receive federal financial assistance from the U.S. Department of Education.

The Governing Board is committed to maintaining a welcoming, safe, and supportive school environment that is free from discrimination and harassment. The Board prohibits at school or at school-sponsored or school-related activities, sex discrimination and sex-based harassment, as defined in the accompanying administrative regulation, targeted at any student, based on the student's actual or perceived sex; sex stereotypes; sex characteristics; sexual orientation; gender; gender identity; gender expression; pregnancy, childbirth, termination of pregnancy or lactation, including related medical conditions or recovery; and, parental, marital, and family status.

CSBA NOTE: Districts are required to prohibit retaliation when a right or privilege secured by Title IX is interfered with, including when a person reports possible sex discrimination, made a sex-discrimination complaint, or participated or refused to participate in any way in the district's Title IX process. Pursuant to 34 CFR 106.71, as amended by 89 Fed. Reg. 33474, when the district has information about conduct that reasonably may constitute retaliation under Title IX, including peer retaliation, the district is required to respond to such conduct using the procedures used for other forms of sex discrimination as specified in 34 CFR 106.44 and 106.45; see AR/E(1) 5145.71 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

Pursuant to Education Code 220.1, as added by AB 1955 (Ch. 95, Statutes of 2024), a district, including a Governing

Board member, may not retaliate or otherwise take adverse action against an employee, including by placing the employee on administrative leave, on the basis that the employee supported a student exercising rights specified in Education Code 220.1, performed work in a manner consistent with the district's legal obligations related to educational equity, or provided instruction to students consistent with current content standards, curriculum frameworks, instructional materials adopted by the state board, and state law.

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

CSBA NOTE: The following two paragraphs relate to student and employee reporting of sex discrimination, including sex-based harassment. It is important to note that reporting to law enforcement and/or child protective services does not relieve a school district of its responsibility to investigate a complaint of sex discrimination, including sex-based harassment.

The district strongly encourages students who feel that they are being or have experienced sex discrimination, including sex-based harassment, on school grounds or at a school-sponsored or school-related activity, or off-campus when the conduct has a continuing effect on campus, to immediately contact their teacher, the principal, the district's Title IX Coordinator, or any other available school employee.

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

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

Any employee who receives a report or observes an incident of sex discrimination, including sex-based harassment, by or against a student in a district education program or activity shall report the incident to the Title IX Coordinator within one workday.

Once notified, the Title IX Coordinator shall ensure the complaint or allegation is addressed through Administrative Regulation 5145.71 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

CSBA NOTE: Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, when the Title IX Coordinator is notified of conduct that reasonably may constitute sex discrimination, including sex-based harassment, the Title IX Coordinator is required to offer and coordinate supportive measures to the complainant, and, if the district has begun grievance procedures or offered an informal resolution process to the respondent, offer and coordinate supportive measures to the respondent, as appropriate.

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

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

The Superintendent or designee shall ensure that all district staff are trained regarding the district's sex discrimination and sex-based harassment policy, and that all employees receive training related to their duties under Title IX as specified in Administrative Regulation 4119.11/4219.11/4319.11 - Sex Discrimination and Sex-Based Harassment. (34 CFR 106.8)

Instruction/Information

CSBA NOTE: Pursuant to Education Code 231.7, as added by AB 1071 (Ch. 65, Statutes of 2023), CDE is required to make available on its website (1) resources on abuse, including sexual, emotional, and physical abuse, and teen dating violence prevention for professional learning purposes, (2) information about local and national hotlines and

services for youth experiencing teen dating violence, and (3) other relevant materials for parents/guardians, and other caretakers of students.

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

1. What acts and behavior constitute sex discrimination and sex-based harassment, including the fact that sex discrimination and sex-based harassment could occur between people of the same sex and could involve sexual violence
2. A clear message that students do not have to endure sex discrimination or sex-based harassment under any circumstance
3. Encouragement to report observed incidents of sex discrimination and sex-based harassment even when the alleged victim of the discrimination or harassment has not complained

CSBA NOTE: Where sex discrimination, or sex-based harassment or violence, occurs in the context of other possible rule violations, students may be reluctant to report such conduct. For example, a student who experiences sex-based harassment while away from school without permission may be reluctant to file a complaint if the student believes discipline will be imposed for the violation. As such, Item #4 below clarifies that any other rule violation will be addressed separately from the sex discrimination and/or sex-based harassment complaint in order to encourage students to report the harassment.

4. A clear message that student safety is the district's primary concern, and that any separate rule violation involving an alleged victim or any other person reporting a sex discrimination or sex-based harassment incident will be addressed separately and will not affect the manner in which the sex discrimination or sex-based harassment complaint will be received, investigated, or resolved
5. A clear message that, regardless of a complainant's noncompliance with the writing, timeline, or other formal filing requirements, every sex discrimination and sex-based harassment allegation that involves a student, whether as the complainant, respondent, or victim of the discrimination or harassment, shall be investigated and action shall be taken to respond to harassment, prevent recurrence, and address any continuing effect on students
6. Information about the district's procedures for investigating complaints and the person(s) to whom a report of sex discrimination and/or sex-based harassment should be made
7. Information about the rights of students and parents/guardians to file a civil or criminal complaint, as applicable, including the right to file a civil or criminal complaint while the district investigation of a sex discrimination or sex-based harassment complaint continues
8. A clear message that, when needed, the district will implement supportive measures to ensure a safe school environment for a student who is the complainant or victim of sex discrimination or sex-based harassment and/or other students during an investigation

Disciplinary Actions

CSBA NOTE: Pursuant to Education Code 48900.2, a student in grades 4-12 may be suspended and/or expelled from school for sex-based harassment. 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. For more information regarding suspension and expulsion, see AR 5144.1 - Suspension and Expulsion/Due Process and AR 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities).

When there is an allegation of Title IX sex discrimination, including sex-based harassment, 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, prohibits the district from imposing any disciplinary sanctions against a respondent for the allegedly discriminatory behavior until the grievance procedures are completed.

Upon completion of an investigation of sex discrimination and/or sex-based harassment, any student found to have engaged in sex discrimination, and/or sex-based harassment or sexual violence, in violation of this policy, shall be subject to disciplinary action. For students in grades 4-12, disciplinary action may include suspension and/or expulsion, provided that, in imposing such discipline, the entire circumstances of the incident(s) shall be taken into account.

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

discrimination against, and/or sex-based harassment or sexual violence toward, any student, shall be subject to disciplinary action, up to and including dismissal, in accordance with law and the applicable collective bargaining agreement.

Record-Keeping

CSBA NOTE: Pursuant to 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, the district is required to keep the following records for at least seven years: (1) for each complaint of sex discrimination, including sex-based harassment, records documenting any informal resolution process implemented in accordance with 34 CFR 106.44 or grievance procedures implemented in accordance with 34 CFR 106.45, (2) for each notification the Title IX Coordinator receives of information about conduct that may reasonably constitute sex discrimination under Title IX, actions taken to fulfill the district's obligations as specified in 34 CFR 106.44, including supportive measures, and (3) all materials used to train district employees; the Title IX Coordinator and designees; investigators, decisionmakers, and other persons who are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures; and any person who facilitates an informal resolution process.

The Superintendent or designee shall maintain records in accordance with law, including in accordance with 34 CFR 106.8 as specified in Administrative Regulation 5145.71 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures, and district policies and regulations, of all reported cases of sex-based harassment to enable the district to monitor, address, and prevent repetitive harassing behavior in district schools.

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

State References

	Description
5 CCR 432	Student records
5 CCR 4600-4670	Uniform complaint procedures
5 CCR 4900-4965	Nondiscrimination in elementary and secondary educational programs receiving state or federal financial assistance
Civ. Code 1714.1	Liability of parent or guardian for act of willful misconduct by a minor
Civ. Code 51.9	Liability for sexual harassment; business, service and professional relationships
Ed. Code 200-262.4	Prohibition of discrimination
Ed. Code 220.1	Prohibition of retaliation related to educational equity
Ed. Code 220.3	Prohibition of disclosure of information related to student's sexual orientation, gender identity, or gender expression
Ed. Code 220.5	Prohibition of policies requiring disclosure of information related to student's sexual orientation, gender identity, or gender expression
Ed. Code 35292.5	School restrooms; all-gender restrooms
Ed. Code 48900	Grounds for suspension or expulsion
Ed. Code 48900.2	Additional grounds for suspension or expulsion; sexual harassment
Ed. Code 48904	Liability of parent/guardian for willful student misconduct
Ed. Code 48980	Parent/Guardian notifications
Ed. Code 48985	Notices to parents in language other than English
Ed. Code 49060-49079	Student records
Gov. Code 12950.1	Sexual harassment training

Federal References

	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

Federal References

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

Description

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

Management Resources References

California Department of Education Publication

Court Decision

Court Decision

Court Decision

Court Decision

Court Decision

Court Decision

Court Decision

CSBA Publication

CSBA Publication

CSBA Publication

Federal Register

U.S. DOE, Office for Civil Rights Publication

U.S. DOE, Office for Civil Rights Publication

U.S. DOE, Office for Civil Rights Publication

Website

Website

Website

Website

Description

California Longitudinal Pupil Achievement Data System (CALPADS) Update FLASH #158: Guidance for Changing a Student's Gender in CALPADS, July 2019

Gebser v. Lago Vista Independent School District (1998) 524 U.S. 274

Oona by Kate S. v. McCaffrey (1998, 9th Cir.) 143 F.3d 473

Reese v. Jefferson School District (2000, 9th Cir.) 208 F.3d 736

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

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

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

[Safe Schools: Strategies for Governing Boards to Ensure Student Success, 2011](#)

[Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students, Policy Brief, February 2014](#)

[Legal Guidance on Rights of Transgender and Gender Nonconforming Students in Schools, October 2022](#)

[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](#)

[Sexual Harassment: It's Not Academic, September 2008](#)

[Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, January 2001](#)

[Examples of Policies and Emerging Practices for Supporting Transgender Students, May 2016](#)

[CSBA District and County Office of Education Legal Services](#)

[California Department of Education](#)

[CSBA](#)

[U.S. Department of Education, Office for Civil Rights](#)

Cross References

0410

0450

0450

1114

1114

Description

[Nondiscrimination In District Programs And Activities](#)

[Comprehensive Safety Plan](#)

[Comprehensive Safety Plan](#)

[District-Sponsored Social Media](#)

[District-Sponsored Social Media](#)

Cross References**Description**

1312.1	Complaints Concerning District Employees
1312.1	Complaints Concerning District Employees
1312.3	Uniform Complaint Procedures
1312.3	Uniform Complaint Procedures
1312.3-E(1)	Uniform Complaint Procedures
1312.3-E(2)	Uniform Complaint Procedures
1313	Civility
3515.4	Recovery For Property Loss Or Damage
3515.4	Recovery For Property Loss Or Damage
3530	Risk Management/Insurance
3530	Risk Management/Insurance
3580	District Records
3580	District Records
4117.7	Employment Status Reports
4118	Dismissal/Suspension/Disciplinary Action
4118	Dismissal/Suspension/Disciplinary Action
4119.11	Sex Discrimination and Sex-Based Harassment
4119.11	Sex Discrimination and Sex-Based Harassment
4119.12	Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures
4119.12-E(1)	Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures
4131	Staff Development
4218	Dismissal/Suspension/Disciplinary Action
4218	Dismissal/Suspension/Disciplinary Action
4219.11	Sex Discrimination and Sex-Based Harassment
4219.11	Sex Discrimination and Sex-Based Harassment
4219.12	Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures
4219.12-E(1)	Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures
4219.21	Professional Standards
4219.21-E(1)	Professional Standards
4231	Staff Development
4317.7	Employment Status Reports
4319.11	Sex Discrimination and Sex-Based Harassment
4319.11	Sex Discrimination and Sex-Based Harassment
4319.12	Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures
4319.12-E(1)	Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures
4319.21	Professional Standards

Cross References**Description**

4319.21-E(1)	Professional Standards
5125	Student Records
5125	Student Records
5131	Conduct
5131.2	Bullying
5131.2	Bullying
5131.5	Vandalism And Graffiti
5132	Dress And Grooming
5132	Dress And Grooming
5137	Positive School Climate
5138	Conflict Resolution/Peer Mediation
5141.4	Child Abuse Prevention And Reporting
5141.4	Child Abuse Prevention And Reporting
5141.52	Suicide Prevention
5141.52	Suicide Prevention
5144	Discipline
5144	Discipline
5144.1	Suspension And Expulsion/Due Process
5144.1	Suspension And Expulsion/Due Process
5144.2	Suspension And Expulsion/Due Process (Students With Disabilities)
5145.2	Freedom Of Speech/Expression
5145.2	Freedom Of Speech/Expression
5145.3	Nondiscrimination/Harassment
5145.3	Nondiscrimination/Harassment
5145.6	Parent/Guardian Notifications
5145.6-E(1)	Parent/Guardian Notifications
5145.71	Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures
5145.71-E(1)	Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures
5145.9	Hate-Motivated Behavior
5146	Married/Pregnant/Parenting Students
6142.1	Sexual Health And HIV/AIDS Prevention Instruction
6142.1	Sexual Health And HIV/AIDS Prevention Instruction
6142.8	Comprehensive Health Education
6142.8	Comprehensive Health Education
6145	Extracurricular And Cocurricular Activities
6145	Extracurricular And Cocurricular Activities
6145.2	Athletic Competition
6145.2	Athletic Competition
6163.4	Student Use Of Technology

Cross References

6163.4-E(1)

Description

[Student Use Of Technology](#)