

Regulation 5145.77: ^2024 Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures

Status: ADOPTED

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Title IX of the Education Amendments Act of 1972 ("Title IX"), and its implementing regulations found at 34 C.F.R. Part 106, prohibits the district from discriminating on the basis of sex, including sex-based harassment. The district has adopted the grievance procedures set forth in this administrative regulation ("AR") that provide for prompt and equitable resolution of complaints alleging any action prohibited by Title IX.

Effective Date August 1, 2024

All complaints by a prospective, current, or former student alleging one or more incidents of sex discrimination, including sex-based harassment, that took place before August 1, 2024, shall be processed in accordance with administrative regulation ("AR") 5145.3 entitled "Nondiscrimination/Harassment"; BP/AR 5145.7 entitled "Sexual Harassment"; and/or AR 5145.71 entitled "2020 Title IX Complaint Procedures" as determined by the district's Title IX Coordinator or designee.

All complaints by a prospective, current, or former student alleging one or more incidents of sex discrimination, including sex-based harassment, that took place on or after August 1, 2024, shall be processed in accordance with the grievance procedures contained in this AR.

Definitions

The following definitions, many of which are found in the 2024 Title IX Regulations at 34 C.F.R. §106.2, are utilized in this AR.

1. **"Consent"** is knowing, voluntary, clear permission by word or action to engage in sexual activity.
 - Individuals may perceive and experience the same interaction in different ways. Therefore, it is the responsibility of each Party to determine that the other has consented before engaging in the activity.
 - If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.
 - For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain their consent to being kissed back.
 - Consent can also be withdrawn once given. The withdrawal must be reasonably and clearly communicated. If consent is withdrawn, the sexual activity must stop within a reasonable time.
 - Consent to some sexual contact (such as kissing or fondling) does not imply there is consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.
 - Proof of consent or non-consent is not a burden placed on either Party involved in an incident. Instead, the burden remains on the district to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable individual in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.
2. **"Complainant"** is an individual who is alleged to have been subject to conduct that could constitute sex discrimination under Title IX at a time when the individual was participating in, or attempting to participate in, a district educational program or activity.
3. **"Complaint"** means 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.
4. **"Decision-maker"** is the individual who makes the determination of responsibility.

5. **“Disciplinary sanctions”** means consequences imposed on a respondent following a determination under Title IX that the respondent violated the district’s prohibition on sex discrimination.
6. **“Grievance Procedures”** is inclusive of the formal investigation procedures and the informal resolution process set forth in this AR.
7. **“Investigator”** is the individual who investigates the allegations, through interviews and review of evidence.
8. **“Party”** means a complainant or respondent.
9. **“Peer retaliation”** means retaliation by a student against another student.
10. **“Pregnancy or Related Conditions”** means pregnancy, childbirth, termination of pregnancy, or lactation, medical conditions related thereto, or recovery therefrom.
11. **“Relevant”** means related to the allegations of sex discrimination under investigation as part of these grievance procedures. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a Decision-maker in determining whether the alleged sex discrimination occurred.
12. **“Remedies”** means measures provided, as appropriate, to a complainant or any other individual the district identifies as having had their equal access to the district’s education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that individual’s access to the district’s education program or activity after a recipient determines that sex discrimination occurred.
13. **“Respondent”** means an individual who is alleged to have engaged in conduct that could constitute sex discrimination.
14. **“Retaliation”** means intimidation, threats, coercion, or discrimination against any individual authorized by the district to provide aid, benefit, or service under the district’s education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or its regulations, or because the individual has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX and this regulation.
15. **“Sex-based harassment”** is a form, or subset, of sex discrimination. It includes conduct related to sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity, that takes the form of one or more of the following:

(1)*Quid pro quo harassment.* An 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 such an aid, benefit, or service on an individual’s participation in unwelcome sexual conduct;

(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 an individual’s ability to participate in or benefit from the district’s education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- The degree to which the conduct affected the complainant’s ability to access the district’s education program or activity;
- The type, frequency, and duration of the conduct;
- The Parties’ ages, roles within the district’s education program or activity, previous interactions, and other factors about each Party that may be relevant to evaluating the effects of the conduct;

- The location of the conduct and the context in which the conduct occurred; and
- Other sex-based harassment in the district's education program or activity; or

(3) *Specific offenses.*

- **Sexual assault.** Sexual assault is any sexual act directed at a complainant without their consent, or instances in which the complainant is incapable of giving consent. Sexual assault includes:
 - **Rape.** The carnal knowledge of a complainant, or penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another individual, without their consent, including instances where they are incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - **Sodomy.** The oral or anal sexual intercourse with a complainant, forcibly, and/or against their will (non-consensually), or not forcibly or against their will in instances in which the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - **Sexual assault with an object.** The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of the complainant, forcibly, and/or against their will (non-consensually), or not forcibly or against their will in instances in which the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - **Fondling.** The touching of the private body part(s) (buttocks, groin, breasts), of the complainant, causing another individual to touch the private body part(s) of complainant, or causing complainant to touch another individual's private body part(s), for the purpose of sexual gratification, forcibly, and/or against their will (non-consensually), or not forcibly or against their will in instances in which the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - **Incest.** Non-forcible sexual intercourse, between individuals who are related to each other, within the degrees wherein marriage is prohibited by California law.
 - **Statutory Rape.** Non-forcible sexual intercourse, with an individual who is under the statutory age of consent (18 years of age in California).
- **Dating violence.** Violence committed (a) by an individual who is or has been in a social relationship of a romantic or intimate nature with the victim; and (b) where the existence of such a relationship shall be determined based on a consideration of the length of the relationship; the type of relationship; and the frequency of interaction between the individuals involved in the relationship.
- **Domestic violence.** Felony or misdemeanor crimes committed by an individual who (a) is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the recipient, or an individual similarly situated to a spouse of the victim; (b) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; (c) shares a child in common with the victim; or (d) commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.
- **Stalking.** Engaging in a course of conduct directed at a specific individual that would cause a reasonable individual to (a) fear for the individual's safety or the safety of others or (b) suffer substantial emotional distress.

16. **“Supportive measures”** means individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent to: (1) Restore

or preserve that 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 district's investigation process or during an informal resolution process.

Basic Requirements of Title IX Grievance Procedures

The district will treat complainants and respondents equitably.

The district requires that any Title IX Coordinator or designee, investigator, decision-maker, appeal officer, or informal resolution officer not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. These individuals must be trained. As long as there is no conflict of interest, a decision-maker may be the same individual as the Title IX Coordinator and investigator. (34 C.F.R. §106.8(d).)

The district presumes that the respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its grievance procedures.

The district will not impose discipline on a respondent for sex discrimination prohibited by Title IX unless and until there is a determination at the conclusion of the investigation process that the respondent engaged in prohibited sex discrimination or unless agreed to through the informal resolution process.

The district will take reasonable steps to protect the privacy of the Parties and witnesses during the investigation process and/or the informal resolution process. These steps will not restrict the ability of the Parties to obtain and present evidence. The Parties cannot engage in retaliation, including against witnesses.

The district will objectively evaluate all evidence that is relevant and not otherwise impermissible – including both inculpatory and exculpatory evidence. Credibility determinations will not be based on an individual's status as a complainant, respondent, or witness.

If the respondent is a student with a disability, the district will require the Title IX Coordinator or designee to consult with one or more members, as appropriate, of the student's IEP 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.

Reporting Sex Discrimination

Anyone who has knowledge of conduct that may constitute sex discrimination is encouraged to report it to the Title IX Coordinator or designee as soon as practically possible.

Employees who have knowledge of conduct that may constitute sex discrimination must report it to the Title IX Coordinator or designee within one (1) business day. An employee may be subject to discipline for failure to timely report incident(s) of sex discrimination, including sex-based harassment.

Filing a Complaint of Sex Discrimination

A complaint of sex discrimination, including sex-based harassment, may be submitted directly to the Title IX Coordinator or designee. The following is contact information for the district's Title IX Coordinator(s):

Melinda Iremonger
Title IX Coordinator (Personnel Involved)
5735 47th Avenue
Sacramento, CA 95824
(916) 643-7446

David Van Natten
Title IX Coordinator (Student on Student)
5735 47th Avenue
Sacramento, CA 95824
(916) 643-7420

Complaints containing allegations of sex discrimination, including sex-based harassment, may be submitted verbally or in writing.

Complaints of sex-based harassment may only be filed by:

- A complainant;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; or
- Title IX Coordinator or designee.

Complaints of sex discrimination may be filed by:

- A complainant;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant;
- Any current district student or employee;
- An individual, other than a current district student or employee, who is alleged to have been subject to conduct that would constitute sex discrimination under Title IX during their participation, or attempt to participate, in the district's education program or activity; or
- The district's Title IX Coordinator or designee.

The district may consolidate complaints of sex discrimination against more than one respondent, or by more than one complainant against one or more respondents, or by one Party against another Party, when the allegations of sex discrimination arise out of the same facts or circumstances.

If the complainant withdraws any or all the allegations in a complaint, or requests the district not process a complaint, the Title IX Coordinator or designee must determine whether to initiate a complaint of sex discrimination. (34 C.F.R. § 106.44 (f).)

Where the Title IX Coordinator or designee is determining whether to initiate a complaint, the Title IX Coordinator or designee shall consider the following:

- The complainant's request not to proceed with initiation of a complaint;
- The complainant's reasonable safety concerns regarding initiation of a complaint;
- The risk that additional acts of sex discrimination, including sex-based harassment, would occur if a complaint is not initiated;
- 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;
- The age and relationship of the parties, including whether the respondent is an employee of the district;
- 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;
- The availability of evidence to assist a decisionmaker in determining whether sex discrimination, including sex-based harassment occurred; and
- Whether the district could end the alleged sex discrimination, including sex-based harassment and prevent its recurrence without initiating grievance procedures.

There is no time limit to bringing forth a Title IX complaint to the district. However, if a respondent is no longer

subject to the district's jurisdiction and/or significant time has passed, the ability to investigate, respond, and/or provide remedies may be limited or impossible. The Title IX Coordinator or designee has the discretion whether to acting on a complaint of sex discrimination that is significantly impacted by the passage of time including, but not limited to, the rescission or revision of this regulation. The Title IX Coordinator or designee may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

Knowingly asserting false and/or malicious allegations, or knowingly providing false or malicious statements, is a serious offense and may be subject to appropriate disciplinary action. Allegations or information provided in good faith but ultimately determined to be erroneous or that do not result in a determination of a policy violation, will not trigger disciplinary action.

Supportive Measures

Upon learning of conduct that may constitute sex discrimination under Title IX, the Title IX Coordinator or designee shall promptly contact the complainant and the respondent to offer and coordinate supportive measures, as appropriate, to restore or preserve their access to the district's education program or activity and/or to support them during the district's formal investigation procedure or informal resolution process.

Supportive measures shall be nondisciplinary and nonpunitive. Supportive measures shall not unreasonably burden either Party. Supportive measures will be offered and implemented as reasonably available, with consideration for the Parties' wishes and without being charged a fee. Supportive measures will be offered even where a formal investigation procedure and/or informal resolution process is not applicable.

Supportive measures may include, but are not limited to (34 C.F.R. §§ 106.2, 106.44(g)):

- Counseling;
- Extensions of deadlines and other course-related or work-related adjustments;
- Campus escort services;
- Increased security and monitoring of certain areas of the campus;
- Restrictions on contact applied to one or more Parties;
- Leaves of absence;
- Changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and
- Training and education programs related to sex-based harassment.

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 C.F.R. §106.44(g)(5).)

If a Party is not satisfied with the supportive measure offering, the Party is encouraged to work with the Title IX Coordinator or designee to modify an existing supportive measure or to request an additional supportive measure. A Party may also submit to the Title IX Coordinator a written challenge within two (2) business days that includes a request to modify or terminate a supportive measure. The challenge shall be reviewed by an impartial employee, who is not the Title IX Coordinator or designee, to determine whether the challenged supportive measure offering is consistent with the definition of supportive measures. (34 C.F.R. §106.44(g)(4).)

Upon the conclusion of any formal investigation procedure or informal resolution process, the district may continue with the supportive measures, or modify or terminate such measures, as appropriate.

Emergency Removal of Respondent

If the respondent is a district employee, the employee may be placed on administrative leave during the pendency of the Title IX grievance procedures. (34 C.F.R. §106.44.)

If the respondent is a district student, on an emergency basis only, the district may remove the student respondent from the district's education program or activity, provided that an imminent and serious threat to the health or safety of a complainant or any students, employees, or other individuals arising from the allegations of sex discrimination justifies removal and provides the student with notice and an opportunity to challenge the decision immediately following the removal. Any challenge to an emergency removal must be submitted to the Title IX Coordinator or designee in writing within two (2) business days. This authority to remove a student respondent does not modify the student respondent's rights under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973. (34 C.F.R. §106.44(h).)

Informal Resolution Process

In lieu of resolving a complaint through the formal investigation procedures, the district may offer the Parties the opportunity to participate in a confidential informal resolution process. The district may not offer an informal resolution process to resolve a complaint that includes allegations an employee engaged in sex-based harassment of a student, or when such a process would conflict with Federal, State, or local law. The district also has the discretion to not offer an informal resolution where it does not deem it appropriate under the circumstances, including but not limited to, where doing so would present a future risk of harm to others.

The informal resolution process is voluntary and must be consented to by the Parties. The district shall not require a Party to participate in the informal resolution process or to waive their right to receive a determination via the formal investigation procedure. (34 C.F.R. §106.44(k).)

Before engaging in an informal resolution process, the district must provide the Parties with written notice of the following (34 C.F.R. §106.44(k)(3).):

- The allegations;
- The requirements of the informal resolution process;
- That, prior to agreeing to a resolution, any Party has the right to withdraw from the informal resolution process and to initiate or resume a formal investigation;
- That the Parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the Parties from initiating or resuming a formal investigation arising from the same allegations;
- The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the Parties;
- What information the district will maintain; and
- Whether and how the district may disclose such information.

The informal resolution officer must not be the same individual as the investigator or the decision-maker. The informal resolution officer must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. Informal resolution officers must be trained.

The purpose of the confidential informal resolution process is to reach a mutual written agreement between the Parties as to how to resolve the allegations at issue such that each Party is not limited or denied participation in or the benefit of the district's educational program or activity, including but not limited to corrective or remedial action. The informal resolution process may take the form of a restorative justice conversation, mediation, or other process as determined appropriate by the Title IX Coordinator or designee or the informal resolution officer.

When informal resolution is offered, the Title IX Coordinator or designee must still take appropriate, prompt, and effective steps to ensure that sex discrimination does not continue or recur within the district's education program or activity.

Formal Investigation Procedure

The following formal investigation procedures provide for adequate, reliable, and impartial investigations of complaints alleging sex discrimination under 2024 Title IX regulations.

The burden is on the district, not the Parties, to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.

A. Notice of Complaint

Upon initiation of the district's Title IX formal investigation procedure, the Title IX Coordinator or designee will notify the Parties, in writing, of the following:

- The district's Title IX investigation procedures and, if applicable, informal resolution process;
- Sufficient information available at the time to allow the Parties to respond to the allegations, including the identities of the Parties involved in the incident(s), the conduct alleged to constitute sex discrimination, and the date(s) and location(s) of the alleged incident(s);
- Retaliation is prohibited; and
- The Parties will be provided with a Report of Evidence that contains the relevant and permissible evidence, including summary of the Parties/witness interviews and documentary evidence.

If, in the course of an investigation, the district decides to investigate additional allegations of sex discrimination by the respondent toward the complainant that are not included in the notice or that are included in a complaint that is consolidated, the Title IX Coordinator or designee shall notify the Parties of the additional allegations.

B. Dismissal of Complaint

The Title IX Coordinator or designee may dismiss a complaint of sex discrimination if:

- The Title IX Coordinator or designee is unable to identify the respondent after taking reasonable steps to do so;
- The respondent is not participating in the district's education program or activity and/or is not employed by the district;
- 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 or designee determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX even if proven; or
- The Title IX Coordinator or designee determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Before dismissing the complaint, the Title IX Coordinator or designee will make reasonable efforts to clarify the allegations with the complainant.

Upon dismissal, the Title IX Coordinator or designee will promptly notify the complainant of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then the Title IX Coordinator or designee will also notify the respondent of the dismissal and the basis for the dismissal promptly following notification to the complainant, or simultaneously if notification is in writing.

The Title IX Coordinator or designee will notify the complainant that a dismissal may be appealed. If the dismissal occurs after the respondent has been notified of the allegations, the Title IX Coordinator or designee will also notify the respondent that the dismissal may be appealed.

All dismissal appeals must be filed in writing, and sent to the Title IX Coordinator or designee, within three (3) business days of the notification of the dismissal. The appeal must specify at least one of the following bases, and provide any reasons or supporting evidence for why the ground is met:

- Procedural irregularity that would change the outcome
;
- New evidence that would change the outcome and that was not reasonably available when the dismissal was made; and
- The Title IX Coordinator, investigator, or decision-maker 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.

Failure to do so may result in the appeal being denied.

If the dismissal is appealed, Title IX Coordinator or designee will:

- Notify the Parties of any appeal, including notice of the allegations, if notice was not previously provided to the respondent;
- Afford the non-appealing Party three (3) business days to provide a statement in support of or challenging the dismissal;
- Notify the Parties of the result of the appeal and the rationale for the result;
- Implement appeal procedures equally for the Parties;
- Ensure that the appeal officer did not take part in an investigation of the allegations or dismissal of the complaint; and
- Ensure that the appeal officer has been trained consistent with the Title IX regulation.

When a complaint is dismissed, Title IX Coordinator or designee will, at a minimum:

- Offer supportive measures to the Parties, as appropriate; and
- Take other prompt and effective steps, as appropriate, to ensure that sex discrimination does not continue or recur within the district's education program or activity.

C. Applicable Timeframes and Extension for Good Cause

The following timeframes are applicable to the major stages of the formal investigation procedure:

- Within five (5) business days of receiving the complaint, the Title IX Coordinator or designee will determine whether to dismiss or process a Title IX complaint.
- Within sixty (60) business days of receiving the complaint, the Parties will be provided a report summarizing the evidence ("Report of Evidence").
- Within five (5) business days of receiving the Report of Evidence, the Parties may submit to the investigator a written response to the Report of Evidence.
- Within thirty (30) business days of sending the Parties the Report of Evidence, a written determination will be issued to the Parties.
- The Parties will have five (5) business days from the date of the written determination to submit an appeal.

The Title IX Coordinator or designee may reasonably extend the above timeframes for good cause. The Parties will be provided with written notice of the delay, which will include the reason(s) for the delay.

D. Roles

The district has the discretion to determine who fills what roles during a formal investigation. Factors to be considered when determining who fills what role include, but are not limited to:

- The nature and complexity of allegations,
- The age and mental capacity of the Parties,
- Potential conflicts of interest,
- The amount and type of evidence, and

- Availability of district staff and resources.

For purposes of this AR, the district may utilize one of the following investigation models:

1. The Title IX Coordinator or designee will not be the same individual as the investigator but will be the decision-maker.
2. The Title IX Coordinator or designee will not be the same individual as the investigator or the decision-maker. The investigator will not be the same individual as the decision-maker.

E. Collection and Exchange of Evidence

During the investigation process, the Parties will have equal opportunity to present fact witnesses and other inculpatory and exculpatory evidence that is relevant and not otherwise impermissible.

The investigator will interview the Parties and all other individuals who may have information related to the allegations. The investigator will also gather evidence. Once collected, the investigator will determine what evidence is relevant and what evidence is impermissible regardless of relevance.

The following types of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, except by the district to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

- Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the individual to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- 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 that Party's or witness's voluntary, written consent for use in the investigation process is obtained; and
- 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.

The Parties will be provided with a Report of Evidence that contains the relevant and permissible evidence, including summaries of Party and witness interviews, and documentary evidence. The Parties will have five (5) business days to review and provide a written response to the Report of Evidence.

The Parties shall not disclose information and evidence obtained solely through the investigation process, and the district will take reasonable steps to prevent and address any such unauthorized disclosure. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the allegations of sex discrimination are authorized.

F. Written Determination

If the investigator is distinct from the decision-maker:

- The investigator will send the Report of Evidence to the decision-maker, which may or may not include a recommended determination, and
- The decision-maker may question Parties and witnesses to adequately assess credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination. The decision-maker may either ask the questions directly of the Party or witness, request the investigator ask the questions, or consult with the investigator regarding the questions.

Following an investigation the decision-maker will:

- Evaluate all relevant and not otherwise impermissible evidence;
- Not base their credibility determination on an individual's status as a complainant, respondent, or witness; and
- Use the "preponderance of the evidence" standard to determine whether the allegations of sex discrimination are sustained.

The "preponderance of the evidence" standard of proof requires the evidence to show that it is more likely than not that the alleged conduct occurred. If the decision-maker is not persuaded under the "preponderance of evidence" standard that the alleged conduct more likely than not occurred, then the decision-maker will not sustain the alleged conduct.

The decision-maker will notify the Parties in writing of the determination whether sex discrimination occurred under Title IX, including the rationale for such determination and the procedures and permissible bases for appeal.

G. Appeal of Written Determination

Either Party may appeal the written determination. An appeal must be filed in writing within five (5) business days of the date of the written determination. Appeals submitted after this deadline are not timely and shall not be considered. The appeal must specify at least one of the grounds below and provide any reasons or supporting evidence for why the ground is met, otherwise the appeal may be denied:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the dismissal was made;
- The Title IX Coordinator, investigator, or decision-maker 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; and
- The final determination by the decision-maker is substantially contrary to the weight of the evidence in the record.

The non-appealing Party shall be provided notice of the appeal and three (3) business days to submit a written response.

Appeal decisions are to be deferential to the original written determination, making changes to the written determination only when there is clear error. An appeal is not an opportunity for the appeal officer to substitute their judgment for that of the original decision-maker merely because they disagree with the written determination.

An appeal may be granted or denied. Appeals that are granted should be remanded (or partially remanded) to the original investigator and/or decision-maker with corrective instructions for reconsideration. In rare circumstances where an error cannot be cured by the original investigator and/or decision-maker or the Title IX Coordinator or designee (as in cases of conflict of interest or bias), the appeal officer may order a new investigation and/or a new determination with new investigator and/or decision-maker roles.

The appeal officer will provide the Parties with a written appeal determination within ten (10) business days of the appeal. Once an appeal is decided, the outcome is final and constitutes the final determination. If a remand results in a new determination that is different from the appealed determination, that new determination can be appealed, once, on any of the available appeal grounds.

Corrective/Disciplinary Action

The district shall not impose any disciplinary sanctions until a final written determination of responsibility has been made via the investigation procedures or an informal resolution process. (34 C.F.R. §106.45(h)(4).)

If the allegations of sex discrimination are sustained, the Title IX Coordinator or designee will:

- Coordinate the provision and implementation of remedies to a complainant and other people the district identifies as having had equal access to the district's education program or activity limited or denied by the sex discrimination;
- Coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions; and
- Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the district's education program or activity.

For students in grades 4-12, discipline for sex-based harassment may include suspension and/or expulsion. After the completion of the complaint procedure, if it is determined that a student at any grade level has committed sexual assault, sexual battery, committed an obscene act or engaged in habitual profanity or vulgarity at school or at a school activity off school grounds, the Superintendent or designee, or principal or designee, shall immediately suspend the student and shall recommend expulsion. (Ed. Code, §§ 48900.2, 48915.)

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

- Transfer from a class or school as permitted by law,
- Parent/guardian conference,
- Education of the student regarding the impact of the conduct on others,
- Positive behavior support or counseling,
- Referral of the student to a student success team,
- Denial of participation in extracurricular or cocurricular activities or other privileges as permitted by law.

When an employee is determined to be responsible for sex-based harassment, the district shall take appropriate disciplinary action, up to and including dismissal, in accordance with applicable law and collective bargaining agreement.

Alternative Resources

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.

Record-Keeping

The Superintendent or designee shall maintain, for a period of seven (7) years, the following (34 C.F.R. § 106.8):

1. A record of the informal resolution process or the formal investigation procedures, and the resulting outcome for all complaints of sex discrimination under Title IX;
2. A record of any actions, including supportive measures, taken in response to each notification the Title IX Coordinator or designee receives of information about conduct that reasonably may constitute sex discrimination under Title IX; and
3. All Title IX training materials. The district shall make such training materials available upon request for inspection by members of the public.

For complaints containing allegations of childhood sexual assault, the Superintendent or designee shall also maintain, indefinitely, the following (Cal. Civ. Proc., § 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; and
6. All training materials addressing the prohibition and investigation of childhood sexual assault.

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

Notice References

Description

Unique Policy

This policy is unique to the district/COE and is not connected to an existing CSBA sample policy or included in regular quarterly updates from CSBA.