

## BOARD POLICY 4033: LACTATION ACCOMMODATION

### Comparison Matrix

Section: Personnel

#### SUMMARY OF UPDATE

**Summary of Update:** Policy updated to reflect **NEW FEDERAL REGULATIONS (89 Fed. Reg. 33474)** which (1) require districts to provide reasonable break time for employees to express breast milk or breastfeed, and to ensure that employees have access to a lactation space, as specified, (2) provide that "sex" for purposes of sex discrimination under Title IX includes lactation and related medical conditions or recovery, and (3) require 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, to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct. Additionally, policy updated to reflect the Providing Urgent Maternal Protections (PUMP) for Nursing Mother Act which (1) requires employers to provide reasonable break time for nursing employees to express breast milk for one year after the child's birth, and to ensure that employees have access to a lactation space, as specified, and (2) authorizes an employee to file a complaint with the Wage and Hour Division of the U.S. Department of Labor for violation of such act. In addition, policy updated to reflect the Pregnant Workers Fairness Act which (1) requires employers to provide reasonable accommodation to employees due to pregnancy, childbirth, or related medical conditions, including lactation, as specified, and (2) authorizes an employee to file a complaint with the Equal Employment Opportunity Commission for failure to provide reasonable accommodations pursuant to the act.

CSBA NOTE: Pursuant to Labor Code 1034, districts are mandated to develop policy regarding lactation accommodation with specified components, as provided below.

Both federal and state law require that employees be provided reasonable break time and an appropriate location to accommodate their desire to express breast milk for their infant children. Title IX (20 USC 1681-1688), and its implementing regulation 34 CFR 106.57, as amended by 89 Fed. Reg. 33474, require districts to provide reasonable break time for employees to express breast milk or breastfeed, and to ensure that employees have access to a lactation space, as specified. Additionally, the Providing Urgent Maternal Protections for Nursing Mothers (PUMP) Act (29 USC 218d) requires employers to provide reasonable break time for nursing employees to express breast milk for one year after the child's birth, and to ensure that employees have access to a lactation space, as specified. In addition, the Pregnant Workers Fairness Act (PWFA) (42 USC 2000gg-2000gg-6) requires employers to provide reasonable accommodation to employees due to pregnancy, childbirth, or related medical conditions, including lactation. State law (Labor Code 1030-1034; Government Code 12925-12954) also applies to all district employees. Where provisions of the laws conflict, the statute providing greater protections for employees supersedes. The district should consult CSBA's District and County Office of Education Legal Services or district legal counsel if questions arise about the application of conflicting laws to a particular employee.

Government Code 12926 includes breastfeeding or medical conditions related to breastfeeding within the definition of "sex" for purposes of sex discrimination under the California Fair Employment and Housing Act. Additionally, 34 CFR 106.10, as amended by 89 Fed. Reg. 33474, provides that "sex" for purposes of sex discrimination under Title IX includes lactation and related medical conditions or recovery. In addition, Labor Code 1033 prohibits an employer from discharging, or in any manner discriminating or retaliating against, an employee for exercising or attempting to exercise any right related to lactation accommodation. Pursuant to Labor Code 1033, violation of Labor Code 1030-1034 may result in a citation from the Labor Commissioner and/or a civil penalty.

Districts are required to prohibit retaliation when a right or privilege secured by Title IX is interfered with, including when a person reported 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, 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) 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

CURRENT VERSION			REVISED VERSION	CSBA MODIFICATIONS and/or NOTES	
PARA	Section	Sub-Section	December 8, 2020		July 2024
1			The Governing Board recognizes the immediate and long-term health benefits of breastfeeding and desires to provide a supportive environment for any district employee to express milk for an infant child upon returning to work following the birth of the child. The Board prohibits discrimination, harassment, and/or retaliation against any district employee for seeking an accommodation to express breast milk for an infant child while at work.	The Governing Board recognizes the immediate and long-term health benefits of breastfeeding and desires to provide a supportive environment for any district employee to express breast milk for an infant child upon returning to work following the birth of the child. The Board prohibits discrimination, harassment, and/or retaliation against any district employee for seeking an accommodation to express breast milk for an infant child while at work.	The district should ensure consistency of this policy with provisions in the district's collective bargaining agreement, if any, related to break times or other employment issues.
2			An employee shall notify the employee's supervisor or other appropriate personnel in advance of the intent to request an accommodation. The supervisor shall respond to the request and shall work with the employee to make arrangements. If needed, the supervisor shall address scheduling in order to ensure that the employee's essential job duties are covered during the break time.	An employee shall notify the employee's supervisor or other appropriate district administrator in advance of the intent to request an accommodation. The supervisor or appropriate district administrator shall respond to the request and shall work with the employee to make arrangements. If needed, the supervisor or appropriate district administrator shall address scheduling in order to ensure that the employee's essential job duties are covered during the break time.	CSBA NOTE: Labor Code 1034 mandates that the district's policy regarding lactation accommodation include the process by which the employee is to make a lactation accommodation request and the district's obligation to respond to the request. The following paragraph should be modified to reflect the district's process.  For more information regarding workplace accommodations, see AR 4032 - Reasonable Accommodation and for temporary assignments, see BP 4113.4/4213.4/4313.4 - Temporary Modified/Light-Duty Assignment.
3			Lactation accommodations shall be granted unless limited circumstances exist as specified in law.	Lactation accommodations shall be granted unless limited circumstances exist as specified in law.	CSBA NOTE: Pursuant to Labor Code 1032, all districts are required to grant lactation accommodation except when granting the

				<p>accommodation would "seriously disrupt" district operations. "Serious disruption" is not defined in the law.</p> <p>Additionally, the PUMP Act (29 USC 218d) and Labor Code 1031 provide an exception for districts with fewer than 50 employees when lactation accommodation would result in "undue hardship" based on significant difficulty or expense in relation to the size, financial resources, nature, or structure of the district. In addition, the PWFA (42 USC 2000gg-1) applies to districts with 15 or more employees, but provides an exception for accommodations that would impose an "undue hardship." When a district is able to demonstrate undue hardship, Labor Code 1031 only requires that reasonable efforts be made to provide the employee with the use of a room or other location in close proximity to the employee's work area for the employee to express breast milk in private. Pursuant to Labor Code 1031, the provided room or location may not be a toilet stall.</p> <p>Regardless of the size of the district, the determination of serious disruption or undue hardship should be made on a case-by-case basis and only in limited, stringent circumstances. The burden of demonstrating why accommodation could not be made, even if on a temporary basis or for less time than requested, would likely fall to the district.</p>
4		Before a determination is made to deny lactation accommodations to an employee, the employee's supervisor shall consult with the Superintendent or designee. When lactation accommodations are denied, the	No change	CSBA NOTE: Labor Code 1034 mandates that the district's policy include a statement that the district provide a written response to an employee if the district is unable to comply with the break time or location requirements.

		Superintendent or designee shall document the options that were considered and the reasons for denying the accommodations.		34 CFR 106.57, as amended by 89 Fed. Reg. 33474, requires the district to provide "reasonable" break time for an employee to express breast milk or breastfeed, but does not have any qualification related to the requirement to provide a lactation space. Additionally, it would be unlikely that a district would have a valid reason to deny a lactation accommodation pursuant to the PWFA. Thus, districts should proceed with caution before denying a lactation accommodation, and consult CSBA's District and County Office of Education Legal Services or district legal counsel as necessary.
5		The Superintendent or designee shall provide a written response to any employee who was denied the accommodation(s).	No change	
6		The district shall include this policy in its employee handbook or in any set of policies that the district makes available to employees. In addition, the Superintendent or designee shall distribute the policy to new employees upon hire and when an employee makes an inquiry about or requests parental leave.	No change	CSBA NOTE: Labor Code 1034 mandates that the district's policy regarding lactation accommodation be distributed to employees as provided in the following paragraph.  Additionally, pursuant to 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, the district's policy regarding the prohibition of sex discrimination, which includes lactation and related conditions, is required to be published, and the district's notice of nondiscrimination on the basis of sex is required to be posted on the district's website and appear in each handbook, catalog, announcement, bulletin, and application that the district makes available to employees and applicants for employment.
		<b><u>Break Time and Location Requirements</u></b>	No change	

1		The district shall provide a reasonable amount of break time to accommodate an employee each time the employee has a need to express breast milk for an infant child.	No change	<p>CSBA NOTE: Although the PUMP Act (29 USC 218d) limits the length of time that an employee is entitled to lactation accommodation to one year after the birth of the child, Labor Code 1030 and the PWFA (42 USC 2000gg-1) do not set a specific limit on the infant child's age and therefore provides greater benefits to employees.</p> <p>Additionally, 34 CFR 106.57, as amended by 89 Fed. Reg. 33474, which requires districts to provide reasonable break time for an employee to express breast milk or breastfeed, does not specify a duration of time from birth of the child.</p>
2		To the extent possible, any break time granted for lactation accommodation shall run concurrently with the break time already provided to the employee. Any additional break time used by a non-exempt employee for this purpose shall be unpaid.	No change	<p>CSBA NOTE: Labor Code 1030 and the PUMP Act (29 USC 218d) do not require the district to compensate non-exempt employees for breaks taken for the purpose of expressing breast milk. However, an employee who uses break time already provided by the district as paid time must be compensated for that break time in the same manner as any other employee. Any additional time beyond the authorized paid break time could be uncompensated, provided the employee is completely relieved from duty during that time. If the district instead chooses to provide compensation for such additional break time, it should modify the following paragraph accordingly. The district also may provide flexible scheduling for those employees who choose to work extra time to make up for any uncompensated break time beyond the authorized break time.</p>
3		The employee shall be provided <del>the use of</del> a private room or location, other than a bathroom, which may be the employee's work	The employee shall be provided <i>a lactation space which may be used by the employee for expressing breast milk or breastfeeding as</i>	<p>CSBA NOTE: Labor Code 1031 requires the district to provide an employee with the use of a room or location, other than a bathroom,</p>

		area or another location that is in close proximity to the employee's work area. <del>The room or location provided</del> shall meet the following requirements:	<i>needed. The lactation space shall be</i> a private room or location, other than a bathroom, which may be the employee's work area or another location that is in close proximity to the employee's work area, <i>and</i> shall meet the following requirements:	to express breast milk in private. This may include the place where the employee normally works if the location otherwise meets legal requirements, as specified below. Labor Code 1031 authorizes the district to designate a temporary location to express breast milk if the district is unable to provide a permanent location due to operational, financial, or space limitation, as long as the space is in close proximity to the employee's work area, shielded from view, free from intrusion while breast milk is being expressed, and is otherwise compliant with law.  Additionally, the PUMP Act (29 USC 218d) and Title IX (34 CR 106.57, as amended by 89 Fed. Reg. 33474) require the district to ensure that an employee can access a lactation space, other than a bathroom, that is clean, shielded from view, and free from intrusion from others.
	1	Is shielded from view and free from intrusion while the employee is expressing milk	No change	
	2	Is safe, clean, and free of hazardous materials, as defined in Labor Code 6382	No change	
	3	Contains a place to sit and a surface to place a breast pump and personal items	No change	
	4	Has access to electricity or alternative devices, including, but not limited to, extension cords or charging stations, needed to operate an electric or battery-powered breast pump	No change	
	5	Has access to a sink with running water and a refrigerator or, if a refrigerator cannot be provided, another cooling device suitable for storing milk in close proximity to the employee's workspace	No change	

4		If a multipurpose room is used for lactation, among other uses, the use of the room for lactation shall take precedence over other uses for the time it is in use for lactation purposes.	No change	
		<b><u>Dispute Resolution</u></b>	No change	
			<p><i>Complaints alleging sex discrimination under Title IX shall be investigated and resolved in accordance with the procedures 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.</i></p>	<p>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 procedures specified in AR 4030 - Nondiscrimination in Employment. Due to this uncertainty, it is recommended that districts consult CSBA's District and County of Office Education Legal Services or district legal counsel prior to utilizing such a complaint process 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.</p> <p>Additional remedies may be available for violation of the PUMP Act (29 USC 218d) under the Fair Labor Standards Act, the PWFA (42 USC 2000gg-2), and state law pursuant to</p>

					Labor Code 1030-1034 and Government Code 12925-12954.
				<i>Additionally, an employee may file a complaint with the Wage and Hour Division of the U.S. Department of Labor for an alleged violation of the Providing Urgent Maternal Protections for Nursing Mothers Act and/or the Equal Employment Opportunity Commission for failure to provide reasonable accommodations pursuant to the Pregnant Workers Fairness Act.</i>	
1			An employee may file a complaint with the Labor Commissioner at the California Department of Industrial Relations for any alleged violation of Labor Code 1030-1034.	<i>In addition</i> , an employee may file a complaint with the Labor Commissioner at the California Department of Industrial Relations for any alleged violation of Labor Code 1030-1034.	CSBA NOTE: The following paragraph is mandated pursuant to Labor Code 1034.

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