

BOARD POLICY 5145.7: ~~SEXUAL~~ **SEX DISCRIMINATION AND SEX-BASED HARASSMENT**

Comparison Matrix

Section: Students

SUMMARY OF UPDATE

Summary of Update: Policy updated to include material related to sex discrimination, in addition to sex-based harassment. Additionally, policy updated to reflect **NEW FEDERAL REGULATIONS (89 Fed. Reg. 33474)** which (1) clarify that discrimination on the basis of sex, including sex-based harassment, for the purpose of Title IX includes 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, (2) require employees with knowledge of conduct that reasonably may constitute sex discrimination or sex-based harassment in a district education program or activity to notify the Title IX Coordinator, (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, (4) require the Title IX Coordinator to offer and coordinate supportive measures when notified of conduct that reasonably may constitute sex discrimination, including sex-based harassment (5) require specified training related to sex discrimination for all district employees, as well as additional training for 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 the Title IX Coordinator(s) and designees, and (6) require specified records to be maintained for seven years. In addition, policy updated to reflect **NEW LAW (AB 1955, 2024)** which prohibits a district, including a Governing Board member from retaliating or otherwise taking 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 certain Education Code provisions, 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. Policy also updated to (1) provide that employees are required to report incidents of prohibited discrimination within one workday, which may be modified to reflect the district's timeline, in order to maintain consistency of such reporting requirements across the policy manual, and (2) delete material related to requirements for posting and publishing the district's sexual harassment policy which are located in Administrative Regulation 5145.3 - Nondiscrimination/Harassment, and the accompanying administrative regulation by reference.

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.

CURRENT VERSION			REVISED VERSION	CSBA MODIFICATIONS and/or NOTES	
PARA	Section	Sub-Section	January 12, 2021		July 2024
1			The Governing Board is committed to maintaining a safe school environment that is free from harassment and discrimination. The Board prohibits, at school or at school-sponsored or school-related activities, sexual harassment targeted at any student by anyone. The Board also prohibits retaliatory behavior or action against any person who reports, files a complaint or testifies about, or otherwise supports a complainant in alleging sexual harassment.	The Governing Board is committed to maintaining a <i>welcoming, safe, and supportive</i> school environment that is free from discrimination and harassment. The Board prohibits at school or at school-sponsored or school-related activities, <i>sex discrimination and sex-based</i> harassment, <i>as defined in the accompanying administrative regulation</i> , targeted at any student, <i>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</i>	

			<i>medical conditions or recovery; and, parental, marital, and family status.</i>	
			<i>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.</i>	<p>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.</p> <p>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.</p>
2		The district strongly encourages students who feel that they are being or have been sexually harassed on school grounds or at a school-	The district strongly encourages students who feel that they are being or have <i>experienced sex discrimination, including sex-based</i>	CSBA NOTE: The following two paragraphs relate to student and employee reporting of sex discrimination, including sex-based

		<p>sponsored or school-related activity by another student or an adult, or who have experienced off-campus sexual harassment that 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. Any employee who receives a report or observes an incident of sexual harassment shall notify the Title IX Coordinator.</p>	<p><i>harassment</i>, on school grounds or at a school-sponsored or school-related activity, <i>or off-campus when the conduct</i> 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.</p>	<p>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.</p>
			<p><i>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.</i></p>	<p>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.</p> <p>The following paragraph should be revised to reflect the district's timeline.</p>
3		<p>Once notified, the Title IX Coordinator shall ensure the complaint or allegation is addressed through AR 5145.71 - Title IX Sexual Harassment Complaint Procedures or BP/AR 1312.3 - Uniform Complaint Procedures, as applicable. Because a complaint or allegation that is dismissed or denied under the Title IX complaint procedure may still be subject to consideration under state law, the Title IX Coordinator shall ensure that any implementation of AR 5145.71 concurrently meets the requirements of BP/AR 1312.3.</p>	<p>Once notified, the Title IX Coordinator shall ensure the complaint or allegation is addressed through Administrative Regulation 5145.71 - Title IX <i>Sex Discrimination and Sex-Based</i> Harassment Complaint Procedures.</p>	

4		The Title IX Coordinator shall offer supportive measures to the complainant and respondent, as deemed appropriate under the circumstances.	The Title IX Coordinator shall offer <i>and coordinate</i> supportive measures <i>to be provided</i> to the complainant and, <i>if the district has begun grievance procedures or offered an informal resolution process to the</i> respondent, <i>offer and coordinate supportive measures to be provided to the respondent</i> as deemed appropriate under the circumstances.	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
5		The Superintendent or designee shall inform students and parents/guardians of the district's sexual harassment policy by disseminating it through parent/guardian notifications, publishing it on the district's web site, and including it in student and staff handbooks. All district staff shall be trained regarding the policy.	The Superintendent or designee shall <i>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.</i>	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.
		<u>Instruction/Information</u>	<u>No change</u>	
1		The Superintendent or designee shall ensure that all district students receive age-appropriate information on sexual	The Superintendent or designee shall ensure that all district students receive age-appropriate information on <i>sex discrimination</i>	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

		harassment. Such instruction and information shall include:	<i>and sex-based</i> harassment. Such instruction and information shall include:	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.
1		What acts and behavior constitute sexual harassment, including the fact that sexual harassment could occur between people of the same sex and could involve sexual violence	What acts and behavior constitute <i>sex discrimination and sex-based</i> harassment, including the fact that <i>sex discrimination and sex-based</i> 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 sexual harassment under any circumstance	A clear message that students do not have to endure <i>sex discrimination or sex-based</i> harassment under any circumstance	
3		Encouragement to report observed incidents of sexual harassment even when the alleged victim of the harassment has not complained	Encouragement to report observed incidents of <i>sex discrimination and sex-based</i> harassment even when the alleged victim of the <i>discrimination or</i> harassment has not complained	
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 sexual harassment incident will be addressed separately and will not affect the manner in which the sexual harassment complaint will be received, investigated, or resolved	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 <i>sex discrimination or sex-based</i> harassment incident will be addressed separately and will not affect the manner in which the sex discrimination or <i>sex-based</i> harassment complaint will be received, investigated, or resolved	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.

5	A clear message that, regardless of a complainant's noncompliance with the writing, timeline, or other formal filing requirements, every sexual harassment allegation that involves a student, whether as the complainant, respondent, or victim of the harassment, shall be investigated and action shall be taken to respond to harassment, prevent recurrence, and address any continuing effect on students	A clear message that, regardless of a complainant's noncompliance with the writing, timeline, or other formal filing requirements, <i>every sex discrimination and sex-based</i> harassment allegation that involves a student, whether as the complainant, respondent, or victim of the <i>discrimination or</i> 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 sexual harassment should be made	Information about the district's procedures for investigating complaints and the person(s) to whom a report of <i>sex discrimination and/or sex-based</i> 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 sexual harassment complaint continues	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 <i>sex discrimination or sex-based</i> 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 sexual harassment and/or other students during an investigation	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 <i>sex discrimination or sex-based</i> harassment and/or other students during an investigation	
	<u>Disciplinary Actions</u>	<u>No change</u>	
1	Upon completion of an investigation of a sexual harassment complaint, any student found to have engaged in sexual 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	Upon completion of an investigation of <i>sex discrimination and/or sex-based</i> harassment, any student found to have engaged in <i>sex discrimination, and/or sex-based</i> 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	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

		entire circumstances of the incident(s) shall be taken into account.	entire circumstances of the incident(s) shall be taken into account.	<p>suspension and expulsion, see AR 5144.1 - Suspension and Expulsion/Due Process and AR 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities).</p> <p>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.</p>
2		Upon investigation of a sexual harassment complaint, any employee found to have engaged in sexual 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.	Upon investigation of <i>sex discrimination and/or sex-based</i> harassment, any employee found to have engaged in <i>sex discrimination against, and/or sex-based</i> 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	No change	
1		In accordance with law and district policies and regulations, the Superintendent or designee shall maintain a record of all reported cases of sexual harassment to enable the district to monitor, address, and prevent repetitive harassing behavior in district schools.	The Superintendent or designee shall maintain <i>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,</i> of all reported cases of <i>sex-based</i> harassment to enable the district to monitor, address, and prevent repetitive harassing behavior in district schools.	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.
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