

BOARD POLICY 4119.11, 4219.11, 4319.11: ~~SEXUAL~~ SEX DISCRIMINATION AND SEX-BASED HARASSMENT

Comparison Matrix

Section: Personnel

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 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. In addition, policy updated to reflect **NEW FEDERAL REGULATIONS (89 Fed. Reg. 33474)** which (1) require districts to provide a notice of nondiscrimination on the basis of sex, (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, and (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.

CSBA NOTE: Sex discrimination and sex-based harassment are prohibited by Title VII of the Civil Rights Act of 1964 (42 USC 2000e-2000e-17) and/or Title IX of the Education Amendments of 1972 (20 USC 1681-1688; 34 CFR 106.1-106.82), as well as the California Fair Employment and Housing Act (Government Code 12900-12996).

Education Code 231.5, 2 CCR 11023, and 34 CFR 106.8 mandate that districts have a written policy prohibiting sex discrimination and sex-based harassment against employees. As part of this mandate, districts are also required to adopt a written policy prohibiting sex discrimination and sex-based harassment against students; see BP/AR 5145.7 - Sex Discrimination and Sex-Based Harassment and AR 5145.71 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

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 Office of Education Legal Services or district legal counsel prior to utilizing the process specified in AR 4030 - Nondiscrimination in Employment for this purpose. For more information regarding the Title IX grievance procedures, see AR 4119.12 - Sex Discrimination and Sex-Based Harassment Complaint Procedures.

Pursuant to 2 CCR 11034, the district may be liable for sex-based harassment committed by a supervisor, coworker, or a third party. Pursuant to Government Code 12940, employers may also be held liable for sex-based harassment committed against their workers by clients, customers, or other third parties if they knew or should have known of the harassment and failed to take immediate and appropriate corrective action to stop the harassment.

CURRENT VERSION			REVISED VERSION	CSBA MODIFICATIONS and/or NOTES	
PARA	Section	Sub-Section	March 8, 2022		July 2024
1			The following policy shall apply to all district employees, interns, volunteers, contractors, job applicants, and other persons with an employment relationship with the district.	No change	
2			The Governing Board is committed to providing a safe work environment that is free of harassment and intimidation. The Board prohibits sexual harassment against district employees and retaliatory behavior or action against any person who complains, testifies or otherwise participates in the complaint process established for the purpose of this policy.	The Governing Board is committed to providing a safe work environment that is free of <i>discrimination</i> , harassment, and intimidation. The Board prohibits <i>sex discrimination, including sex-based harassment, as defined in the accompanying administrative regulation, in district programs and activities by and against district employees.</i>	
3			Sexual harassment includes, but is not limited to, harassment that is based on the sex, gender, gender identity, gender expression, or sexual orientation of the victim and harassment based on pregnancy, childbirth, or related medical conditions.	Delete	
				<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>	New paragraph added CSBA NOTE: 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.
4			The Superintendent or designee shall take all actions necessary to ensure the prevention, investigation, and correction of sexual harassment, including but not limited to:	The Superintendent or designee shall take all actions necessary to ensure the prevention, investigation, and correction of <i>sex discrimination and sex-based</i> harassment, including but not limited to:	<p>CSBA NOTE: Federal and state courts have provided guidance that may help employers avoid liability or mitigate damages in sex-based harassment cases. In Department of Health Services v. Superior Court (McGinnis), the California Supreme Court outlined measures that may constitute mitigating factors in the assessment of damages, including establishing anti-harassment policies, communicating those policies to employees, consistently enforcing the policies, preserving the confidentiality of employees who report harassment, and preventing retaliation against reporting employees. The U.S. Supreme Court in Burlington Industries v. Ellerth held that, for certain claims under federal law, an employer may defend against sex-based harassment claims by proving that (1) reasonable care was exercised to prevent and promptly correct any sexually harassing behavior, and (2) the employee (victim) failed to take advantage of the preventive and corrective opportunities provided by the employer. Additionally, in Faragher v. City of Boca Raton, one of the factors relied on by the U.S. Supreme Court in finding liability for harassment by a supervisor was the failure of the policy to provide an assurance to its employees that harassing supervisors may be bypassed in registering complaints.</p> <p>Pursuant to Government Code 12950.1, employers with five or more employees are</p>

				<p>required to provide sex-based harassment training to supervisory and nonsupervisory employees which includes training in regard to sex discrimination. Additionally, Title IX, and its implementing regulation 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, requires specified training related to sex discrimination, including sex-based harassment, for all district employees, as well as additional training for (1) investigators, decisionmakers, and other persons who are responsible for implementing the recipient'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. See the accompanying administrative regulation for timelines and training requirements.</p> <p>Items #1-4 below reflect the courts' guidance, Government Code 12950.1, and 34 CFR 106.8, and should be modified to reflect district practice.</p>
1		Providing training to employees in accordance with law and administrative regulation	No change	
2		Publicizing and disseminating the district's sexual harassment policy to employees and others to whom the policy may apply	Publicizing and disseminating the district's <i>sex discrimination and sex-based</i> harassment policy to employees and others to whom the policy may apply	
			<i>3. Publicizing, in accordance with 34 CFR 106.8 and as specified in Administrative Regulation 4030 - Nondiscrimination in Employment, a Title IX notice of nondiscrimination to employees, applicants for employment, and bargaining units</i>	<p>New section added</p> <p>CSBA NOTE: Pursuant to Title IX and its implementing regulation 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, districts are required to provide a notice of nondiscrimination on the basis of sex, as specified below. For more information about the content and publication requirements for</p>

				the notice of nondiscrimination, see AR 4030 - Nondiscrimination in Employment.
	3	Ensuring prompt, thorough, fair, and equitable investigation of complaints	4. Ensuring prompt, thorough, fair, and equitable investigation of complaints <i>through the appropriate state and/or federal procedures</i>	
	4	Taking timely and appropriate corrective/remedial action(s), which may require interim separation of the complainant and the alleged harasser and subsequent monitoring of developments	No change except the number	
5		The Superintendent or designee shall periodically evaluate the effectiveness of the district's strategies to prevent and address harassment. Such evaluation may involve conducting regular anonymous employee surveys to assess whether harassment is occurring or is perceived to be tolerated, partnering with researchers or other agencies with the needed expertise to evaluate the district's prevention strategies, and using any other effective tool for receiving feedback on systems and/or processes. As necessary, changes shall be made to the harassment policy, complaint procedures, or training.	The Superintendent or designee shall periodically evaluate the effectiveness of the district's strategies to prevent and address <i>sex discrimination and sex-based</i> harassment. Such evaluation may involve conducting regular anonymous employee surveys to assess whether <i>sex discrimination and/or sex-based</i> harassment is occurring or is perceived to be tolerated, partnering with researchers or other agencies with the needed expertise to evaluate the district's prevention strategies, and using any other effective tool for receiving feedback on systems and/or processes. As necessary, changes shall be made to harassment policy(ies), complaint procedures, or training, <i>as appropriate and in accordance with law.</i>	CSBA NOTE: The following optional paragraph reflects a recommendation of the U.S. Equal Employment Opportunity Commission's informal guidance, "Promising Practices for Preventing Harassment," has been expanded to include sex discrimination, and may be revised to reflect district practice.
		<u>Sexual Harassment Reports and Complaints</u>	<u>Reports and Complaints</u>	
1		District employees who feel that they have been sexually harassed in the performance of their district responsibilities or who have knowledge of any incident of sexual harassment by or against another employee shall immediately report the incident to their direct supervisor, a district administrator, or the district's Title IX Coordinator. Employees	<i>Any</i> district employee who <i>has experienced sex discrimination or sex-based harassment in the district's education program or activity may file a complaint</i> with the district's Title IX Coordinator.	CSBA NOTE: 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, requires the district to designate at least one employee to coordinate its responsibilities under Title IX, who must be referred to as the Title IX Coordinator. See the accompanying administrative regulation.

		may bypass their supervisor in filing a complaint if the supervisor is the subject of the complaint. A supervisor or administrator who receives a harassment complaint shall promptly notify the Title IX Coordinator.		
			<i>Any employee with knowledge of conduct that reasonably may constitute sex discrimination or sex-based harassment by or against another district employee, a student, or a third party in a district education program or activity shall notify the Title IX Coordinator within one workday. An employee may be subject to discipline for failure to timely report such conduct.</i>	New paragraph added CSBA NOTE: Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, a district is required 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.
2		Once notified, the Title IX Coordinator shall ensure the complaint or allegation is addressed through Administrative Regulation 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures or AR 4030 - Nondiscrimination in Employment , 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 4119.12/4219.12/4319.12 concurrently meets the requirements of AR 4030.	Once notified, the Title IX Coordinator shall ensure the complaint or allegation is addressed through Administrative Regulation 4119.12/4219.12/4319.12 - Title IX <i>Sex Discrimination and Sex-Based Harassment</i> Complaint Procedures.	
3		The Title IX Coordinator shall offer supportive measures to the complainant and respondent,	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</i>	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

		as deemed appropriate under the circumstances.	<i>has begun grievance procedures or offered an informal resolution process to the respondent, offer and coordinate supportive measures to be provided to the</i> respondent as deemed appropriate under the circumstances.	reasonably may constitute sex discrimination, including sex-based harassment, the Title IX Coordinator is required to offer and coordinate supportive measures to the complainant. Thus, districts should not wait to respond until a "formal" complaint is made. If the district has begun grievance procedures or offered an informal resolution process to the respondent, the Title IX Coordinator is required to offer and coordinate supportive measures to the respondent, as appropriate.
4		Upon investigation of a sexual harassment complaint, any district employee found to have engaged or participated in sexual harassment or to have aided, abetted, incited, compelled, or coerced another to commit sexual harassment in violation of this policy shall be subject to disciplinary action, up to and including dismissal, in accordance with law and the applicable collective bargaining agreement.	Upon investigation of a <i>sex discrimination or sex-based</i> harassment complaint, any district employee found to have engaged or participated in <i>sex discrimination or sex-based</i> harassment or to have aided, abetted, incited, compelled, or coerced another to commit <i>sex discrimination or sex-based</i> harassment in violation of this policy shall be subject to disciplinary action, up to and including dismissal, in accordance with law and the applicable collective bargaining agreement.	CSBA NOTE: In addition to district discipline imposed on employees who engage in sex-based harassment, Government Code 12940 provides that such employees may be held personally liable in a court of law for any damage to the victim(s).

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