

**Administrative Regulation 4119.13/4219.13/4319.13: 2024 Title IX
Sex Discrimination :**

7. **Investigator**
review of evidence.
8. **Party**
9. **Pregnancy or Related Conditions**
pregnancy, or lactation, medical conditions related thereto, or recovery therefrom.
10. **Relevant**
part of these grievance procedure

The type, frequency, and duration of the conduct;

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-

(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 of sexual gratification, forcibly, and/or against their will (non-consensually), or not forcibly or against their will in instances in which the

(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 the program or activity; or

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 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 decision maker 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 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

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 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 if there is a 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

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.

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The Parties will be provided with a Report of Evidence that contains all permissible evidence, including summary of the Parties/witness interviews and documentary evidence.

If, in the course of an

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Upon dismissal, the Title IX Coordinator or designee will promptly notify the complainant of the

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

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;

Following an investigation the decision-maker will:

Evaluate all relevant and not otherwise impermissible evidence;

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

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

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:

State

5 CCR 4600-4670

Description

[Uniform complaint procedures](#)

No

5 CCR 4900-4965

Management Resources

4119.11	<u>Sexual Harassment</u>
4131	<u>Staff Development</u>
4131	<u>Staff Development</u>
4218	<u>Dismissal/Suspension/Disciplinary Action</u>
4219.11	<u>Sex Discrimination and Sex-Based Harassment</u>
4219.11	<u>Sex Discrimination and Sex-Based Harassment</u>
4319.11	<u>Sex Discrimination and Sex-Based Harassment</u>
4319.11	<u>Sex Discrimination and Sex-Based Harassment</u>
5030	<u>Student Wellness</u>
5141.4	<u>Child Abuse Prevention And Reporting</u>
5141.4	<u>Child Abuse Prevention And Reporting</u>
5141.52	

