



TITLE IX SEX DISCRIMINATION

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TITLE IX STATUTE

(20 U.S.C. §§ 1681–
1688)

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

TITLE IX REGULATION

(34 CFR 106.31)

- “no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient that receives Federal financial assistance.”
- “In the limited circumstances in which Title IX or this part permits **different treatment or separation on the basis of sex**, a recipient must not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to more than de minimis harm, except as permitted by 20 U.S.C. 1681(a)(1) through (9) and the corresponding regulations §§ 106.12 through 106.15, 20 U.S.C. 1686 and its corresponding regulation § 106.32(b)(1), or § 106.41(b).”
- “Adopting a policy or engaging in a practice that **prevents a person from participating in an education program or activity** consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex.”

TITLE IX REGULATION

(34 CFR 106.31)

Specific Prohibitions

In providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

- Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service
- Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner
- Deny any person any such aid, benefit, or service
- Subject any person to separate or different rules of behavior, sanctions, or other treatment

TITLE IX REGULATION

(34 CFR 106.31)

Specific Prohibitions

In providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

- Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition
- Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on basis of sex in providing any aid, benefit or service to students or employees
- Limit any person in the enjoyment of any right, privilege, advantage, or opportunity

TITLE IX REGULATIONS

(34 C.F.R. Part 106)

2020 REGULATIONS (In effect for sexual harassment occurring before 8/1/2024)	2024 REGULATIONS (In effect for sex discrimination occurring on or after 8/1/2024)
<ul style="list-style-type: none">■ Prohibit discrimination on the basis of sex – Sexual harassment■ Compliance Requirements<ul style="list-style-type: none">• Title IX Coordinator/Others• Nondiscrimination Policy• Notice of Nondiscrimination• Grievance Procedures• Training• Recordkeeping	<ul style="list-style-type: none">■ Prohibit discrimination on the basis of sex – Sex discrimination■ Compliance Requirements<ul style="list-style-type: none">• Title IX Coordinator/Others• Nondiscrimination Policy• Notice of Nondiscrimination• Grievance Procedures• Training• Recordkeeping

TITLE IX TRAINING REQUIREMENT

(34 CFR 106.8(d))

Level 1

All employees

Level 2

Investigators

Decisionmakers

Persons responsible for implementing grievance procedures

Persons authorized to modify or terminate supportive measures

Level 3

Facilitators of informal resolution process

Level 4

Title IX Coordinators and designees

APPLICATION OF TITLE IX UNDER 2024 REGULATIONS

(34 CFR 106.2, 106.10, 106.11)

Recipient of federal financial assistance

“**[1]** all sex discrimination **[2]** occurring under a recipient’s education program or activity in the United States”



[1] Sex Discrimination

- Sex-based harassment
- Sex stereotypes
- Sex characteristics
- Pregnancy or related conditions
- Sexual orientation
- Gender identity

[2] Education Program or Activity/US

- Conduct that is subject to CUSD’s disciplinary authority
- Exception - Sex-based hostile environment: Address even when some conduct alleged to be contributing to hostile environment occurred outside CUSD’s education program or activity or outside U.S.

SEX-BASED HARASSMENT

(34 CFR 106.2)

- **Employee Quid Pro Quo:** An employee, agent, or other authorized person conditioning an aid, benefit, or service under recipient's program or activity on a person's participation in unwelcome sexual conduct.

- **Hostile Environment Harassment**
 - Factor specific inquiry
 - Unwelcome sex-based conduct
 - Based on totality of circumstances
 - Subjectively and objectively offensive
 - So severe or pervasive that it limits or denies a person's ability to participate in or benefit from the education program or activity

- **"Feared 4":** Sexual Assault, Dating Violence, Domestic Violence, Stalking

Hostile Environment Harassment

2024 Regulations

Hostile Environment Harassment

“[1] Unwelcome sex-based conduct that, based on the totality of the circumstances, is [2] subjectively and objectively offensive and is so severe or pervasive that it [3] limits or denies a person’s ability to participate in or benefit from the recipient’s education program or activity (creates a hostile environment.” (34 CFR 106.2)

2020 Regulations

Sexual Harrassment

“[1] Unwelcome conduct determined by a reasonable person to be so [2] severe, pervasive, and objectively offensive that it [3] effectively denies a person’s equal access to the recipient’s education program or activity.” (34 CFR 106.30)

Hostile Environment Harassment: Subjectively and Objectively Offensive

- Objectively Offensive: “[B]ehavior that would be offensive to a reasonable person under the circumstances, not merely offensive to the victim, personally or subjectively.” (*Kollaritsch v. Michigan State Univ. of Trustees* (6th Cir. 2019) 944 F.3d 613, 621)
- Subjectively Offensive: Behavior that is offensive to the alleged victim.
- “[D]epends on a constellation of surrounding circumstances, expectations, and relationships, including, but not limited to, the ages of the harasser and the victim and the number of individuals involved.” (*Kollaritsch v. Michigan State Univ. of Trustees* (6th Cir. 2019) 944 F.3d 613, 620)
- Intent is not a required element

Hostile Environment Harassment: Severe

- Verbal conduct coupled with offensive touching may elevate the severity of the conduct to Title IX sexual harassment (*Davis v. Monroe County Bd. of Educ.* (1999) 526 U.S. 629, 652)
- Single instance, depending on the nature of the conduct, could be sufficiently severe. (*Davis v. Monroe County Bd. of Educ.* (1999) 526 U.S. 629, 652)
- “[S]omething more than just juvenile behavior among students, even behavior that is antagonistic, non-consensual, and crass.” (*Kollaritsch v. Michigan State Univ. of Trustees* (6th Cir. 2019) 944 F.3d 613, 620)
- “[S]imple acts of teasing and name calling among school children” are not enough, “even when these comments target differences in gender”. (*Davis v. Monroe County Bd. of Educ.* (1999) 526 U.S. 629, 652)

Hostile Environment Harassment: Pervasive

- Systemic, widespread, or multiple incidents of harassment (*Kollaritsch v. Michigan State Univ. of Trustees* (6th Cir. 2019) 944 F.3d 613, 620)
- Consider other incidents where the potential respondent engaged in similar conduct

Hostile Environment Harassment: Limits or Denies Access

- **“Limits or denies a person’s ability to participate in or benefit from the recipient’s education program or activity (creates a hostile environment” (34 CFR 106.2)**
- Specific manifestation of trauma not required:
 - Evaluate whether a reasonable person in the complainant’s position would be limited or denied participation to education program or activity compared to a similarly situated person who is not suffering the alleged sex discrimination
 - Does not require that a complainant’s total or entire educational access has been denied – does not need to drop out of school, failed a class, had a panic attack, or exhibited specific trauma symptoms

Hostile Environment Harassment: Factors to Consider

1

Degree to which conduct affected complainant's ability to access education program or activity

2

Type, frequency, and duration of conduct

3

Parties' ages, roles within the education program or activity, previous interactions and other facts about each party that may be relevant to evaluating the effects of the conduct

4

Location of conduct and context in which conduct occurred

5

Other sex-based harassment in the education program or activity

Pregnancy or Related Conditions

(34 CFR 106.2)

Definition – “Pregnancy or related conditions”

- Pregnancy, childbirth, termination of pregnancy, or lactation
- Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation
- Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions

Pregnancy or Related Conditions

(34 CFR 106.40)

Nondiscrimination

- Not adopt or implement any policy, practice, or procedure concerning a student's current, potential, or past parental, family, or marital status that treats students differently on the basis of sex
- Not discriminate in its education program or activity against any student based on the student's current, potential, or past pregnancy or related conditions
 - May allow a student, based on pregnancy or related conditions, to voluntarily participate in a separate portion of education program or activity, provided separate portion is comparable to that offered to students who are not pregnant and do not have related conditions

Pregnancy or Related Conditions

(34 CFR 106.40)

No Certificate to Participate

Not require a student who is pregnant or has related conditions to provide certification from a healthcare provider or any other person that student is physically able to participate in class, program, or extracurricular activity unless:

- ✓ Certified level of physical ability or health is necessary for participation in class, program, or extracurricular activity;
- ✓ CUSD requires such certification of all students participating in class, program, or extracurricular activity; and
- ✓ Information obtained is not used as a basis for sex discrimination

Pregnancy or Related Conditions

(34 CFR 106.40)

Specific Required Actions: Title IX Coordinator must coordinate specific actions to prevent sex discrimination and ensure equal access to education program or activity:

1. Provide information of CUSD's obligations related to pregnancy or related conditions under Title IX and notice of nondiscrimination
2. Make reasonable modifications to policies, practices, or procedures and offer them to a student with pregnancy or related conditions
3. Allow student to voluntarily access separate and comparable portion of education program or activity

Pregnancy or Related Conditions

(34 CFR 106.40)

Specific Required Actions Cont.

4. Allow student to voluntarily take a leave of absence from education program or activity to cover, at minimum, period deemed medically necessary by the student's licensed healthcare provider or applicable leave policy
5. Ensure student can access lactation space (must be space other than bathroom, clean, shielded from view, free from intrusion from others, and may be used for expressing breast milk or breastfeeding)
6. Not require supporting documentation unless necessary and reasonable for CUSD to determine reasonable modifications to make or whether to take additional specific actions

Pregnancy or Related Conditions

(34 CFR 106.40)

Specific Required Actions Cont.

7. Treat pregnancy or related conditions in the same manner and under the same policies as other temporary medical conditions with respect to any medical or hospital benefit, service, plan, or policy CUSD administers, operates, offers, or participates in

Pregnancy or Related Conditions

(34 CFR 106.40)

Reasonable Modifications - Requirement

- Modifications to policies, practices, or procedures must be based on student's individualized needs due to pregnancy or related conditions
- Not required to make modifications that fundamentally alters nature of education program or activity
- Student has discretion to accept or decline each reasonable modification offered by CUSD
- CUSD must implement each reasonable accommodation that is accepted by a student

Pregnancy or Related Conditions

(34 CFR 106.40)

Reasonable Modifications - Examples

- Breaks during class to express breast milk, breastfeed, or attend to health needs associated with pregnancy or related conditions, including eating, drinking, or using restroom
- Intermittent absences to attend medical appointments
- Access to online or homebound education
- Changes in schedule or course sequence
- Extensions of time for coursework and rescheduling of tests and examinations
- Allowing student to sit or stand, or carry or keep water nearby
- Counseling
- Changes in physical space or supplies (e.g., access to larger desk or a footrest)
- Elevator access

“The Feared 4” (34 CFR 106.2)

Dating Violence

Violence committed by a person:

- Who is or has been in a social relationship of a romantic or intimate nature with victim; and
- Where existence of relationship shall be determined based on: (1) length of relationship; (2) type of relationship; and (3) frequency of interaction between the persons involved in the relationship

Stalking

Engaging in course of conduct directed at a specific person that would cause a reasonable person to: (A) fear for person's safety or safety of others; or (B) suffer substantial emotional distress

Sexual Assault

Offense classified as forcible or nonforcible sex offense under FBI uniform crime reporting system

Domestic Violence

Felony or misdemeanor crimes committed by a person who:

- Is current or former spouse or intimate partner of victim under the family or domestic violence laws of CA or a person similarly situated to a spouse of victim;
- Is cohabitating, or has cohabitated, with victim as a spouse or intimate partner;
- Shares a child in common with victim; or
- Commits acts against a youth or adult victim who is protected from those acts under CA family or domestic violence laws

Sex Discrimination Must Be Under CUSD Program or Activity

➤ **Program or Activity**

2024 Regulations

- General Rule: Conduct that is subject to recipient's disciplinary authority (34 CFR 106.11)
- Sex-Based Hostile Environment: Address even when some conduct alleged to be contributing to hostile environment occurred outside recipient's education program or activity or outside U.S.

2020 Regulations: Locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the harassment occurs (34 CFR 106.44)

➤ **Online and Off Campus:** Subject to CUSD's disciplinary authority?

Sex Discrimination Must Be Under CUSD Program or Activity

Athletics (34 CFR 106.41)

- No exclusion from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, club or intramural athletics offered by CUSD
- May operate or sponsor separate teams for each sex where selection for teams is based upon competitive skill or activity involved is a contact sport
- Where CUSD operates or sponsors a team in a particular sport for one sex but operates or sponsors no team for the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport (include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact)

A map of the United States and parts of Canada and Mexico. A white circle is superimposed over the map, containing text. The map shows major cities like Seattle, Portland, Sacramento, San Jose, Fresno, Los Angeles, San Diego, Tijuana, Las Vegas, Phoenix, Chicago, Indianapolis, Nashville, Memphis, Atlanta, Jacksonville, New York, Philadelphia, Washington, Cleveland, Toronto, Ottawa, Montreal, Boston, and cities in Canada like Vancouver, Victoria, Edmonton, Calgary, Winnipeg, and Thunder Bay. The text inside the circle reads:

**Title IX applies to sex
discrimination occurring
against a person in the
United States**

SEX-BASED HOSTILE ENVIRONMENT

- Address even when some conduct alleged to be contributing to hostile environment occurred outside recipient's education program or activity or outside U.S.

Practical Analysis

- Student A makes insensitive sexual comments to Student B on multiple occasions, some during school and some on weekends
- Student C grabs Student D's buttocks during a football game
- Supervisor tells Staff A that Staff A is taking too many breaks to express breast milk.
- The Girls After School Club refuses to allow Student E, who is a transgender girl, to become a member of the club.

COMPLIANCE REQUIREMENTS

2020 REGULATIONS

(In Effect for Sexual Harassment
Occurring Before 8/1/2024)

- Title IX Coordinator/Others
- Nondiscrimination Policy
- Notice of Nondiscrimination
- Grievance Procedures
- Training
- Recordkeeping

2024 REGULATIONS

(In effect for Sex Discrimination
Occurring on or after 8/1/2024)

- Title IX Coordinator/Others
- Nondiscrimination Policy
- Notice of Nondiscrimination
- Grievance Procedures
- Training
- Recordkeeping

TERMINOLOGIES – 2024 TITLE IX REGULATIONS

Complaint

2024 Regulations: An oral or written request to recipient that objectively can be understood as a request for recipient to investigate and make a determination about alleged discrimination (34 CFR 106.2)

2020 Regulations: Formal Complaint - Document filed by complainant or signed by the Title IX Coordinator alleging sexual harassment against respondent and requesting recipient to investigate the allegation of sexual harassment. (34 CFR 106.30)

Complainant (34 CFR 106.2, 2024 Regulations)

- Student or employee alleged to have been subjected to conduct that could constitute sex discrimination
- Person other than a student or employee alleged to have been subjected to conduct that could constitute sex discrimination and who was participating or attempting to participate in recipient's education program or activity at the time of the alleged sex discrimination

Respondent (34 CFR 106.2, 2024 Regulations)

- Person who is alleged to have violated the recipient's prohibition on sex discrimination

CUSD TITLE IX TEAM

(2020 Title IX Regulations: In effect for sexual harassment occurring before 8/1/2024)

	Title IX Coordinator/ Informal Resolution Facilitator/Investigator	Investigator/ Decision Maker	Appeal Officer
Student Complaint	Russ Harding	Associate Supt. of School Leadership/Designee (Marc Hammack)	Deputy Supt./Designee (Norm Anderson)
Employee Complaint	Shareen Crosby	Associate Supt. of Human Resources/Designee (Barry Jager)	Deputy Supt./Designee (Norm Anderson)

CUSD TITLE IX TEAM

(2024 Title IX Regulations: In effect for sex discrimination occurring on or after 8/1/2024)

	Title IX Coordinator/ Informal Resolution Facilitator	Investigator/ Decision Maker	Appeal Officer
Student Complaint	Russ Harding Student Services and School Attendance Assistant Director	Assistant Superintendents/ Designees	Deputy Superintendent/ Designee (Norm Anderson)
Employee Complaint	Shareen Crosby Risks and Benefits Manager	Assistant Superintendents/ Designees	Deputy Superintendent/ Designee (Norm Anderson)

TITLE IX COORDINATOR

- Conduct oversight and coordination of CUSD's compliance of its responsibilities under Title IX
- Take actions to promptly and effectively end sex discrimination in CUSD's education program or activity when notified of conduct that reasonably may constitute sex discrimination under Title IX
- Receive and respond to reports of sex discrimination
- Treat complainants and respondents equitably
- Offer and coordinate supportive measures
- Initiate informal resolution process or investigation under the grievance procedures
- Coordinate provision and implementation of remedies
- Recordkeeping

(For details, see Title IX Coordinator Role and Responsibilities Checklist)

INFORMAL RESOLUTION FACILITATOR

- Cannot be the same person as the investigator or decisionmaker (34 CFR 106.44(k))
- Must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent (34 CFR 106.45(b))
- Must receive training required by 34 CFR 106.8(d)
- Treat complainants and respondents equitably (34 CFR 106.45(b))

SUPPORTIVE MEASURES STAFF

- Treat complainants and respondents equitably (34 CFR 106.45(b))
- Must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent (34 CFR 106.45(b))
- Must receive training required by 34 CFR 106.8(d)

INVESTIGATOR/DECISIONMAKER

- Decisionmaker may not be the same person as Title IX Coordinator (34 CFR 106.45(b))
- Must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent (34 CFR 106.45(b))
- Must receive training required by 34 CFR 106.8(d)
- Treat complainants and respondents equitably (34 CFR 106.45(b))

APPEAL OFFICER

- Must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent (34 CFR 106.45(b))
- Must receive training required by 34 CFR 106.8(d)(3)
- Designated Appeal Officer: Norm Anderson, Deputy Superintendent

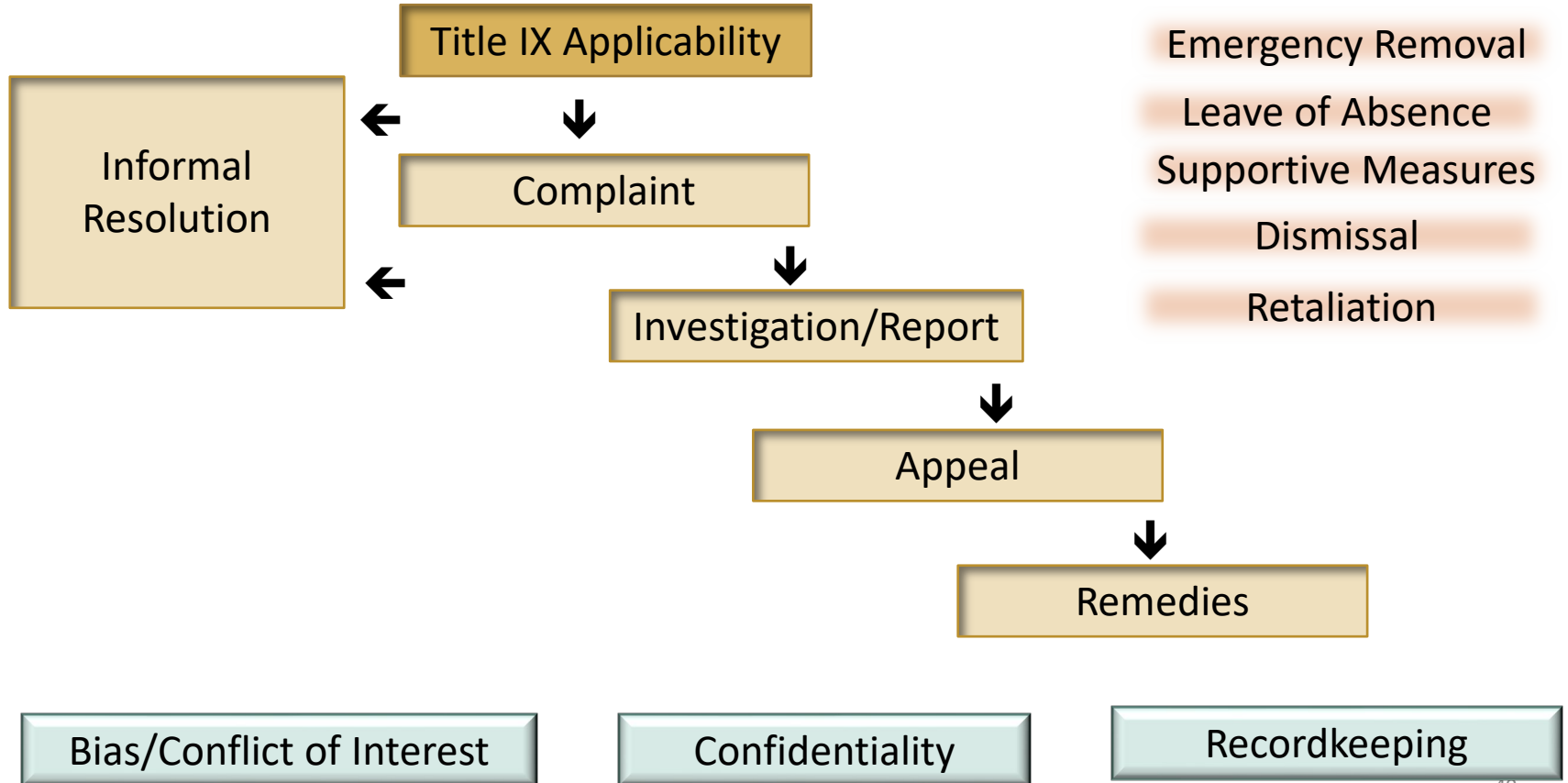
KNOW YOUR TITLE IX TEAM -- QUIZ

- Who are the Title IX Coordinators?
- Who are responsible for investigating and issuing the report?
- Who facilitates informal resolution?
- Who are responsible for implementing supportive measures?
- Who is the appeal officer?
- Who must report possible Title IX sex discrimination?

CUSD NONDISCRIMINATION POLICIES AND NOTICE

BP/AR 0410	Nondiscrimination in District Programs and Activities
BP/AR 1312.3	Uniform Complaint Procedures
BP/AR 4030	Nondiscrimination in Employment
BP/AR 4119.11, 4219.11, 4319.11	Sexual Harassment
AR 4119.12, 4219.12, 4319.12/ 5145.71	Title IX Sexual Harassment Complaint Procedures <i>(Note: Sexual harassment occurring before 8/1/2024)</i>
AR 4119.13, 4219.13, 4319.13/ 5145.72	Title IX Sexual Harassment Complaint Procedures <i>(Note: Sex discrimination occurring on or after 8/1/2024)</i>
BP/AR 5145.3	Nondiscrimination/Harassment
BP/AR 5145.7	Sexual Harassment
BP/AR 5146	Married/Pregnant/Parenting Students
	Notice of Nondiscrimination

CUSD GRIEVANCE PROCEDURES



BIAS/CONFLICT OF INTEREST

(34 CFR 106.8, 106.45)

Applicable Designated Roles

- Title IX Coordinator
- Investigator
- Decisionmaker
- Informal Resolution Facilitator
- Persons responsible for implementing CUSD's grievance procedures
- Persons who have authority to modify or terminate supportive measures

Prohibited Bias/Conflict of Interest

Must not have a conflict of interest or bias for or against complainants or respondents generally or for or against any individual complainant or respondent.

- Prejudice for or against one person or group
- An affinity or habitual attraction to something
- The property of not being in balance
- A particular point of view from which something is seen or presented

CONFIDENTIALITY

Personally Identifiable Information

Not disclose personally identifiable information obtained during Title IX process, except in following circumstances: (34 CFR 106.44(j))

- Prior written consent from a person with the legal right to consent to the disclosure
- When information is disclosed to a parent, guardian, or other authorized legal representative with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue
- Carry out purposes of Title IX regulations, including action taken to address sex discrimination in CUSD's education program or activity
- Required by federal law or regulations or a federal award
- Disclosures are not otherwise in conflict with Title IX
- When required by state or local law
- When permitted under FERPA or its implementing regulations

CONFIDENTIALITY

Supportive Measures

Must not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one party of supportive measures provided to another party, unless necessary to provide the supportive measure or restore or preserve a party's access to the education program or activity, or when an exception (34 CFR 106.44(g))

TITLE IX COMPLAINT PROCEDURES – REQUIREMENTS

(34 CFR 106.45(b))

- ❖ Treat complainants and respondents equitably
- ❖ Persons designated as a Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent
- ❖ Respondent is presumed to not be responsible for the alleged sex discrimination until a determination regarding sex discrimination is made

TITLE IX COMPLAINT PROCEDURES – REQUIREMENTS

(34 CFR 106.45(b))

- ❖ Reasonably prompt timeframes for major stages of the grievance procedures: AR – Title IX Complaint Procedures
- ❖ Reasonable steps to protect privacy of parties and witnesses, provided steps do not restrict parties' ability to obtain and present evidence; consult with family members, confidential resources, or advisors; or prepare for or participate in grievance procedures
- ❖ Objective evaluation of all evidence that is relevant and not otherwise impermissible and exclusion of evidence that are not permissible under 34 CFR 106.45(b)(7)

TITLE IX COMPLAINT PROCEDURES – REQUIREMENTS

(34 CFR 106.45(b))

Notice of Allegations

Upon initiation of grievance procedures, CUSD must provide notice of the allegations to the parties:

- CUSD Title IX Complaint Procedures and informal resolution process
- Sufficient information available at the time to allow parties to respond to the allegations (identities of parties involved in incident(s), conduct alleged to constitute sex discrimination, and date(s) and location(s) of alleged incident(s))
- Statement that retaliation is prohibited
- Statement that parties are entitled to equal access to relevant and not otherwise impermissible evidence or accurate description of such evidence

WHEN MUST CUSD RESPOND TO TITLE IX SEX DISCRIMINATION

2024 Regulations

“A recipient with [1] knowledge of [1] conduct that reasonably may constitute sex discrimination in its education program or activity must [3] respond promptly and effectively.” (34 CFR 106.44(a))

2020 Regulations

“A recipient with [1] actual knowledge of [2] sexual harassment in an education program or activity . . . must [3] respond promptly in a manner that is not deliberately indifferent.” (34 CFR 106.44(a))

WHEN MUST CUSD RESPOND TO TITLE IX SEX DISCRIMINATION

(34 CFR 106.44(a))

2024 Regulations

(34 CFR 106.44(c))

Reports are to made to:

- CUSD's confidential employees
- Title IX Coordinator

2020 Regulations

(34 CFR 106.8(a))

Reports can be made:

- By mail, telephone, or email, using contact information listed for Title IX Coordinator
- By any means that results in Title IX Coordinator receiving the person's report
- At any time, including during non-business hours, by using telephone number, email, or mail to office address listed for Title IX Coordinator

REPORTING SEX DISCRIMINATION TO CUSD

2024 Regulations (34 CFR 106.44(c))

- **Confidential employees** must explain to person who reports conduct that may reasonably constitute sex discrimination the following:
 - His/her status as a confidential employee for purposes of Title IX
 - How to contact Title IX Coordinator
 - How to make a complaint of sex discrimination
 - Supportive measures, informal resolution process, and investigation through Title IX Coordinator
- **Non-confidential employees** must notify Title IX Coordinator when employee has information about conduct that may reasonably constitute sex discrimination

REPORTING SEX DISCRIMINATION TO CUSD

Confidential employees (34 CFR 106.2 – 2024 Regulations)

- Employee whose communications are privileged or confidential under federal or state law - confidential status only while employee functions within scope of duties to which privilege or confidentiality applies
- Employee whom CUSD designated as confidential to provide services to persons related to sex discrimination. If employee also has duty not associated with providing those services, confidential status is only as to information received about sex discrimination in connection with providing those services

KEY WORD: “ALLEGATION”

- CUSD must respond once it knows of conduct that reasonably may constitute sex discrimination in its education program or activity
- “Well, we didn’t believe there was enough evidence it happened” does not get CUSD past its obligations to address sex discrimination under Title IX

DOES TITLE IX APPLY? 2020 Regulations

(REVIEW OF SITE STEPS)

Key Requirements for Sexual Harassment

A

Jurisdiction

Any location, event or circumstance over which the school exhibits substantial control over both the alleged harasser and the “context” in which the harassment occurred.

B

Severe

Verbal conduct + offensive touching. Single instance – sufficiently severe. More than juvenile behavior among students. More than teasing and name calling.

C

Pervasive

Systemic, widespread, or multiple incidents. Other similar incidents involving same harasser.

D

Objectively Offensive

Offensive to a reasonable person under the circumstances. Must consider circumstances, expectations, and relationships.

E

Deny Access

Whether reasonable person would be effectively denied access to education. Denial of total or entire education not required.

School Site Steps

01

FINISH YOUR INQUIRY AND REPORT IMMEDIATELY

Gather statements from the victim(s), perpetrator(s), and witness(es) and collect evidence. Write a brief narrative with the basic information. Report immediately.

02

EMAIL RUSS HARDING & DAN MOORHEAD, CC MAIYA YANG SITE PRINCIPAL

Write your school's name in the subject line and "Possible Title IX". Attach the narrative, all statements, and images of any evidence.



To Russ Harding; Dan Moorhead;

Cc Maiya Yang;

Subject Clovis North High School - Possible Title IX

School Site Steps

03

MAKE PREPARATIONS TO WAIT

Student cannot be disciplined until the Title IX process is complete. Figure out how to separate the perpetrator(s) from the victim(s) in a non-punitive way while waiting for Title IX processing determination (should be 1-2 days)

04

CONTACT PARENTS

Notify parents of the incident that occurred on campus. Let parents of the perpetrator(s) know that the incident is under review currently to determine next steps in terms of consequences and that you will get back to them. Offer alleged victim(s) and harasser(s) support services.

Is it Title IX?

NO

If you get an email stating it is not a Title IX Offense, proceed with the student discipline process.

Follow CUSD student discipline process to determine if California Education Code(s) were violated and apply appropriate consequences.

YES

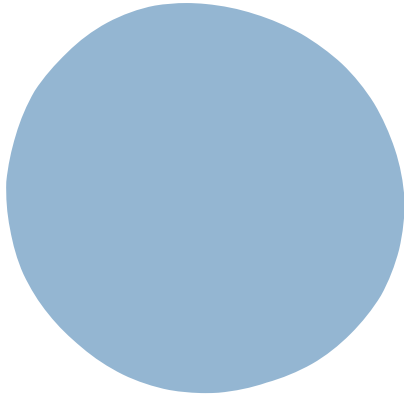
Notify both the perpetrator(s) and the victim(s) they will be contacted by the Title IX Coordinator, Russ Harding, to discuss next steps.

Ask the parent(s) of both the victim(s) and perpetrator(s) again if they would like any *supportive measures*.

School Site Steps

It is determined that there is Title IX sexual harassment

- Email from Title IX Coordinator notifying you that he/she will be contacting the potential complainant and respondent
- Filing/Signing of Formal Complaint
- Informal Resolution
- Investigation
- Decision
- Appeal



COMPLAINT

➤ **What is a complaint?**

Oral or written request to CUSD that objectively can be understood as a request for CUSD to investigate and make a determination about alleged discrimination under Title IX (34 CFR 106.2)

➤ **Who may file a complaint?** (34 CFR 106.6(g), 106.8(b)(2), 106.45(a)(2))

- Student
- Employee
- Other individuals who are anticipating or attempting to participate in CUSD's education program or activity
- Parents, guardians, or authorized representatives on behalf of complainant
- Title IX Coordinator

➤ **May complaints be consolidated?** Yes, when allegations of sex discrimination arise out of the same facts or circumstances (34 CFR 106.45(e))

August 1, 2024: Key Requirements for Title IX Sexual Discrimination

A Jurisdiction

Any act related to a school activity or school attendance that occur at any time, including but not limited to while on school grounds, while going to and coming from school, during the lunch period whether on or off campus, and during or while going to or coming from, a school-sponsored activity.

B Severe or Pervasive

Severe: Can be a single incident. Verbal conduct with offensive touching may elevate severity. More than juvenile behavior, antagonistic, non-consensual and crass. Teasing and name calling is not enough even when these comments target difference in gender.

Pervasive: Systemic, widespread, or multiple incidents of harassment. Consider other incidents by the respondent engaged in similar conduct.

C Offensive

Objectively Offensive: Offensive to a reasonable person under the circumstance

Subjectively Offensive: Behavior that is offensive to the alleged victim.

Intent is not a required element.

D Limit Access

Created a hostile environment that could or does limit or denies a person's partial or complete ability to participate in or benefit from the education program or activity when compared to a student that has not been harassed.

School Site Steps

Finish Your Investigation

Gather statements from the victims(s), perpetrator(s), and witnesses(es) and collect evidence. Attach them to an email that has a brief narrative with the basic information.

1

Send The Email To Russ Harding, Dan Moorhead, And legal@cusd.com

Write you “Possible Title IX” school’s name and the first initial and last name of the possible perpetrator in the subject line.

2

To	<input type="radio"/> Russ Harding ; <input type="radio"/> Dan Moorhead ; <input checked="" type="checkbox"/> Legal
Cc	
Subject	Possible Title IX - Clark - T. Garcia

Make Preparations To Wait

A student can not be given consequences of any type until the Title IX process is complete.

This includes removal from an activity or class, suspension, alternatives to suspension, and/or placement on non-privilege.

3

Parent Notification & Supportive Measures

Notify parents of all involved students the incident that occurred on campus. Let parents know that the incident is under review to determine next steps in terms of consequences. Ask the parent if there are supportive measures you can offer such as mental health supports, seat or class change, escort to class, safe place for lunch and break, etc.

4

Is it Title IX



If you get an email stating it is not a Title IX offense, proceed with the student discipline process.

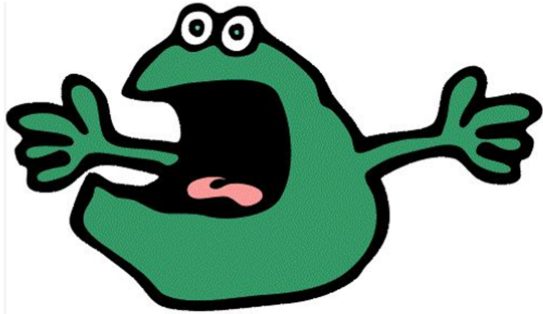
Follow CUSD student discipline processes to determine if California Education Code(s) were violated and apply appropriate consequences.



Notify both the perpetrator(s) and the victim(s) that the incident you previously discussed with them has been determined as a possible Title IX violation and that they will be contacted by the Title IX Coordinator, Russ Harding, to discuss next steps.

Ask the parent(s) of both (all) students again if they would like any supportive measures for their student during the Title IX process.

It's a YES!



**WHAT DO I DO
NOW?**

1. **School Site will continue to issue no punitive consequences. Russ Harding will keep the school site informed of the Title IX process.**
2. **Parent of the victim will be contacted and asked if the victim would like to file a Title IX complaint. They will have to sign a document stating their choice.**
3. **Safety and Risk Analysis for Emergency Removal by Title IX Coordinator**
4. **Filing/Signing of a Formal Complaint**
5. **Informal Resolution**
6. **Investigation**
7. **Decision**
8. **Appeal**

Supportive Measures (34 CFR 106.44(g))

Requirements

- Must offer and coordinate supportive measures, as appropriate
- May vary supportive measures depending on what CUSD deems to be reasonably available
- Must not unreasonably burden either party
- Must be designed to protect the safety of the parties or CUSD's educational environment or provide support during CUSD's grievance procedures or during informal resolution process

Supportive Measures (34 CFR 106.44(g))

Requirements

- Must not be imposed for punitive or disciplinary reasons
- May, as appropriate, **modify or terminate supportive measures** at conclusion of grievance procedures or at conclusion of informal resolution process, or continue them beyond that point
- Must provide complainant or respondent with timely opportunity to seek, from an appropriate and impartial employee, **modification or reversal of decision to provide, deny, modify, or terminate supportive measures**
 - Impartial employee must be someone other than employee who made the challenged decision and must have authority to modify or reverse the decision if he/she determines that the decision to provide, deny, modify, or terminate the supportive measure was inconsistent with the definition of supportive measures.
 - Allow a party to seek additional modification or termination of a supportive measure if circumstances change materially

Supportive Measures (34 CFR 106.2)

Definition – Supportive Measures

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:

- Restore or preserve that party's access to recipient's education program or activity, including measures designed to protect the parties' safety or recipient's educational environment; or
- Provide support during recipient's grievance procedures or during informal resolution process

Supportive Measures – Examples

(34 CFR 106.44(g))

- Counseling
- Extensions of deadlines and other course-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
- Training and education programs related to sex-based harassment

Supportive Measures (34 CFR 106.44(g))

Requirements

- Confidentiality: Must not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one party of supportive measures provided to another party, unless necessary to provide the supportive measure or restore or preserve a party's access to the education program or activity, or when an exception
- Special Education: To determine compliance with IDEA and Section 504 in implementing supportive measures, Title IX Coordinator must consult with –
 - One or more members, as appropriate, of student's IEP team, or
 - One or more members, as appropriate, of the group of persons responsible for student's placement decision

Emergency Removal of Student

(34 CFR 106.44(h))

May remove a respondent from CUSD's education program or activity on an emergency basis:

- Conduct an individualized safety and risk analysis,
- Determine that an imminent and serious threat to the health or safety of complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies removal, and
- Provide respondent with notice and opportunity to challenge the decision immediately following the removal

Administrative Leave of Employee

(34 CFR 106.44(i))

- May place an employee on leave consistent with state law, board policies, and collective bargaining agreements
- Administrative leave is from employment responsibilities during the pendency of the grievance procedures

Dismissal of Complaint (34 CFR 106.45(d))

May dismiss a complaint of sex discrimination for any of the following:

- Unable to identify respondent after taking reasonable steps to do so
- Respondent is not participating in CUSD's education program or activity and is not employed by CUSD
- Complainant voluntarily withdraws any or all allegations in complaint and without the withdrawn allegations, the conduct in the remaining allegations, if any, would not constitute sex discrimination
- Title IX Coordinator declines to initiate a complaint
- Conduct alleged, even if proven, would not constitute sex discrimination

Dismissal of Complaint (34 CFR 106.45(d))

Notice

- Notify complainant of basis for dismissal and that dismissal may be appealed
- If dismissal occurs after issuance of notice of allegations, notify respondent of basis for dismissal and that dismissal may be appealed

INFORMAL RESOLUTION

(34 CFR 106.44(k))

NOT PERMITTED

- Not available to resolve allegations that employee engaged in sex-based harassment of student
- Cannot require parties to participate in or use informal resolution process
- Cannot require waiver of the right to an investigation and determination of a complaint as a condition of enrollment, employment, or exercise of any other right
- Facilitator of informal resolution cannot be same person as investigator or decisionmaker

PERMITTED

- May be used any time prior to a determination whether sex discrimination occurred
- Requires voluntary consent from both parties (does not require consent to be in writing but written consent recommended)
- Prior to agreeing to a resolution, any party may withdraw from informal resolution process

INFORMAL RESOLUTION

(34 CFR 106.44(k))

Discretion to Offer Informal Resolution

- CUSD has discretion to determine whether it is appropriate to offer informal resolution process when it receives information about conduct that reasonably may constitute sex discrimination or when a complaint is made
- CUSD may decline to offer informal resolution despite one or more of the parties' wishes (e.g., alleged conduct would present a future risk of harm to others)

INFORMAL RESOLUTION

(34 CFR 106.44(k))

Notice

Before initiating an informal resolution process, CUSD must provide to the parties notice that explains the following:

- Allegations
- 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 the grievance procedures
- 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 CUSD will maintain and whether and how CUSD could disclose such information for use in grievance procedures if the grievance procedures are initiated or resumed

INVESTIGATION

(34 CFR 106.45(f))

Conducting the Investigation

- Equal opportunity for parties to present witnesses and evidence that are relevant and not impermissible
- Review of evidence and determination of what evidence is relevant and impermissible regardless of relevance
- Equal access to relevant evidence relating to alleged sex discrimination
- Decisionmaker to question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is in dispute and relevant to evaluating one or more allegations of sex discrimination

INVESTIGATION

(34 CFR 106.45(f))

Determining Whether Sex Discrimination Occurred

- Burden of proof on CUSD, not on the parties
- Use the preponderance of the evidence standard of proof to determine whether sex discrimination occurred
- Notify parties in writing of the determination whether sex discrimination occurred, including rationale for such determination and procedures and permissible bases for parties to appeal

Appeal

(34 CFR 106.45(i))

Requirements

- Comparable to appeals under other complaint procedures
- Available to both parties
- Appeal of dismissal or written determination
- Written notice to parties regarding appeal
- Equal opportunity to submit written statement
- Issuance of written decision to both parties

REMEDIES (34 CFR 106.2)

Implementing Remedies

- Students: Education Code, Board Policies
- Employees: Education Code, Labor Code, Collective Bargaining Agreement, Board Policies

REMEDIES (34 CFR 106.2)

Remedies - Definition

- Measures provided, as appropriate, to complainant or any other person who had his/her equal access to recipient's education program or activity limited or denied by sex discrimination
- Measures are provided to restore or preserve the person's access to recipient's education program or activity after a determination that sex discrimination occurred

RETALIATION

Retaliation Prohibited

Retaliation, including peer retaliation, is prohibited in a recipient's education program or activity

- Complaint of retaliation to be processed through Title IX grievance procedures or an informal resolution process (34 CFR 106.71)
- **Peer retaliation** means retaliation by a student against another student (34 CFR 106.2)

RETALIATION (34 CFR 106.2)

Retaliation – Definition

Intimidation, threats, coercion, or discrimination against any person by recipient, a student, or an employee or other person authorized by recipient to provide aid, benefit, or service under recipient's education program or activity:

- for the purpose of interfering with any right or privilege secured by Title IX, or
- Because the person reported information, made a complaint, testified, assisted, or participated or refused to participate in an investigation, proceeding, hearing, informal resolution process and in any other actions

RECORDKEEPING

2024 Regulations (34 CFR 106.8(f))

Must maintain for at least 7 years:

- Complaint of sex discrimination
- Records documenting informal resolution process or grievance procedures
- Resulting outcome
- Notification received by Title IX Coordinator about conduct that reasonably may constitute sex discrimination and records documenting actions taken
- Training materials (make available for inspection upon request by public)

2020 Regulations (34 CFR 106.45(b)(10))

Must maintain for 7 years, sexual harassment investigation documents, including:

- Determination regarding responsibility
- Recordings or transcripts of live hearing
- Disciplinary sanctions imposed on respondent
- Remedies provided to complainant
- Appeal and result
- Informal resolution and result
- Actions taken in response to a report of sexual harassment
- Actions taken, including supportive measures, in response to a formal complaint of sexual harassment
- Training materials (post on website/provide to public upon request)



Questions?

