

NONDISCRIMINATION IN DISTRICT PROGRAMS AND ACTIVITIES

Federal and state laws mandate nondiscrimination on the basis of sex in educational institutions. Title IX of the Educational Amendments of 1972 provides that “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.” Noncompliance can result in federal funds being withheld from the particular educational program or activity or part thereof in which such noncompliance is found.

California Sex Equity in Education Law (Education Code §§200 *et seq.*) states, “It is the policy of the State of California to afford all persons, regardless of their sex, equal rights and opportunities in the educational institutions of the state...”

General Provisions under State and Federal Law

1. Educational and Related Programs: Exclusion from participation in, or denial of benefits of any academic, extracurricular, research, occupational training, or other program activity is prohibited based on sex. No course may be offered or educational program conducted separately for males or females including “health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.” *Exceptions may be made in the following areas:*

- a. **Physical Education Separation and Grouping:** Students may be separated within physical education classes or activities when engaging in wrestling, soccer, football, basketball, and other sports, the purpose or major activity of which involves bodily contact. Students may be grouped in physical education classes on the basis of ability, provided specified standards of individual performance are used. These standards must be applied without regard to sex; however, “where use of a single standard of measuring skill or progress in physical education has an adverse effect on members of one sex...other appropriate standards which do not have such an effect” shall be used.
- b. **Athletics:** Exclusion from participation in or denial of “equivalent” opportunity in athletics programs. No student may be excluded on the basis of sex from participation in interscholastic, intramural, or group athletics. Separate teams, however, are permitted when selection is based upon competitive skill, or for a contact sport. However, when there is only one team in a particular sport for one sex, the sport is not a contact sport, and “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.”

Equality of athletic opportunity is required for both male and female students. Although regulations do not require equivalency of expenditures for male and female athletics, the following factors are to be considered:

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- (1) Effective accommodation of the interests and abilities of members of both sexes by the selection of sports and levels of competition.
- (2) Provision of equipment and supplies.
- (3) Scheduling of games and practice time.
- (4) Travel and per diem allowance.
- (5) Opportunity to receive coaching.
- (6) Assignment and compensation of coaches.
- (7) Provision of locker rooms, practice and competitive facilities.
- (8) Provision of medical and training facilities and services.
- (9) Publicity.

- c. **Sex Education:** Those portions of sex education classes focusing on “exclusivity with human sexuality” may, but need not be, conducted in separate classes for boys and girls.
- d. **Choruses:** Selecting students on the basis of vocal range is permitted, even if it results in the choir being primarily composed of either male or female students.

2. **Textbooks and Instructional Materials:** Regulations explicitly provide that choice of textbooks and other curriculum materials is left to the district. School districts must adopt instructional materials in accordance with the provisions of Education Code §§60040.

3. **Recruitment, Admissions and Counseling:** Materials are not different for students based on sex and materials that permit or require different treatment of students based on sex are prohibited, i.e., recruitment materials, admissions forms and policies, materials used for counseling students in terms of class or career selection, or for counseling for admissions.

4. **Discipline:** Disciplinary practices and policies shall not discriminate based on sex. Students may not be disciplined based on their gender, gender identity, perceived gender identity, stereotypical notions of masculinity or femininity, or appearance.

5. **Marital or Family Status, Pregnant or Parenting Status:** Students may not be discriminated against because of marital status, family status, pregnancy, or parenting. Lactating students must be provided reasonable accommodations. The policy also prohibits exclusion from any program, activity or employment due to pregnancy or related conditions. If separate programs are offered for pregnant students, the programs must be voluntary, and the educational program must be the same as that offered to other students. A doctor’s certificate may be required for continued participation in the normal educational program or activity if such a certificate is required of all students who may be physically or emotionally unable to participate in a program or activity.

6. **Employment Counseling and Assistance:** Employment counseling and assistance for students, when available, shall not discriminate on the basis of sex.

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7. **Employment:** Discrimination among persons in employment practices and conditions, including students and non-students, academic and non-academic personnel.

8. **Sexual Harassment:** The district is committed to providing all students with an environment free of sexual harassment (including sexual violence) and will not tolerate sexual harassment against any of its students. The district prohibits any and all sexual harassment that has the purpose or effect of having a negative impact on the student's academic performance; that creates an intimidating, hostile or offensive educational environment; or in which a student's grades, benefits, services, honors, program, or activities are dependent upon submission to sexually harassing conduct.

Protocols

The protocols below are intended to provide timely and effective steps reasonably calculated to address concerns and allegations of sexual harassment, remedy any sexual harassment that occurred by ending it and preventing it from occurring again, and correct any resulting effects or consequences from the sexual harassment for both (or all) parties.

A student, the student's parent or legal guardian, a legal advocate, or other appropriate person may pursue a complaint for any student who has been the victim of sexual harassment (including sexual violence). In a case of sexual violence, a student, a student's parent, a legal advocate, or other appropriate person has the right to file a criminal complaint with law enforcement authorities and a Title IX complaint simultaneously on behalf of that student.

Retaliation for reporting, filing a complaint, or assisting in processing any allegation of sexual harassment is prohibited.

Students or employees found to have engaged in sexual harassment of students may be subject to discipline, up to and including expulsion or dismissal. State law requires a recommendation for expulsion for students who are found to have committed sexual assault or sexual battery, however, state law also prohibits suspension and expulsion of students in Kindergarten through Grade 3 for this conduct. Depending upon the nature of the confirmed conduct, the individual facts, and the age of the children involved, a range of sanctions could apply. Appropriate discipline will be determined on an individual basis by the school site for conduct involving students in Grades 3 and below.

Definitions

1. **Sexual Harassment:** Any form of discrimination which includes, but is not limited to, unwelcome sexual advances, requests for sexual favors, or other verbal, visual or physical conduct of a sexual nature made by someone from or in the educational setting under any of the following conditions:

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- a. Submission to the conduct is explicitly or implicitly made a term or condition of an individual's academic status or progress; or
- b. Submission, or rejection of, the conduct by the individual is used as a basis of academic decisions affecting the individual; or
- c. The conduct has the purpose or effect of having a negative impact upon the individual's academic performance or of creating an intimidating, offensive, or hostile educational environment; or
- d. Submission to, or rejection of, the conduct by the individual is used as a basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.

2. **Unwelcome Conduct:** Some examples of sexual harassment may include, but are not limited to:

- a. Deliberate written or oral comments, gestures, or physical contacts of a sexual nature or demeaning to one's gender, which are unwelcome or interfere with school productivity;
- b. Implicit or explicit sexual behavior by a fellow student, district employee, or other person within the school environment which has the effect of controlling, influencing or otherwise affecting the school environment;
- c. Unwelcome suggestive, vulgar, or obscene letters, notes, posters, calendars, or other visual products, or derogatory comments, slurs, and/or jokes of a sexual nature.

3. **Intimidating Offensive, or Hostile Educational Environment:** An environment which is created when sexual harassment is sufficiently severe, OR objectively offensive AND persistent or pervasive.

- a. **Severe:** Physical incidents are more likely to be severe without need for repetition. Touching of another's genitals, buttocks, or breasts could be considered severe depending on the age of the student(s). Sexual assault, sexual battery, and sexual violence are considered severe. If an incident is severe, it does not have to be persistent or pervasive to be considered sexual harassment.
- b. **Objectively Offensive:** Any behavior or action of a sexual nature that a reasonable person would consider to be offensive. Incidents can sometimes involve physical threats, humiliation, or ridicule.

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- c. **Persistent or Pervasive:** The behavior is persistent such that it may be repeated, continuing beyond the usual, not stopping, or continuing even though others want the behavior to stop; OR the behavior is pervasive such that it is widespread, openly practiced, well-known among students or employees, occurring in public, occurring with regularity, or known but nobody talks about it.

4. **Responsible Reporter:** All school employees are considered “Responsible Reporters” of sexual harassment. Any employee who witnesses or suspects any sexual harassment involving a student or students, is required to report it to an administrator or designee.

5. **Title IX Coordinator:** The district’s Title IX Coordinator is assigned to the Legal Services Division and is responsible for enforcing this Regulation and for receiving sexual harassment reports and complaints, coordinating site investigations, and ensuring interim measures and remedial actions are implemented. The Title IX Coordinator shall undertake any additional investigation deemed necessary to resolve complaints.

Any questions or concerns about sexual harassment involving students may be directed to the district’s Title IX Coordinator who will provide information about the procedure for reporting allegations of sexual harassment, responsive steps that will be taken, and how to initiate a formal Uniform Complaint in accordance with Board Policy and Administrative Regulation 1312.3. The district’s Title IX Coordinator may be contacted at:

San Diego Unified School District
Title IX Office
4100 Normal Street
Room 2129
San Diego, CA 92103
619-725-7225

6. **Informal Report or Complaint:** Reports or complaints presented orally or in writing regarding sex equity and/or sexual harassment may be reported to the site principal or administrator without filing a formal complaint. The district’s informal resolution process is outlined below.

7. **Formal Complaint:** A formal complaint may be initiated at any time by the filing of a written, signed complaint on a Uniform Complaint Form. Using the form is recommended, but not required, however, the complaint must be in writing and signed by the complainant and state in the complaint that it is a formal or Uniform Complaint. The district’s formal resolution process is outlined below.

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Implementation

1. District:

- a. Develops and adopts a policy and plan of supporting practices for systemic and consistent consideration of gender equity in all programs and operations.
- b. Assesses Title IX compliance, develops corrective measures, and monitors their effectiveness.
- c. Provides notice of Sexual Harassment policies and regulations to parents/guardians annually via the district's Facts for Parents publication.
- d. Posts the rights of students, the responsibilities of the district, and a description of how to file a complaint under Title IX on the district website.
- e. Posts the name and contact information of the Title IX coordinator on the district website.
- f. Provides links for the United States Office of Civil Rights (OCR), to OCR's complaint website and complaint form.
- g. Provides a link for the California Department of Education, Office for Equal Opportunity on the district website.

2. School: The school shall notify students and parents/guardians of the district's policy of nondiscrimination on the basis of sex and prohibition of sexual harassment through:

- a. Issuance of Facts for Parents booklet which delineates parent/guardian rights and responsibilities under federal legislation, including Title IX notification requirement.
- b. Student handbooks and any other publications that set forth the rules, regulations, procedures, and standards of conduct.
- c. Posting of the policy in a prominent location in the main administration building or other area of the school site visible to students. "Prominent location" means the main administrative building or other area where notices regarding the school's rules, regulations, procedures, and standards of conduct are posted.
- d. Discuss the nondiscrimination and sexual harassment policies with students as part of orientation programs and beginning of the year assemblies or classroom presentations for all students.

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- e. Provide a copy of and discuss the nondiscrimination and sexual harassment policy as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session, as applicable.
- f. Notification shall be supplemented in other media available to parents/guardians and students (e.g., PTA, bulletins, school newsletters, and newspapers).
- g. Annually assessing gender equity issues and developing site action plans that implements supportive action.
- h. Working to reduce the number of classes with disproportionate male/female enrollments.

3. **Complaints of Sexual Harassment:** The district has both an informal and a formal resolution process.

- a. **Confidentiality:** Regardless of whether the formal or informal process is utilized, the confidentiality of information received, and the privacy of the person involved will be protected, except for disclosures required by law or as to those individuals who need to know within the context of an investigation, analysis, appeal of sexual harassment allegations, or prevention or correction of misconduct. Therefore, a guarantee of confidentiality is not provided.

If a person informs a site principal/administrator about the alleged sexual harassment but asks that the matter be kept confidential and that no action be taken, the district must still discharge its duties to prevent and correct sexual harassment. The site principal/administrator must contact the district's Title IX Coordinator, make further inquiry and/or investigation, and take appropriate interim measures, remedial actions, corrective actions, or intervention steps, with or without implementing this procedure. Some allegations may be so egregious as to require district action regardless of a person's desire to remain anonymous or not process a complaint. For example, some allegations may require a report to Child Protective Services (CPS).

- b. **Time Limit:** Regardless of whether the formal or informal process is utilized, all complaints of sexual harassment must be presented within six months from the date the alleged conduct occurred. However, nothing within this regulation prohibits district representatives from pursuing an investigation and implementing remedies regardless of that deadline, with or without the implementation of this regulation.
- c. **Informal Complaint Resolution Process:** A violation of sex equity in district programs against students shall be resolved informally at the lowest level whenever possible (i.e., by the site principal/administrator). The purpose of the informal resolution process is to encourage any student who believes he or she has been victimized by sexual harassment,

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but does not want to file a formal written complaint, to come forward by providing a less formal method for identifying concerns, agreeing on how to resolve those concerns, and obtaining a resolution. All sexual harassment reports and complaints should be directed to the site principal/administrator. An informal complaint may cause an inquiry but does not result in starting the formal complaint process described in Administrative Regulation 1312.3. It is not necessary to use this informal resolution process, and if implemented, it is not necessary to complete the informal process in order to be able to file a formal complaint. A formal complaint may be filed at any time during the resolution process. Upon receipt of a report of sexual harassment, either orally or in writing, the site principal/administrator receiving the complaint must:

- (1) Explain the responsive steps that will be taken in the informal process, and advise the complainant of the availability of the district's Uniform Complaint process (Administrative Regulation 1312.3) and where the regulation can be found.
- (2) Notify the district's Title IX Coordinator of the report of sexual harassment. Regardless of any request to use the informal process, the district may implement additional investigatory, corrective and preventive actions if the site principal/administrator or title IX Coordinator determines the allegations are not appropriately addressed through an informal process.
- (3) Take interim preventive measures to stop the harassment and protect the accuser from further harassment pending the outcome of the investigation. Any such actions, whether interim or permanent, shall avoid or minimize, to the extent possible, any disadvantage to the accuser.
- (4) Conduct an investigation within 10 school days of the receipt of the report of sexual harassment. Only school district personnel who have completed district-provided sexual harassment training may be given responsibility for conducting the investigation of student sexual harassment complaints. The investigator must document specific steps taken in the investigation, which must include the opportunity for both (or all) parties to identify witnesses and provide evidence. The evidentiary standard that must be used in the investigation is "preponderance of the evidence" – what is more likely to have happened than not.
- (5) Notify both or all parties in writing of the outcome of the investigation within 10 school days of the receipt of the report of sexual harassment. The response to the complainant must include the interim actions and remedial actions, if warranted, that will be taken are designed to end the harassment, prevent its recurrence and address its effects on the harassed student. Interim actions and remedies may include but are not limited to counseling or therapy, changing classrooms or student schedules, academic support, separating the harassed student from the harasser, and follow up with both students to

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- ensure the harassment has stopped and the harassed student is not subjected to retaliation. The Title IX Coordinator can offer assistance regarding additional potential interim actions and remedies.
- (6) Notify the complainant he or she may file a Uniform Complaint if not satisfied with the outcome of the informal process. Include a copy of Administrative Regulation 1312.3 and the Uniform Complaint Form with the sexual harassment notification and/or outcome letter.
- (7) Report the outcome to the Title IX Coordinator by sending copies of the signed letters via e-mail, and/or contacting the Title IX Coordinator by phone or e-mail.
- d. **Formal Complaint Process:** The formal Uniform Complaint process is initiated by the filing of a written, signed complaint on the Uniform Complaint Form, with the Legal Services Office, which will be referred to the district's Uniform Complaint Compliance Office for processing. Using the form is recommended, but not required, in order to file a formal complaint of sexual harassment; however, a formal complaint must be in writing and signed by the complainant. If a complainant is unable to put a complaint in writing due to conditions such as a disability or illiteracy, district staff shall assist him/her in the filing of a Uniform Complaint. The formal Uniform Complaint process may be implemented without filing an informal complaint or at any time during the informal resolution process. The Uniform Complaint process is fully explained in Administrative Regulation 1312.3.

*Legal Reference:*EDUCATION CODE200-262.4 *Prohibition of discrimination*48985 *Notices to parents in language other than English*51007 *Legislative intent: state policy*GOVERNMENT CODE11000 *Definitions*11135 *Nondiscrimination in programs or activities funded by state*11138 *Rules and regulations*12900-12996 *Fair Employment and Housing Act*54953.2 *Brown Act compliance with Americans with Disabilities Act*PENAL CODE422.55 *Definition of hate crime*422.6 *Interference with constitutional right or privilege*CODE OF REGULATIONS, TITLE 54600-4687 *Uniform complaint procedures*4900-4965 *Nondiscrimination in elementary and secondary education programs*UNITED STATES CODE, TITLE 201400-1482 *Individuals with Disabilities in Education Act*

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Legal Reference: (continued)

1681-1688 *Discrimination based on sex or blindness, Title IX*
2301-2415 *Carl D. Perkins Vocational and Applied Technology Act*
6311 *State plans*
6312 *Local education agency plans*
UNITED STATES CODE, TITLE 29
794 *Section 504 of the Rehabilitation Act of 1973*
UNITED STATES CODE, TITLE 42
2000d-2000d-7 *Title VI, Civil Rights Act of 1964*
2000e-2000e-17 *Title VII, Civil Rights Act of 1964 as amended*
2000h-2000h-6 *Title IX*
12101-12213 *Americans with Disabilities Act*
CODE OF FEDERAL REGULATIONS, TITLE 28
35.101-35.190 *Americans with Disabilities Act*
36.303 *Auxiliary aids and services*
CODE OF FEDERAL REGULATIONS, TITLE 34
100.1-100.13 *Nondiscrimination in federal programs, effectuating Title VI*
104.1-104.39 *Section 504 of the Rehabilitation Act of 1973*
106.1-106.61 *Discrimination on the basis of sex, effectuating Title IX, especially:*
106.9 *Dissemination of policy*

Management Resources:

CSBA PUBLICATIONS
Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students, Policy Brief, February 2014
Interim Guidance Regarding Transgender Students, Privacy, and Facilities, September 27, 2013
Safe Schools: Strategies for Governing Boards to Ensure Student Success, 2011
U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS
Notice of Non-Discrimination, January 1999
Protecting Students from Harassment and Hate Crime, January 1999
Nondiscrimination in Employment Practices in Education, August 1991
U.S. DEPARTMENT OF JUSTICE PUBLICATIONS
2010 ADA Standards for Accessible Design, September 2010
WEB SITES
CSBA: <http://www.csba.org>
California Department of Education: <http://www.cde.ca.gov>
Safe Schools Coalition: <http://www.casafeschools.org>
Pacific ADA Center: <http://www.adapacific.org>
U.S. Department of Education, Office for Civil Rights: <http://www.ed.gov/about/offices/list/ocr>
U.S. Department of Justice, Civil Rights Division, Americans with Disabilities Act: <http://www.ada.gov>

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San Diego, California