

REGULATION: 4119.12, 4219.12, 4319.12: TITLE IX ~~SEXUAL~~ **SEX DISCRIMINATION AND SEX-BASED HARASSMENT COMPLAINT PROCEDURES**

Comparison Matrix

Section: Personnel

SUMMARY OF UPDATE

Summary of Update: Regulation updated to reflect **NEW FEDERAL REGULATIONS (89 Fed. Reg. 33474)** which make extensive and significant changes to the title IX grievance procedures including that they (1) require a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct, (2) require district's to follow "basic requirements" when implementing the Title IX grievance procedures, (3) modify the definition of a "complaint" and who may bring a complaint, (4) modify the Title IX Coordinator's responsibilities related to the initiation of a complaint when the alleged victim chooses to not bring a complaint, (5) modify the requirements related to the offering and coordination of supportive measures, (6) expand the requirements related to the dismissal of complaints, including the appeal of dismissals, (7) expand the requirements related to the informal resolution process, (8) amend requirements related to notice of allegations when a formal investigation is initiated by the district, (9) expand requirements related to the investigation procedures, (10) modify requirements related to the written decision, (11) alter the process for the appeal of the decision, (12) provide for extension of timelines, and (13) amend requirements for remedies, disciplinary actions, and record-keeping. Additionally, regulation updated to delete material defining sex-based harassment as the definitions for sex discrimination and sex-based harassment are contained within Administrative Regulation 4119.11 - Sex Discrimination and Sex-Based Harassment, and to delete material in regard to reporting of sex-based harassment as such material is contained within other related policies. Regulation also updated to add a section on Consolidation of Complaints, and material related to record-keeping requirements for complaints containing allegations of childhood sexual assault.

CSBA NOTE: Title IX of the Education Amendments of 1972 (20 USC 1681-1688; 34 CFR 106.1-106.82) prohibits discrimination based on sex, including sex-based harassment, and mandates that the district adopt and publish complaint procedures. The following administrative regulation reflects the Title IX grievance procedures detailed in 34 CFR 106.44-106.45, as amended by 89 Fed. Reg. 33474.

Application of the Title IX complaint procedures to the facts of a specific complaint may implicate complicated questions about the intersection of state law, federal law, and, in cases involving employees, the applicable collective bargaining agreement. Pursuant to 34 CFR 106.11 and 106.44, as amended by 89 Fed. Reg. 33474, a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, is required to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct. As such a complaint may also fall within the complaint process as specified in AR 4030 - Nondiscrimination in Employment, it is unclear whether districts would additionally be required to follow the procedures specified in AR 4030 - Nondiscrimination in Employment. Due to this uncertainty, it is recommended that districts consult with CSBA's District and County Office of Education Legal Services or district legal counsel prior to utilizing the procedures specified in AR 4030 - Nondiscrimination in Employment for this purpose.

See AR 4030 - Nondiscrimination in Employment. Also see BP/AR 4119.11/4219.11/4319.11 - Sex Discrimination and Sex-Based Harassment for information about prohibited conduct, training, required notifications, and processes for reporting sex discrimination and sex-based harassment.

CURRENT VERSION

REVISED VERSION

CSBA MODIFICATIONS

PARA	Section	Sub-Section	March 8, 2022	July 2024	and/or NOTES
1			<p>The complaint procedures described in this administrative regulation shall be used to address any complaint governed by Title IX of the Education Amendments of 1972 alleging that a district employee, while in an education program or activity in which a district school exercises substantial control over the context and respondent, was subjected to one or more of the following forms of sexual harassment:</p>	<p>The complaint procedures described in this administrative regulation shall be used to address any complaint governed by Title IX of the Education Amendments of 1972 alleging that a district employee, while in an education program or activity, <i>was subjected to conduct on or after August 1, 2024, including, but not limited to, conduct that is under the authority of the district, that constitutes sex discrimination, including sex-based harassment. For conduct that occurred prior to this date, the district should utilize its policies in place at the time the alleged sex discrimination, including sex-based harassment, occurred, so long as they are in accordance with the applicable statutes and regulations.</i></p>	
				<p><i>Sex discrimination and sex-based harassment include, but are not limited to, sex-based conduct as specified in Administrative Regulation 4119.11/4219.11/4319.11 - Sex Discrimination and Sex-Based Harassment.</i></p>	
				<p><u><i>Basic Requirements</i></u></p>	
				<p><i>When implementing Title IX grievance procedures, the district shall:</i></p>	<p>CSBA NOTE: 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, requires that the district's grievance procedures follow specified basic requirements, which are reflected below.</p>
				<p><i>1. Treat complainants and respondents equitably</i></p>	
				<p><i>2. Ensure that the Title IX Coordinator or designee, investigator, or decisionmaker not have a conflict of interest or bias for or</i></p>	

				<i>against complainants or respondents generally or an individual complainant or respondent</i>	
				<i>2. (2) The investigator and the decisionmaker may be the same person as the Title IX Coordinator or designee.</i>	
				<i>3. Presume that the respondent is not responsible for the alleged sex discrimination, including sex-based harassment, until a determination is made at the conclusion of the grievance procedures</i>	
				<i>4. Establish reasonably prompt timeframes for the major stages of the grievance procedures, such as evaluation of whether to dismiss or investigate a complaint, investigation, decision, and appeals if any</i>	
				<i>5. Establish a process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the parties that includes the reason for the delay</i>	
				<i>Additionally, the district shall not disclose personally identifiable information obtained while implementing Title IX complaint procedures unless the district has obtained prior written consent from a person with the legal right to consent to the disclosure; the 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; to take action to address conduct that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, in the district's education program or activity; as</i>	CSBA NOTE: Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, the district may not disclose personally identifiable information obtained while complying with the Title IX complaint procedures, except as provided below.

			<i>required by federal law, regulations, or as a condition to a federal award; as required by state or local law; or to the extent such disclosures are not otherwise in conflict with Title IX.</i>	
			<i>If the respondent is a student with a disability, the Title IX Coordinator or designee shall consult with one or more members, as appropriate, of the student's individualized education program or 504 team, to determine how to comply with the requirements of the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973.</i>	
	1	A district employee conditioning the provision of a district aid, benefit, or service on a person's participation in unwelcome sexual conduct	Delete	
	2	Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity	Delete	
	3	Sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 or 34 USC 12291	Delete	
2		All other sexual harassment complaints or allegations shall be investigated and resolved in accordance with AR 4030—Nondiscrimination in Employment. The determination of whether the allegations meet the definition of sexual harassment under Title IX shall be made by the district's Title IX Coordinator.	Delete	
3		Because the complainant has a right to pursue a complaint under AR 4030 for any allegation that is dismissed or denied under the Title IX complaint procedure, the Title IX Coordinator	Delete	

		shall ensure that all requirements and timelines for AR 4030 are concurrently met while implementing the Title IX procedure.		
		<u>Reporting Allegations/Filing a Formal Complaint</u>	<u>Filing a Complaint</u>	
1		An employee who is the alleged victim of sexual harassment may submit a report of sexual harassment to the district's Title IX Coordinator using the contact information listed in AR 4119.11/4219.11/4319.11 Sexual Harassment or to the employee's direct supervisor or other district administrator, who shall forward the report to the Title IX Coordinator within one day of receiving the report.	Delete	
2		Upon receiving such a report, the Title IX Coordinator shall inform the complainant of the right to file a formal complaint and the process for filing a formal complaint.	Upon receiving <i>information of an allegation of sex discrimination, including sex-based harassment, the Title IX Coordinator or designee shall notify the individual(s) specified in law of the Title IX grievance procedures, and of the informal resolution process, if available and appropriate.</i>	
3		A formal complaint, with the complainant's physical or digital signature, may be filed with the Title IX Coordinator in person, by mail, by email, or by any other method authorized by the district.	Delete	
			<i>A complaint is an oral or written request that can objectively be understood by the Title IX Coordinator or designee as a request for the district to investigate and make a determination about alleged sex discrimination, including sex-based harassment.</i>	CSBA NOTE: Pursuant to 34 CFR 106.2, as amended by 89 Fed. Reg. 33474, a "complaint" is defined as an oral or written request to the district that objectively can be understood as a request for the district to investigate and make a determination about alleged discrimination under Title IX.
			<i>Complaints of sex discrimination and sex-based harassment may only be brought by an employee, or former employee, who was</i>	

				<i>participating or attempting to participate in the district's education program or activity at the time of the alleged sex-based harassment, or the Title IX Coordinator or designee.</i>	
4			<p>Even if the alleged victim chooses not to file a formal complaint, the Title IX Coordinator shall file a formal complaint in situations when a safety threat exists. In addition, the Title IX Coordinator may file a formal complaint in other situations as permitted under the Title IX regulations, including as part of the district's obligation to not be deliberately indifferent to known allegations of sexual harassment. In such cases, the Title IX Coordinator shall provide the alleged victim notices as required by the Title IX regulations at specific points in the complaint process.</p>	<p>If the alleged victim chooses not to <i>bring a complaint, or withdraws any or all of the allegations in a complaint, and in the absence or termination of an informal resolution process</i>, the Title IX Coordinator <i>or designee</i> shall <i>consider whether to initiate a complaint. To do so, the Title IX Coordinator or designee shall first consider the following factors:</i></p>	<p>CSBA NOTE: Given the district's duty pursuant to 34 CFR 106.44 to respond to reports of sex discrimination, including sex-based harassment, promptly and effectively, the Title IX Coordinator or designee should file a complaint even when the victim chooses not to do so, when, based on the considerations described below, the Title IX Coordinator or designee determines that a health or safety threat exists or when the district would be prevented from ensuring equal access based on sex in its programs or activities. In such cases, the alleged victim must receive notices as required by the Title IX regulations at specific points in the complaint process.</p>
				<i>1. The victim's request not to proceed with initiation of a complaint</i>	
				<i>2. The victim's reasonable safety concerns regarding initiation of a complaint</i>	
				<i>3. The risk that additional acts of sex discrimination, including sex-based harassment, would occur if a complaint is not initiated</i>	
				<i>4. 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</i>	
				<i>5. The age and relationship of the parties, including whether the respondent is an employee of the district</i>	

				6. <i>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</i>	
				7. <i>The availability of evidence to assist a decisionmaker in determining whether sex discrimination, including sex-based harassment, occurred</i>	
				8. <i>Whether the district could end the alleged sex discrimination, including sex-based harassment, and prevent its recurrence without initiating the Title IX grievance procedures</i>	
				<i>If, after considering these factors, the Title IX Coordinator determines that the alleged conduct presents an imminent and serious threat to the health and safety of the complainant or another person, or that the conduct as alleged prevents the district from ensuring equal access to a district program or activity on the basis of sex, the Title IX Coordinator may initiate a complaint.</i>	
				<i>If the Title IX Coordinator initiates a complaint, the Title IX Coordinator shall provide the alleged victim notice of the complaint as well as other notices as required by the Title IX regulations at specific points in the complaint process. The Title IX Coordinator shall also address reasonable concerns about the victim's safety or the safety of others, including providing supportive measures as described in "Supportive Measures" below, and taking other appropriate prompt and effective steps to ensure that sex discrimination, including sex-based</i>	CSBA NOTE: Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, the Title IX Coordinator or designee is required to take the steps described below upon initiating a complaint.

			<i>harassment, does not continue or recur within the district.</i>	
5		The Title IX Coordinator, investigator, decision-maker, or a facilitator of an informal resolution process shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. Such persons shall receive training in accordance with 34 CFR 106.45.	The Title IX Coordinator <i>or designee</i> , investigator, decisionmaker, <i>other person who is responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures, or a facilitator</i> of an informal resolution process shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. Such persons shall receive training in accordance with 34 CFR 106.8.	CSBA NOTE: Pursuant to 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, in addition to Title IX Coordinators or designees, investigators, and decisionmakers, persons who are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures may not have a conflict of interest or bias for or against complainants or respondents generally, or an individual complainant or respondent, and are required to receive specified training.
			<i>In order to ensure that employees are not barred from reporting information about conduct that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, the Title IX Coordinator shall monitor the district for barriers to reporting and take steps reasonably calculated to address such barriers.</i>	CSBA NOTE: Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, the Title IX Coordinator is required to monitor the district for barriers to reporting information about conduct that reasonably may constitute sex discrimination, including sex-based harassment, under Title IX, as specified below.
		Supportive Measures	No change	
1		Upon receipt of a report of Title IX sexual harassment , the Title IX Coordinator shall promptly contact the complainant to discuss the availability of supportive measures and shall consider the complainant's wishes with respect to the supportive measures implemented. Supportive measures shall be offered as appropriate, as reasonably available, and without charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures shall be non-disciplinary, non-punitive, and not unreasonably burden the	Upon receipt of a report of Title IX <i>sex discrimination or sex-based harassment</i> , the Title IX Coordinator <i>or designee</i> shall <i>offer and coordinate</i> supportive measures. Supportive measures <i>may vary depending on what the district determines to be</i> reasonably available <i>and shall not unreasonably burden either the complainant or respondent. Supportive measures shall be provided without charging a fee to the complainant or respondent and be designed to protect the safety of the complainant, respondent, and the district's educational environment, and to provide support during any grievance procedures</i>	CSBA NOTE: 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, requires districts to offer and coordinate supportive measures as described below. Pursuant to 34 CFR 106.2, as amended by 89 Fed. Reg. 33474, "supportive measures" are defined as individualized measures offered as appropriate, reasonably available and without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without charging a fee to the complainant or respondent to (1) restore or preserve the party's access to the district's education program or activity, including measures that are designed to

		<p>other party, including measures designed to protect the safety of all parties or the district's educational environment or to deter sexual harassment. Supportive measures may include, but are not limited to, counseling, extensions of deadlines, modifications of work schedules, mutual restrictions on contact, changes in work locations, leaves of absence, increased security, and monitoring of certain areas of the campus.</p>	<p><i>implemented as specified in 34 CFR 106.45 or informal resolution process as specified in 34 CFR 106.44. The district shall not impose such measures for punitive or disciplinary reasons. Supportive measures may include, but are not limited to, counseling; extensions of deadlines and other course- or work-related adjustment; changes in class, work, housing, or extracurricular or any other activity regardless of whether there is a comparable alternative; campus escort services; modifications of class or work schedules; mutual restrictions on contact; changes in class or work locations; leaves of absence; increased security; monitoring of certain areas of the campus; and, training and education programs related to sex-based harassment.</i></p>	<p>protect the safety of the parties or the district's educational environment, or (2) provide support during the recipients' grievance procedures specified in 34 CFR 106.45 or during any informal resolution process as specified in 34 CFR 106.44.</p>
			<p><i>Unless there is an allegation of sex-based harassment or retaliation, the district may provide supportive measures without altering the alleged discriminatory conduct.</i></p>	<p>CSBA NOTE: Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, the district's provision of supportive measures does not require the district, its employees, or any other persons authorized to provide aid, benefit, or service on the district's behalf to alter the alleged discriminatory conduct for the purpose of providing the supportive measures unless there is an allegation of sex-based harassment or retaliation.</p>
			<p><i>Upon the conclusion of any grievance procedures implemented as specified in 34 CFR 106.45 or informal resolution process as specified in 34 CFR 106.44, the district may continue with the supportive measures, or modify or terminate such measures, as appropriate.</i></p>	
			<p><i>The district shall provide a complainant or respondent for whom supportive measures have been implemented with a timely opportunity to seek, from an impartial</i></p>	

			<i>employee with authority to modify or reverse the supportive measures, modification or reversal of the district's decision to provide, deny, modify, or terminate such measures, and to seek additional modification or termination of the supportive measures if circumstances materially change.</i>	
2		The district shall maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the district's ability to provide the supportive measures.	<i>The district shall not disclose information about supportive measures to any person other than the person to whom they apply, including informing one party of supportive measures provided to another party, unless the disclosure is necessary to providing the supportive measures, or restoring or preserving a party's access to the district's education program or activity.</i>	CSBA NOTE: Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, the district is required to provide both parties for whom supportive measures have been implemented with the opportunity to challenge, to an impartial employee, the implementation of such measures. An "impartial employee" must be someone other than the employee who made the decision to provide the supportive measures which are being challenged, but who has the authority to modify or reverse the decision if the employee determines that the decision to provide, deny, modify, or terminate the supportive measures was inconsistent with the definition of supportive measures as specified in 34 CFR 106.2.
		Emergency Removal	No change	
1		If a district employee is the respondent, the employee may be placed on administrative leave during the pendency of the formal complaint process.	No change	
2		If the respondent is a student, the district may, on an emergency basis, remove the student from the district's education program or activity, provided that the district conducts an individualized safety and risk analysis, determines that removal is justified due to an immediate threat to the physical health or safety of any student or other individual arising from the allegations, and provides the	If the respondent is a student, the district may, on an emergency basis, remove the student from the district's education program or activity, provided that the district conducts an individualized safety and risk analysis, determines that removal is justified due to an imminent <i>and serious</i> threat to the health or safety of <i>a complainant</i> or any student, employee, or other individual arising from the	CSBA NOTE: Pursuant to Education Code 48900.2, a student in grades 4-12 may be suspended and/or expelled from school for sexual harassment. Additionally, Education Code 48915(c) requires the Superintendent or designee to recommend expulsion for any student, irrespective of grade, who commits sexual assault or battery as defined in the Penal Code. See AR 5144.1 - Suspension and

		<p>student with notice and an opportunity to challenge the decision immediately following the removal. This authority to remove a student does not modify a student's rights under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973.</p>	<p>allegations, and provides the <i>respondent</i> with notice and an opportunity to challenge the decision immediately following the removal. This authority to remove a student does not modify a student's rights under the <i>IDEA</i> or Section 504 of the Rehabilitation Act of 1973.</p>	<p>Expulsion/Due Process.</p> <p>34 CFR 106.44 allows a student to be removed in emergency situations as described below, but 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, requires that a student not be "disciplined" prior to a finding being made pursuant to the Title IX grievance process. Due to this inconsistency in state and federal law, districts are advised to consult CSBA's District and County Office of Education Legal Services of district legal counsel as to the manner of imposing an emergency removal.</p>
		Dismissal of Complaint	No change	
1		<p>The Title IX Coordinator shall dismiss a formal complaint if the alleged conduct would not constitute sexual harassment as defined in 34 CFR 106.30 even if proved. The Title IX Coordinator shall also dismiss any complaint in which the alleged conduct did not occur in the district's education program or activity or did not occur against a person in the United States, and may dismiss a formal complaint if the complainant notifies the district in writing that the complainant would like to withdraw the complaint or any allegations in the complaint, the respondent is no longer employed by the district, or sufficient circumstances prevent the district from gathering evidence sufficient to reach a determination with regard to the complaint.</p>	Delete	
			<p><i>The Title IX Coordinator or designee may dismiss a complaint if:</i></p>	<p>CSBA NOTE: The following section describes when the Title IX Coordinator or designee may dismiss a Title IX complaint and actions the Title IX Coordinator or designee is required to take when a complaint is dismissed pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474.</p>

				<i>1. The district is unable to identify the respondent after taking reasonable steps to do so</i>	
				<i>2. The respondent is not participating in the district's education program or activity and is not employed by the district</i>	
				<i>3. The district determines that the conduct alleged in the complaint, even if proven, would not constitute sex discrimination, including sex-based harassment, under Title IX</i>	
				<i>3. (2) Before dismissing the complaint, the Title IX Coordinator shall make reasonable efforts to clarify the allegations with the complainant.</i>	
				<i>4. The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and the Title IX Coordinator determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination, including sex-based harassment, under Title IX, even if proven</i>	
				<i>The Title IX Coordinator shall determine whether to dismiss or investigate any complaint of sex discrimination, including sex-based harassment, within 10 days, unless such timeline is extended in accordance with this administrative regulation.</i>	CSBA NOTE: Pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, the district is required to establish reasonably prompt timeframes for the major stages of the grievance procedures. The following paragraph should be revised to reflect the timeline established by the district.
2			Upon dismissal, the Title IX Coordinator shall promptly send written notice of the dismissal and the reasons for the dismissal simultaneously to the parties, and shall inform them of their right to appeal the dismissal of a	Upon dismissal, the Title IX Coordinator shall promptly <i>notify the complainant</i> of the dismissal and the reasons for the dismissal. <i>Additionally, if the dismissal occurs after the respondent has been notified of the</i>	

			formal complaint or any allegation in the complaint in accordance with the appeal procedures described in the section "Appeals" below.	<i>allegations, the Title IX Coordinator shall provide such notification to the respondent, which shall occur simultaneously to both parties if the notification is in writing. The Title IX Coordinator shall also inform the complainant, and the respondent if the dismissal occurs after the respondent has been notified of the allegations, of their right to appeal. Dismissals may be appealed on the following bases:</i>	
				<i>1. A procedural irregularity that would change the outcome</i>	
				<i>2. New evidence that would change the outcome and that was not reasonably available when the dismissal was made</i>	
				<i>3. The Title IX Coordinator, investigator, or decisionmaker 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</i>	
				<i>If the dismissal is appealed, the district shall:</i>	
				<i>1. Notify the parties of any appeal, including notice of the allegations, if notice was not previously provided to the respondent</i>	
				<i>2. Implement appeal procedures equally for the parties</i>	
				<i>3. Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint</i>	
				<i>4. Ensure that the decisionmaker for the appeal has been trained consistent with the Title IX regulations</i>	

				5. Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome	
				6. Notify the parties of the result of the appeal and the rationale for the result	
				<i>If a complaint is dismissed, the Title IX Coordinator or designee shall offer supportive measures as described above in "Supportive Measures" to the complainant. Additionally, the respondent shall be offered supportive measures if the complaint was dismissed because the complainant voluntarily withdrew any or all of the allegations in the complaint and the district determined that without the withdrawn allegations the conduct, even if proven, would not constitute sex discrimination, including sex-based harassment, under Title IX, or if the complaint was dismissed because the district determined, after taking reasonable efforts to clarify the allegations of the complaint, that the alleged conduct would not constitute sex discrimination, including sex-based harassment, even if proven. The Title IX Coordinator shall also take other appropriate prompt and effective steps to ensure that sex discrimination, including sex-based harassment, does not continue or recur within the district's education program or activity.</i>	
3			If a complaint is dismissed, the conduct may still be addressed pursuant to AR 4030 - Nondiscrimination in Employment as applicable.	No change	
			<u>Informal Resolution Process</u>	No change	
1			When a formal complaint of sexual harassment is filed, the district may offer an informal resolution process, such as	<i>At any time prior to determining whether sex discrimination, including sex-based harassment, occurred under the complaint</i>	CSBA NOTE: The following section reflects when the district may offer an informal resolution process, notification and consent

		mediation, at any time prior to reaching a determination regarding responsibility. The district shall not require a party to participate in the informal resolution process or to waive the right to an investigation and adjudication of a formal complaint.	<i>procedures specified in 34 CFR 106.45, the district may offer, if it is determined to be appropriate upon receiving information about conduct that reasonably may constitute sex discrimination under Title IX or when a complaint of sex discrimination is made, an informal resolution process, such as mediation, to the complainant and respondent. However, the district shall not offer an informal resolution process if the complaint alleges that an employee engaged in sex-based harassment of an elementary or secondary school student or that such process would conflict with federal, state, or local law.</i>	requirements, criteria for the facilitator of the informal resolution process, and other required steps when an informal resolution process is implemented, as specified in 34 CFR 106.44, as amended by 89 Fed. Reg. 33474. Additionally, 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, provides potential terms that may be included in an informal resolution agreement. Because such agreements will be fact-specific and reflective of sensitive topics, districts are encouraged to consult CSBA's District and County Office of Education Legal Services or district legal counsel when drafting informal resolution agreements.
			<i>The district shall not require or pressure a party to participate in the informal resolution process, or to waive the right to an investigation and determination of a complaint as a condition of employment or continuing employment, or exercise of any other right. The district may decline to offer an informal resolution process including, but not limited to, when the district determines that the alleged conduct would present a future risk of harm to others.</i>	
2		The district may facilitate an informal resolution process provided that the district:	The district may facilitate an informal resolution process provided that the district, <i>prior to initiating such process:</i>	
	1	Provides the parties with written notice disclosing the allegations, the requirements of the informal resolution process, the right to withdraw from the informal process and resume the formal complaint process, and any consequences resulting from participating in the informal resolution process, including that records will be maintained or could be shared.	Provides the parties with written notice disclosing the allegations; the requirements of the informal resolution process; the right to withdraw from the informal process and resume the formal complaint process; <i>the inability to initiate or resume complaint procedures arising from the same allegations once the informal resolution process is concluded; the potential terms that may be</i>	

			<i>requested or offered in an informal resolution agreement, including that the agreement would only be binding on the parties; and the information that the district will maintain and whether and how the district could disclose such information for use in Title IX grievance procedures if such procedures are initiated or resumed</i>	
	2	Obtains the parties' voluntary, written consent to the informal resolution process	Obtains the parties' voluntary consent to the informal resolution process	
			<i>The Title IX Coordinator or designee shall ensure that the facilitator of the informal resolution process is not the same person as the investigator or decisionmaker of any ongoing or newly initiated complaint process specified in 34 CFR 106.45, does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent, and receives training in accordance with 34 CFR 106.8.</i>	
			<i>If the district facilitates an informal resolution process, the Title IX Coordinator shall, to the extent necessary, take other appropriate prompt and effective steps to ensure that sex discrimination, including sex-based harassment, does not continue or recur within the district' education program or activity.</i>	
		<u>Written Notice</u>	<u>Notice of Allegations</u>	
1		If a formal complaint is filed , the Title IX Coordinator shall provide the known parties with written notice of the following:	If <i>the district initiates a formal Title IX investigation</i> , the Title IX Coordinator or designee shall provide the known parties with written notice of the following:	CSBA NOTE: The following section reflects the notice districts are required to provide to the parties pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474.
	1	The district's complaint process, including any informal resolution process	No change	

2	The allegations potentially constituting sexual harassment with sufficient details known at the time, including the identity of parties involved in the incident if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident if known. Such notice shall be provided with sufficient time for the parties to prepare a response before any initial interview.	<i>Sufficient information, available at the time, to allow the parties to respond to the allegations, including, to the extent available, the identity of parties involved in the incident(s), the conduct allegedly constituting sex discrimination, including sex-based harassment, and the date(s) and location(s) of the alleged incident. Such notice shall be provided with sufficient time for the parties to prepare a response before any initial interview.</i>	
2 (2)	If, during the course of the investigation, new Title IX allegations arise about the complainant or respondent that are not included in the initial notice, the Title IX Coordinator shall provide notice of the additional allegations to the parties.	No change	
3	A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the complaint process	Delete	
4	The opportunity for the parties to have an advisor of their choice who may be, but is not required to be, an attorney, and the ability to inspect and review evidence	Delete	
5	The prohibition against knowingly making false statements or knowingly submitting false information during the complaint process	Delete	
		<i>3. A statement that retaliation is prohibited</i>	
		<i>4. A statement that the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of such evidence, as specified</i>	

2		The above notice shall also include the name of the investigator, facilitator of an informal process, and decision-maker and shall inform the parties that, if at any time a party has concerns regarding conflict of interest or bias regarding any of these persons, the party should immediately notify the Title IX Coordinator.	The above notice may also include the name of the investigator, facilitator of an informal process, and decisionmaker and shall inform the parties that, if at any time a party has concerns regarding conflict of interest or bias regarding any of these persons, the party should immediately notify the Title IX Coordinator <i>or designee</i> .	CSBA NOTE: The following paragraph is optional. Although not required by law, a best practice is to provide notice to the parties of the name of the investigator, facilitator, and decisionmaker in order to give the parties an opportunity to raise concerns of conflict of interest or bias as prohibited by 34 CFR 106.45.
			<u><i>Consolidation of Complaints</i></u>	
			<i>The district may consolidate complaints of sex discrimination, including sex-based harassment, against more than one respondent; by more than one complainant against one or more respondents; or by one party against another party, when the allegations of sex discrimination, including sex-based harassment, arise out of the same facts or circumstances.</i>	CSBA NOTE: The following section reflects the district's authority to consolidate complaints of sex discrimination, including sex-based harassment, as specified in 34 CFR 106.45, as amended by 89 Fed. Reg. 33474.
		<u>Investigation Procedures</u>	No change	
			<i>The district shall provide for adequate, reliable, and impartial investigation of complaints.</i>	CSBA NOTE: Pursuant to 34 CFR 106.45, when investigating a complaint, the burden of proof rests on the district and not on the parties. However, the district must obtain the party's voluntary, written consent to access, consider, disclose, or otherwise use a party's records that are maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional, which are made and maintained in connection with the provision of treatment to the party.
1		During the investigation process, the district's designated investigator shall:	No change	
	1	Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence	Provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence <i>that is relevant and not otherwise impermissible</i>	

	2	Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence	<i>Review all evidence gathered through the investigation and determine which evidence is relevant and which evidence is impermissible regardless of relevance</i>	
	3	Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney	<i>Provide each party with an equal opportunity to access evidence that is relevant, and not otherwise impermissible, to the allegations of sex discrimination, including sex-based harassment, by:</i>	
			<i>a. Providing an equal opportunity to access either the relevant and not otherwise impermissible evidence or an accurate description of such evidence</i>	
			<i>a. (2) If an accurate description is provided, the district shall, upon request of any party, provide the parties with an equal opportunity to access the relevant and permissible evidence.</i>	
			<i>b. Providing a reasonable opportunity to respond to the evidence or to the accurate description of the evidence</i>	
			<i>c. Taking reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures</i>	
	4	Not limit the choice or presence of an advisor for either the complainant or respondent in any meeting or grievance proceeding, although the district may establish restrictions regarding the extent to which the advisor may participate in the proceedings as long as the restrictions apply equally to both parties	Delete	
	5	Provide, to a party whose participation is invited or expected, written notice of the	Delete	

		date, time, location, participants, and purpose of all investigative interviews or other meetings, with sufficient time for the party to prepare to participate		
6		Send in an electronic format or hard copy to both parties and their advisors, if any, the evidence obtained as part of the investigation that is directly related to the allegations raised in the complaint, and provide the parties at least 10 days to submit a written response for the investigator to consider prior to the completion of the investigative report	Delete	
			4. Take reasonable steps to protect the privacy of parties and witnesses which do not restrict the ability of the parties to obtain and present evidence, including, by speaking to witnesses; consulting with family members, confidential resources, or advisors; or otherwise preparing for or participating in the grievance procedures	
7		Objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence, and determine credibility in a manner that is not based on a person's status as a complainant, respondent, or witness	5. Objectively evaluate all evidence <i>that is relevant and not otherwise impermissible</i> , including both inculpatory and exculpatory evidence, <i>including that</i> credibility <i>determinations will not be</i> based on a person's status as complainant, respondent, or witness	
			6. Exclude as impermissible the following types of evidence, and questions seeking that evidence:	
			a. Evidence that is protected under a privilege recognized by state or federal law or evidence that is provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege	

				<i>b. A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the district obtains that party's or witness's voluntary, written consent for use in its grievance procedures</i>	
				<i>b. (2) Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment.</i>	
				<i>b. (3) The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.</i>	
	8		Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to the determination of responsibility, send to the parties and their advisors, if any, the investigative report in an electronic format or a hard copy, for their review and written response	Delete	
				<i>The district shall ensure that the decisionmaker is able to question parties and witnesses adequately to assess a party's or witness's credibility to the extent credibility is</i>	CSBA NOTE: The following paragraph should be amended to reflect district practice regarding the process established to enable the decisionmaker to question parties and

			<i>both in dispute and relevant to evaluating one or more allegations of sex-based harassment.</i>	witnesses adequately to assess a party's or witness's credibility.
			<i>If the complaint is against an employee, rights conferred under an applicable collective bargaining agreement shall be applied to the extent they do not conflict with the Title IX requirements.</i>	CSBA NOTE: Districts with questions about the application of a collective bargaining agreement in the context of a Title IX investigation should consult CSBA's District and County Office of Education Legal Services or district legal counsel.
			<i>The investigator shall complete the investigation within 30 days after the Title IX Coordinator determines to proceed with an investigation, unless such timeline is extended in accordance with this administrative regulation.</i>	CSBA NOTE: Pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, the district is required to establish reasonably prompt timeframes for the major stages of the grievance procedures. The district should revise the following paragraph to reflect the timeline established by the district.
2		Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged by the complainant or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.	Delete	
3		Privacy rights of all parties to the complaint shall be maintained in accordance with applicable state and federal laws.	Delete	
4		If the complaint is against an employee, rights conferred under an applicable collective bargaining agreement shall be applied to the extent they do not conflict with the Title IX requirements.	Delete	
		<u>Written Decision</u>	No change	

1		<p>The Superintendent shall designate an employee as the decision-maker to determine responsibility for the alleged conduct, who shall not be the Title IX Coordinator or a person involved in the investigation of the matter.</p>	<p>The Superintendent shall designate an employee as the decisionmaker to determine responsibility for the alleged conduct, who <i>may be the Title IX Coordinator or designee or the investigator so long as there is no conflict of interest or bias.</i></p>	<p>CSBA NOTE: Pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, the person designated as the decisionmaker of the determination of responsibility may be the same person designated as the Title IX Coordinator or designee and/or investigator, so long as there is no conflict of interest or bias. The following paragraph may be revised to reflect the position designated by the district to provide a written determination of responsibility. While designation decisions will depend on the size of the district, a best practice is to designate an upper-level administrator as the decisionmaker and designate the Superintendent as the person to consider appeals.</p>
			<p><i>Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, the district shall:</i></p>	
			<p><i>1. Use the preponderance of the evidence standard of proof to determine whether sex discrimination, including sex-based harassment, has occurred</i></p>	
			<p><i>2. Notify the parties in writing of the determination of whether sex discrimination, including sex-based harassment, occurred</i></p>	
			<p><i>2. (2) The notification shall include the rationale for such determination and the procedures and permissible bases for the complainant and respondent to appeal, if applicable.</i></p>	
2		<p>After the investigative report has been sent to the parties but before reaching a determination regarding responsibility, the decision-maker shall afford each party the opportunity to submit written, relevant</p>	<p>Delete</p>	

		<p>questions that the party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.</p>		
3		<p>The decision-maker shall issue, and simultaneously provide to both parties, a written decision as to whether the respondent is responsible for the alleged conduct.</p>	<p>Delete</p>	
4		<p>The written decision shall be issued within 60 calendar days of the receipt of the complaint.</p>	<p>The written decision shall be issued within 60 days after <i>the investigation is completed, unless such time is extended in accordance with this administrative regulation.</i></p>	<p>CSBA NOTE: Pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, the district is required to establish reasonably prompt timeframes for the major stages of the grievance procedures. The district should revise the following paragraph to reflect the timeline established by the district.</p>
5		<p>The timeline may be temporarily extended for good cause with written notice to the complainant and respondent of the extension and the reasons for the action.</p>	<p>Delete</p>	
6		<p>In making this determination, the decision-maker shall use the "preponderance of the evidence" standard for all formal complaints of sexual harassment.</p>	<p>Delete</p>	
7		<p>The written decision shall include the following:</p>	<p>Delete</p>	
	1	<p>Identification of the allegations potentially constituting sexual harassment as defined in 34 CFR 106.30</p>		
	2	<p>A description of the procedural steps taken from receipt of the formal complaint through the written decision, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held if the district includes hearings as part of the grievance process</p>	<p>Delete</p>	

	3	Findings of fact supporting the determination	Delete	
	4	Conclusions regarding the application of the district's code of conduct or policies to the facts	Delete	
	5	A statement of, and rationale for, the result as to each allegation, including a decision regarding responsibility, any disciplinary sanctions the district imposes on the respondent, and whether remedies designed to restore or preserve equal access to the district's educational program or activity will be provided by the district to the complainant	Delete	
	6	The district's procedures and permissible bases for the complainant and respondent to appeal	Delete	
		Appeals	<u>Appeal of the Decision</u>	
1		<p>Either party may appeal the district's decision or dismissal of a formal complaint or any allegation in the complaint, if the party believes that a procedural irregularity affected the outcome, new evidence is available that could affect the outcome, or a conflict of interest or bias by the Title IX Coordinator, investigator(s), or decision maker(s) affected the outcome. If an appeal is filed, the district shall:</p>	<p>Either party may appeal the district's decision of a complaint or any allegation in the complaint.</p>	<p>CSBA NOTE: 34 CFR 106.45 allows either the complainant or respondent to appeal the district's decision, and requires the district to offer the parties an appeal process that at a minimum is the same as it offers in all other comparable proceedings, if any, including proceedings relating to other discrimination complaints, such as AR 4030 - Nondiscrimination in Employment. The district may revise the following section to reflect applicable timelines and appeal process established by the district.</p> <p>The following section should also be revised to identify the person who has been designated as the decisionmaker(s) for the appeal. Pursuant to 34 CFR 106.45, the decisionmaker for the appeal cannot be the same person as the decisionmaker that reached the determination regarding responsibility or</p>

				dismissal, the investigator(s), or the Title IX Coordinator.
	1	Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties-	Delete	
	2	Ensure that the decision-maker(s) for the appeal is trained in accordance with 34 CFR 106.45 and is not the same decision-maker(s) who reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator	Delete	
	3	Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome	Delete	
	4	Issue a written decision describing the result of the appeal and the rationale for the result-	Delete	
	5	Provide the written decision simultaneously to both parties	Delete	
2		An appeal must be filed in writing within 10 calendar days of receiving the notice of the decision or dismissal, stating the grounds for the appeal and including any relevant documentation in support of the appeal. Appeals submitted after this deadline are not timely and shall not be considered.	Delete	
3		A written decision shall be provided to the parties within 20 calendar days from the receipt of the appeal.	Delete	
			<i>When conducting an appeal, the district shall follow the appeal process as specified in Administrative Regulation 4030 - Nondiscrimination in Employment.</i>	
4		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.	No change	

5		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.	No change	
			<u>Extension of Timelines</u>	
			<i>Any timelines specified in this administrative regulation may be extended by the district for good cause, with written notice to the parties. The written notice shall specify the reasons for the extension.</i>	CSBA NOTE: Pursuant to 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, the district is required to establish a process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause, with notice to the parties that includes the reason for the delay.
		<u>Remedies</u>	No change	
1		When a determination of responsibility for sexual harassment has been made against the respondent, the district shall provide remedies to the complainant. Such remedies may include the same individualized services described above in the section "Supportive Measures," but need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.	<i>When there is a determination that sex discrimination, including sex-based harassment, has occurred, the Title IX Coordinator shall coordinate the provision and implementation of remedies to the complainant and other persons the district identifies as having had equal access to the district's education program or activity limited or denied by sex discrimination, including sex-based harassment; coordinate the imposition of any disciplinary sanctions on a respondent as described in "Disciplinary Actions" below, including notification to the complainant of any such disciplinary sanctions; and take other appropriate prompt and effective steps to ensure that sex discrimination, including sex-based harassment, does not continue or recur within the district's education program or activity.</i>	
		<u>Disciplinary Actions</u>	No change	
1		The district shall not impose any disciplinary sanctions or other actions against a	No change	

		respondent, other than supportive measures as described above in the section "Supportive Measures," until the complaint procedure has been completed and a determination of responsibility has been made.		
2		When an employee is found to have committed sexual harassment or retaliation, the district shall take appropriate disciplinary action, up to and including dismissal, in accordance with applicable law and collective bargaining agreement.	When an employee is found to have committed <i>sex discrimination, including sex-based</i> harassment, or retaliation, the district shall take appropriate disciplinary action, up to and including dismissal, in accordance with applicable law and collective bargaining agreement.	
			<i>The district shall not discipline a party, witness, or others participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the district's determination of whether sex discrimination, including sex-based harassment, occurred.</i>	
		Record-Keeping	No change	
1		The Superintendent or designee shall maintain, for a period of seven years:	No change	CSBA NOTE: The following paragraph reflects Title IX record-keeping requirements pursuant to 34 CFR 106.8, as amended by 89 Fed. Reg. 33474.
	1	A record of all reported cases and Title IX investigations of sexual harassment, any determinations of responsibility, any audio or audiovisual recording and transcript if applicable, any disciplinary sanctions imposed, any remedies provided to the complainant, and any appeal or informal resolution and the results therefrom.	<i>For each complaint of sex discrimination, including sex-based harassment, records documenting any informal resolution process or formal investigation procedures</i>	
	2	A record of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment, including the district's basis for its conclusion that its response was not deliberately	<i>For each notification the Title IX Coordinator or designee receives of information about conduct that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, records documenting the</i>	

		indifferent, the measures taken that were designed to restore or preserve equal access to the education program or activity, and, if no supportive measures were provided to the complainant, the reasons that such a response was not unreasonable in light of the known circumstances.	<i>actions taken to fulfill the district's obligations as specified in 34 CFR 106.44, including supportive measures offered and implemented</i>	
	3	All materials used to train the Title IX Coordinator, investigator(s), decision-maker(s), and any person who facilitates an informal resolution process. The district shall make such training materials publicly available on its web site, or if the district does not maintain a web site, available upon request by members of the public.	All materials used to train district employees ; the Title IX Coordinator <i>and designee(s)</i> ; investigator(s), decisionmaker(s), and <i>other</i> person(s) who <i>are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures; and any person who facilitates an informal resolution process</i>	
			<i>3. (2) The district shall make such training materials available upon request by members of the public.</i>	
			<i>For complaints containing allegations of childhood sexual assault, the Superintendent or designee shall also indefinitely maintain the following:</i>	
			<i>1. A record of the allegation(s)</i>	
			<i>2. A record of the investigation procedures followed</i>	
			<i>3. A record of the written determination</i>	
			<i>4. A record of the corrective action implemented, if any</i>	
			<i>5. A record of any appeals and the outcome of the same</i>	
			<i>6. All training materials addressing the prohibition and investigation of childhood sexual assault</i>	

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