

REGULATION 4030: NON-DISCRIMINATION IN EMPLOYMENT

Comparison Matrix

Section: Personnel

SUMMARY OF UPDATE

Summary of Update: Regulation updated to reflect **NEW FEDERAL REGULATIONS (89 Fed. Reg. 33474)** which (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 districts to provide a notice of nondiscrimination on the basis of sex, and (3) require specified training related to sex discrimination for all district employees, as well as additional training for investigators, decisionmakers, and other persons who are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures; facilitators of an informal resolution process; and the Title IX Coordinator(s) and designees. Additionally, regulation updated to reflect remedies available for violation of the Providing Urgent Maternal Protections (PUMP) for Nursing Mothers Act, the Pregnant Workers Fairness Act, and other provisions of state law.

CSBA NOTE: Pursuant to 2 CCR 11023, districts are mandated to adopt rules and regulations to ensure that district programs and activities are free from unlawful discriminatory practices. Pursuant to Government Code 12940, protections against discrimination apply to employees, job applicants, persons who serve in unpaid internship or other limited-duration programs to gain unpaid work experience, volunteers, and independent contractors.

CURRENT VERSION			REVISED VERSION	CSBA MODIFICATIONS and/or NOTES	
PARA	Section	Sub-Section	May 10, 2022		July 2024
1			All allegations of discrimination in employment, including those involving an employee, job applicant, intern, volunteer, or other person contracted to provide services to the district shall be investigated and resolved in accordance with procedures specified in this administrative regulation.	All allegations of discrimination in employment, including those involving an employee, job applicant, intern, volunteer, or other person contracted to provide services to the district shall be investigated and resolved in accordance with procedures specified in this administrative regulation. <i>However, complaints alleging sex discrimination under Title IX shall be investigated and resolved in accordance with the procedures specified in 34 CFR 106.44 and 106.45 and Administrative Regulation 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.</i>	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 the accompanying administrative regulation, it is unclear whether districts would additionally be required to follow the procedures specified in the accompanying

				<p>administrative regulation. Due to this uncertainty, it is recommended that districts consult CSBA's District and County Office of Education Legal Services or district legal counsel prior to utilizing such a complaint process for this purpose. For more information regarding the Title IX grievance procedures, see AR 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.</p>
2		<p>The district designates the position identified below as its coordinator for nondiscrimination in employment (coordinator) to organize and manage the district's efforts to comply with state and federal nondiscrimination laws and to answer inquiries regarding the district's nondiscrimination policies. The coordinator may be contacted at:</p>	<p>No change</p>	<p>CSBA NOTE: Many nondiscrimination laws and regulations require identification of an employee who is responsible for compliance with the nondiscrimination laws. For example, pursuant to 34 CFR 104.7, 106.8, and 110.25, the district is required to designate the person(s) responsible for the overall implementation of the requirements of federal laws which prohibit discrimination on the basis of disability, sex, and age, i.e., Section 504 of the Rehabilitation Act of 1973 (29 USC 794), Title IX of the Education Amendments of 1972 (20 USC 1681-1688), and the Age Discrimination in Employment Act (29 USC 621-634). The district should fill in the blanks below to designate the responsible employee and contact information.</p> <p>34 CFR 106.8 requires the district to designate at least one district employee to coordinate its responsibilities under Title IX, who must be referred to as the Title IX Coordinator. If the district has more than one Title IX Coordinator, it must designate one of its Title IX Coordinators to retain ultimate oversight over those responsibilities and ensure the district's consistent compliance with its responsibilities under Title IX. It is</p>

				recommended that the Title IX Coordinator be the same person designated below and, if the district wishes to separate out these responsibilities, for one individual to designate designees and maintain oversight; see AR 4119.11/4219.11/4319.11 - Sex Discrimination and Sex-Based Harassment.
3		<p>Jeff Youskievicz Assistant Superintendent, Educational Services Title IX Coordinator/Compliance Officer 35320 Daggett-Yermo Rd. P.O. Box 847 Yermo, CA 92398 jyouskievicz@svusdk12.net 760-254-2916 Ext. 1157</p>	No change	
		Measures to Prevent Discrimination	No change	
1		To prevent unlawful discrimination, harassment, and retaliation in district employment, the Superintendent or designee shall implement the following measures:	No change	<p>CSBA NOTE: Pursuant to Government Code 12940 and 2 CCR 11023, the district is required to take all reasonable steps to prevent unlawful discrimination and harassment. 2 CCR 11023 specifies certain requirements to be included in the district's policy.</p> <p>The following section reflects the requirements of 2 CCR 11023 and other applicable laws or regulations, as indicated.</p>
	1	Display in a prominent and accessible location at every work site where the district has employees, and post electronically in a conspicuous location on computers for employee use, up-to-date California Department of Fair Employment and Housing (DFEH) posters on the prohibition of workplace discrimination and harassment, the rights of transgender employees, and the rights and obligations of employees who are	Display in a prominent and accessible location at every work site where the district has employees, and post electronically in a conspicuous location on computers for employee use, up-to-date California <i>Civil Rights Department (CRD)</i> posters on the prohibition of workplace discrimination and harassment, <i>including sex-based harassment</i> , the rights of transgender employees, and the rights and obligations of employees who are	CSBA NOTE: Pursuant to Government Code 12950 and 2 CCR 11049, districts are required to post the California Civil Rights Department (CRD), formerly the Department of Fair Employment and Housing (DFEH), posters, "California Law Prohibits Workplace Discrimination and Harassment," "Sexual Harassment," "The Rights of Employees Who Are Transgender or Gender Nonconforming," "Your Rights and Obligations as a Pregnant

		pregnant, have a related medical condition, or are recovering from childbirth	pregnant, have a related medical condition, or are recovering from childbirth	<p>Employee," and "Family Care and Medical Leave and Pregnancy Disability Leave," as provided in Item #1. CRD rules require that these materials be posted electronically and in every location where the district has employees (e.g., district office, hiring office, each school site). These posters and the rules for posting are available on CRD's website. Also see AR 4161.8/4261.8/4361.8 - Family Care and Medical Leave.</p> <p>In addition, Executive Order 11246 requires contractors and subcontractors who hold a single federal contract or subcontract in excess of \$10,000, or who hold contracts or subcontracts with the federal government in any 12-month period that have a total value of more than \$10,000, to display the U.S. Equal Employment Opportunity Commission (EEOC) "Know Your Rights: Workplace Discrimination is Illegal" poster in conspicuous places available to employees and applicants for employment and representatives of each labor union with which the covered contractor or subcontractor has a collective bargaining agreement. The poster and rules for posting are available on EEOC's website.</p>
	2	Publicize the district's nondiscrimination policy and regulation, including the complaint procedures and the coordinator's contact information, by:	No change	
		a Including them in each announcement, bulletin, or application form that is used in employee recruitment	No change	
		b Posting them in all district schools and offices, including staff lounges and other prominent locations	No change	

		c	Posting them on the district's web site and providing easy access to them through district-supported social media, when available	No change	
	3		Disseminate the district's nondiscrimination policy and administrative regulation to all employees by one or more of the following methods:	No change	
		a	Printing and providing a copy to all employees, with an acknowledgment form for each employee to sign and return	No change	
		b	Sending a copy via email with an acknowledgment return form	No change	
		c	Posting a copy on the district intranet with a tracking system ensuring all employees have read and acknowledged receipt of the policies	No change	
		d	Discussing the policy and regulation with employees upon hire and/or during a new hire orientation session	No change	
		e	Any other way that ensures employees receive and understand the policy	No change	
				<i>4. Post in a prominent location on the district's website and include in each handbook, catalog, announcement, bulletin, and application form for students, parents/guardians or other authorized legal representative, and employees, the Title IX notice of nondiscrimination which includes the following:</i>	New section/sub-sections added CSBA NOTE: Pursuant to Title IX and its implementing regulation 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, districts are required to provide a notice of nondiscrimination on the basis of sex, as specified below.
				<i>a. The district does not discriminate on the basis of sex in any education program or activity that it operates</i>	
				<i>b. Inquiries about the application of Title IX may be referred to the district's Title IX Coordinator and/or the U.S. Department of Education Office for Civil Rights</i>	

				<i>c. The name or title, office and email address, and telephone number of the district's Title IX Coordinator</i>	
				<i>d. How to locate the district's nondiscrimination policy and the district's grievance procedures for Title IX complaints</i>	
				<i>e. How to report conduct that may constitute sex discrimination under Title IX</i>	
				<i>f. How to make a complaint of Title IX sex discrimination</i>	
				<i>f. (2) If necessary due to the format or size of any publication specified above, the district may include only the statement that the district prohibits sex discrimination in any education program or activity that it operates, that individuals may report concerns or questions to the Title IX Coordinator, and the location of the complete notice on the district's website.</i>	
				<i>f. (3) The district shall not distribute a publication stating that the district treats students, employees or applicants differently on the basis of sex, unless such treatment is permitted by Title IX.</i>	
	4		Provide to employees a handbook that contains information that clearly describes the district's nondiscrimination policy, procedures for filing a complaint, and resources available to anyone who feels that he/she has been the victim of any discriminatory or harassing behavior	5. Provide to employees a handbook which contains information that clearly describes the district's nondiscrimination policy, procedures for filing a complaint, and resources available to <i>employees who believe they have</i> been the victim of any discriminatory or harassing behavior	
	5		Provide training regarding the district's nondiscrimination policy, including what constitutes unlawful discrimination, harassment, and retaliation and how and to whom a report of an incident should be made	6. Provide training regarding the district's nondiscrimination policy, including what constitutes unlawful discrimination, harassment, and retaliation and how and to whom a report of an incident should be made,	CSBA NOTE: Optional Item #6 below provides for training regarding the district's discrimination policy and reporting procedures. Title IX, and its implementing regulation 34 CFR 106.8, as amended by 89

			<i>as well as any additional training as specified in 34 CFR 106.8 related to the prohibition of Title IX sex discrimination</i>	Fed. Reg. 33474, requires specified training related to sex discrimination for all district employees, as well as additional training for (1) investigators, decisionmakers, and other persons who are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures, (2) facilitators of an informal resolution process, and (3) the Title IX Coordinator(s) and designees. For requirements specifically pertaining to sex discrimination and sex-based harassment training, see AR 4119.11/4219.11/4319.11 - Sex Discrimination and Sex-Based Harassment.
	5 (2)	The district may also provide bystander intervention training to employees which includes information and practical guidance on how to recognize potentially problematic behaviors and which may motivate them to take action when they observe such behaviors. The training and education may include exercises to provide employees with the skills and confidence to intervene as appropriate and to provide them with resources they can call upon that support their intervention.	No change except number change	
	6	Periodically review the district's recruitment, hiring, and promotion processes and regularly monitor the terms, conditions, and privileges of employment to ensure district compliance with law	7. Periodically review the district's recruitment, hiring, and promotion processes and regularly monitor the terms, conditions, and privileges of employment to ensure district compliance with law <i>and Board Policy 4111 - Recruitment and Selection</i>	
	7	For any district facility where 10 percent of employees have a language other than English as their spoken language, translate the policy into every language spoken by at least 10 percent of the workforce	No change except number change	

		<u>Complaint Procedure</u>	No change	
1		Complaints of sexual harassment shall be investigated and resolved in accordance with AR 4119.12/4219.12/4319.12 – Title IX Sexual Harassment Complaint Procedures if the alleged conduct meets the definition of sexual harassment pursuant to 34 CFR 106.30.	Delete	
2		Any other complaint alleging unlawful discrimination or harassment shall be addressed in accordance with the following procedures:	Any complaint alleging unlawful discrimination or harassment shall be addressed in accordance with the following procedures:	<p>CSBA NOTE: 2 CCR 11023 mandates that a district's policy include a complaint process with specified requirements. Some of the requirements of 2 CCR 11023 are similar to those required under existing case law.</p> <p>In Faragher-Ellerth v. City of Boca Raton and Burlington Industries, Inc v. Ellerth, the Supreme Court held that liability may be mitigated for hostile environment employment discrimination when (1) the employer took reasonable care to prevent and promptly correct the discriminatory or harassing conduct (i.e., provided a complaint procedure) and (2) the aggrieved employee unreasonably failed to take advantage of corrective opportunities offered by the employer (i.e., failure to file a complaint).</p> <p>In its April 2024, "Enforcement Guidance on Harassment in the Workplace," EEOC outlines the elements of an effective complaint process including (1) prompt and effective investigations and corrective action, (2) adequate confidentiality protections, and (3) adequate anti-retaliation protections. While EEOC's guidance recommends a "prompt" investigation, neither the law nor EEOC delineates a specific time frame for resolution. EEOC's guidance acknowledges that whether an investigation is considered "prompt" is</p>

				fact-sensitive and may vary depending on the nature and severity of the alleged harassment and reasons for the delay, and that intermediate measures may be necessary to prevent further harassment during the investigation. The following section, including the listed timelines, is consistent with EEOC's guidance and should be modified to reflect district practice.
	1	<p>Notice and Receipt of Complaint: A complainant may inform a direct supervisor, another supervisor, the coordinator, the Superintendent or, if available, a complaint hotline or an ombudsman. The complainant's direct supervisor may be bypassed in filing a complaint when the supervisor is the subject of the complaint.</p>	No change	
	1 (2)	The complainant may first attempt to resolve the situation informally with the complainant's supervisor before filing a written complaint.	No change	
	1 (3)	A supervisor or manager who has received information about an incident of discrimination or harassment, or has observed such an incident, shall report it to the coordinator, whether or not the complainant files a written complaint.	No change	
	1 (4)	The written complaint should contain the complainant's name, the name of the individual who allegedly committed the act, a description of the incident, the date and location where the incident occurred, any witnesses who may have relevant information, any available evidence of the discrimination or harassment, and any other pertinent information which may assist in investigating and resolving the complaint.	No change	

2		Investigation Process: The coordinator shall initiate an impartial investigation of an allegation of discrimination or harassment within five business days of receiving notice of the alleged discriminatory or harassing behavior, regardless of whether a written complaint has been filed or whether the written complaint is complete.	No change	
2 (2)		The coordinator shall meet with the complainant to describe the district's complaint procedure and discuss the actions being sought by the complainant in response to the allegation. The coordinator shall inform the complainant that the investigation of the allegations will be fair, timely, and thorough and will be conducted in a manner that provides all parties due process and reaches reasonable conclusions based on the evidence collected. The coordinator shall also inform the parties that the investigation will be kept confidential to the extent possible, but that some information may be disclosed as necessary to conduct an effective investigation.	No change	
2 (3)		If the coordinator determines that a detailed fact-finding investigation is necessary, the investigation shall begin immediately. As part of this investigation, the coordinator should interview the complainant, the person accused, and other persons who could be expected to have relevant information.	No change	
2 (4)		The coordinator shall track and document the progress of the investigation to ensure reasonable progress and shall inform the parties as necessary.	No change	
2 (5)		When necessary to carry out the investigation or to protect employee safety, the	No change	

		coordinator may discuss the complaint with the Superintendent or designee, district legal counsel, or the district's risk manager.		
	2 (6)	The coordinator shall also determine whether interim measures, such as scheduling changes, transfers, or leaves, need to be taken before the investigation is completed in order to prevent further incidents. The coordinator shall ensure that such interim measures do not constitute retaliation.	No change	
	3	Written Report on Findings and Remedial/Corrective Action: No more than 20 business days after receiving the complaint, the coordinator shall conclude the investigation and prepare a written report of the findings. This timeline may be extended for good cause. If an extension is needed, the coordinator shall notify the parties and explain the reasons for the extension	No change	
	3 (2)	The report shall include the decision and the reasons for the decision and shall summarize the steps taken during the investigation. If a determination has been made that discrimination or harassment occurred, the report shall also include any corrective action(s) that have been or will be taken to address the behavior, provide appropriate options for remedial actions and resolutions for the complainant, and ensure that retaliation or further discrimination or harassment is prevented. The report shall be presented to the Superintendent or designee.	No change	
	3 (3)	A summary of the findings shall be presented to the complainant and the person accused.	No change	
	4	Appeal to the Governing Board: The complainant or the person accused may appeal any findings to the Board within 10	No change	

		business days of receiving the written report of the coordinator’s findings. The Superintendent or designee shall provide the Board with all information presented during the investigation. Upon receiving an appeal, the Board shall schedule a hearing as soon as practicable. Any complaint against a district employee shall be addressed in closed session in accordance with law. The Board shall render its decision within 10 business days.		
		Other Remedies	No change	
1		In addition to filing a discrimination or harassment complaint with the district, a person may file a complaint with either DFEH or the Equal Employment Opportunity Commission (EEOC). The time limits for filing such complaints are as follows:	In addition to filing a discrimination or harassment complaint with the district, a person may file a complaint with either CRD or the Equal Employment Opportunity Commission (EEOC). The time limits for filing such complaints are as follows:	CSBA NOTE: Items #1-3 below state the time limits within which complaints must be filed. Employees should be informed that the deadline for filing charges starts to run from the last date of the unlawful act, not from the conclusion of the district's complaint investigation. Pursuant to CRD procedures, CRD will automatically forward any complaint it has accepted for investigation to EEOC when the matter falls within EEOC's jurisdiction.
	1	For filing a complaint with DFEH alleging a violation of Government Code 12940-12952, within three years of the alleged discriminatory act(s), unless an exception exists pursuant to Government Code 12960	For filing a complaint with CRD alleging a violation of Government Code 12940-12952, within three years of the alleged discriminatory act(s), unless an exception exists pursuant to Government Code 12960	CSBA NOTE: Pursuant to Government Code 12960, a complaint alleging employment discrimination pursuant to Government Code 12940-12952 must be filed with CRD within three years of the alleged discriminatory act(s). That period may be extended under certain circumstances. Districts should consult CSBA's District and County Office of Education Legal Services or district legal counsel if any questions arise.
	2	For filing a complaint with EEOC, within 180 days of the alleged discriminatory act(s)	No change	CSBA NOTE: 42 USC 2000e-5 specifies that a person must file a discrimination complaint with EEOC within 180 days of the alleged discriminatory act. Pursuant to 42 USC 2000e-5, the 180-day timeline for compensation

					discrimination starts when the discriminatory paycheck is received and that each discriminatory paycheck restarts the timeline for the filing of a complaint.
	3		To file a valid complaint with EEOC after first filing a complaint with DFEH , within 300 days of the alleged discriminatory act(s) or within 30 days after the termination of proceedings by DFEH, whichever is earlier	For filing a complaint with EEOC after first filing a complaint with <i>CRD</i> , within 300 days of the alleged discriminatory act(s) or within 30 days after the termination of proceedings by CRD, whichever is earlier	
				<i>An employee may also file a complaint with the Wage and Hour Division of the U.S. Department of Labor for an alleged violation of the PUMP Act and/or the Equal Employment Opportunity Commission for failure to provide reasonable accommodations pursuant to the Pregnant Workers Fairness Act.</i>	New paragraph added CSBA NOTE: Additional remedies may be available for violation of the PUMP Act (29 USC 218d) under the Fair Labor Standards Act, the Pregnant Workers Fairness Act (42 USC 2000gg-2), and state law pursuant to Labor Code 1030-1034 and Government Code 12925-12954. See BP 4033 - Lactation Accommodation.
				<i>Additionally, an employee may file a complaint with the Labor Commissioner at the California Department of Industrial Relations for any alleged violation of Labor Code 1030-1034.</i>	New paragraph added

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