

## BOARD POLICY 5145.3: NON-DISCRIMINATION/HARASSMENT

### Comparison Matrix

Section: Students

#### SUMMARY OF UPDATE

**Summary of Update:** Policy updated to reflect **NEW FEDERAL REGULATIONS (89 Fed. Reg. 33474)** which (1) clarify that discrimination on the basis of sex, including sex-based harassment, for the purpose of Title IX includes sex stereotypes; sex characteristics; gender identity; sexual orientation; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions or recovery; and parental, marital, and family status, and (2) 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. Additionally, policy updated to reflect **NEW LAW (AB 1165, 2023)** which encourages districts to have a student who has been suspended, or for whom other means of correction have been implemented pursuant to Education Code 48900.5 for an incident of racist bullying, harassment, or intimidation, as well as the victim, to engage in a restorative justice practice suitable to address the needs of both the victim and the perpetrator.

CSBA NOTE: The following mandated policy reflects various provisions of state and federal law which prohibit discrimination against students in educational programs and activities based on certain actual or perceived characteristics of an individual. Education Code 220 prohibits discrimination based on disability, race, nationality, immigration status, ethnicity, gender, gender identity, gender expression, sexual orientation, religion, or any other characteristic contained in the definition of hate crimes in Penal Code 422.55. Government Code 11135 prohibits discrimination based on most of the foregoing characteristics and on sex, color, ancestry, age, medical condition, marital status, and an individual's genetic information. Title VI of the Civil Rights Act of 1964 (42 USC 2000d-2000d-7) prohibits discrimination based on race, color, or national origin. Title IX (20 USC 1681-1688; 34 CFR 106.1-106.82, as amended by 89 Fed. Reg. 33474) prohibits discrimination based on sex; sex stereotypes; sex characteristics; gender; gender identity; sexual orientation; pregnancy, childbirth, termination of pregnancy, or lactation; and, parental, marital, and family status. The Age Discrimination Act of 1975 (42 USC 6101-6107) prohibits discrimination based on age. The Americans with Disabilities Act (ADA) (20 USC 12101-12213) and Section 504 (29 USC 794) prohibit discrimination based on disability. Education Code 260 gives the Governing Board primary responsibility for ensuring that district programs and activities are free from discrimination based on age or any of the characteristics listed in Education Code 220. For more information regarding the requirement for district programs and activities to be free from discrimination, see BP 0410 - Nondiscrimination in District Programs and Activities.

For policy addressing student sex discrimination and sex-based harassment, see BP/AR 5145.7 - Sex Discrimination and Sex-Based Harassment, and for language regarding Title IX sex discrimination, including sex-based harassment, complaint procedures, see AR/E(1) 5145.71 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

Education Code 234.1 mandates that districts adopt policy prohibiting discrimination, harassment, intimidation, and bullying based on the actual or perceived characteristics listed above, which applies to all acts related to school activity or school attendance occurring within a school under the jurisdiction of the district, and a process for receiving and investigating such complaints. The California Department of Education (CDE), through its Federal Program Monitoring process, reviews districts' uniform complaint procedures (UCP) and other anti-discrimination policies and processes to ensure compliance with these requirements. In addition, the U.S. Department of Education's Office for Civil Rights (OCR) is responsible for the administrative enforcement of federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, sex, disability, and age in programs and activities that receive federal financial assistance from the department, and requires the adoption of nondiscrimination policies and complaint procedures.

Education Code 234.1, as amended by AB 1078 (Ch. 229, Statute of 2023), also requires that the district's nondiscrimination policy include a statement that the policy applies to all acts of the Board and the Superintendent in enacting policies and procedures that govern the district. Education Code 234.1, as amended by AB 1078, contains similar language regarding the County Board of Education and the County Superintendent of Schools.

Education Code 243, as added by AB 1078, clarifies when it is unlawful discrimination for the Board to (1) refuse to approve the use of any textbook, instructional material, supplemental instructional material, or other curriculum for classroom instruction, or any book or resource in a school library or (2) prohibit the use of any textbook, instructional material, supplemental instructional material, or other curriculum for classroom instruction, or any book or resource in a school library. The Board may not refuse to approve such use on the basis that the material includes a study of the role and contributions of specified individuals or groups, unless the study of the role and contributions reflects adversely upon legally protected groups. Additionally, the Board may not prohibit such use on the basis that the study of the role and contributions contain inclusive or diverse perspectives. In addition, the Board's action to ban or censor a textbook, instructional material, supplemental instructional material, or other curriculum for classroom instruction on any of the bases described above may also constitute unlawful discrimination pursuant to Education Code 220. And, pursuant to Education Code 244, as added by SB 153 (Ch. 38, Statutes of 2024), the Board is prohibited from adopting or approving the use of any textbook, instructional material, supplemental instructional material, or curriculum for classroom instruction if the use would subject a student to unlawful discrimination pursuant to Education Code 220. For more information regarding instructional materials adoption, see BP/AR/E(1) 6161.1 - Selection and Evaluation of Instructional materials, CSBA's publication, "Instructional Materials Adoptions: State and local governing board processes, roles, and responsibilities," and corresponding Fact Sheet and Reference, and the California Attorney General's, "Guidance to School Officials re: Legal Requirements for Providing Inclusive Curricula and Books."

OCR has clarified in several publications that conduct that occurs off campus may have an adverse effect on a student at school (e.g., create a "hostile environment" for the student). When that happens, the district has an obligation to investigate and to take steps to protect the student.

CURRENT VERSION			REVISED VERSION	CSBA MODIFICATIONS and/or NOTES
PARA	Section	Sub-Section	October 13, 2020	
1			<p>This policy shall apply to all acts constituting unlawful discrimination or harassment related to school activity or to school attendance occurring within a district school, and to acts which occur off campus or outside of school-related or school-sponsored activities but which may have an impact or create a hostile environment at school.</p>	<p>This policy shall apply to all acts constituting unlawful discrimination or harassment related to school activity or to school attendance occurring within a district school, to acts which occur off campus or outside of school-related or school-sponsored activities but which may have an impact or create a hostile environment at school, <i>and to all acts of the Governing Board and the Superintendent in enacting policies and procedures that govern the district.</i></p>

2		<p>The <del>Governing</del> Board desires to provide a safe school environment that allows all students equal access to and opportunities in the district's academic, extracurricular, and other educational support programs, services, and activities. The Board prohibits, at any district school or school activity, unlawful discrimination, including discriminatory harassment, intimidation, and bullying, <del>targeted</del> at any student by anyone, based on the student's actual or perceived race, color, ancestry, nationality, national origin, immigration status, ethnic group identification, ethnicity, age, religion, <del>marital status</del>, pregnancy, parental status, physical or mental disability, medical condition, sex, sexual orientation, gender, gender identity, gender expression, or genetic information, or association with a person or group with one or more of these actual or perceived characteristics.</p>	<p>The Board desires to provide a <i>welcoming, safe, and supportive</i> school environment that allows all students equal access to and opportunities in the district's academic, extracurricular, and other educational support programs, services, and activities. The Board prohibits, at any district school or school activity, unlawful discrimination, including discriminatory harassment, intimidation, and bullying, <i>of</i> any student by anyone, based on the student's actual or perceived race; color; ancestry; nationality; national origin; immigration status; ethnic group identification; ethnicity; age; religion; pregnancy, <i>childbirth, termination of pregnancy or lactation, including related medical conditions or recovery</i>; parental, <i>marital, and family</i> status; physical or mental disability; medical condition; sex; <i>sex stereotypes; sex characteristics</i>; sexual orientation; gender; gender identity; gender expression; or genetic information; or, association with a person or group with one or more of these actual or perceived characteristics.</p>	<p>CSBA NOTE: 34 CFR 106.2 and 106.10, as amended by 89 Fed. Reg. 33474, clarify that discrimination on the basis of sex for the purpose of Title IX includes discrimination on the basis of sex stereotypes; sex characteristics; sexual orientation; gender identity; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions or recovery; and parental, marital, and family status.</p>
3		<p>Unlawful discrimination, including discriminatory harassment, intimidation, or bullying, may result from physical, verbal, nonverbal, or written conduct based on any of the categories listed above. Unlawful discrimination also occurs when prohibited conduct is so severe, persistent, or pervasive that it affects a student's ability to participate in or benefit from an educational program or activity; creates an intimidating, threatening, hostile, or offensive educational environment; has the effect of substantially or unreasonably interfering with a student's academic</p>	<p><b>No change</b></p>	<p>CSBA NOTE: OCR's May 2024 Dear Colleague Letter, "Protecting Students from Discrimination, such as Harassment, Based on Race, Color, or National Origin, Including Shared Ancestry or Ethnic Characteristics," which expands and clarifies the U.S. Department of Education's 2023, "Guidance on Constitutionally Protected Prayer and Religious Expression in Public Schools," provides that Title VI's protections from race, color, and national origin discrimination extends to students who experience discrimination based on actual or perceived</p>

		<p>performance; or otherwise adversely affects a student's educational opportunities.</p>		<p>(1) shared ancestry or ethnic characteristics or (2) citizenship or residency in a country with a dominant religion or distinct religious identity. While Title VI does not protect individuals based solely on religious discrimination, it does apply to antisemitism and other forms of discrimination when based on shared ancestry or ethnic characteristics. The guidance includes clarifying examples regarding existing legal requirements under Title VI.</p> <p>Additionally, OCR's November 2023 Dear Colleague Letter, "Discrimination, Including Harassment, Based on Shared Ancestry or Ethnic Characteristics," states that all students, including students who are or are perceived to be Jewish, Israeli, Muslim, Arab, or Palestinian, as well as students who come from, or are perceived to come from, all regions of the world, are entitled to a school environment free from discrimination based on race, color, or national origin. The Dear Colleague Letter provides that Title VI also protects students from discrimination which is based on (1) actual or perceived citizenship or residency in a country with a dominant religion or distinct religious identity, including Jewish, Muslim, Sikh, Hindu, Christian, and Buddhist students, when the discrimination involves racial, ethnic, or ancestral slurs or stereotypes, (2) a student's skin color, physical features, or style of dress that reflects both ethnic and religious traditions, and (3) where a student came from or is perceived to have come from. Discrimination based on a student's foreign accent, foreign name, or a student speaking a foreign language may also violate Title VI's prohibitions against discrimination.</p>
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				OCR's August 2023 Dear Colleague Letter, "Race and School Programming," states that a district may not separate students based on race, but may include group discussions or activities that focus on race as part of the curriculum, courses, or programs so long as access or participation is not permitted or limited based on race. OCR's guidance also provides that a school-sponsored program with emphasis on race, such as a student club, that is open to all students, typically would not violate Title VI solely because of its race-related theme.
4		Unlawful discrimination also includes disparate treatment of students based on one of the categories above with respect to the provision of opportunities to participate in school programs or activities or the provision or receipt of educational benefits or services.	<b>No change</b>	CSBA NOTE: In addition to the types of prohibited student conduct described above, unlawful discrimination includes different treatment of students with respect to the provision of opportunities to participate in school programs or activities or the provision or receipt of educational benefits or services. See BP 0410 - Nondiscrimination in District Programs and Activities.
			<i>Because unlawful discrimination could occur when disciplining students, including suspension and expulsion, the Superintendent or designee shall ensure that staff enforce discipline rules fairly, consistently and in a non-discriminatory manner, as specified in Board Policy and Administrative Regulation 5144 - Discipline, Board Policy and Administrative Regulation 5144.1 - Suspension and Expulsion/Due Process, and Administrative Regulation 5144.2 - Suspension and Expulsion/Due Process (Students With Disabilities).</i>	CSBA NOTE: Unlawful discrimination may occur when disciplining students. OCR's guidance, "Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973," "Resource on Confronting Racial Discrimination in Student Discipline," and "Creating Inclusive and Nondiscriminatory School Environments for LGBTQI Students," address discrimination in the use of discipline based on disability, race, and gender expression.  For more information regarding student discipline, see BP/AR 5144 - Discipline, BP/AR 5144.1 - Suspension and Expulsion/Due

				Process, and AR 5144.2 - Suspension and Expulsion/Due Process (Students With Disabilities).
5		The Board also prohibits any form of retaliation against any individual who reports or participates in the reporting of unlawful discrimination, files or participates in the filing of a complaint, or investigates <del>or</del> participates in the investigation of a complaint or report alleging unlawful discrimination. Retaliation complaints shall be investigated and resolved in the same manner as a discrimination complaint.	The Board also prohibits any form of retaliation against any individual who reports or participates in the reporting of unlawful discrimination, files or participates in the filing of a complaint, or investigates, participates, <i>or refuses to</i> participate in the investigation of a complaint or report alleging unlawful discrimination. Retaliation complaints shall be investigated and resolved in the same manner as a discrimination complaint.	
6		The Superintendent or designee shall facilitate students' access to the educational program by publicizing the district's nondiscrimination policy and related complaint procedures to students, parents/guardians, and employees. In addition, the Superintendent or designee shall post the district's policies prohibiting discrimination, harassment, intimidation, and bullying and other required information on the district's website in a manner that is easily accessible to parents/guardians and students, in accordance with law and the accompanying administrative regulation.	<b>No change</b>	CSBA NOTE: Pursuant to Education Code 234.1 and 34 CFR 106.8, a district is required to publicize its nondiscrimination policies to the school community. Additionally, Education Code 234.1, as amended by SB 153, and 234.6 require the district to make readily accessible on its website its nondiscrimination, harassment, intimidation, bullying, sex-based harassment, suicide prevention, and other specified policies and information related to specified state and federal laws and resources. In addition, 34 CFR 104.8 requires districts to take "continuing steps" to notify students, parents/guardians, applicants for admission, and employees that it does not discriminate on the basis of disability in its education programs or activities.  For further information regarding specific posting requirements, see "Measures to Prevent Discrimination" in the accompanying administrative regulation.
7		The Superintendent or designee shall provide training and/or information on the scope and use of the policy and complaint procedures	<b>No change</b>	

		and take other measures designed to increase the school community's understanding of the requirements of law related to discrimination. The Superintendent or designee shall regularly review the implementation of the district's nondiscrimination policies and practices and, as necessary, shall take action to remove any identified barrier to student access to or participation in the district's educational program. The Superintendent or designee shall report the findings and recommendations to the Board after each review.		
8		Regardless of whether a complainant complies with the writing, timeline, and/or other formal filing requirements, all complaints alleging unlawful discrimination, including discriminatory harassment, intimidation, or bullying, shall be investigated and prompt action taken to stop the discrimination, prevent recurrence, and address any continuing effect on students.	No change	
9		Students who engage in unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, in violation of law, Board policy, or administrative regulation shall be subject to appropriate consequence or discipline, which may include suspension or expulsion when the behavior is severe or pervasive as defined in Education Code 48900.4. Any employee who permits or engages in prohibited discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, shall be subject to disciplinary action, up to and including dismissal.	No change	CSBA NOTE: Policies related to discrimination must be consistent with the First Amendment right to free speech. Education Code 48950 prohibits a district from subjecting a high school student to disciplinary sanctions solely on the basis of speech or other communication that would be constitutionally protected if engaged in outside of campus. However, Education Code 48950 also specifies that the law does not prohibit discipline for harassment, threats, or intimidation unless constitutionally protected. Whether such speech might be entitled to constitutional protection would be determined on a case-by-case basis, with consideration for the specific words used and the circumstances involved. It

					is recommended that districts consult CSBA's District and County Office of Education Legal Services or district legal counsel as necessary.
				<i>When a student has been suspended, or other means of correction have been implemented against the student for an incident of racist bullying, harassment, or intimidation, the principal or designee shall engage both the victim and perpetrator in a restorative justice practice suitable to the needs of the students. The principal or designee may also require the perpetrator to engage in a culturally sensitive program that promotes racial justice and equity and combats racism and ignorance and shall regularly check on the victim to ensure that the victim is not in danger of suffering from any long-lasting mental health issues.</i>	CSBA NOTE: The following paragraph may be revised to reflect district practice. Pursuant to Education Code 48900.5, as amended by AB 1165 (Ch. 22, Statutes of 2023), the district is encouraged to have a student who has been suspended, or for whom other means of correction have been implemented pursuant to Education Code 48900.5 for an incident of racist bullying, harassment, or intimidation, as well as the victim, to engage in a restorative justice practice suitable to address the needs of both the victim and the perpetrator, in addition to the other measures specified in the following paragraph; see BP/AR 5131.2 - Bullying.
				<i>When appropriate based on the severity or pervasiveness of the bullying, the Superintendent or designee shall notify the parents/guardians of victims and perpetrators and may contact law enforcement.</i>	
				<i>Allegations of unlawful discrimination in district programs and activities shall be brought, investigated, and resolved in accordance with Board Policy 1312.3 - Uniform Complaint Procedures, when required by law. However, complaints alleging sex discrimination, including sex-based harassment, 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 5145.71 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.</i>	CSBA NOTE: 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 the Title IX grievance procedures when investigating and resolving the complaint. A complaint may also fall within the complaint process adopted by the district pursuant to Education Code 234.1 for receiving and investigating complaints of unlawful discrimination, including discriminatory harassment, intimidation,



				retaliation, and bullying that is consistent with the district's UCP specified in 5 CCR 4600-4670. It is unclear whether districts would additionally be required to follow the UCP when investigating and resolving such a complaint. 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 the UCP for this purpose. For more information regarding the Title IX grievance procedures, see AR 5145.71 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.
		<b>Record-Keeping</b>	<b>No change</b>	
1		The Superintendent or designee shall maintain a record of all reported cases of unlawful discrimination, including discriminatory harassment, intimidation, or bullying, to enable the district to monitor, address, and prevent repetitive prohibited behavior in district schools.	<b>No change</b>	

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