

FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

Personnel**TITLE IX SEXUAL HARASSMENT COMPLAINT PROCEDURES**Policy Statement:

The complaint procedures described in this Superintendent Policy shall be used to address any complaint governed by Title IX of the Education Amendments of 1972 alleging that an employee of the Fresno County Superintendent of Schools (“FCSS”), while in an education program or activity, was subjected to conduct on or after August 1, 2024, including, but not limited to, conduct that is under the authority of the FCSS, that constitutes sex discrimination, including sex-based harassment.

For conduct that occurred prior to this date, the FCSS will 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.

The following policy shall not be used to resolve any Title IX complaint by a student.

QUICK LINKS

[Supervisor Report of Incident/Complaint
Incident/Complaint Form
Incident/Complaint Appeal Form](#)

Sex discrimination and sex-based harassment include, but are not limited to, sex-based conduct as specified in Superintendent Policy SP HR – 4319.11 – Sexual Harassment.

BASIC REQUIREMENTS

When implementing Title IX grievance procedures, the FCSS shall: (34 CFR 106.45)

1. Treat complainants and respondents equitably.
2. Ensure that the Title IX Coordinator or designee, investigator, or decisionmaker does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. The investigator and the decisionmaker may be the same person as the Title IX Coordinator or designee.
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.
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.
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.

Additionally, the FCSS Title IX team shall not disclose personally identifiable information obtained while implementing Title IX complaint procedures unless the FCSS Title IX team 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 FCSS’ education program or activity; as required by

FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

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. (34 CFR 106.44) 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.

FILING A COMPLAINT

Upon receiving 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.

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 FCSS to investigate and make a determination about alleged sex discrimination, including sex-based harassment. (34 CFR 106.2)

Complaints of sex discrimination and sex-based harassment may only be brought by an employee, or former employee, who was participating or attempting to participate in the FCSS' education program or activity at the time of the alleged sex-based harassment, or the Title IX Coordinator or designee. (34 CFR 106.45)

If the alleged victim chooses not to 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, the Title IX Coordinator or designee shall consider whether to initiate a complaint. To do so, the Title IX Coordinator or designee shall first consider the following factors (34 CFR 106.44):

1. The victim's request not to proceed with initiation of a complaint.
2. The victim's reasonable safety concerns regarding initiation of a complaint.
3. The risk that additional acts of sex discrimination, including sex-based harassment, would occur if a complaint is not initiated.
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 a FCSS campus or program or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence.
5. The age and relationship of the parties, including whether the respondent is a FCSS employee.
6. 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.
7. The availability of evidence to assist a decisionmaker in determining whether sex discrimination, including sex-based harassment, occurred.
8. Whether the FCSS could end the alleged sex discrimination, including sex-based harassment, and prevent its recurrence without initiating the Title IX grievance procedures.

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 FCSS from ensuring equal access to a FCSS program or activity on the basis of sex, the Title IX Coordinator may initiate a complaint.

FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

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 harassment, does not continue or recur. (34 CFR 106.44)

The Title IX Coordinator or designee, investigator, decisionmaker, other person who is responsible for implementing the FCSS' grievance procedures or have the authority to modify or terminate supportive measures, 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 106.8. (34 CFR 106.44)

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 FCSS' operations for barriers to reporting and take steps reasonably calculated to address such barriers. (34 CFR 106.44, 106.45)

SUPPORTIVE MEASURES

Upon receipt of a report of Title IX sex discrimination or sex-based harassment, the Title IX Coordinator or designee shall offer and coordinate supportive measures. Supportive measures may vary depending on what the FCSS Title IX team determines to be reasonably available 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 FCSS' educational environment, and to provide support during any grievance procedures implemented as specified in 34 CFR 106.45 or informal resolution process as specified in 34 CFR 106.44. The FCSS 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 or FCSS facility; and, training and education programs related to sex-based harassment. (34 CFR 106.2, 106.44)

Unless there is an allegation of sex-based harassment or retaliation, the FCSS Title IX team may provide supportive measures without altering the alleged discriminatory conduct. (34 CFR 106.44)

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 FCSS may continue with the supportive measures, or modify or terminate such measures, as appropriate. (34 CFR 106.44) The FCSS Title IX team shall provide a complainant or respondent for whom supportive measures have been implemented with a timely opportunity to seek, from an impartial employee with authority to modify or reverse the supportive measures, modification or reversal of the FCSS'

FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

decision to provide, deny, modify, or terminate such measures, and to seek additional modification or termination of the supportive measures if circumstances materially change. (34 CFR 106.44)

The FCSS Title IX team 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 FCSS' education program or activity. (34 CFR 106.44)

EMERGENCY REMOVAL

If the FCSS employee is the respondent, the employee may be placed on administrative leave during the pendency of the formal complaint process. (34 CFR 106.44)

If the respondent is a student, the FCSS may, on an emergency basis, remove the student from the education program or activity, provided that the FCSS conducts an individualized safety and risk analysis, determines that removal is justified due to an imminent and serious threat to the health or safety of a complainant or any student, employee, or other individual arising from the allegations, and provides the respondent 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 IDEA or Section 504 of the Rehabilitation Act of 1973. (34 CFR 106.44)

DISMISSAL OF COMPLAINT

The Title IX Coordinator or designee may dismiss a complaint if (34 CFR 106.45):

1. The FCSS is unable to identify the respondent after taking reasonable steps to do so.
2. The respondent is not participating in the FCSS' education program or activity and is not employed by the FCSS.
3. The FCSS determines that the conduct alleged in the complaint, even if proven, would not constitute sex discrimination, including sex-based harassment, under Title IX.
Before dismissing the complaint, the Title IX Coordinator shall make reasonable efforts to clarify the allegations with the complainant.
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.

The Title IX Coordinator shall determine whether to dismiss or investigate any complaint of sex discrimination, including sex-based harassment, within ten (10) working days, unless such timeline is extended in accordance with this administrative regulation.

Upon dismissal, the Title IX Coordinator shall promptly notify the complainant of the dismissal and the reasons for the dismissal. Additionally, if the dismissal occurs after the respondent has been notified of the 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 (34 CFR 106.45):

FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

1. A procedural irregularity that would change the outcome.
2. New evidence that would change the outcome and that was not reasonably available when the dismissal was made.
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.

If the dismissal is appealed, the FCSS Title IX team shall (34 CFR 106.45):

1. Notify the parties of any appeal, including notice of the allegations, if notice was not previously provided to the respondent.
2. Implement appeal procedures equally for the parties.
3. Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint.
4. Ensure that the decisionmaker for the appeal has been trained consistent with the Title IX regulations.
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.

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 FCSS Title IX team 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 FCSS 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 FCSS' education program or activity. (34 CFR 106.45)

If a complaint is dismissed, the conduct may still be addressed pursuant to SP HR 4030 – Prohibition of Employee Discrimination, Harassment and Retaliation, as applicable.

INFORMAL RESOLUTION PROCESS

At any time prior to determining whether sex discrimination, including sex-based harassment, occurred under the complaint procedures specified in 34 CFR 106.45, the FCSS Title IX team 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 FCSS 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. (34 CFR 106.44)

The FCSS 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 FCSS may decline to

FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

offer an informal resolution process including, but not limited to, when the FCSS determines that the alleged conduct would present a future risk of harm to others. (34 CFR 106.44)

The FCSS Title IX team may facilitate an informal resolution process provided that prior to initiating such process, the FCSS Title IX team (34 CFR 106.44):

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; 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 requested or offered in an informal resolution agreement, including that the agreement would only be binding on the parties; and the information that the FCSS will maintain and whether and how the FCSS could disclose such information for use in Title IX grievance procedures if such procedures are initiated or resumed, and
2. Obtains the parties' voluntary consent to the informal resolution process.

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. (34 CFR 106.44)

If the FCSS 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 FCSS' education program or activity. (34 CFR 106.45)

NOTICE OF ALLEGATIONS

If the FCSS initiates a formal Title IX investigation, the Title IX Coordinator or designee shall provide the known parties with written notice of the following: (34 CFR 106.45)

1. The FCSS' complaint process, including any informal resolution process.
2. 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(s). Such notice shall be provided with sufficient time for the parties to prepare a response before any initial interview.
If, during 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.
3. A statement that retaliation is prohibited.
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.

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 or designee.

FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

CONSOLIDATION OF COMPLAINTS

The FCSS 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. (34 CFR 106.45)

INVESTIGATION PROCEDURES

The FCSS shall provide for adequate, reliable, and impartial investigation of complaints. (34 CFR 106.45)

During the investigation process, the FCSS' designated investigator shall (34 CFR 106.45):

1. Provide an equal opportunity for the parties to present facts, witnesses and other inculpatory and exculpatory evidence that is relevant and not otherwise impermissible.
2. Review all evidence gathered through the investigation and determine which evidence is relevant and which evidence is impermissible regardless of relevance.
3. 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:
 - a. Providing an equal opportunity to access either the relevant and not otherwise impermissible evidence or an accurate description of such evidence. If an accurate description is provided, the FCSS shall, upon request of any party, provide the parties with an equal opportunity to access the relevant and permissible evidence.
 - b. Providing a reasonable opportunity to respond to the evidence or to the accurate description of the evidence.
 - c. Taking reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures.
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.
5. Objectively evaluate all evidence that is relevant and not otherwise impermissible, including both inculpatory and exculpatory evidence, including that credibility determinations will not be 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.
 - b. A party's or witness' 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 FCSS obtains that party's or witness's voluntary, written consent for use in its grievance procedures.

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

FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

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.

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.

The FCSS 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 both in dispute and relevant to evaluating one or more allegations of sex-based harassment. (34 CFR 106.45)

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.

The investigator shall complete the investigation within fifty (50) days after the Title IX Coordinator determines to proceed with an investigation, unless such timeline is extended in accordance with this Superintendent Policy.

WRITTEN DECISION

The FCSS shall designate an employee as the decisionmaker to determine responsibility for the alleged conduct, who may be the Title IX Coordinator or designee or the investigator so long as there is no conflict of interest or bias. (34 CFR 106.45)

Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, the FCSS Title IX team shall (34 CFR 106.45):

1. Use the preponderance of the evidence standard of proof to determine whether sex discrimination, including sex-based harassment, has occurred.
2. Notify the parties in writing of the determination of whether sex discrimination, including sex-based harassment, occurred.

The notification shall include the rationale for such determination and the procedures and permissible bases for the complainant and respondent to appeal, if applicable.

The written decision shall be issued within ten (10) days after the investigation is completed, unless such time is extended in accordance with this Superintendent Policy.

APPEAL OF THE DECISION

Either party may appeal the Title IX team's decision of a complaint or any allegation in the complaint. (34 CFR 106.45)

Following the complainant's receipt of the disposition of the complaint by the designated Title IX decision-maker, the complainant may, if not satisfied with the disposition, appeal the matter to the Fresno County Superintendent of Schools, within ten (10) calendar days that disposition is dated. The complainant's appeal shall be in writing, signed by the complainant, and completed on a form prescribed by the FCSS. The appeal shall state specifically the reasons why the complainant is dissatisfied with the report and recommended disposition by the designated Title IX decision-maker.

FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

The FCSS shall review the basis for the complainant's appeal and make a decision based on the record presented. The FCSS reserves his/her rights to determine if it is necessary to collect additional information and/or to accept or modify the final disposition and action implemented as a result of the complaint.

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.

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.

EXTENSION OF TIMELINES

Any timelines specified in this Superintendent Policy may be extended by the FCSS Title IX team for good cause, with written notice to the parties. The written notice shall specify the reasons for the extension. (34 CFR 106.45)

REMEDIES

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 FCSS identifies as having had equal access to the FCSS' 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 FCSS' education program or activity. (34 CFR 106.45)

DISCIPLINARY ACTIONS

The FCSS shall not impose any disciplinary sanctions or other actions against a 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. (34 CFR 106.44, 106.45)

When an employee is found to have committed sex discrimination, including sex-based harassment, or retaliation, the FCSS shall take appropriate disciplinary action, up to and including dismissal, in accordance with applicable law, policies, procedures, and collective bargaining agreements.

The FCSS 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 FCSS' determination of whether sex discrimination, including sex-based harassment, occurred. (34 CFR 106.45)

RECORD-KEEPING

The FCSS or designee shall maintain, for at least a period of seven years (34 CFR 106.45):

1. For each complaint of sex discrimination, including sex-based harassment, records documenting any informal resolution process or formal investigation procedures.

FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

2. 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 actions taken to fulfill the FCSS' obligations as specified in 34 CFR 106.44, including supportive measures offered and implemented.
3. All materials used to train FCSS employees; the Title IX Coordinator and designee(s); investigator(s), decisionmaker(s), and other person(s) who are responsible for implementing the FCSS' grievance procedures or have the authority to modify or terminate supportive measures; and any person who facilitates an informal resolution process.

The FCSS shall make such training materials available upon request by members of the public.

For complaints containing allegations of childhood sexual assault, the FCSS or designee shall also indefinitely maintain the following (Code of Civil Procedure 340.1):

1. A record of the allegation(s).
2. A record of the investigation procedures followed.
3. A record of the written determination.
4. A record of the corrective action implemented, if any.
5. A record of any appeals and the outcome of the same.
6. All training materials addressing the prohibition and investigation of childhood sexual assault.

Adopted: 08/01/2024

Amended: 09/16/2024

CSBA

4119.12/4219.12/4319.12

References

Refer to 5145.71 – Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures (AR) when incident/complaint involves a student.