

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 a Fresno County Superintendent of Schools ("FCSS") employee, while in an education program or activity that FCSS exercises substantial control over the context and respondent, was subjected to one or more of the following forms of sexual harassment: (34 CFR 106.30, 106.44)

1. A FCSS employee conditioning the provision of a FCSS aid, benefit or service on a person's participation in unwelcome sexual conduct.
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person's equal access to the FCSS' education program or activity.
3. Sexual assault, dating violence, domestic violence or stalking as defined in 20 USC 1092 or 34 USC 12291.

For conduct that occurred, in whole or in part, between August 1, 2024 and January 9, 2025, or prior to August 14, 2020, the FCSS will determine the appropriate procedures to follow, in accordance with the applicable statutes and regulations governing the alleged conduct based upon when it occurred.

All other complaints alleging sexual harassment brought by or against an FCSS employee shall be investigated and resolved in accordance with Superintendent Policy 4030, Prohibition of Employee Discrimination, Harassment and Retaliation. The determination over which process shall be used to investigate and resolve a complaint shall be made by the FCSS Title IX Coordinator. The Title IX Coordinator shall ensure that all requirements of Superintendent Policy 4030, Prohibition of Employee Discrimination, Harassment and Retaliation, are concurrently met while implementing the Title IX procedure.

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

QUICK LINKS

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

BASIC REQUIREMENTS

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

1. Treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent. The FCSS shall further follow a grievance process in accordance with 34 CFR 106.45 before the imposition of any disciplinary sanctions or other actions that are not supportive measures, as defined in 34 CFR 106.30, against the respondent.

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Remedies following a determination of responsibility for sexual harassment shall be designed to restore or preserve equal access to FCSS' educational program or activity and shall be provided in accordance with the "Remedies" section below.

2. Require an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence, and provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness.
3. Ensure that the Title IX Coordinator, investigator, decisionmaker, or any person that facilitates an informal resolution process, does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent, and that such individuals receive training in accordance with 34 CFR 106.45.
4. Presume that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance procedures.
5. Establish reasonably prompt timeframes for the conclusion of the grievance procedures, including reasonably prompt timeframes for filing and resolving appeals, if any, and informal resolution processes, if appropriate and offered by FCSS.
- 6.
7. The FCSS' procedures shall also include a process that allows for the temporary delay of the grievance procedures or the limited, reasonable extension of timeframes for good cause with written notice to the parties of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.
8. Describe the range, or list, the possible disciplinary sanctions and remedies that FCSS may implement following any determination of responsibility.
9. State whether the standard of evidence to be used to determine responsibility is the preponderance of evidence standard or the clear and convincing evidence standard and apply the same standard of evidence to formal complaints against students and employees and to all formal complaints of sexual harassment.
10. Include the procedures and permissible bases for the complainant and respondent to appeal.
11. Describe the range of supportive measures available to complainants and respondents.
12. Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

Additionally, the FCSS shall not disclose the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy Act statute or regulations, as required by law, or to carry out the purposes of Title IX, including the conduct of any investigation, hearing, or judicial proceeding arising under Title IX. (34 CFR 106.30, 106.71)

REPORTING ALLEGATIONS/FILING A FORMAL COMPLAINT

A FCSS employee who is an alleged victim of sexual harassment may submit a report of sexual harassment to the FCSS Title IX Coordinator using the contact information listed in Superintendent Policy SP 4319.11, Sexual Harassment, or to any other FCSS supervisory or

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management employee, who shall forward the report to the Title IX Coordinator within one workday of receiving the report.

Upon receiving such a report, the Title IX Coordinator shall notify the complainant of the right to file a formal complaint and the process for filing a formal complaint. (34 CFR 106.44)

A formal complaint shall include the complainant's physical or digital signature, or another indication that the complainant is the person filing the complaint. The complaint may be filed with the Title IX Coordinator in person, by mail, or by email. (34 CFR 106.30)

If FCSS has actual knowledge of sexual harassment or allegations of sexual harassment but the alleged victim does not file a formal complaint, the Title IX Coordinator may file a formal complaint, as permitted under the Title IX regulations. In situations when an imminent safety threat exists, the Title IX Coordinator shall file a formal complaint. In cases where the Title IX Coordinator files a formal complaint, the Title IX Coordinator shall provide the alleged victim notices as required by the Title IX regulations at specific points in the complaint process.

SUPPORTIVE MEASURES

Upon receipt of a Title IX sexual harassment report, 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 cost to the complainant or respondent, before or after the filing of a formal complaint or even if no formal complaint has been filed. Such measures shall be nondisciplinary, nonpunitive, and designed to restore or preserve equal access to FCSS' education program or activity without unreasonably burdening the other party. The measures will be designed to protect the safety of all parties or the FCSS' education program or activity without unreasonably burdening the other party, including measures designed to deter sexual harassment. Supportive measures may include, but are not limited to, counseling, extensions of deadlines or other course or work-related adjustments, changes in class or work schedules, campus escort services, mutual restrictions on contact, changes in class or work locations, leaves of absence, increased security, and/or monitoring of certain areas of the campus or FCSS facility. (34 CFR 106.30, 106.44)

FCSS shall maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the FCSS' ability to provide the supportive measures. (34 CFR 106.30)

EMERGENCY REMOVAL

If a 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 a student is the respondent, 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 immediate threat to the physical health or safety of any student or other individual arising from the allegations, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

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Any such removal may not constitute discipline for student record purposes or Superintendent and Board Policy 5144, Discipline. Additionally, 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. (34 CFR 106.44)

DISMISSAL OF COMPLAINT

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. Additionally, the Title IX Coordinator shall dismiss a formal complaint in which the alleged conduct did not occur in the FCSS' education program or activity or did not occur against a person in the United States. In addition, the Title IX Coordinator may dismiss a formal complaint if the complainant notifies FCSS in writing that the complainant would like to withdraw the complaint or any allegations in the complaint, the respondent is no longer enrolled or employed by FCSS, or sufficient circumstances prevent FCSS from gathering evidence sufficient to reach a determination regarding the complaint. (34 CFR 106.45)

Upon dismissal, the Title IX Coordinator shall promptly, and simultaneously to the parties, send written notice of the dismissal and the reasons for the dismissal and shall inform the parties of their right to appeal the dismissal in accordance with the appeal procedures described in the "Appeals" section, below. (34 CFR 106.45)

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

INFORMAL RESOLUTION PROCESS

When a formal complaint of sexual harassment is filed, FCSS may offer an informal resolution process, such as mediation, at any time prior to reaching a determination regarding responsibility. (34 CFR 106.45)

The FCSS shall not require a party to participate in the informal resolution process, or waive the right to an investigation and determination of a formal complaint, nor require such waiver as a condition of enrollment or employment or continuing enrollment or employment. (34 CFR 106.45) As part of an informal resolution, the parties may agree upon discipline without the need for an investigation.

The FCSS may facilitate an informal resolution process provided that FCSS (34 CFR 106.45):

1. Provides the parties with written notice disclosing the allegations; the requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations; the right to withdraw from the informal process and resume the formal complaint process at any time prior to agreeing to a resolution; and any consequences resulting from the informal resolution process, including that records will be maintained or could be shared;
2. Obtains the parties' voluntary, written consent to the informal resolution process; and
3. Does not offer or facilitate an informal resolution process to resolve allegations of an employee sexually harassing a student.

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If a formal complaint is filed, the Title IX Coordinator 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. The allegations potentially constituting sexual harassment with sufficient details known at the time, including, the identity of parties involved in the incident(s), if known, the conduct allegedly constituting sexual 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 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.
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.
5. The prohibition against knowingly making false statements or knowingly submitting false information during the complaint process.

The above notice may also include the name of the investigator, facilitator of an informal process, and decisionmaker, and inform the parties that, if at any time a party has concerns regarding a conflict of interest or bias regarding any of these persons, the party should immediately notify the Title IX Coordinator.

CONSOLIDATION OF COMPLAINTS

When the allegations of sexual harassment arise out of the same facts or circumstances, the FCSS may consolidate formal complaints alleging sexual harassment against more than one respondent; by more than one complainant against one or more respondents; or by one party against another party. (34 CFR 106.45)

INVESTIGATION PROCEDURES

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

1. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
2. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
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.

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4. Not limit the choice or presence of an advisor for either the complainant or respondent in any meeting or grievance proceeding, although FCSS 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.
5. Provide to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings, with sufficient time for the party to prepare to participate.
6. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including evidence that FCSS does not intend to rely on in reaching a determination regarding responsibility and inculpatory and exculpatory evidence whether obtained from a party or other source so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.
7. 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 with at least ten (10) days to submit a written response for the investigator to consider prior to the completion of the investigative report.
8. Create an investigative report that fairly summarizes relevant evidence and, at least ten (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.

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 alleged conduct 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.

Privacy rights of all parties to the complaint shall be maintained in accordance with applicable state and federal laws.

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.

WRITTEN DECISION

The FCSS shall designate an employee as the decisionmaker to determine responsibility for the alleged conduct. The decisionmaker shall not be the Title IX Coordinator or a person involved in the investigation. (34 CFR 106.45)

After the investigative report has been sent to the parties, but before reaching a determination regarding responsibility, the decisionmaker shall afford each party the opportunity to submit written, relevant 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.

The decisionmaker shall issue a written decision, simultaneously provided to both parties, as to the scope of the respondent's responsibility for the alleged conduct, if any. (34 CFR 106.45)

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The written decision shall be issued within 60 calendar days of the complaint's receipt.

The FCSS may extend the timeline for good cause with written notice to the complainant and respondent of the extension and the reasons for the action. (34 CFR 106.45)

In making this determination, the decisionmaker shall use the "preponderance of the evidence" standard for all formal complaints of sexual harassment. The same standard of evidence shall be used for formal complaints against students as for complaints against employees. (34 CFR 106.45)

The written decision shall include the following: (34 CFR 106.45)

1. Identification of the allegations potentially constituting sexual harassment as defined in 34 CFR 106.30.
2. 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 applicable.
3. Findings of fact supporting the determination of responsibility or dismissal.
4. Conclusions regarding the application of the FCSS' code of conduct or policies to the facts.
5. A statement of, and rationale for, the result as to each allegation, including a decision regarding responsibility, any disciplinary sanctions recommended or imposed on the respondent, and whether remedies designed to restore or preserve equal access to the FCSS' educational program or activity will be provided by FCSS to the complainant.
6. FCSS procedures and permissible bases for the complainant and respondent to appeal.

APPEAL OF THE DECISION

Either party may appeal the written 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 was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome, or a conflict of interest or bias by the Title IX Coordinator, investigator(s), or decisionmaker(s) affected the outcome. (34 CFR 106.45)

If an appeal is filed, the FCSS shall: (34 CFR 106.45)

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties.
2. Ensure that the decisionmaker(s) for the appeal is trained in accordance with 34 CFR 106.45 and is not the same decisionmaker(s) who reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.
3. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.
4. Issue a written decision describing the result of the appeal and the rationale for the result.
5. Provide the written decision simultaneously to both parties.

An appeal shall be filed in writing within ten (10) calendar days of receiving the notice of the decision or dismissal, stating the grounds for the appeal and including any relevant documentation

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in support of the appeal. Appeals submitted after this deadline are not timely and shall not be considered.

A written decision shall be provided to the parties within twenty (20) calendar days from the receipt of the appeal.

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 anti-discrimination laws, if applicable.

REMEDIES

When a determination of responsibility for sexual harassment has been made against the respondent, the FCSS shall provide remedies to the complainant, as appropriate. Such remedies may include the same individualized services described in the "Supportive Measures" section, above, but need not be nondisciplinary or nonpunitive and need not avoid burdening the respondent. (34 CFR 106.45)

DISCIPLINARY ACTIONS

The FCSS may impose disciplinary sanctions or other actions after 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 sexual 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.

RECORD-KEEPING

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

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.
2. A record of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment, including FCSS' basis for its conclusion that its response was not deliberately 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.
3. All materials used to train the Title IX Coordinator, investigator(s), decisionmaker(s), and any person who facilitates an informal resolution process. The FCSS shall make such training materials publicly available on its website.

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

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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.

Additionally, the FCSS or designee shall indefinitely maintain a record of insurance which evidences the agency's coverage for acts of sexual assault.

Adopted: 08/01/2024

Amended: 09/16/2024, 07/30/2025

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.