Butte County Office of Education
SUPERINTENDENT POLICIES AND ADMINISTRATIVE REGULATIONS

AR 5145.71
Title IX Sexual Harassment Complaint Procedures

The complaint procedures described in this administrative regulation shall be used to address any complaint governed by Title IX of the Education Amendments of 1972 alleging that a Butte County Office of Education (BCOE) student, while in an education program or activity in which a BCOE school exercises substantial control over the context and respondent, was subjected to one or more of the following forms of sexual harassment:

1. A BCOE employee conditioning the provision of a BCOE aid, benefit, or service on the student'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 student equal access to BCOE's education program or activity
3. Sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 or 34 USC 12291

For a complaint governed by Title IX based on conduct that occurred, in whole or in part, between August 1, 2024 and January 9, 2025, or prior to August 14, 2020, the Title IX Coordinator shall consult with BCOE legal-counsel to determine which procedures to use.

All other sexual harassment complaints brought by or on behalf of students shall be investigated and responded to pursuant to AR 1312.3 - Uniform Complaint Procedures. The determination over which process shall be used to investigate and resolve a complaint shall be made by BCOE's Title IX Coordinator.

The Title IX Coordinator shall ensure that all requirements and timelines for Superintendent's Policy/Administrative Regulation 1312.3 – Uniform Complaint Procedures are concurrently met while implementing the Title IX procedure.

The County Superintendent or designee shall ensure that the Title IX Coordinator, investigator, decisionmaker, or a facilitator of an informal 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 persons receive training in accordance with 34 CFR 106.45

Reporting Allegations/Filing a Formal Complaint
A student who is the alleged victim of sexual harassment or the student's parent/guardian may submit a report of sexual harassment to BCOE's Title IX Coordinator using the contact information listed in Administration Regulation 5145.7 – Sexual Harassment, or to any other available school 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 inform the complainant of the process for filing a formal complaint.

Even if the alleged victim chooses not to file a formal complaint, the Title IX Coordinator may file a formal complaint as permitted under the Title IX regulations. In such cases, the alleged victim is not a party to the case, but will receive notices as required by the Title IX regulations at specific points in the complaint process.

A formal complaint, with the complainant's physical or digital signature or another indication that the complainant is the person filing the complaint, may be filed with the Title IX Coordinator in person, by mail, by email, or by any other method authorized by BCOE.

Supportive Measures
Upon receipt of a report of Title IX sexual harassment, even if a formal complaint is not filed, the Title IX Coordinator shall promptly contact the complainant to discuss the availability of supportive measures and shall consider the complainant's wishes with respect to the supportive measures implemented.

Supportive measures shall be offered as appropriate, as reasonably available, and without charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures shall be non-disciplinary, nonpunitive, and designed to restore or preserve equal access to the education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the educational environment or to deter sexual harassment. Supportive measures may include, but are not limited to, counseling, course-related adjustments, modifications of class schedules, mutual restrictions on contact, increased security, and monitoring of certain areas of the campus.

BCOE shall maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair BCOE's ability to provide the supportive measures.

Emergency Removal from School
A student shall not be disciplined for alleged sexual harassment under Title IX until the investigation has been completed. However, on an emergency basis, BCOE may remove a student from BCOE's education program or activity, provided that BCOE 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 student with notice and an opportunity to challenge the decision immediately following the removal. This authority to remove a student does not modify a student's rights under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973.

If a BCOE employee is the respondent, the employee may be placed on administrative leave during the pendency of the formal complaint process.

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. The Title IX Coordinator shall also dismiss any complaint that did not occur in BCOE's education program or activity or did not occur against a person in the United States. The Title IX Coordinator may also dismiss a formal complaint if the complainant notifies BCOE 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 BCOE, or sufficient circumstances prevent BCOE from gathering evidence sufficient to reach a determination with regard to the complaint.

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 them of their right to appeal the dismissal of a formal complaint or any allegation in the complaint in accordance with the appeal procedures described in the section "Appeals" below.

If a complaint is dismissed on the grounds that the alleged conduct does not constitute sexual harassment as defined in 34 CFR 106.30, the conduct may still be addressed pursuant to SP/AR 1312.3 - Uniform Complaint Procedures as applicable.

Informal Resolution Process
When a formal complaint of sexual harassment is filed, BCOE may offer an informal resolution process such as mediation, at any time prior to reaching a determination regarding responsibility. BCOE shall not require a party to participate in the informal resolution process or to waive the right to an investigation and adjudication of a formal complaint.

BCOE may facilitate an informal resolution process provided that BCOE:

1. Provides the parties with written notice disclosing the allegations, the requirements of the informal resolution process, the right to withdraw from the informal process and resume the formal complaint process, and any

consequences resulting from participating in the informal resolution process, including that records will be maintained or could be shared.
2. Obtains the parties' voluntary, written consent to the informal resolution process
3. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student

Formal Complaint Process
If a formal complaint is filed, the Title IX Coordinator shall provide the known parties with written notice of the following:

1. BCOE's complaint process, as set forth in this Administrative Regulation (AR 5145.71) 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 if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident if known. Such notice shall be provided with sufficient time for the parties to prepare a response before any initial interview.

   If, during the course of the investigation, BCOE investigates allegations 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 shall also include the name of the investigator, facilitator of an informal process, and decision-maker and shall provide either party with no less than three calendar days to raise concerns of conflict of interest or bias regarding any of these persons.

Consolidation of Complaints
When the allegations of sexual harassment arise out of the same facts or circumstances, BCOE 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.

Investigation Procedures
During the investigation process, BCOE shall pursuant to 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
4. Not limit the choice or presence of an advisor for either the complainant or respondent in any meeting or grievance proceeding, although BCOE 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. Send in an electronic format or hard copy to both parties and their advisors, if any, the evidence that is directly related to the allegations raised in the complaint, and provide the parties at least 10 days to submit a written response for the investigator to consider prior to the completion of the investigative report
7. Objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence, and determine credibility in a manner that is not based on a person's status as a complainant, respondent, or witness
8. Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to the determination of responsibility, send to the parties and their advisors, if any, the investigative report in an electronic format or a hard copy, for their review and written response
9. After sending the investigative report to the parties and before reaching a determination regarding responsibility, 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

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged by the complainant or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

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 County Superintendent shall designate an employee as the decision-maker to determine responsibility for the alleged conduct, who shall not be the Title IX Coordinator or a person involved in the investigation of the matter.

The decision-maker shall issue, and simultaneously provide to both parties, a written decision as to whether the respondent is responsible for the alleged conduct.

The written decision shall be issued within 45 calendar days of the receipt of the complaint.

The timeline may be temporarily extended for good cause with written notice to the complainant and respondent of the extension and the reasons for the action.

In making this determination, BCOE 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.

The written decision shall include the following:
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, and methods used to gather other evidence
3. Findings of fact supporting the determination
4. Conclusions regarding the application of BCOE's code of conduct to the facts
5. A statement of, and rationale for, the result as to each allegation, including a decision regarding responsibility, any disciplinary sanctions BCOE imposes on the respondent, and whether remedies designed to restore or preserve equal access to BCOE's educational program or activity will be provided by BCOE to the complainant
6. BCOE's procedures and permissible bases for the complainant and respondent to appeal

Appeals
Either party may appeal BCOE's decision or dismissal of a formal complaint or any allegation in the complaint, if the party believes that a procedural irregularity affected the outcome, new evidence is available that could affect the outcome, or a conflict of interest or bias by the Title IX Coordinator, investigator(s), or decision-maker(s) affected the outcome. If an appeal is filed, BCOE shall:

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties
2. Ensure that the decision-maker(s) for the appeal is trained in accordance with 34 CFR 106.45 and is not the same decision-maker(s) who reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator
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 must be filed in writing within 10 calendar days of receiving the determination, stating the grounds for the appeal and including any relevant documentation in support of the appeal. Appeals submitted after this deadline are not timely and shall not be considered. Either party has the right to file a complaint with the U.S. Department of Education's Office for Civil Rights.

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

Remedies
When a determination of responsibility for sexual harassment has been made against the respondent, BCOE shall provide remedies to the complainant. Such remedies may include the same individualized services described above in the section "Supportive Measures," but need not be non-disciplinary or nonpunitive and need not avoid burdening the respondent.

Corrective/Disciplinary Actions
BCOE 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)

For students in grades 4-12, discipline for sexual harassment may include suspension and/or expulsion. After the completion of the complaint procedure, if it is determined that a student at any grade level has committed sexual assault or sexual battery at school or at a school activity off school grounds, the Division Superintendent or principal shall immediately suspend the student and shall recommend expulsion to the County Superintendent pursuant to SP 5144.1 – Suspension and Expulsion/Due Process.

Other actions that may be taken with a student who is determined to be responsible for sexual harassment include, but are not limited to:

1. Transfer from a class or school as permitted by law
2. Parent/guardian conference
3. Education of the student regarding the impact of the conduct on others
4. Positive behavior support
5. Denial of participation in extracurricular or cocurricular activities or other privileges as permitted by law

When an employee is found to have committed sexual harassment or retaliation, BCOE shall take appropriate disciplinary action, up to and including dismissal, in accordance with applicable law and collective bargaining agreement.

Record-Keeping

The County Superintendent or designee shall maintain for a period of seven years:

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, any appeal or informal resolution and the results therefrom, and responses made.
2. A record of any actions, including supportive measures taken in response to a report or formal complaint of sexual harassment including why BCOE's 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 the light of the known circumstances
3. All materials used to train the Title IX Coordinator, investigator(s), decision-maker(s), and any person who facilitates an informal resolution process. BCOE shall make such training materials publicly available on its web site.

For complaints containing allegations of childhood sexual assault, the County Superintendent or designee shall also indefinitely maintain the following:

1. A record of the allegations
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 County Superintendent or designee shall indefinitely maintain a record of insurance which evidences BCOE's coverage for acts of sexual assault.

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