

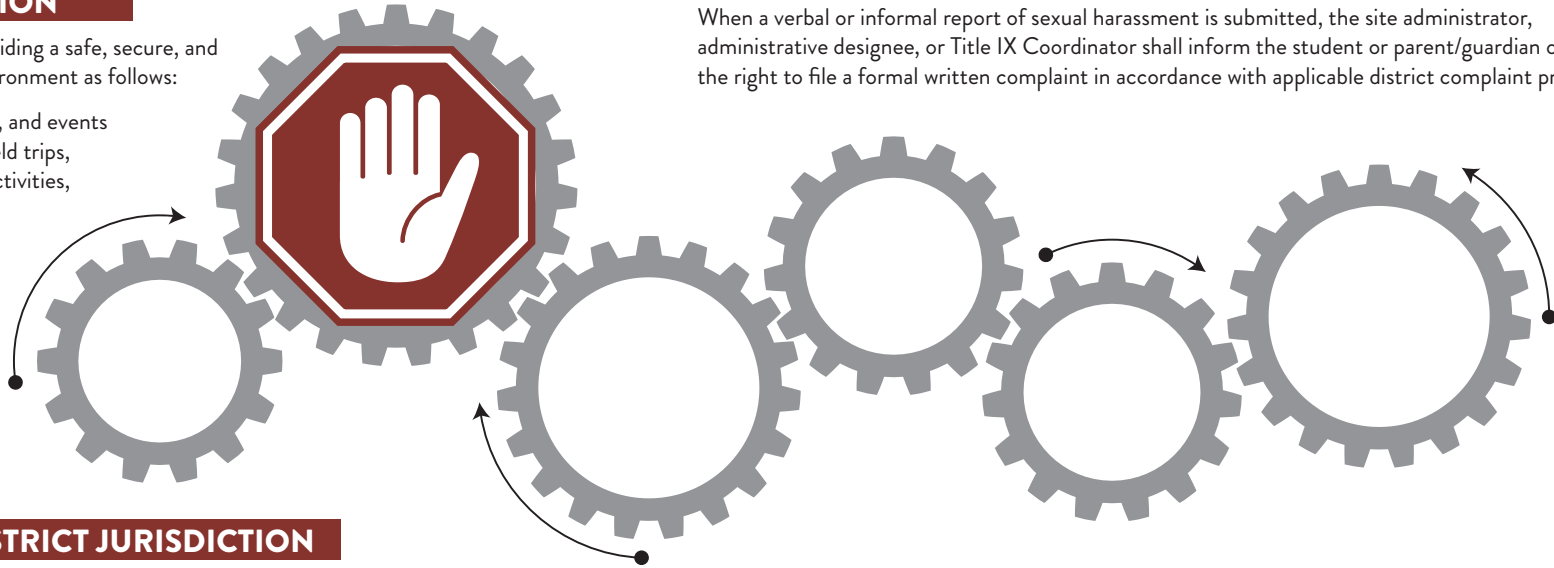
TITLE IX SEXUAL HARASSMENT: LAW & POLICY 2020-2021

Title IX of the Education Amendments of 1972 states, “No person...shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.

DISTRICT JURISDICTION

The District is responsible for providing a safe, secure, and hostile free learning and work environment as follows:

1. On-campus programs, activities, and events
2. Off-campus sporting events, field trips, and all educational programs, activities, and events.
3. Lunch
4. Students coming to and from school.



EXCEPTIONS TO DISTRICT JURISDICTION

When a report or complaint of sexual harassment involves off-campus conduct, the Title IX Coordinator shall assess whether the conduct may have a continuing effect on or create or contribute to the creation of a hostile school environment to the target of the conduct. If the Title IX Coordinator determines that a hostile environment may be created, the complaint shall be investigated and resolved in the same manner as if the prohibited conduct occurred at school.

DEFINING SEXUAL ASSAULT

Sexual assault is an umbrella term that can broadly be defined as the unwanted and nonconsensual touch of another person’s intimate body parts, for the purpose of sexual arousal, gratification, or abuse. The unwanted touch is against the will of that person, or while that person is unlawfully restrained by the accused or an accomplice, or the unwanted touch is against a disabled, unconscious, or medically incapacitated person.

When sexual assault leads to nonconsensual intercourse, it is charged as a rape.

REPORTING OF SEXUAL HARASSMENT

Any school employee who observes an incident of sexual harassment involving a student shall, within one school day, report the observation to the principal or Title IX Coordinator. The report shall be made regardless of whether the alleged victim files a formal complaint or requests confidentiality.

STUDENTS AND PARENTS RIGHTS TO FILE A COMPLAINT

When a verbal or informal report of sexual harassment is submitted, the site administrator, administrative designee, or Title IX Coordinator shall inform the student or parent/guardian of the right to file a formal written complaint in accordance with applicable district complaint procedures.

NEW DEFINITION OF SEXUAL HARASSMENT UNDER TITLE IX

As of August 14, 2020, the definition of sexual harassment, under federal law Title IX, has been amended as follows:

1. Quid Pro Quo (Something for Something): A ‘district employee’ conditioning the provision of a district aid, benefit, or service on the student’s participation in unwelcome sexual conduct.
2. Hostile Environment: Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a student equal access to the district’s education program or activity.
3. Severe: Sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 or 34 USC 12291

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EMPLOYEE RESPONSIBILITY TO INTERVENE

Any school employee who witnesses an incident of unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, shall immediately intervene to stop the incident when it is safe to do so. (Education Code 234.1)

STATUTE OF LIMITATIONS

Complaints involving sexual harassment, as defined under the Title IX regulations, are not limited to the six months statutes of limitations.

CIVIL LIABILITY

Assembly Bill 218 would increase the statute of limitations, allowing victims of childhood sexual assault, another 22 years from the age of majority – or until the age of 40 – to file a claim.

CRIMINAL LIABILITY

Under California Law, for sex crimes committed against children on or after January 1, 2017, claims may commence at any time.

DISCIPLINE MEASURES

Pursuant to Education Code 48900.2, a student in grades 4-12 may be suspended and/or expelled from school for sexual harassment. Districts should also note that Education Code 48915(c) requires the Superintendent or designee to recommend expulsion for any student, irrespective of grade, who commits sexual assault or battery as defined in the Penal Code.

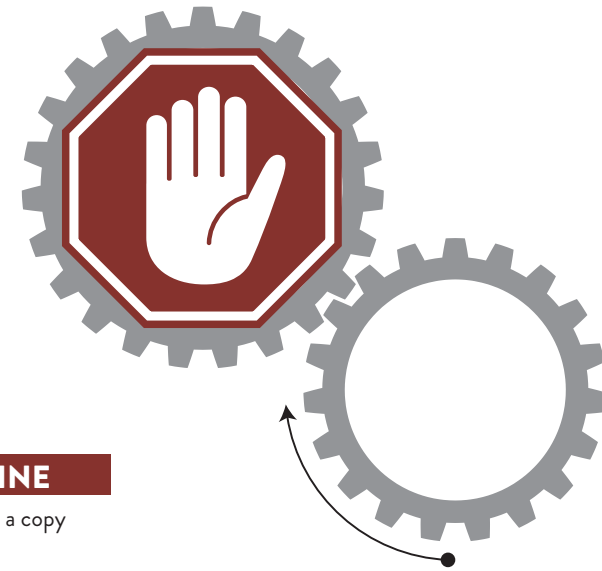
SUPPORTIVE MEASURES

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. Supportive measures may include the following: counseling, course-related adjustments, modifications of class schedules, mutual restrictions on contact, increased security, and monitoring of certain areas of the campus.

EMERGENCY REMOVAL

Prior to the completion of an investigation, the District may remove a student from the District's education program or activity, provided that the District 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. (34 CFR 106.44)

DISTRICT CIVIL RIGHTS & COMPLIANCE OFFICE • 510.486.9338 • COMPLAINTS@BERKELEY.NET



COMPLAINT PROCESS TIMELINE

1. All complaints received are timestamped, and a copy is provided to the complainant.
2. Within 5 days, the complainant will receive an "Acknowledgment Letter" outlining the complaint allegations.
3. An investigator will review related documents, interview the complainant, the respondent, and all witnesses.
4. Within 60 days, the complainant will receive a "Letter of Findings" with facts, analysis, and a decision, along with appeal information.

HOW TO APPEAL

A Title IX Sexual Harassment complaint may be appealed within 10 calendars to:

Berkeley Unified School District
2020 Bonar Street, Suite 321, Berkeley CA. 94702
Attention: Dr. Brent Stephens, Superintendent
Superintendent@berkeley.net

WHO TO CONTACT FOR HELP?

Stephen Jimenez-Robb, Title IX Coordinator
Berkeley Unified School District
2020 Bonar Street, Room 117, Berkeley, CA 94702
(510) 486-9338 / complaints@berkeley.net

Click Link to access Title IX Complaint Form