

# MODESTO CITY SCHOOLS

## Administrative Regulation

AR 5145.3

### STUDENTS

#### Nondiscrimination/Harassment

The Board of Education is committed to equal opportunity for all individuals in education. District programs and activities shall be free from unlawful discrimination targeting a student, including discriminatory harassment, intimidation, or bullying, based on the student's actual or perceived race, color, ancestry, nationality, national origin, language, immigration status, ethnic group identification, ethnicity, age, religion, marital status, pregnancy, parental status, economic status, physical or mental disability, medical condition, sex, sexual orientation, gender, gender identity, gender expression, or genetic information, or any other legally protected status or association with a person or group with one or more of these actual or perceived characteristics. This policy shall apply to all acts related to school activity or school attendance occurring within a District school under the jurisdiction of the Superintendent of Modesto City Schools. The Board is committed to the “Principles of Rights, Responsibilities, and Respect to Ensure a Safe School Environment.”

#### Purpose of Complaint Procedure

The purpose of the complaint procedures is to ensure that no student shall be subjected to discrimination, intimidation, bullying, and/or harassment under any program, activity or service offered by the District.

*(cf. 1312.1 – Complaints Concerning District Employees) (N/A)*

*(cf. 1312.1 – Complaints Concerning School Personnel)*

*(cf. 1312.3 – Uniform Complaint Procedures)*

#### Complaint Coordinators

The district designates the individual(s) identified below as the employee(s) responsible for coordinating the district's efforts to comply with applicable state and federal civil rights laws, including Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, and the Age Discrimination Act of 1975, and to answer inquiries regarding the district's nondiscrimination policies. The individual(s) shall also serve as the compliance officer(s) specified in AR 1312.3 - Uniform Complaint Procedures:

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1. The Associate Superintendent, Educational Services is the Title IX Compliance Officer for student-to-student harassment, intimidation, bullying, and/or discrimination and is designated by the District to receive and process complaints under this procedure. The Associate Superintendent, Educational Services is also the District's Equity Officer. The Associate Superintendent, Educational Services can be reached at:

Modesto City Schools District Office  
426 Locust Street  
Modesto, CA 95351  
Phone: (209) 492-1454  
Email: Goudeau.B@monet.k12.ca.us

2. The Associate Superintendent, Human Resources is the Title IX Compliance Officer for any student harassment and/or discrimination complaints involving employees of the District either engaging in, or being the victim of harassment, intimidation, bullying, and/or discrimination. The Associate Superintendent can be reached at:

Modesto City Schools District Office  
426 Locust Street  
Modesto, CA 95351  
Phone: (209) 492-3122  
Email: Henderson.M@monet.k12.ca.us

3. The Associate Superintendent, Student Support Services is the Compliance Officer for any student complaints related to Section 504 of the Rehabilitation Act of 1973, or Title II of the Americans with Disabilities Act. The Associate Superintendent can be reached at:

Modesto City Schools District Office  
426 Locust Street  
Modesto, CA 95351  
Phone: (209) 574-1605  
Email: Herbst.M@monet.k12.ca.us

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#### **Definition of Terms**

1. Complainant – A student and/or the student’s parent/guardian who believes the student has been discriminated, intimidated, bullied, and/or harassed.
2. Respondent – The individual who allegedly discriminated, intimidated, bullied, and/or harassed the complainant.
3. Discrimination/intimidation/bullying/harassment – Discriminatory harassment, intimidation, or bullying, may result from physical, verbal, nonverbal, or written conduct, when committed based on any of the categories listed above. Unlawful discrimination also includes the creation of a hostile environment through prohibited conduct that 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 performance; or otherwise adversely affects a student's educational opportunities. 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.

#### **Measures to Prevent Discrimination**

To prevent unlawful discrimination, including discriminatory harassment, intimidation, retaliation, and bullying of students at district schools or in school activities and to ensure equal access of all students to the educational program, the Superintendent or designee shall implement the following measures:

1. Publicize the district's nondiscrimination policy and related complaint procedures, including the compliance officer's contact information, to students, parents/guardians, employees, volunteers, and the general public by posting them on the district's web site and other prominent locations and providing easy access to them through district-supported social media, when available.

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2. Post in a prominent and conspicuous location on the district and school web sites information regarding Title IX prohibitions against discrimination based on a student's sex, gender, gender identity, pregnancy, and parental status, including the following: (Education Code 221.61)
  - a. The name and contact information of the district's Title IX Compliance Officer, including the phone number and email address
  - b. The rights of students and the public and the responsibilities of the district under Title IX, including a list of rights as specified in Education Code 221.8 and web links to information about those rights and responsibilities located on the web sites of the Office for Equal Opportunity and the U.S. Department of Education's Office for Civil Rights (OCR)
  - c. A description of how to file a complaint of noncompliance with Title IX in accordance with AR 1312.3 - Uniform Complaint Procedures

*(cf. 1113 – District and School Web Sites) (N/A)*

*(cf. 1113 – District, School, Staff and Student Websites)*

*(cf. 1114 – District-Sponsored Social Media)*

3. Annually notify all students and parents/guardians of the district's nondiscrimination policy, including its responsibility to provide a safe, nondiscriminatory school environment for all students. The notice shall inform students and parents/guardians that they may request to meet with the compliance officer to determine how best to accommodate or resolve concerns that may arise from the district's implementation of its nondiscrimination policies. The notice shall also inform all students and parents/guardians that, to the extent possible, the district will address any individual student's interests and concerns in private.

*(cf. 5145.6 – Parental Notifications) (N/A)*

4. The Superintendent or designee shall ensure that students and parents/guardians, including those with limited English proficiency, are notified of how to access the relevant information provided in the district's nondiscrimination policy and related complaint procedures, notices, and forms in a language they can understand.

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If 15 percent or more of students enrolled in a particular district school speak a single primary language other than English, the district's policy, regulation, forms, and notices concerning nondiscrimination shall be translated into that language in accordance with Education Code 234.1 and 48985. In all other instances, the district shall ensure meaningful access to all relevant information for parents/guardians with limited English proficiency.

5. Provide to students and employees information regarding the district's nondiscrimination policy; what constitutes prohibited discrimination, including discriminatory harassment, intimidation, retaliation, or bullying and how/to whom a report of an incident should be made.

*(cf. 1240 – Volunteer Assistance)*  
*(cf. 4131 – Staff Development) (N/A)*  
*(cf. 4231 – Staff Development) (N/A)*  
*(cf. 4331 – Staff Development) (N/A)*  
*(cf. 4131/4231/4331 – Staff Development)*

6. At the beginning of each school year, inform school employees that any employee who witnesses any act of unlawful discrimination, including discriminatory harassment, intimidation, or bullying, against a student is required to intervene if it is safe to do so. (Education Code 234.1)
7. At the beginning of each school year, inform each principal or designee of the district's responsibility to provide appropriate assistance or resources to protect students from threatened or potentially discriminatory behavior and ensure their privacy rights.

**Reporting Procedures**

Any student, or the student's parent/guardian, who believes that he/she has been the victim of unlawful harassment, intimidation, bullying, and/or discrimination should immediately contact a school site administrator or other District administrator. Any District employee who observes conduct that may constitute harassment, intimidation, bullying, and/or discrimination toward any person shall immediately intervene when safe to do so (Education Code 234.1). The employee shall report the alleged acts immediately to an appropriate District official designated by this policy. In addition, any student who observes any such incident is strongly encouraged to report the incident to the principal or compliance officer, whether or not the alleged victim files a complaint.

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1. At Each School Site: The principal/designee is the person responsible for receiving oral or written reports of harassment, intimidation, bullying, and/or discrimination at the school level.

Once notified verbally or in writing, the principal/designee shall begin the investigation and shall implement immediate measures necessary to stop the discrimination and ensure that all students have access to the educational program and a safe school environment. Any interim measures adopted to address unlawful discrimination shall, to the extent possible, not disadvantage the complainant or a student who is the victim of the alleged unlawful discrimination.

A written statement, and/or any submitted Uniform Complaint forms, will be forwarded by the principal/designee to the Associate Superintendent, Educational Services; the Associate Superintendent, Human Resources; or the Associate Superintendent, Student Support Services. If the complaint involves the principal/designee, the complaint shall be filed directly with the Associate Superintendent, Human Resources.

2. In the District: The Associate Superintendent, Human Resources; the Associate Superintendent, Educational Services; and the Associate Superintendent, Student Support Services are designated as the District administrators who shall receive reports or complaints of harassment, intimidation, bullying, and/or discrimination.

The Board of Education hereby designates the Superintendent to hear any complaint against the Associate Superintendent, Educational Services; the Associate Superintendent, Human Resources; and the Associate Superintendent, Student Support Services. If the complaint involves the Superintendent, the complaint shall be filed directly with the Board of Education.

*(cf. 5141.4 – Child Abuse Prevention and Reporting)*

3. Submission of a complaint or report of harassment, intimidation, bullying, and/or discrimination will not affect the complainant or reporter's future employment, grades, or work assignments.

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4. Use of formal reporting forms is mandatory.
5. The District will respect the privacy of the complainant, the individual(s) against whom the complaint is filed, and the witnesses as much as possible. Nevertheless, the District is legally obligated to investigate and take appropriate actions.
6. The appropriate Equity Officer or Title IX Compliance Officer shall maintain a record keeping system to oversee the processing of harassment, intimidation, bullying, and/or discrimination complaints in order to monitor and track the receipt, investigation, and remedial action taken in response to complaints.

### **Investigation**

1. The Associate Superintendent, Educational Services; the Associate Superintendent, Human Resources; and the Associate Superintendent, Student Support Services will designate either a Senior Director or other supervisor to conduct the investigation of harassment and/or discrimination complaints.
2. For school site complaints not satisfactorily resolved at the site level, they may be appealed to the site administrator's supervisor. Upon receipt of a report or complaint alleging harassment, intimidation, bullying, and/or discrimination, the appropriate Equity Officer or Title IX Compliance Officer may designate a Senior Director or other appropriate supervisor to conduct a review of the appealed complaint. The designated Senior Director, or other appropriate supervisor, shall either validate the school site investigation or authorize further investigations.
3. An investigation may consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and others who may have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. An investigation may also consist of any other methods, including document collection, deemed pertinent by the investigator.

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4. An investigation will determine whether the allegations of harassment, intimidation, bullying, and/or discrimination were or were not substantiated based upon a preponderance of the evidence. If there is sufficient evidence to make a determination, the scope and severity of the behavior, identity of the perpetrator(s) if possible and, the harm to the victim(s) if any shall be documented.
5. In determining whether alleged conduct constitutes a violation of this policy, the District will consider the circumstances, the nature of the behavior, past incidents, patterns of behavior, the relationships between the parties, and the context in which the alleged incidents occurred.
6. The District may take immediate steps, at its discretion, to protect the complainant, pupils, teachers, administrators or other school personnel pending completion of an investigation of alleged harassment, intimidation, bullying and/or discrimination. The investigation will be completed as soon as practical and within any applicable Uniform Complaint Procedure timeframes.
7. Upon completion of the investigation, a written determination shall be made indicating whether the allegations have been substantiated as factual and whether they are violations of this policy. The written determination shall be signed by the appropriate Equity and/or Title IX Compliance Officer.

### **District Action**

1. Upon completion of the investigation, if the District determines that action is necessary to resolve the complaint, the District will take appropriate action.
2. The result of the District's investigation of any complaint filed under these procedures will be reported in writing by the District to the complainant.
3. Complainants who disagree with the findings or action taken as a result of their complaint may appeal in writing to the Superintendent/designee. For complaints determined to have been covered under the Uniform Complaint Procedures, the appeals process under AR 1312.3 will be followed.

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#### Enforcement of District Policy

The Superintendent or designee shall take appropriate actions to reinforce BP 5145.3 – Nondiscrimination in District Programs and Activities. As needed, these actions may include any of the following:

1. Removing vulgar or offending graffiti

*(cf. 5131.5 – Vandalism and Graffiti) (N/A)*

2. Disseminating and/or summarizing the district's policy and regulation regarding unlawful discrimination

*(cf. 4112.6/4212.6/4312.6 – Personnel Files)*

*(cf. 4119.23/4219.23/4319.23 – Unauthorized Release of Confidential/Privileged Information) N/A*

*(cf. 4119.12/4219.12/4319.12 – Release of Employee Information)*

*(cf. 5125 – Student Records) (N/A)*

*(cf. 5125 – Student Records; Confidentiality)*

3. Taking appropriate disciplinary action against students, employees, and anyone determined to have engaged in wrongdoing in violation of district policy, including any student who is found to have filed a complaint of discrimination that he/she knew was not true

*(cf. 4118 – Dismissal/Suspension/Disciplinary Action) (N/A)*

*(cf. 4218 – Dismissal/Suspension/Disciplinary Action) (N/A)*

*(cf. 5144 – Discipline) (N/A)*

*(cf. 5144.1 – Suspension and Expulsion/Due Process) (N/A)*

*(cf. 5144.2 – Suspension and Expulsion/Due Process (Students with Disabilities)) (N/A)*

*(cf. 5132.1 – Suspension and Expulsion/Due Process (Pupils with Previously Identified Exceptional Needs))*

*(cf. 6159.4 – Behavioral Interventions for Special Education Students) (N/A)*

#### Reprisal

The District will take appropriate action against any student/employee who retaliates against any person who reports alleged harassment, intimidation, bullying, and/or discrimination or any student/employee who testifies, assists or participates in an investigation, or who testifies, assists or participates in a proceeding or hearing relating to such harassment. (Retaliation includes, but is not limited to, any form of intimidation, bullying, reprisal, or harassment.)

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#### Right to Alternative Complaint Procedures

These procedures do not deny the right of any individual to pursue other avenues of recourse which may include filing charges with other agencies, initiating civil action or seeking redress under State criminal statutes and/or Federal law. Individuals may also pursue complaints under the District's Uniform Complaint Procedures (Board Policy 1312.3) if they chose not to file under this complaint procedure. A copy of this policy is available at any school or at the District.

#### False Reports

It is a violation of this policy to knowingly report false allegations of harassment, intimidation, bullying, and/or discrimination. Employees/students found to knowingly report or corroborate false allegations would be subject to appropriate discipline and/or legal action.

#### Dissemination of Policy

1. This policy or a summary shall be conspicuously posted throughout the District's facilities in areas accessible to pupils, staff, parents, and community members.
2. This policy shall appear in the Student Conduct Code. The policy will also be distributed to all staff and faculty.

#### Transgender and Gender-Nonconforming Students

##### Definition of Terms

1. Gender identity – The student's gender-related identity, appearance, or behavior as determined from the student's internal sense of his/her gender, whether or not that gender-related identity, appearance, or behavior is different from that traditionally associated with the student's physiology or assigned sex at birth.
2. Gender expression – A student's gender-related appearance and behavior, whether stereotypically associated with the student's assigned sex at birth. (Education Code 210.7)

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3. Gender transition – The process in which a student changes from living and identifying as the sex assigned to the student at birth to living and identifying as the sex that corresponds to the student's gender identity.
4. Gender-nonconforming student – A student whose gender expression differs from stereotypical expectations.
5. Transgender student – A student whose gender identity is different from the gender he/she was assigned at birth.

Regardless of whether they are sexual in nature, acts of verbal, nonverbal, or physical aggression, intimidation, or hostility that are based on sex, gender identity, or gender expression, or that have the purpose or effect of producing a negative impact on the student's academic performance or of creating an intimidating, hostile, or offensive educational environment are prohibited. Examples of the types of conduct which are prohibited in the district and which may constitute gender-based harassment include, but are not limited to:

1. Refusing to address a student by a name and the pronouns consistent with his/her gender identity.
2. Disciplining or disparaging a student or excluding him/her from participating in activities for behavior or appearance that is consistent with his/her gender identity or that does not conform to stereotypical notions of masculinity or femininity, as applicable.
3. Blocking a student's entry to the restroom that corresponds to his/her gender identity.
4. Taunting a student because he/she participates in an athletic activity more typically favored by a student of the other sex.
5. Revealing a student's transgender status to individuals who do not have a legitimate need for the information, without the student's consent.
6. Use of gender-specific slurs.
7. Physical assault of a student motivated by hostility toward him/her because of his/her gender, gender identity, or gender expression.

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The district's uniform complaint procedures (AR 1312.3) shall be used to report and resolve complaints alleging discrimination against transgender and gender-nonconforming students.

To ensure that transgender and gender-nonconforming students are afforded the same rights, benefits, and protections provided to all students by law and Board policy, the district shall address each situation on a case-by-case basis, in accordance with the following guidelines:

1. **Right to privacy:** A student's transgender or gender-nonconforming status is his/her private information and the district shall only disclose the information to others with the student's prior written consent, except when the disclosure is otherwise required by law or when the district has compelling evidence that disclosure is necessary to preserve the student's physical or mental well-being. In any case, the district shall only allow disclosure of a student's personally identifiable information to employees with a legitimate educational interest as determined by the district pursuant to 34 CFR 99.31. Any district employee to whom a student's transgender or gender-nonconforming status is disclosed shall keep the student's information confidential. When disclosure of a student's gender identity is made to a district employee by a student, the employee shall seek the student's permission to notify the compliance officer. If the student refuses to give permission, the employee shall keep the student's information confidential, unless he/she is required to disclose or report the student's information pursuant to this administrative regulation and shall inform the student that honoring the student's request may limit the district's ability to meet the student's needs related to his/her status as a transgender or gender-nonconforming student. If the student permits the employee to notify the compliance officer, the employee shall do so.

As appropriate given the student's need for support, the compliance officer may discuss with the student any need to disclose the student's transgender or gender-nonconformity status or gender identity or gender expression to his/her parents/guardians and/or others, including other students, teacher(s), or other adults on campus. The district shall offer support services, such as counseling, to students who wish to inform their parents/guardians of their status and desire assistance in doing so.

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*(cf. 1340 – Access to District Records)*

*(cf. 3580 – District Records) (N/A)*

2. **Determining a Student's Gender Identity:** The compliance officer shall accept the student's assertion of his/her gender identity and begin to treat the student consistent with his/her gender identity unless district personnel present a credible and supportable basis for believing that the student's assertion is for an improper purpose.
3. **Addressing a Student's Transition Needs:** The compliance officer shall arrange a meeting with the student and, if appropriate, his/her parents/guardians to identify and develop strategies for ensuring that the student's access to education programs and activities is maintained. The meeting shall discuss the transgender or gender-nonconforming student's rights and how those rights may affect and be affected by the rights of other students and shall address specific subjects related to the student's access to facilities and to academic or educational support programs, services, or activities, including, but not limited to, sports and other competitive endeavors. In addition, the compliance officer shall identify specific school site employee(s) to whom the student may report any problem related to his/her status as a transgender or gender- nonconforming individual, so that prompt action can be taken to address it. Alternatively, if appropriate and desired by the student, the school may form a support team for the student that will meet periodically to assess whether the arrangements for the student are meeting his/her educational needs and providing equal access to programs and activities, educate appropriate staff about the student's transition, and serve as a resource to the student to better protect the student from gender-based discrimination.
4. **Accessibility to Sex-Segregated Facilities, Programs, and Activities:** When the district maintains sex-segregated facilities, such as restrooms and locker rooms, or offers sex-segregated programs and activities, such as physical education classes, intermural sports, and interscholastic athletic programs, students shall be permitted to access facilities and participate in programs and activities consistent with their gender identity. To address any student's privacy concerns in using sex-segregated facilities, the district shall offer available options such as a gender-neutral or single-use restroom or changing area, a bathroom stall with a door, an area in the locker room separated by a curtain or screen, access to a staff member's office, or use of the locker room

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before or after the other students. However, the district shall not require a student to utilize these options because he/she is transgender or gender-nonconforming. In addition, a student shall be permitted to participate in accordance with his/her gender identity in other circumstances where students are separated by gender, such as for class discussions, yearbook pictures, and field trips. A student's right to participate in a sex-segregated activity in accordance with his/her gender identity shall not render invalid or inapplicable any other eligibility rule established for participation in the activity. (Education Code 221.5(f); U.S. Department of Education, Office for Civil Rights; U.S. Department of Justice, Civil Rights Division (2016, May 13). Dear colleague letter on transgender students; and California Department of Fair Employment and Housing Frequently Asked Questions (April 25, 2018): School Success and Opportunity Act (Assembly Bill 1266))

*(cf. 6145 – Extracurricular and Cocurricular Activities) (N/A)*

*(cf. 6145 – Extracurricular Activities, 7-12)*

*(cf. 6145.2 – Athletic Competition) (N/A)*

*(cf. 6153 – School-Sponsored Trips) (N/A)*

*(cf. 6153 – Field Trips)*

*(cf. 7110 – Facilities Master Plan) (N/A)*

5. Student Records: A student's legal name or gender as entered on the mandatory student record required pursuant to 5 CCR 432 shall only be changed with proper documentation. However, at the written request of a student or, if appropriate, his/her parents/guardians, the district shall use the student's preferred name and pronouns consistent with his/her gender identity on all other district-related documents. Such preferred name may be added to the student's record and official documents as permitted by law.

*(cf. 5125 – Student Records) N/A*

*(cf. 5125 – Student Records; Confidentiality)*

*(cf. 5125.1 – Release of Directory Information)*

6. Names and Pronouns: If a student so chooses, district personnel shall be required to address the student by a name and the pronouns consistent with his/her gender identity, without the necessity of a court order or a change to his/her official district record. However, inadvertent slips or honest mistakes by district personnel in the use of the student's name and/or consistent pronouns will, in general, not constitute a violation of this administrative regulation or the accompanying district policy.

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7. Uniforms/Dress Code: A student has the right to dress in a manner consistent with his/her gender identity, subject to any dress code adopted on a school site.

*(cf. 5132 – Dress Code)*

**Legal References:**

Education Code

*200-262.4 Prohibition of discrimination  
48900.3 Suspension or expulsion for act of hate violence  
48900.4 Suspension or expulsion for threats or harassment  
48904 Liability of parent/guardian for willful student misconduct  
48907 Student exercise of free expression  
48950 Freedom of speech  
48985 Translation of notices  
49020-49023 Athletic programs  
51500 Prohibited instruction or activity  
51501 Prohibited means of instruction  
60044 Prohibited instructional materials*

Civil Code

*1714.1 Liability of parents/guardians for willful misconduct of minor*

Government Code

*11135 Nondiscrimination in programs or activities funded by state*

Penal Code

*422.55 Definition of hate crime  
422.6 Crimes, harassment  
Code of Regulations, Title 5  
432 Student record  
4600-4670 Uniform complaint procedures  
4900-4965 Nondiscrimination in elementary and secondary education programs  
United States Code, Title 20  
1681-1688 Title IX of the Education Amendments of 1972  
12101-12213 Title II equal opportunity for individuals with disabilities  
United States Code, Title 29  
794 Section 504 of Rehabilitation Act of 1973  
United States Code, Title 42  
2000d-2000e-17 Title VI and Title VII Civil Rights Act of 1964, as amended  
2000h-2-2000h-6 Title IX of the Civil Rights Act of 1964  
6101-6107 Age Discrimination Act of 1975  
Code of Federal Regulations, Title 28  
35.107 Nondiscrimination on basis of disability; complaints*

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*Legal References (cont.):*

*Code of Federal Regulations, Title 34*

*99.31 Disclosure of personally identifiable information*

*100.3 Prohibition of discrimination on basis of race, color or national origin*

*104.7 Designation of responsible employee for Section 504*

*106.8 Designation of responsible employee for Title IX*

*106.9 Notification of nondiscrimination on basis of sex*

*110.25 Prohibition of discrimination based on age*

*Court Decisions*

*Donovan v. Poway Unified School District, (2008) 167 Cal.App.4th 567*

*Flores v. Morgan Hill Unified School District, (2003) 324 F.3d 1130*

*200-262.4 Prohibition of discrimination*

*48900.3 Suspension or expulsion for act of hate violence*

*48900.4 Suspension or expulsion for threats or harassment*

*48904 Liability of parent/guardian for willful student misconduct*

*48907 Student exercise of free expression*

*48950 Freedom of speech*

*48985 Translation of notices*

*49020-49023 Athletic programs*

*51500 Prohibited instruction or activity*

*51501 Prohibited means of instruction*

*60044 Prohibited instructional materials*

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