CSBA Sample District Policy Manual CSBA Sample Manual Site

Policy 5145.7: SexualSex Discrimination and Sex-Based Harassment Status: ADOPTED

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Date: 1007/01/20202024

CSBA NOTE: Education Code 231.5 and 34 CFR 106.8 mandate the district to have written policies on sexualsex discrimination and sex-based harassment. The following policy addresses sex discrimination and sex-based harassment by and of against students in the school setting. As part of this mandate, the district should also adopt a sexualsex discrimination and sex-based harassment policy related to employees; see BP/AR 4119.11/4219.11/4319.11 - Sexual Sex Discrimination and Sex-Based Harassment and AR 4119.12/4219.12/4319.12 - Title IX Sexual Sex Discrimination and Sex-Based Harassment Complaint Procedures.

Moreover, this Board policy and the accompanying administrative regulation reflect the right of a transgender student to participate in sex-segregated educational programs and use facilities consistent with one's gender identity, as specified in Education Code 221.5 and 34 CFR 106.31, as amended by 89 Fed. Reg. 33474, and best practices based on existing state and federal law.

Both federal law (, Title IX of the Education Amendments of 1972) (20 USC 1681-1688; 34 CFR 106.1-106.82), and state law (Education Code 220, 231.5), prohibit sexualsex discrimination, including sex-based harassment and require districts to establish procedures for the prompt and equitable resolution of sexual sex discrimination, including sex-based harassment complaints. Pursuant to 34 CFR 106.11 and 106.44, as amended by 89 Fed. Reg. Whether 33474, a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sexbased harassment, is required to follow Title IX grievance procedures when investigating and resolving a complaint is addressed through based on the federal Title IX alleged conduct. As such a complaint procedures adopted pursuant to 34 CFR 106.44-106.45, as added by 85 Fed. may also fall within 30026, or the statescope of the uniform complaint procedures adopted pursuant to 5 CCR 4600-4670 (UCP) as specified in BP/AR 1312.3 - Uniform Complaint Procedures, it is dependent onunclear whether the alleged conduct meets districts would additionally be required to follow the process specified in BP/AR 1312.3 - Uniform Complaint Procedures. Due to this uncertainty, it is recommended that districts consult CSBA's District and County Office of Education Legal Services or district legal counsel prior to utilizing the UCP for this purpose. For more stringent federal definition or the state definition of sexual harassment. In order to meetinformation regarding the applicable timelines, in some instances it may be necessary to review a complaint under bothTitle IX grievance procedures concurrently. See the accompanying administrative regulation, BP/AR 1312.3 - Uniform Complaint Procedures, and , see AR 5145.71 -_ Title IX SexualSex Discrimination and Sex-Based Harassment Complaint Procedures.

34 CFR 106.2 and 106.10, as amended by 89 Fed. Reg. 33474, clarify that discrimination on the basis of sex for the purpose of Title IX includes discrimination on the basis of sex stereotypes; sex characteristics; sexual orientation; gender identity; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions or recovery; and parental, marital, and family status.

A <u>Pursuant to 34 CFR 106.44</u>, as amended by 89 Fed. Reg. 33474, a district can be held liable for civil damages for the sexualsex discrimination, including sex-based harassment of students pursuant to Title IX if the district is found to have been "deliberately indifferent" in its response to known sexualhas knowledge of conduct that reasonably may constitute sex-based harassment. Pursuant to 34 CFR 106.30, a district is deliberately indifferent if its response to Title IX sexual harassment is clearly unreasonable in light of the known circumstances.

in its education program or activity and does not respond promptly and effectively.

In addition to filing a private civil lawsuit, an alleged victim of sexualsex discrimination, including sex-based harassment, may file a complaint with the California Department of Education (CDE) and/or the U.S. Department of Education's Office for Civil Rights (OCR), the federal agency responsible for administrative enforcement of federal laws and regulations that prohibit discrimination in programs and activities that receive federal financial assistance from the U.S. Department of Education.

The Governing Board is committed to maintaining a <u>welcoming</u>, safe, <u>and supportive</u> school environment that is free from harassment and discrimination, and harassment. The Board prohibits, at school or at school-sponsored or school-related activities, <u>sexual sex discrimination and sex-based</u> harassment, <u>as defined in the accompanying administrative regulation</u>, targeted at any student, <u>based on the student's actual or perceived sex; sex stereotypes; sex characteristics; sexual orientation; gender; gender identity; gender expression; pregnancy, childbirth, termination of pregnancy or lactation, including related medical conditions or recovery; and, parental, marital, and family status.</u>

CSBA NOTE: Districts are required to prohibit retaliation when a right or privilege secured by anyone. The Title IX is interfered with, including when a person reports possible sex discrimination, made a sex-discrimination complaint, or participated or refused to participate in any way in the district's Title IX process. Pursuant to 34 CFR 106.71, as amended by 89 Fed. Reg. 33474, when the district has information about conduct that reasonably may constitute retaliation under Title IX, including peer retaliation, the district is required to respond to such conduct using the procedures used for other forms of sex discrimination as specified in 34 CFR 106.44 and 106.45; see AR/E(1) 5145.71 – Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

Pursuant to Education Code 220.1, as added by AB 1955 (Ch. 95, Statutes of 2024), a district, including a Governing Board also member, may not retaliate or otherwise take adverse action against an employee, including by placing the employee on administrative leave, on the basis that the employee supported a student exercising rights specified in Education Code 220.1, performed work in a manner consistent with the district's legal obligations related to educational equity, or provided instruction to students consistent with current content standards, curriculum frameworks, instructional materials adopted by the state board, and state law.

Additionally, the Board prohibits retaliatory behavior or action against any person who reports, files a complaint complains or testifies about, or otherwise supports a complainant in alleging sexual conduct that reasonably may constitute sex discrimination, including sex-based harassment, reports such conduct, or otherwise participates or refuses to participate in the complaint process established for the purpose of this policy. (Education Code 220.1; 34 CFR 106.71)

CSBA NOTE: 34 CFR 106.44, as added by 85 Fed. The following two paragraphs relate 30026, requires the district, when there is actual knowledge of sexual harassment in an education

program or activity, to respond promptly in a manner that is not unreasonable in light of the known circumstances. 34 CFR 106.30, as added, defines "actual knowledge" as notice of sexual harassment or allegations of sexual harassment being submitted to the district's Title IX Coordinator, any official of the district who has authority to institute corrective measures, or anystudent and employee of an elementary or secondary school. reporting of sex discrimination, including sex-based harassment. It is important to note that a referral reporting to law enforcement and/or child protective services does not relieve a school district of its responsibility to investigate thea complaint as a matter of sex discrimination, including sex-based harassment.

The district strongly encourages students who feel that they are being or have been sexually harassed experienced sex discrimination, including sex-based harassment, on school grounds or at a school-sponsored or school-related activity by another student, or an adult, or who have experienced off-campus sexual harassment that when the conduct has a continuing effect on campus, to immediately contact their teacher, the principal, the district's Title IX Coordinator, or any other available school employee.

CSBA NOTE: 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, requires a district to respond promptly and effectively when it has knowledge of conduct that reasonably may constitute sex discrimination or sex-based harassment in its education program or activity. 34 CFR 106.44 further obligates a district to require its Title IX Coordinator to monitor the district's programs and activities for barriers to reporting information of such conduct and its employees to notify the Title IX Coordinator when they have such information.

The following paragraph should be revised to reflect the district's timeline.

Any employee who receives a report or observes an incident of sexual harassment sex discrimination, including sex-based harassment, by or against a student in a district education program or activity shall notifyreport the incident to the Title IX Coordinator. within one workday.

Once notified, the Title IX Coordinator shall ensure the complaint or allegation is addressed through AR 5145.71 - Title IX Sexual Harassment Complaint Procedures or BP/AR 1312.3 - Uniform Complaint Procedures, as applicable. Because a complaint or allegation that is dismissed or denied under the Title IX complaint procedure may still be subject to consideration under state law, the Title IX Coordinator shall ensure that any implementation of AR 5145.71 concurrently meets the requirements of BP/AR 1312.3.

The Title IX Coordinator shall offer supportive measures to the complainant and respondent, as deemed appropriate under the circumstances. Administrative Regulation 5145.71 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

CSBA NOTE: Education Code 234.6, as added by AB 34 (Ch. 282, Statutes of 2019), requires districts, beginning in the 2020-21 school year, to post the district's written policy on sexual harassment in a prominent location on the district's web site in a manner that is easily accessible to parents/guardians and students.

Education Code 231.6, as added by AB 543 (Ch. 428, Statutes of 2019), requires districts serving students in grades 9-12 to create a poster that notifies students of the district's sexual harassment policy, and to display it prominently and conspicuously in each bathroom and locker room on campus.

Education Code 231.5, as amended by AB 543, requires the district to provide a copy of the district's sexual harassment policy as part of any orientation program conducted for new and continuing students.

Pursuant to 34 CFR 106.8, the district is required to notify students, parents/guardians, employees, and bargaining units of its policy to not discriminate on the basis of sex as well as its complaint procedures and processes, and to post this information in a prominent location on the district's web site and in student and staff handbooks.

Requirements related to the dissemination of the district's sexual harassment policy and procedures and best practices for reinforcing the policy are addressed in the accompanying administrative regulation.

The Superintendent or designee shall inform students and parents/guardians of the district's sexual harassment policy by disseminating it through parent/guardian notifications, publishing it on the district's web site, and including it in student and staff handbooks. All district staff shall be trained regarding the policy.

Instruction/Information

CSBA NOTE: Pursuant to 34 CFR 106.44, as amended by 89 Fed. Reg. 33474, when the Title IX Coordinator is notified of conduct that reasonably may constitute sex discrimination, including sexbased harassment, the Title IX Coordinator is required to offer and coordinate supportive measures to the complainant, and, if the district has begun grievance procedures or offered an informal resolution process to the respondent, offer and coordinate supportive measures to the respondent, as appropriate.

The Title IX Coordinator shall offer and coordinate supportive measures to be provided to the complainant and, if the district has begun grievance procedures or offered an informal resolution process to the respondent, offer and coordinate supportive measures to be provided to the respondent as deemed appropriate under the circumstances.

CSBA NOTE: 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, requires that all employees receive training related to their duties under Title IX promptly upon hire or change of position that alters their duties under Title IX, and annually thereafter. The training provided to all employees is required to include the district's obligation to address sex discrimination, the scope of conduct that constitutes sex discrimination under Title IX, including the definition of sex-based harassment, and the applicable notice and information requirements. 34 CFR 106.8, as amended 89 Fed. Reg. 33474, requires additional training for (1) investigators, decisionmakers, and other persons who are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures, (2) facilitators of an informal resolution process, and (3) Title IX Coordinators and designees.

The Superintendent or designee shall ensure that all district staff are trained regarding the district's sex discrimination and sex-based harassment policy, and that all employees receive training related to their duties under Title IX as specified in Administrative Regulation 4119.11/4219.11/4319.11 – Sex Discrimination and Sex-Based Harassment. (34 CFR 106.8)

Instruction/Information

CSBA NOTE: Pursuant to Education Code 231.7, as added by AB 1071 (Ch. 65, Statutes of 2023), CDE is required to make available on its website (1) resources on abuse, including sexual, emotional, and physical abuse, and teen dating violence prevention for professional learning purposes, (2) information about local and national hotlines and services for youth experiencing teen dating violence, and (3) other relevant materials for parents/guardians, and other caretakers of students.

The Superintendent or designee shall ensure that all district students receive age-appropriate information on sexualsex discrimination and sex-based harassment. Such instruction and information shall include:

- 1. What acts and behavior constitute <u>sexualsex discrimination and sex-based</u> harassment, including the fact that <u>sexualsex discrimination and sex-based</u> harassment could occur between people of the same sex and could involve sexual violence
- 2. A clear message that students do not have to endure sexualsex discrimination or sex-based harassment under any circumstance
- Encouragement to report observed incidents of sexualsex discrimination and sex-based harassment even when the alleged victim of the discrimination or harassment has not complained

CSBA NOTE: Where sexualsex discrimination, or sex-based harassment or violence, occurs in the context of other possible rule violations, students may be reluctant to report sexual harassment or violence. such conduct. For example, a student who is sexually harassed experiences sex-based harassment while away from school without permission may be reluctant to file a complaint if the student believes discipline will be imposed for the violation. As such, itemItem #4 below clarifies that any other rule violation will be addressed separately from the sexualsex discrimination and/or sex-based harassment complaint in order to encourage students to report the harassment.

- 4. A clear message that student safety is the district's primary concern, and that any separate rule violation involving an alleged victim or any other person reporting a sexualsex discrimination or sex-based harassment incident will be addressed separately and will not affect the manner in which the sexualsex discrimination or sex-based harassment complaint will be received, investigated, or resolved
- 5. A clear message that, regardless of a complainant's noncompliance with the writing, timeline, or other formal filing requirements, every sexualsex discrimination and sex-based harassment allegation that involves a student, whether as the complainant, respondent, or victim of the discrimination or harassment, shall be investigated and action shall be taken to respond to harassment, prevent recurrence, and address any continuing effect on students
- 6. Information about the district's procedures for investigating complaints and the person(s) to whom a report of sexualsex discrimination and/or sex-based harassment should be made
- 7. Information about the rights of students and parents/guardians to file a civil or criminal complaint, as applicable, including the right to file a civil or criminal complaint while the district investigation of a sexualsex discrimination or sex-based harassment complaint continues

8. A clear message that, when needed, the district will implement supportive measures to ensure a safe school environment for a student who is the complainant or victim of sexualsex discrimination or sex-based harassment and/or other students during an investigation

Disciplinary Actions

CSBA NOTE: Pursuant to Education Code 48900.2, a student in grades 4-12 may be suspended and/or expelled from school for sexualsex-based harassment. Education Code 48915(c) requires the Superintendent ordesignee or designee to recommend expulsion for any student, irrespective of grade, who commits sexual assault or battery as defined in the Penal Code. See For more information regarding suspension and expulsion, see AR 5144.1 - Suspension and Expulsion/Due Process and AR 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities).

When there is an allegation of Title IX sex discrimination, including sex-based harassment, 34 CFR 106.45, as amended by 89 Fed. Reg. 33474, prohibits the district from imposing any disciplinary sanctions against a respondent for the allegedly discriminatory behavior until the grievance procedures are completed.

Upon completion of an investigation of a sexualsex discrimination and/or sex-based harassment complaint, any student found to have engaged in sexualsex discrimination, and/or sex-based harassment or sexual violence, in violation of this policy, shall be subject to disciplinary action. For students in grades 4-12, disciplinary action may include suspension and/or expulsion, provided that, in imposing such discipline, the entire circumstances of the incident(s) shall be taken into account.

Upon investigation of a sexualsex discrimination and/or sex-based harassment complaint, any employee found to have engaged in sexualsex discrimination against, and/or sex-based harassment or sexual violence toward, any student, shall be subject to disciplinary action, up to and including dismissal, in accordance with law and the applicable collective bargaining agreement.

Record-Keeping

CSBA NOTE: Pursuant to 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, the district is required to keep the following records for at least seven years: (1) for each complaint of sex discrimination, including sex-based harassment, records documenting any informal resolution process implemented in accordance with 34 CFR 106.44 or grievance procedures implemented in accordance with 34 CFR 106.45, (2) for each notification the Title IX Coordinator receives of information about conduct that may reasonably constitute sex discrimination under Title IX, actions taken to fulfill the district's obligations as specified in 34 CFR 106.44, including supportive measures, and (3) all materials used to train district employees; the Title IX Coordinator and designees; investigators, decisionmakers, and other persons who are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures; and any person who facilitates an informal resolution process.

In accordance with law and district policies and regulations, the Superintendent or designee shall maintain a record of all reported cases of sexual The Superintendent or designee shall maintain records in accordance with law, including in accordance with 34 CFR 106.8 as specified in Administrative Regulation 5145.71 – Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures, and district policies and regulations, of all reported cases of sex-based

harassment to enable the district to monitor, address, and prevent repetitive harassing behavior in district schools.

Policy Reference UPDATE Service

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Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State 5 CCR 432 5 CCR 4600-4670	Description Student records Uniform complaint procedures
5 CCR 4900-4965	Nondiscrimination in elementary and secondary educational programs receiving state or federal financial assistance
Civ. Code 1714.1	Liability of parent or guardian for act of willful misconduct by a minor
Civ. Code 51.9	Liability for sexual harassment; business, service and professional relationships
Ed. Code 200-262.4	Prohibition of discrimination
Ed. Code 220.1	Prohibition of retaliation related to educational equity
Ed. Code 220.3	Prohibition of disclosure of information related to student's sexual orientation, gender identity, or gender expression
Ed. Code 220.5	Prohibition of policies requiring disclosure of information related to student's sexual orientation, gender identity, or gender expression
Ed. Code 35292.5	School restrooms; all-gender restrooms
Ed. Code 48900	Grounds for suspension or expulsion
Ed. Code 48900.2	Additional grounds for suspension or expulsion; sexual harassment
Ed. Code 48904	Liability of parent/guardian for willful student misconduct
Ed. Code 48980	Parent/Guardian notifications
Ed. Code 48985	Notices to parents in language other than English
Ed. Code 49060-49079	Student records
Gov. Code 12950.1	Sexual harassment training
Federal 20 USC 1092	Description Definition of sexual assault
20 USC 1221	Application of laws
20 USC 1232g	Family Educational Rights and Privacy Act (FERPA) of 1974
20 USC 1681-1688	Title IX of the Education Amendments of 1972; discrimination based on sex

34 CFR 106.1-106.82 Nondiscrimination on the basis of sex in education programs 34 CFR 99.1-99.67 Family Educational Rights and Privacy 34 USC 12291 Definition of dating violence, domestic violence, and stalking 42 USC 1983 Civil action for deprivation of rights 42 USC 2000d-2000d-7 Title VI, Civil Rights Act of 1964 42 USC 2000e-2000e-17 Title VII, Civil Rights Act of 1964, as amended Description **Management Resources Court Decision** Gebser v. Lago Vista Independent School District (1998) 524 U.S. 274 **Court Decision** Oona by Kate S. v. McCaffrey (1998, 9th Cir.) 143 F.3d 473 **Court Decision** Reese v. Jefferson School District (2001, 9th Cir.) 208 F.3d 736 **Court Decision** Davis v. Monroe County Board of Education (1999) 526 U.S. 629 **Court Decision** Doe v. Petaluma City School District (1995, 9th Cir.) 54 F.3d 1447 **Court Decision** Donovan v. Poway Unified School District (2008) 167 Cal.App.4th 567 **Court Decision** Flores v. Morgan Hill Unified School District (2003, 9th Cir.) 324 F.3d 1130 Federal Register Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, April 29, 2024, Vol. 89, No. 83, pages 33474-33896 (https://www.federalregister.gov/documents/2024/04/29/2024-07915/nondiscrimination-on-the-basis-of-sex-in-education-programsor-activities-receiving-federal) **CSBA Publication** Legal Guidance on Rights of Transgender and Gender Nonconforming Students in Schools, October 2022 **CSBA Publication** Safe Schools: Strategies for Governing Boards to Ensure Student Success, 2011 **CSBA Publication** Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students, Policy Brief, February 2014 U.S. DOE, Office for Civil Q&A on Campus Sexual Misconduct, September 2017 California Rights California Department of Longitudinal Pupil Achievement Data System (CALPADS) Update **Education** Publication FLASH #158: Guidance for Changing a Student's Gender in CALPADS, July 2019 U.S. DOE, Office for Civil Rights Sexual Harassment: It's Not Academic, September 2008 **Publication** U.S. DOE, Office for Civil Rights Revised Sexual Harassment Guidance: Harassment of Students by **Publication** School Employees, Other Students, or Third Parties, January 2001

U.S. DOE, Office for Civil Rights Examples of Policies and Emerging Practices for Supporting

Publication Transgender Students, May 2016

U.S. DOE, Office for Civil Rights Dear Colleague Letter: Title IX Coordinators, April 2015

Publication

Website CSBA District and County Office of Education Legal Services

Website California Department of Education

Website CSBA

Website U.S. Department of Education, Office for Civil Rights

Cross References

Code 0410	Description Nondiscrimination In District Programs And Activities
0450	Comprehensive Safety Plan
0450	Comprehensive Safety Plan
1114	District-Sponsored Social Media
1114	District-Sponsored Social Media
1312.1	Complaints Concerning District Employees
1312.1	Complaints Concerning District Employees
1312.3	Uniform Complaint Procedures
1312.3	Uniform Complaint Procedures
1312.3-E(1)	Uniform Complaint Procedures
1312.3-E(2)	Uniform Complaint Procedures
1313	Civility
3515.4	Recovery For Property Loss Or Damage
3515.4	Recovery For Property Loss Or Damage
3530	Risk Management/Insurance
3530	Risk Management/Insurance
3580	District Records
3580	District Records
4117.7	Employment Status Reports
4118	Dismissal/Suspension/Disciplinary Action
4118	Dismissal/Suspension/Disciplinary Action
4119.11	Sex Discrimination and SexualSex-Based Harassment

4119.11	Sex Discrimination and SexualSex-Based Harassment
4119.12	<u>Title IX Sex Discrimination and Sex-Based Harassment</u> <u>Complaint Procedures</u>
4131	Staff Development
4218	Dismissal/Suspension/Disciplinary Action
4218	Dismissal/Suspension/Disciplinary Action
4219.11	Sex Discrimination and SexualSex-Based Harassment
4219.11	Sex Discrimination and SexualSex Harassment
4219.12	<u>Title IX Sex Discrimination and Sex-Based Harassment</u> <u>Complaint Procedures</u>
4219.21	Professional Standards
4219.21-E(1)	Professional Standards
4231	Staff Development
4317.7	Employment Status Reports
4319.11	Sex Discrimination and SexualSex-Based Harassment
4319.11	Sex Discrimination and SexualSex-Based Harassment
4319.12	<u>Title IX Sex Discrimination and Sex-Based Harassment</u> <u>Complaint Procedures</u>
4319.21	Professional Standards
4319.21-E(1)	Professional Standards
5125	Student Records
5125	Student Records
5131	Conduct
5131.2	Bullying
5131.2	Bullying
5131.5	Vandalism And Graffiti
5132	Dress And Grooming
5132	Dress And Grooming
5137	Positive School Climate
5138	Conflict Resolution/Peer Mediation
5141.4	Child Abuse Prevention And Reporting
5141.4	Child Abuse Prevention And Reporting

5141.52	Suicide Prevention
5141.52	Suicide Prevention
5144	Discipline
5144	Discipline
5144.1	Suspension And Expulsion/Due Process
5144.1	Suspension And Expulsion/Due Process
5144.2	Suspension And Expulsion/Due Process (Students With Disabilities)
5145.2	Freedom Of Speech/Expression
5145.2	Freedom Of Speech/Expression
5145.3	Nondiscrimination/Harassment
5145.3	Nondiscrimination/Harassment
5145.6	Parent/Guardian Notifications
5145.6-E(1)	Parent/Guardian Notifications
5145.71	Title IX <u>SexualSex Discrimination and Sex-Based</u> Harassment Complaint Procedures
5145.71-E(1)	Title IX <u>SexualSex Discrimination and Sex-Based</u> Harassment Complaint Procedures
5145.9	Hate-Motivated Behavior
6142.1	Sexual Health And HIV/AIDS Prevention Instruction
6142.1	Sexual Health And HIV/AIDS Prevention Instruction
6142.8	Comprehensive Health Education
6142.8	Comprehensive Health Education
6145	Extracurricular And Cocurricular Activities
6145	Extracurricular And Cocurricular Activities
6145.2	Athletic Competition
6145.2	Athletic Competition
6163.4	Student Use Of Technology
6163.4-E(1)	Student Use Of Technology