

PIEDMONT UNIFIED SCHOOL DISTRICT

Board Policy

BP 5145.7

Students

SEXUAL HARASSMENT

The Board of Education is committed to promoting and maintaining a safe school environment that is free from harassment and discrimination. Sexual harassment devalues all students, undermines students' physical safety, impedes students' ability to learn, and reinforces social inequality. The Board:

1. Is committed to eliminating sexual harassment and repairing the harm it causes;
2. Prohibits sexual harassment of students at school or at school-sponsored or school-related activities; and
3. Prohibits retaliatory behavior or action against any person who reports, files a complaint or testifies about, or otherwise supports a complainant in alleging sexual harassment.

The district strongly encourages and supports any student to immediately contact his/her teacher, the principal, Title IX coordinator, or any other available school employee if he/she feels that he/she is being or has been sexually harassed on school grounds or at a school-sponsored or school-related activity, or by a district employee in a non-school setting or non-school-related/sponsored event. Any employee who receives a report or observes an incident of sexual harassment will notify the principal, the superintendent, or the Title IX coordinator. The district will take immediate steps to stop harassment and protect the safety and well-being of reported victims of sexual harassment, including interim measures during the investigation, as appropriate.

Prohibited Conduct and Uniform Complaints

Sexual harassment is prohibited on all campuses and at all school-sponsored programs and activities. Any prohibited conduct that occurs off campus or outside of school-related or school-sponsored programs or activities will be regarded as sexual harassment in violation of district policy if it has a continuing effect on, or creates a hostile school environment for, the complainant or victim of the conduct.

(cf. 0410 - Nondiscrimination in District Programs and Activities)

(cf. 1312.1 - Complaints Concerning District Employees)

(cf. 5131 - Conduct)

(cf. 5131.2 - Bullying)

(cf. 5137 - Positive School Climate)

(cf. 5141.4 - Child Abuse Prevention and Reporting)

(cf. 5145.3 - Nondiscrimination/Harassment)

(cf. 6142.1 - Sexual Health and HIV/AIDS Prevention Instruction)

The District will review and address any report or complaint of sexual harassment involving a student, employee, or third party against another student, employee, or third party. The Superintendent or designee will ensure that a complaint regarding sexual harassment will be investigated promptly and resolved in accordance with law and district procedures specified in this policy and corresponding administrative regulation, and AR 1312.3, Uniform Complaint Procedures.

When a complaint is filed, complainant, victim, and accused will be provided with information to understand fully the investigation process (actions, timeline, who may be contacting them), confidentiality requirements, applicable board policies, administrative procedures, and other laws and regulations.

Principals or other district officers are responsible for notifying students and parents/guardians that complaints of sexual harassment can be filed under AR 1312.3 and where to obtain a copy of the procedures.

The district's Title IX Coordinator is also the District Compliance Officer and is responsible for handling complaints under the Uniform Complaint procedures regarding sexual harassment and to answer inquiries regarding the district's sexual harassment policies.

Title IX Coordinator/District Compliance Officer

ADDRESS: 760 Magnolia Avenue, Piedmont

Phone No.: (510) 594- 2686

EMail: cwozniak@piedmont.k12.ca.us

(cf. 1312.3 - Uniform Complaint Procedures)

Annual Notification

At the beginning of each school year, the Superintendent or designee will provide to students and their parents/guardians the rules regarding student conduct, including the prohibition on sexual harassment, and procedures for filing complaints. The District will publish these rules and procedures in the Student Handbook and on the District's website, and display the rules and procedures in a prominent location near each school principal's office (Education Code Section 231.5, 48980).

At the beginning of each school year, the Superintendent or designee will provide to all District

employees the rules regarding employee conduct, including the prohibition on sexual harassment, and procedures for filing complaints. The District will provide annual training to administrators, teachers, and staff about identifying and reporting suspected sexual harassment, and protection from retaliation for reporting suspected sexual harassment.

Each year, the District will provide age-appropriate information to students about identifying and reporting sexual harassment, protection from retaliation for reporting suspected sexual harassment, and counseling and other support services and resources available to students confronting suspected sexual harassment.

(Education Code 48980; 5 CCR 4917)

(cf. 5145.6 - Parental Notifications)

(Education Code 231.5)

Instruction and Information

The Superintendent or designee will take appropriate actions to reinforce the district's sexual harassment policy, and will ensure that all district students receive age-appropriate information on sexual harassment, student rights, and the complaint procedure. Such instruction and information will include:

1. What acts and behavior constitute sexual harassment, including the fact that sexual 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 sexual harassment under any circumstance;
3. Encouragement to report observed incidents of sexual harassment, even where the alleged victim of the harassment has not complained;
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 sexual harassment incident will be addressed separately and will not affect the manner in which the sexual 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 sexual harassment allegation that involves a student, whether as the complainant, respondent, or victim of the harassment, of which school employees become aware of through any means, will be investigated and prompt action will be taken to stop any harassment, prevent recurrence, and address any continuing effects on students;
6. Information about the district's procedure for investigating complaints and the person(s) to whom a report of sexual harassment should be made;
7. Notification that students and staff are permitted and encouraged to have an advocate present during any portion of the process;
8. Information about the rights of students and parents/guardians to file a civil or criminal complaint, as applicable;
9. A clear message that, when needed, the district will take interim measures to ensure a safe school environment for a student who is the complainant or victim of sexual

harassment and/or other students during an investigation and that, to the extent possible, when such interim measures are taken, they will not disadvantage the complainant or victim of the alleged harassment.

Findings

When the Superintendent or designee has determined that sexual harassment has occurred, s/he will take prompt, appropriate action to end the harassment and to address its effects on the victim and other parties involved by directing them to additional resources and restorative justice work, as warranted.

For the purposes of this section, a “factual finding” includes a finding of fact made by another public or private school, a law enforcement agency, a child protection agency, a court, the Commission on Teaching Credentials, or any other finding of fact provided to the district which indicates that an employee or student engaged in behavior that may constitute a violation of this policy and poses a risk to the safety of the district’s students.

Disciplinary Actions

Upon investigation of a sexual harassment complaint, any student who engages in sexual harassment or sexual violence at school or at a school-sponsored or school-related activity is in violation of this policy and will be subject to disciplinary action. For students K-3, disciplinary action will depend on the maturity of the students and the circumstances involved. 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) will be taken into account. Suspensions and recommendations for expulsion will follow applicable law and in accordance with AR 5144.1, Suspensions and Expulsion/Due Process.

(cf. 5144 - Discipline)

(cf. 5144.1 - Suspension and Expulsion/Due Process)

(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))

Upon investigation of a sexual harassment complaint, any staff member found to have engaged in sexual harassment or sexual violence toward any student on- or off-campus or in a school-sponsored or non-sponsored event will be subject to discipline up to and including dismissal in accordance with applicable policies, laws, and/or collective bargaining agreements.

(cf. 4117.4 - Dismissal)

(cf. 4117.7 - Employment Status Report)

(cf. 4118 - Suspension/Disciplinary Action)

(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)

When disciplinary action is recommended after the Uniform Complaint process is complete, the

Superintendent and/or District Compliance Officer will promptly determine the appropriate sanction and forward the matter to the principal, designee, or appropriate district administrator who will promptly implement any disciplinary process.

Record-Keeping

The Superintendent or designee shall maintain a record of all reported cases of sexual harassment to enable the district to monitor, address, and prevent repetitive prohibited behavior in district schools

(cf. 3580 - District Records)

Confidentiality

All complaints and allegations of sexual harassment or sexual violence will be kept confidential except as necessary to carry out the investigation or take other subsequent necessary action. (5 CCR 4964)

(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)15]

(cf. 5125 - Student Records)

However, when a complainant notifies the district of the harassment but requests confidentiality, the complainant will be informed that the request may limit the ability to investigate the harassment or take necessary action. When honoring a request for confidentiality, the district will take all reasonable steps to investigate and respond to the complaint consistent with the request.

When a complainant notifies the district of the harassment but requests the district not pursue an investigation, the district will determine whether it can honor such a request in accordance with all applicable laws and while still providing a safe and nondiscriminatory environment for all students.

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination on the basis of sex

48900 Grounds for suspension or expulsion

48900.2 Additional grounds for suspension or expulsion; sexual harassment

48904 Liability of parent/guardian for willful student misconduct

48980 Notice at beginning of term

CIVIL CODE

51.9 Liability for sexual harassment; business, service and professional relationships

1714.1 Liability of parents/guardians for willful misconduct of minor

GOVERNMENT CODE

12950.1 Sexual harassment training

CODE OF REGULATIONS, TITLE 5

4600-4687 Uniform complaint procedures

4900-4965 Nondiscrimination in elementary and secondary education programs

UNITED STATES CODE, TITLE 20

1221 Application of laws

1232g Family Educational Rights and Privacy Act

1681-1688 Title IX, discrimination

UNITED STATES CODE, TITLE 42

1983 Civil action for deprivation of rights

2000d-2000d-7 Title VI, Civil Rights Act of 1964

2000e-2000e-17 Title VII, Civil Rights Act of 1964 as amended

CODE OF FEDERAL REGULATIONS, TITLE 34

99.1-99.67 Family Educational Rights and Privacy

106.1-106.71 Nondiscrimination on the basis of sex in education programs

COURT DECISIONS

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

Flores v. Morgan Hill Unified School District, (2003, 9th Cir.) 324 F.3d 1130

Reese v. Jefferson School District, (2001, 9th Cir.) 208 F.3d 736

Davis v. Monroe County Board of Education, (1999) 526 U.S. 629

Gebser v. Lago Vista Independent School District, (1998) 524 U.S. 274

Oona by Kate S. v. McCaffrey, (1998, 9th Cir.) 143 F.3d 473

Doe v. Petaluma City School District, (1995, 9th Cir.) 54 F.3d 1447

Management Resources:

CSBA PUBLICATIONS

Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students, Policy Brief, February 2014

Safe Schools: Strategies for Governing Boards to Ensure Student Success, 2011

U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS

Dear Colleague Letter: Transgender Students, May 2016

Examples of Policies and Emerging Practices for Supporting Transgender Students, May 2016

Dear Colleague Letter: Title IX Coordinators, April 2015

Questions and Answers on Title IX and Sexual Violence, April 2014

Dear Colleague Letter: Sexual Violence, April 4, 2011

Sexual Harassment: It's Not Academic, September 2008

Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, January 2001

WEB SITES

CSBA: <http://www.csba.org>

California Department of Education: <http://www.cde.ca.gov>

U.S. Department of Education, Office for Civil Rights: <http://www.ed.gov/about/offices/list/ocr>

Adopted: June 13, 2018

PIEDMONT UNIFIED SCHOOL DISTRICT

Administrative Regulation

AR 5145.7

Students

SEXUAL HARASSMENT

Requirements and Prohibitions

The Board prohibits sexual harassment and/or sexual violence of any student by other students or District employees. The Board prohibits sexual harassment and/or sexual violence of any District employee by students or other District employees.

The Board strongly encourages any student to immediately report suspected sexual harassment and/or sexual violence. The Board requires that any District employee immediately report suspected sexual harassment and/or sexual violence.

The Board prohibits retaliation against any student or District employee for reporting or attempting to stop suspected sexual harassment and/or sexual violence.

Compliance Officer

The Board of Education designates the following individual to coordinate District efforts to comply with all laws, rules, and regulations protecting students and District employees from sexual harassment and/or sexual violence; and ensure the timely and thorough investigation of complaints alleging sexual harassment and/or sexual violence.

Title IX Coordinator/District Compliance Officer

Director of Curriculum and Instruction

760 Magnolia Avenue, Piedmont

(510) 594- 2686

cwozniak@piedmont.k12.ca.us

(Education Code 234.1; 5 CCR 4621)

Definitions

For purposes of this regulation, the following definitions will apply:

1. **Sexual Harassment.**

Sexual harassment is defined as unwelcome sexual conduct that may include, but is not limited to, sexual violence, unwelcome sexual advances, unwanted requests for sexual favors, or other unwanted verbal, visual, or physical conduct of a sexual nature made against another person of the same or opposite sex in the educational setting, when made on the basis of sex and under any of the following conditions: (Education Code 212.5; 5 CCR 4916)

- a. Sexual harassment of students includes, but is not limited to the following:
 - i. Submission to the harassing conduct is explicitly or implicitly made a term or condition of the student's academic status or progress;
 - ii. Submission to, or rejection of, the harassing conduct is the basis of academic decisions affecting the student;
 - iii. The harassing conduct has a negative impact on the student's work or academic performance;
 - iv. The harassing conduct creates a hostile environment;
 - v. Submission to, or rejection of the harassing conduct is the basis of any decision affecting the student regarding services, honors, programs, or activities available at or through the District;
 - vi. An employee engaging in, soliciting, or encouraging a sexual relationship or sexual activity with a student(s) based on written, verbal, and/or physical contact or fraternization with a student(s); in some circumstances, an employee's physical contact with a student may also take on sexual connotations and rise to the level of sexual harassment, e.g., repeatedly hugging and putting arms around a student under inappropriate circumstances could rise to the level of unwelcome touching of a sexual nature;
 - vii. Sexual relationships between employees and students; and/or
 - viii. Sexual relationships between employees and former students if the employee pursued an intimate or sexual relationship with the former student while the student was enrolled in the district and while the employee was employed with the district

2. **Sexual Violence**

"Sexual violence" means a sexual act committed against a person without the person's freely given consent. Sexual violence includes:

- a. Completed or attempted forced penetration of the person;
- b. Completed or attempted alcohol/drug-facilitated penetration of the person;
- c. Completed or attempted forced acts in which the person is made to penetrate a perpetrator or other person;
- d. Completed or attempted alcohol/drug-facilitated acts in which the person is made to

- penetrate a perpetrator or other person;
- e. Non-physically forced penetration which occurs after the person is pressured -- verbally or through intimidation or misuse of authority -- to consent or acquiesce;
- f. Unwanted sexual contact;
- g. Non-contact unwanted sexual experiences; and/or
- h. Sexual assault, sexual battery, or sexual coercion.

3. **Verbal Conduct**

“Verbal conduct” means verbal, written or electronic comments of a sexual nature, including but not limited to:

- a. Sexual epithets, slurs, jokes or threats;
- b. Sexual propositions or flirtations;
- c. Sexually graphic commentary about a person’s body;
- d. Sexually degrading words used to describe a person;
- e. Sexually suggestive or obscene letters, notes, invitations or electronic communications- containing sexually suggestive comments, words, or images;
- f. Spreading sexual rumors;
- g. Verbal abuse;
- h. Unwelcome or demeaning conduct or comments of a sexual nature directed at or about an individual related to actual or perceived gender, gender identity and gender expressions, sex, sexual behavior, sexual orientation, or other related personal characteristics;
- i. Unwanted sexual comments or questions, or overly personal conversation;
- j. Sexual-oriented stories;
- k. Sexually derogatory comments or degrading descriptions; and/or
- l. Teasing or sexual remarks about students enrolled in a predominantly single-sex class or activity.

4. **Visual Conduct**

“Visual conduct” means leering, making sexually-suggestive gestures, indecent exposure, displaying sexually suggestive objects or images, or similar conduct, including displaying derogatory posters or computer-generated images of a sexual nature.

5. **Physical Conduct**

“Physical conduct” means inappropriate touching of a person or impeding a person’s movement, including;

- a. Unwelcome massaging, grabbing, fondling, stroking, brushing of the body;.
- b. Unwelcome touching an individual’s body or clothes in a sexual way;
- c. Impeding or blocking an individual’s movements or any physical interference with school activities when directed at an individual on the basis of sex or gender expression; and/or
- d. Indecent exposure.

6. District Employees

“District employees” include all administrators, teachers, staff, and District contractors or other persons authorized to transact business or perform services on behalf of the District.

Reports and Complaints

The Board strongly encourages any student and requires that any District employee immediately report suspected sexual harassment, even if the victim has not complained.

The Board strongly encourages all other members of the school community, including parents/guardians and school visitors, to report incidents of suspected sexual harassment, even if the victim has not complained.

The Board prohibits retaliation against any student, District employee, or other person for reporting or attempting to stop suspected sexual harassment.

Reports and complaints of sexual harassment may be made orally or in writing, although the District encourages use of the Uniform & General Complaint Form. This form is available from site principals, at the District office (760 Magnolia Avenue), and on the District website (www.piedmont.k12.ca.us). Oral and written reports and complaints, regardless of their form, will be given the same thorough investigation. When an oral report or complaint is received, the recipient will prepare a written transcript.

Reports and complaints of sexual harassment may be made anonymously. However, the District may not take formal disciplinary action against a student or District employee based solely on an anonymous report or complaint. Also, when a person chooses to remain anonymous, the District cannot engage that person in the investigation, either to obtain or confirm information or to provide that person with a written report of the investigation.

Student Reports. Any student who believes they have been subjected to sexual harassment or who has witnessed sexual harassment may report the conduct to any school employee.

School Employee Observation and Reports. Within one school day of receiving a sexual harassment report or complaint from a student, parent/guardian or other person, the school employee will report it to the site Principal/designee.

Any school employee who observes an incident of sexual harassment involving a student will immediately intervene when safe to do so and will, within one school day, report the conduct to the Principal/designee, whether or not the target of the harassment makes a report or files a complaint. (Education Code 234.1)

Reports about Principal/designee. Where a sexual harassment report or complaint involves the Principal/designee to whom the report would ordinarily be communicated, the employee who receives the report or who observes the incident will instead report to the District Compliance

Officer within one school day.

Principal Actions after Receiving a Report. The Principal/designee will, within one school day of receiving the report from a student, an employee or a third party, forward the complaint itself or a transcription of the oral report to the District Compliance Officer.

The Principal/designee will also inform the student and/or student's parent/guardian of the right to file a written complaint through the Uniform Complaint Procedures, BP/AR 1312.3. The Principal/designee will provide a free copy or a link to the Uniform Complaint Procedures. The Principal/designee will document when and how they informed the student and/or the parent/guardian.

Reports about Adult Sexual Relationships with Students. In all allegations of an employee or third party adult engaging in a sexual relationship with a student or a former student, the District Compliance Officer will assess whether a referral is necessary to either law enforcement or other appropriate agency.

Notification of Factual Findings from other Entities. If the District is on notice of a factual finding that a District employee engaged in behavior with a student, (including a student from a different school or district), which may constitute sexual harassment or sexual violence as defined in this policy, the District Compliance Officer will investigate the circumstances surrounding the factual finding.

If the District is on notice of a factual finding that a student engaged in behavior with another student, (including a student from a different school or district), which may constitute sexual harassment or sexual violence as defined in this policy, the District Compliance Officer will investigate the circumstances surrounding the factual finding.

If the District Compliance Officer is able to determine that the factual finding rises to the level of harassment in violation of this policy, the District will promptly eliminate the harassment in the educational setting, prevent its recurrence in the educational setting, and address its effects in the educational setting.

For the purposes of this section, a "factual finding" includes a finding of fact made by another public or private school, a law enforcement agency, a child protection agency, a court, the Commission on Teaching Credentials or any other finding of fact provided to the District which indicates that an employee or student engaged in behavior which may constitute a violation of this policy and poses a risk to the safety of the District's students.

Other Complaint Options. A student may also file a sex discrimination complaint with the Office for Civil Rights (OCR) of the United States Department of Education. Instructions for filing a complaint can be found at

1. Allegations Against a Student

When a student is alleged to have engaged in sexually harassing conduct, the report or

complaint will be directed to the site principal or principal's designee. The principal or designee will be responsible for investigating the allegations and determining whether there has been a violation of District policy. Within 24 hours of receiving a report or complaint, the principal or designee will forward the report, complaint, or transcription of an oral report to the District Compliance Officer.

If the report or complaint is initially directed to a teacher, counselor, or other staff member, whether orally or in writing, the recipient will immediately forward the information to the site principal or designee.

2. Allegations Against a District Employee

When a District employee (other than the Superintendent) is alleged to have engaged in sexually harassing conduct, the report or complaint will be directed to the Superintendent or designee. The Superintendent or designee will be responsible for investigating the allegations and determining whether there has been a violation of District policy. Within 24 hours of receiving a report or complaint, the Superintendent or designee will forward the report, complaint, or transcription of an oral report to the District Compliance Officer.

If the report or complaint is initially directed to a teacher, counselor, or other staff member, whether orally or in writing, the recipient will immediately forward the information to the Superintendent or designee.

3. Allegations Against the Superintendent

When the Superintendent is alleged to have engaged in sexually harassing conduct against a student or District employee, the report or complaint will be directed to the Board of Education.

The Board will be responsible for investigating the allegations and determining whether there has been a violation of District policy. Within 24 hours of receiving a report or complaint, the Board will forward the report, complaint, or transcription of an oral report to the District Compliance Officer.

If the report or complaint is initially directed to a teacher, counselor, or other staff member, whether orally or in writing, the recipient will immediately forward the information to the Board of Education.

Investigation

The person charged with investigating allegations of sexual harassment ("the investigator") will act promptly and thoroughly, as described below.

Response Pending Investigation/Interim Measures

When an incident of sexual harassment is reported, the principal or designee, in consultation with the compliance officer, will determine whether interim measures are necessary pending the results of the investigation. The principal/designee or compliance officer will take immediate measures necessary to stop harassment and protect students and/or ensure their access to the educational program. To the extent possible, such interim measures will not disadvantage the complainant or victim of the alleged harassment. Interim measures may include placing the individuals involved in separate classes, transferring a student to a class taught by a different teacher, separation of reported victim/complainant and reported harasser, security measures, emotional and psychological support, or other academic accommodations, as appropriate, in accordance with law and Board policy. The school should notify the victim/complainant of their options to avoid contact with the alleged harasser and allow the victim/complainant to change academic arrangements, as appropriate, in accordance with law and Board policy. The school will make the complainant/victim aware of resources and assistance that are available.

A. Interviews

The investigator will interview each of the following individually:

1. The person who made the initial report or complaint (“the complainant”). This interview will be conducted within five (5) school days of the date the investigator received the complaint.
2. The victim (if different from “the complainant”). This interview will be conducted within five (5) school days of the date the investigator received the complaint.
3. Witnesses, if any.
4. The person accused of sexual harassment (“the accused”).
5. Any other persons identified as having information related to the allegations.

At his or her discretion, the investigator may interview or consult with:

1. The Piedmont Police Department or other law enforcement agencies.
2. The District’s legal counsel.
3. Teachers, staff, administrators, or other District employees whose knowledge of the complainant, the victim, or the accused could help the investigator evaluate the situation

or the veracity of the parties.

4. Anyone identified during the course of the investigation as having information that could help the investigator evaluate the situation or the veracity of the parties.

When necessary or appropriate to complete the investigation, the investigator may consult with:

1. The District Compliance Officer.
2. The Superintendent or designee.
3. The parent/guardian of the complainant (if the complainant is a student).
4. The parent/guardian of the victim (if the victim is a student).
5. The parent/guardian of the accused (if the accused is a student).

B. Opportunity for the Complainant and Victim to Provide More Information

The investigator will provide the complainant (and the victim if the complainant is not the victim) an opportunity to explain the allegations, describe the underlying incident(s), identify witnesses or other persons with related information, and present any evidence or information that could help the investigator evaluate the allegations.

If the initial report or complaint was made orally or in a format other than the Uniform & General Complaint Form, the investigator will provide the complainant (and the victim if the complainant is not the victim) with the opportunity to complete the Uniform & General Complaint Form (www.piedmont.k12.ca.us). The investigator will offer to assist in completing the form.

C. Opportunity for the Accused to Respond

The investigator will provide the accused an opportunity to respond to the allegations, including the opportunity to describe the underlying incident(s), identify witnesses or other persons with related information, and present any evidence or information that could help the investigator evaluate the allegations.

D. Protection From Retaliation

Throughout the course of the investigation and after a determination is made, the investigator will take all reasonable steps to ensure that the victim, complainant, and witnesses are protected against discrimination or retaliation based on the complaint. Evidence of any attempted or actual discrimination or retaliation will be included in the report of investigation and plan for corrective and disciplinary action.

E. Determination and Written Report

The investigator will determine whether there has been a violation of District policies prohibiting sexual harassment. To make this determination, the investigator will evaluate the complete record of allegations, interviews, and evidence.

Upon a determination of sexual harassment, the investigator will write a report to the Superintendent including the allegations, summary of investigation, findings, determination, reasons for determination. If the Superintendent is the accused, the investigator will address the report to the Board. If the investigator determines that a report or complaint contained knowingly false statements or accusations, investigator will note this determination in his or her report. If the investigator determines that there has been actual or attempted retaliation against the victim, complainant, or witnesses, the investigator will note this in his or her report.

No later than 60 days after the date of the original report or complaint, the investigator will provide his or her written report to the victim, the complainant, the accused, the District Compliance Officer, and the Superintendent or designee.

F. Final Report

The Superintendent or designee will write a final report that: incorporates the investigator's findings, determination, and reasons for determination; and includes the corrective or restorative action taken. If the disposition includes student or employee discipline, the final report will include only the information permitted by law. The Superintendent or designee will send the final report to the victim, the complainant, and the accused with a notice of their right to appeal. If the Superintendent is the accused, the Board will write the final report and notify the parties.

Corrective Action

Upon a determination of sexual harassment, the Superintendent or designee will decide the appropriate corrective, restorative, or disciplinary action to: end and redress sexual harassment; redress a hostile environment; protect the victim, complainant, and witnesses from retaliation; and refer the matter as appropriate to the Piedmont Police Department or other law enforcement agency. The Superintendent or designee may encourage counseling, guidance, restorative justice practices, training, and other support for all parties.

If the Superintendent is the accused, the Board will decide the appropriate corrective, restorative, or disciplinary action against the Superintendent.

Considerations

When determining the appropriate corrective and/or disciplinary action, the Superintendent or

designee (or, if the Superintendent is the accused, the Board) may consider:

1. The setting and context of the sexual harassment.
2. The number of victims.
3. The age and maturity of the victim and the accused.
4. Whether the sexual harassment was violent and caused or threatened physical harm.
5. Effects of the sexual harassment on victim safety and well-being, including effects on:
 - a. Students' ability to learn, develop, and thrive in a safe and secure school environment.
 - b. District employees' ability to teach and advance the District's educational mission in a safe and secure workplace.
6. Frequency, duration, and pattern or past incidents of sexual harassment or retaliation by the accused.
7. Whether there is evidence of retaliation against the victim, complainant, or witnesses.
8. General school climate, including other incidents or harassment or sexual harassment.
9. Whether referral to the Piedmont Police Department or other law enforcement agency is appropriate.

Refer to AR 1312.3- Uniform Complaint Procedures for Disciplinary Action

Confidentiality

All complaints and allegations of sexual harassment or sexual violence will be kept confidential except as necessary to carry out the investigation or take other subsequent necessary action.

(5 CCR 4964)

(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)15]

(cf. 5125 - Student Records)

However, when a complainant notifies the district of the harassment but requests confidentiality, the complainant will be informed that the request may limit the ability to investigate the harassment or take necessary action. When honoring a request for confidentiality, the district will take all reasonable steps to investigate and respond to the complaint consistent with the request.

When a complainant notifies the district of the harassment but requests the district not pursue an investigation, the district will determine whether it can honor such a request in accordance with all applicable laws and while still providing a safe and nondiscriminatory environment for all

students.

Civil Law Remedies

Reporting sexual harassment to the District does not preclude an individual from seeking civil law remedies that may be available under state or federal discrimination and harassment laws, such as injunctions and restraining orders. When the allegations include discrimination, a complainant may be required to wait 60 days after filing of an appeal with the California Department of Education before pursuing civil law remedies.

Annual Notification, Education, Training

At the beginning of each school year, the Superintendent or designee will provide to students and their parents/guardians: the rules regarding student conduct including the prohibition on sexual harassment; and procedures for filing complaints. The District will publish these rules and procedures in the Student Handbook and on the District's website, and display the rules and procedures in a prominent location near each school principal's office (Education Code Section 231.5, 48980).

At the beginning of each school year, the Superintendent or designee will provide to all District employees: the rules regarding employee conduct including the prohibition on sexual harassment; and procedures for filing complaints. The District will provide annual training to administrators, teachers, and staff about identifying and reporting suspected sexual harassment and protection from retaliation for reporting suspected sexual harassment.

Each year, the District will provide age-appropriate information to students about: identifying and reporting sexual harassment; protection from retaliation for reporting suspected sexual harassment; and counseling and other support services and resources available to students confronting suspected sexual harassment.

LEGAL REFERENCES:

EDUCATION CODE

200-262.4 Prohibition of discrimination on the basis of sex, especially:

212.5 Sexual harassment

220-221.1 Gender, gender identity and gender expression

221.7 School-sponsored athletic programs; prohibited sex discrimination

230 Particular practices prohibited

231.5 Sexual harassment policy

233(e) Defines “hate violence”

32261 Right to attend safe schools, free from the misconduct addressed in this policy

35181 Governing board policy on responsibilities of students

35291-35291.5 Rules

44807 Duty concerning conduct of students

48908 Duties of students

48900-48925 Grounds for suspension or expulsion; sexual harassment

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

48980 Notice at beginning of term

49020-49023 Athletic programs

CIVIL CODE

51.9 Liability for sexual harassment; business, service and professional relationships

1714.1 Liability of parents/guardians for willful misconduct of minor

PENAL CODE

422.6, 422.7, 422.75 Liability for crimes based on discriminatory intent, including hate crimes

UNITED STATES CODE

18 USC 245 Federally Protected Activities

18 USC 249 Hate Crime Acts

20 USC 1681-1688 Title IX, 1972 Education Act Amendments 42 USC 2000d & 2000e et seq.
Title VI & Title VII, Civil Rights Act of 1964 as amended

CODE OF FEDERAL REGULATIONS 34 CFR 104.7 Person Responsible for Overall
Implementation of Title IX 34 CFR 106.8 Person Responsible for Overall Implementation of
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