

Personnel

Sexual Harassment

The Board of Education is committed to providing a safe work environment that is free of harassment and discrimination. Sexual harassment devalues our employees, and undermines their safety, ability to perform their roles and responsibilities, and reinforces social inequality. The Board prohibits sexual harassment against district employees and job applicants and retaliatory behavior or action against any person who complains, testifies, or otherwise participates in the complaint process established for the purpose of this policy.

Sexual harassment includes, but is not limited to, harassment that is based on the gender, gender identity, gender expression, or sexual orientation of the victim. The district strongly encourages any employee to immediately contact their site supervisor if he/she feels that he/she is being or has been sexually harassed while performing their duties on district property or at district-sponsored events.

This policy shall apply to all district employees and to other persons on district property or with some employment relationship with the district, such as interns, volunteers, contractors, and job applicants.

(cf. 0410 - Nondiscrimination in District Programs and Activities)
(cf. 4030 - Nondiscrimination in Employment)

Any district employee who engages or participates in sexual harassment or who aids, abets, incites, compels, or coerces another to commit sexual harassment in violation of this policy is subject to disciplinary action, up to and including dismissal.

(cf. 4117.7/4317.7 - Employment Status Reports)
(cf. 4118 - Dismissal/Suspension/Disciplinary Action)
(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

The Superintendent or designee shall take all actions necessary to ensure the prevention, investigation, and correction of sexual harassment, including but not limited to:

1. Providing training to employees in accordance with law and administrative regulation;
2. Publicizing and disseminating the district's sexual harassment policy to employees and others to whom the policy may apply;
(cf. 4112.9/4212.9/4312.9 - Employee Notifications)
3. Ensuring prompt, thorough, and fair investigation of complaints; and/or

4. Taking timely and appropriate corrective/remedial action(s), which may require interim separation of the complainant and the alleged harasser and subsequent monitoring of developments

The Superintendent or designee shall periodically evaluate the effectiveness of the district's strategies to prevent and address harassment. Such evaluation may involve conducting regular anonymous employee surveys to assess whether harassment is occurring or is perceived to be tolerated, partnering with researchers or other agencies with the needed expertise to evaluate the district's prevention strategies, and using any other effective tool for receiving feedback on systems and/or processes. As necessary, changes shall be made to the harassment policy, complaint procedures, or training.

Sexual Harassment Reports and Complaints

Any district employee who feels that he/she has been sexually harassed in the performance of his/her district responsibilities or who has knowledge of any incident of sexual harassment by or against another employee shall immediately report the incident to his/her direct supervisor, another supervisor, the district's coordinator for nondiscrimination, the Superintendent, or, if available, or a complaint hotline. A supervisor or administrator who receives a harassment complaint shall promptly notify the coordinator.

Complaints of sexual harassment shall be filed and investigated in accordance with the complaint procedure specified in AR 4030, Nondiscrimination in Employment. An employee may bypass his/her supervisor in filing a complaint where the supervisor is the subject of the complaint.

All complaints and allegations of sexual harassment shall be kept confidential to the extent necessary to carry out the investigation or to take other subsequent necessary actions.
(2 CCR 11023)

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination on the basis of sex

GOVERNMENT CODE

12900-12996 Fair Employment and Housing Act, especially:

12940 Prohibited discrimination

12950 Sexual harassment; distribution of information

12950.1 Sexual harassment training

LABOR CODE

1101 Political activities of employees

1102.1 Discrimination: sexual orientation

CODE OF REGULATIONS, TITLE 2

11009 Employment discrimination

11021 Retaliation

11023 Harassment and discrimination prevention and correction

11024 Sexual harassment training and education
11034 Terms, conditions, and privileges of employment
CODE OF REGULATIONS, TITLE 5
4900-4965 Nondiscrimination in elementary and secondary education programs receiving state financial assistance
UNITED STATES CODE, TITLE 20
1681-1688 Title IX prohibition against discrimination
UNITED STATES CODE, TITLE 42
2000e-2000e-17 Title VII, Civil Rights Act of 1964, as amended
CODE OF FEDERAL REGULATIONS, TITLE 34
106.1-106.9 Nondiscrimination on the basis of sex in education programs or activities
106.51-106.61 Nondiscrimination on the basis of sex in employment in education program or activities
COURT DECISIONS
Department of Health Services v. Superior Court of California, (2003) 31 Cal.4th 1026
Faragher v. City of Boca Raton, (1998) 118 S.Ct. 2275
Burlington Industries v. Ellreth, (1998) 118 S.Ct. 2257
Gebser v. Lago Vista Independent School District, (1998) 118 S.Ct. 1989
Oncale v. Sundowner Offshore Serv. Inc., (1998) 118 S.Ct. 998
Meritor Savings Bank, FSB v. Vinson et al., (1986) 447 U.S. 57

Management Resources:

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION PUBLICATIONS
Promising Practices for Preventing Harassment, November 2017
WEB SITES
California Department of Fair Employment and Housing: <http://www.dfeh.ca.gov>
Equal Employment Opportunity Commission: <http://www.eeoc.gov>
U.S. Department of Education, Office for Civil Rights:
<http://www.ed.gov/about/offices/list/ocr/index.html>

Adopted: June 13, 2018

Personnel

Sexual Harassment

This administrative regulation shall apply to all allegations of sexual harassment involving employees, interns, volunteers, and job applicants, but shall not be used to resolve any complaint by or against a student.

Definitions

Examples of actions that might constitute sexual harassment in the work or educational setting, whether committed by a supervisor, a co-worker, or a non-employee, include, but are not limited to:

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 district employees includes, but is not limited to the following:
 - i. Submission to the harassing conduct is explicitly or implicitly made a term or condition of employment, continued employment, or career opportunities or advancement;
 - ii. Submission to, or rejection of, the harassing conduct is the basis of employment decisions affecting the District employee; and/or

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. **Hostile Environment and Hostile Work Environment**

A “hostile environment” exists when sexually harassing conduct is sufficiently severe,

persistent, or pervasive to undermine the learning environment and effectively deny or limit a student's ability to participate in or benefit from District programs. A "hostile work environment" exists when sexually harassing conduct is sufficiently severe, persistent, or pervasive to undermine the teaching or work environment for a District employee.

7. 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.

Training

The Superintendent or designee shall ensure that all employees receive training regarding the district's sexual harassment policies when hired and periodically thereafter. The training shall include how to recognize prohibited or harassing conduct, the procedures for reporting and/or filing complaints involving an employee, employees' duty to use the district's complaint procedures, and employee obligations when a sexual harassment report involving a student is made to the employee. The training shall also include information about processes for employees to informally share or obtain information about harassment without filing a complaint.

(cf. 1312.3 - Uniform Complaint Procedures)

(cf. 4030 - Nondiscrimination in Employment)

(cf. 5145.7 - Sexual Harassment)

Annually, the Superintendent or designee shall ensure that supervisory employees receive at least two hours of classroom or other effective interactive training and education regarding sexual harassment. All such newly hired or promoted employees shall receive training within six months of their assumption of the new position. (Government Code 12950.1)

A supervisory employee is any employee having the authority, in the interest of the district, to hire, transfer, suspend, lay off, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, adjust their grievances, or effectively recommend such action, when the exercise of the authority is not of a merely routine or clerical nature, but requires the use of independent judgment. (Government Code 12926)

(cf. 4300 - Administrative and Supervisory Personnel)

The district's sexual harassment training and education program for supervisory employees shall be aimed at assisting them in preventing and effectively responding to incidents of sexual harassment, as well as implementing mechanisms to promptly address and correct wrongful behavior. The training shall include, but is not limited to, the following: (Government Code 12950.1; 2 CCR 11024)

1. Information and practical guidance regarding federal and state laws on the prohibition, prevention, and correction of sexual harassment, the remedies available to sexual harassment victims in civil actions, and potential district and/or individual exposure or liability
2. The types of conduct that constitute sexual harassment and practical examples which

illustrate sexual harassment, discrimination, and retaliation using training modalities such as role plays, case studies, and group discussions, based on factual scenarios taken from case law, news and media accounts, and hypotheticals based on workplace situations and other sources

3. A supervisor's obligation to report sexual harassment, discrimination, and retaliation of which he/she becomes aware and what to do if the supervisor himself/herself is personally accused of harassment
4. Strategies for preventing harassment, discrimination, and retaliation and appropriate steps to ensure that remedial measures are taken to correct harassing behavior, including an effective process for investigation of a complaint
5. The essential elements of the district's anti-harassment policy, including the limited confidentiality of the complaint process and resources for victims of unlawful sexual harassment, such as to whom they should report any alleged sexual harassment, and how to use the policy if a harassment complaint is filed
6. A copy of the district's sexual harassment policy and administrative regulation, which each participant shall acknowledge in writing that he/she has received
7. The definition and prevention of abusive conduct that addresses the use of derogatory remarks, insults, or epithets, other verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, and the gratuitous sabotage or undermining of a person's work performance
8. Practical examples of harassment based on gender identity, gender expression, and sexual orientation

The Superintendent or designee shall retain for at least two years the records of any training provided to supervisory employees. Such records shall include the names of trained employees, date of the training, the type of training, and the name of the training provider. (2 CCR 11024)

Notifications

A copy of the Board policy and this administrative regulation shall: (Education Code 231.5)

1. Be displayed in a prominent location in the main administrative building, district office, or other area of the school where notices of district rules, regulations, procedures, and standards of conduct are posted
2. Be provided to every district employee at the beginning of the first quarter or semester of the school year or whenever a new employee is hired (cf. 4112.9/4212.9/4312.9 - Employee Notifications)
3. Appear in any school or district publication that sets forth the school's or district's comprehensive rules, regulations, procedures, and standards of conduct

All employees shall receive a copy of an information sheet prepared by the California Department of Fair Employment and Housing (DFEH) or the district that contains, at a minimum, components on: (Government Code 12950)

1. The illegality of sexual harassment
2. The definition of sexual harassment under applicable state and federal law

3. A description of sexual harassment, with examples
4. The district's complaint process available to the employee
5. The legal remedies and complaint process available through DFEH and the Equal Employment Opportunity Commission (EEOC)
6. Directions on how to contact DFEH and the EEOC
7. The protection against retaliation provided by 2 CCR 11021 for opposing harassment prohibited by law or for filing a complaint with or otherwise participating in an investigation, proceeding, or hearing conducted by DFEH and the EEOC

In addition, the district shall post, in a prominent and accessible location, the DFEH poster on discrimination in employment and the illegality of sexual harassment and the DFEH poster regarding transgender rights. (Government Code 12950)

Adopted: June 13, 2018