

SEXUAL HARASSMENT

The **Governing Board** ~~Board of Education~~ is committed to maintaining an ~~educational~~ **safe school** environment that is free from harassment **and discrimination**. The Board prohibits ~~sexual harassment of students by other students, employees or other persons,~~ at school or at school-sponsored or school-related activities, **sexual harassment targeted at any student by anyone**. The Board also prohibits retaliatory behavior or action against person who **reports**, complains, testifies about, assist or otherwise participate in the complaint process established pursuant to this policy and the administrative regulation.

~~The Board of Education is committed to equal opportunity for all individuals in education. District programs and activities shall be free from discrimination, harassment, intimidation, and bullying based on actual or perceived ancestry, age, color, disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sex, sexual orientation, or association with a person or a group with one or more of these actual or perceived characteristics.~~

The district strongly encourages any student who feels that he/she is being or has been sexually harassed on school grounds or at a school-sponsored or school-related activity by another student or an adult who has experienced off-campus sexual harassment that has a continuing effect on campus to immediately contact their teacher, the principal, or any other available school employee. Any employee who receives a report or observes an incident of sexual harassment shall notify the principal or a district compliance officer. Once notified, the principal or compliance officer shall take the steps to investigate and address the allegation, as specified in the accompanying administrative regulation.

The Superintendent or designee shall take appropriate actions to reinforce the district's sexual harassment policy.

Instruction/Information

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

1. What acts and behavior constitute sexual harassment, including the fact that sexual harassment could occur between people of the same ~~gender~~ **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 instances of sexual harassment, even where the victim of the harassment has not complained

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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, shall be investigated and prompt action shall be taken to stop any harassment, prevent recurrence, and address any continuing effect 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. 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 sexual harassment complaint continues**
8. **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 shall not disadvantage the complainant or victim of the alleged harassment**

Complaint Process and Disciplinary Actions

~~Complaints regarding S~~sexual harassment **complaints by and against students** shall be investigated and resolved in accordance with law and district procedures specified in AR 1312.3 - Uniform Complaint Procedures. Principals 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.

Upon investigation of a sexual harassment complaint, Any student who engages found to have engaged in sexual harassment or sexual violence ~~at school or at a school-sponsored or school-related activity~~ is in violation of this policy and shall be subject to disciplinary action. For students in grades 4-8, 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.

(cf. 5144 - Discipline)

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

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

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Upon investigation of a sexual harassment complaint, ~~Any staff member~~ any employee found to have engaged in sexual harassment or sexual violence toward any student shall be subject to discipline up to and including dismissal have their employment terminated in accordance with ~~applicable policies, laws, and/or~~ **the applicable** collective bargaining agreements.

(cf. 4117.7 - Employment Status Report)

(cf. 4118 - Dismissal/Suspension/Disciplinary Action)

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

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

~~Any student who feels that he/she is being or has been subjected to sexual harassment shall immediately contact his/her teacher or any other employee. A school employee to whom a complaint is made shall as soon as possible and no more than 24 hours of receiving the complaint, report it to the principal or designee.~~

~~Any school employee who observes any incident of sexual harassment involving a student shall report this observation to the principal or designee, whether or not the victim files a complaint.~~

~~In any case of sexual harassment involving the principal or any other district employee to whom the complaint would ordinarily be made, the employee who receives the student's report or who observes the incident shall report to the nondiscrimination coordinator or the Superintendent or designee.~~

~~The principal or designee to whom a complaint of sexual harassment is reported shall immediately investigate the complaint in accordance with administrative regulation. Where the principal or designee finds that sexual harassment occurred, he/she shall take prompt, appropriate action to end the harassment and address its effects on the victim. The principal or designee shall also advise the victim of any other remedies that may be available. The principal or designee shall file a report with the Superintendent or designee and refer the matter to law enforcement authorities, where required.~~

~~The Board designates the following position as Coordinator for Sexual Harassment complaints:~~

Director, Human Resources
750 Bradford St.
Redwood City, CA 94063
650-423-2251

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

SEXUAL HARASSMENT (continued)

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 harassing behavior in its schools.

(cf. 3580 - District Records)

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

Management Resources continued: (see next page)

SEXUAL HARASSMENT (continued)

Management Resources continued:

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>

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The district designates the following individual(s) as the responsible employee(s) to coordinate its efforts to comply with Title IX of the Education Amendments of 1972 and California Education Code 234.1, as well as to investigate and resolve sexual harassment complaints under AR 1312.3 - Uniform Complaint Procedures. The coordinator/compliance officer(s) may be contacted at:

Assistant Superintendent of Human Resources

(title or position)

750 Bradford Street Redwood City, CA 94063

(address)

650-482-2200

(telephone number)

wkelly@rcsdk8.net

(email)

Prohibited sexual harassment includes, but is not limited to, 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 gender, in the educational setting, **when under any of the following conditions:** (Education Code 212.5; 5 CCR 4916)

1. Submission to the conduct is explicitly or implicitly made a term or condition of a student's academic status or progress.
2. Submission to or rejection of the conduct by a student is used as the basis for academic decisions affecting the student.
3. The conduct has the purpose or effect of having a negative impact on the student's academic performance, or of creating an intimidating, hostile or offensive educational environment
4. Submission to or rejection of the conduct by the student is used as the basis for any decision affecting the student regarding benefits and services, honors, programs, or activities available at or through any district program or activity.

Examples of Types of conduct which are prohibited in the district and which may constitute sexual harassment include, but are not limited to:

1. Unwelcome leering, sexual flirtations or propositions
2. Sexual slurs, epithets, threats, verbal abuse, derogatory comments or sexually degrading descriptions
3. Graphic verbal comments about an individual's body, or overly personal conversation

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4. Sexual jokes, **derogatory posters**, notes, stories, **cartoons**, drawings, pictures or **obscene** gestures, or **computer-generated images of a sexual nature**
5. Spreading sexual rumors
6. Teasing or sexual remarks about students enrolled in a predominantly single-gender ~~sex~~ class
7. Massaging, grabbing, fondling, stroking or brushing the body
8. Touching an individual's body or clothes in a sexual way
9. ~~Purposefully cornering~~ **Impeding** or blocking ~~normal~~ movements **or any physical interference with school activities when directed at an individual on the basis of sex**
10. Displaying sexually suggestive objects
11. **Sexual assault, sexual battery, or sexual coercion**
12. **Electronic communications containing comments, words, or images described above**

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.

Reporting Process and Complaint Investigation and Resolution

Any student who believes that they have been subjected to sexual harassment by another student, an employee, or a third party or who has witnessed sexual harassment is strongly encouraged to report the incident to their teacher, the principal, or any other available school employee. Within one school day of receiving such a report, the school employee shall forward the report to the principal or the district's compliance officer identified in AR 1312.3. In addition, any school employee who observes an incident of sexual harassment involving a student shall, within one school day, report their observation to the principal or a district compliance officer. The employee shall take these actions, whether or not the alleged victim files a complaint.

When a report or complaint of sexual harassment involves off-campus conduct, the principal shall assess whether the conduct may create or contribute to the creation of a hostile school environment. If they determine that a hostile environment may

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be created, the complaint shall be investigated and resolved in the same manner as if the prohibited conduct occurred at school.

When a verbal or informal report of sexual harassment is submitted, the principal or compliance officer shall inform the student or parent/guardian of the right to file a formal written complaint in accordance with the district's uniform complaint procedures. Regardless of whether a formal complaint is filed, the principal or compliance officer shall take steps to investigate the allegations and, if sexual harassment is found, shall take prompt action to stop it, prevent recurrence, and address any continuing effects.

If a complaint of sexual harassment is initially submitted to the principal, they shall, within two school days, forward the report to the compliance officer to initiate investigation of the complaint. The compliance officer shall contact the complainant and investigate and resolve the complaint in accordance with law and district procedures specified in AR 1312.3.

In investigating a sexual harassment complaint, evidence of past sexual relationships of the victim shall not be considered, except to the extent that such evidence may relate to the victim's prior relationship with the respondent.

In any case of sexual harassment involving the principal, compliance officer, or any other person to whom the incident would ordinarily be reported or filed, the report may instead be submitted to the Superintendent or designee who shall determine who will investigate the complaint.

(cf. 5141.4 - Child Abuse Prevention and Reporting)

Confidentiality

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

However, when a complainant or victim of sexual harassment notifies the district of the harassment but requests confidentiality, the compliance officer shall inform him/her that the request may limit the district's ability to investigate the harassment or take other necessary action. When honoring a request for confidentiality, the district will nevertheless take all reasonable steps to investigate and respond to the complaint consistent with the request.

When a complainant or victim of sexual harassment notifies the district of the harassment but requests that the district not pursue an investigation, the district will determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students.

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

(cf. 5125 - Student Records)

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When an incident of sexual harassment is reported, the principal or designee, in consultation with the compliance officer, shall determine whether interim measures are necessary pending the results of the investigation. The principal/designee or compliance officer shall take immediate measures necessary to stop the harassment and protect students and/or ensure their access to the educational program. **To the extent possible, such interim measures shall not disadvantage the complainant or victim of the alleged harassment.** Interim measures may include placing the individuals involved in separate classes or transferring a student to a class taught by a different teacher, in accordance with law and Board policy. The school should notify the individual who was harassed of their options to avoid contact with the alleged harasser and allow the complainant to change academic and extracurricular arrangements as appropriate. The school should also ensure that the complainant is aware of the resources and assistance, such as counseling, that are available to them. As appropriate, such actions shall be considered even when a student chooses to not file a formal complaint or the sexual harassment occurs off school grounds or outside school-sponsored or school-related programs or activities.

Notifications

A copy of the district's sexual harassment policy and regulation shall:

1. Be included in the notifications that are sent to parents/guardians at the beginning of each school year (Education Code 48980; 5 CCR 4917)

(cf. 5145.6 - Parental Notifications)

2. Be displayed in a prominent location in the main administrative building or other area where notices of district rules, regulations, procedures and standards of conduct are posted (Education Code 231.5)

A copy of the district's sexual harassment policy and regulation shall be posted on district and school web sites and, when available, on district-supported social media.

(cf. 1113 - District and School Web Sites)

3. Be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester or summer session (Education Code 231.5)
4. Appear in any school or district publication that sets forth the school's or district's comprehensive rules, regulations, procedures and standards of conduct (Education Code 231.5)

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5. Be included in the student handbook
6. Be provided to employees and employee organizations

Investigation of Complaints at School (~~Site-Level Grievance Procedure~~)

1. ~~The principal or designee shall promptly investigate all complaints of sexual harassment. In so doing, he/she shall talk individually with:~~
 - a. ~~The student who is complaining~~
 - b. ~~The person accused of harassment~~
 - c. ~~Anyone who witnessed the conduct complained of~~
 - d. ~~Anyone mentioned as having related information~~
2. ~~The student who is complaining shall have an opportunity to describe the incident, present witnesses and other evidence of the harassment, and put his/her complaint in writing.~~
3. ~~The principal or designee shall discuss the complaint only with the people described above. When necessary to carry out his/her investigation or for other good reasons that apply to the particular situation, the principal or designee also may discuss the complaint with the following persons:~~
 - a. ~~The Superintendent or designee~~
 - b. ~~The parent/guardian of the student who complained~~
 - c. ~~If the alleged harasser is a student, his/her parent/guardian~~
 - d. ~~A teacher or staff member whose knowledge of the students involved may help in determining who is telling the truth~~
 - e. ~~Child protective agencies responsible for investigating child abuse reports~~
 - f. ~~Legal counsel for the district~~
4. ~~When the student who complained and the alleged harasser so agree, the principal or designee may arrange for them to resolve the complaint informally with the help of a counselor, teacher, administrator or trained mediator. The student who complained shall never be asked to work out the~~

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- ~~problem directly with the accused person unless such help is provided and both parties agree.~~
5. ~~In reaching a decision about the complaint, the principal or designee may take into account:~~
 - a. ~~Statements made by the persons identified above~~
 - b. ~~The details and consistency of each person's account~~
 - c. ~~Evidence of how the complaining student reacted to the incident~~
 - d. ~~Evidence of any past instances of harassment by the alleged harasser~~
 - e. ~~Evidence of any past harassment complaints that were found to be untrue~~
 6. ~~To judge the severity of the harassment, the principal or designee may take into consideration:~~
 - a. ~~How the misconduct affected one or more students' education~~
 - b. ~~The type, frequency and duration of the misconduct~~
 - c. ~~The number of persons involved~~
 - d. ~~The age and gender of the person accused of harassment~~
 - e. ~~The subject(s) of harassment~~
 - f. ~~The place and situation where the incident occurred~~
 - g. ~~Other incidents at the school, including incidents of harassment that were not related to gender~~
 7. ~~The principal or designee shall write a report of his/her findings, decision, and reasons for the decision and shall present this report to the student who complained and the person accused and parent/guardian.~~
 8. ~~The principal or designee shall give the Superintendent or designee a written report of the complaint and investigation. If the principal or designee verifies that sexual harassment occurred, this report shall describe the actions taken to end the harassment, address the effects of the harassment on the student harassed, and prevent retaliation or further harassment.~~

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9. ~~Within two weeks after receiving the complaint, the principal or designee shall determine whether or not the student who complained has been further harassed. The principal or designee shall keep a record of this information and shall continue this follow-up.~~

Enforcement

~~The Superintendent or designee shall take appropriate actions to reinforce the district's sexual harassment policy. As needed, these actions may include any of the following:~~

1. ~~Removing vulgar or offending graffiti.~~
2. ~~Providing staff inservice and student instruction or counseling.~~
3. ~~Notifying parents/guardians of the actions taken.~~
4. ~~Notifying child protective services.~~
5. ~~Taking appropriate disciplinary action. In addition, the principal or designee may take disciplinary measures against any person who is found to have made a complaint of sexual harassment which he/she knew was not true.~~