

SEXUAL AND GENDER-BASED HARASSMENT**A. Purpose and Scope**

The Governing Board is committed to maintaining an environment free of sexual harassment.

B. General

1. Prohibited sexual or gender-based harassment includes, but is not limited to, unwelcome sexual advances, requests for sexual favors, or other verbal, visual or physical conduct of a sexual nature made by a district employee to a student or another district employee, or when made by a student to another student, of the same or opposite sex in the educational setting, where:
 - a) Submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment, academic status or progress; or
 - b) Submission to or rejection of the conduct by an individual is used as the basis for academic or employment decisions affecting the individual; or
 - c) The conduct has the purpose or effect of having a negative impact on the individual's academic or work performance or of creating an intimidating, hostile or offensive educational or work environment.
 - d) Submission to or rejection of the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the school or any district program or activity.
2. Other types of conduct which are prohibited in the district and which may constitute sexual or gender-based harassment include, but are not limited to:
 - a) Unwelcome leering, sexual flirtations, or propositions.
 - b) Sexual suggestions or obscene letters, notes, invitations, unwelcome sexual slurs, epithets, threats, verbal abuse, derogatory comments or sexually degrading descriptions.
 - c) Attempts to pull down pants or gym shorts or flip up skirts.
 - d) Sexual jokes, derogatory posters, notes, stories, cartoons, drawings, pictures, obscene gestures or computer-generated images of a sexual nature
 - e) Graphic verbal comments about an individual's body or overly personal conversation
 - f) Teasing, name-calling or sexual remarks about an individual's gender identity, gender expression or sexual orientation.
 - g) Massaging, grabbing, fondling, stroking, or brushing the body
 - e) Spreading sexual rumors.
 - f) Touching an individual's body or clothes in a sexual way.
 - g) Impeding or blocking normal movements.
 - h) Purposefully limiting a student's access to educational tools.
 - i) Displaying sexually suggestive objects in the educational or work environment.

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- j) Continuing to express sexual interest after being informed that the interest is unwelcome. (Reciprocal attraction is not considered sexual or gender-based harassment.)
- k) Implying or withholding support for an appointment, promotion, or change of assignment; suggesting a poor performance report will be prepared; or suggesting probation or other discipline will be used. Within the educational environment, implying will withhold or actually withholding grades earned or deserved; suggesting a poor performance evaluation will be prepared; or suggesting a scholarship recommendation or college application will be denied.
- l) Coercive sexual behavior used to control, influence, or affect the career, salary, and/or work environment of another employee. Within the educational environment, engaging in coercive sexual behavior to control, influence, or affect the educational opportunities, grades, and/or learning environment of a student.
- m) Offering favors or educational or employment benefits, such as grades or promotions, favorable performance evaluations, favorable assignments, favorable duties or shifts, recommendations, reclassifications, etc., in exchange for sexual favors.

In determining whether the alleged conduct constitutes sexual or gender-based harassment, the totality of the circumstances, the nature of the harassment and the context in which the alleged incidents occurred will be considered.

C. Forms & Additional References

None

D. Procedures

1. Student Harassment

Any student who feels that he or she is being sexually harassed or harassed based on gender, by an employee, another administrator or faculty member and report the harassment without fear of reprisal. The student does not have to report the harassment to his or her teacher, especially if the student believes that the teacher is the harasser. The student can make this report along or with his or her parent/guardian. An individual who believes a student has been subject to harassment, or witnessed or has knowledge of such harassment may also file a complaint.

Title IX prohibits retaliatory behavior against any complainant or any participant in the complaint process.

A district employee who receives a report of sexual or gender-based harassment of a student or who witnesses the sexual or gender-based harassment of a student shall immediately report the harassment to the Assistant Superintendent of Education Services and Human Resources (if alleged harassment is by a district employee) or the principal or principal's designee (if the alleged harassment is by another student). Administrators, upon receiving a sexual or gender-based harassment report from a student, shall inform the student of his or her rights and shall make every effort to assist the student in securing those rights. The administrator shall provide the student with a copy of the sexual and gender-based harassment policy as well as the

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Administrative Regulations which contains procedures for filing complaints regarding sexual and gender-based harassment.

Each complaint of sexual or gender-based harassment shall be promptly investigated in a way that attempts to respect the privacy of all parties concerned. Formal complaints of sexual or gender-based harassment filed in accordance with the complaint procedures found herein under “7. Complaint Procedures” will be investigated in accordance with “Step 2” of those procedures.

If the complaint requests that his or her name not be disclosed to the harasser, an informal investigation of the allegations shall be conducted to the extent possible without disclosing the complainant’s name. In order to file a formal complaint of sexual or gender-based harassment, however, the student must be willing to disclose his or her name to the alleged harasser. Measures should be taken to evaluate the appropriateness of limiting interactions between the harassing students and the students who were subject of the harassment.

Students who allege sexual or gender-based harassment by their teacher may request to be transferred out of the teacher’s class. The district will attempt to accommodate such requests to the extent practicable. Students who believe that a district employee (e.g., teacher, staff member, etc.) has touched them inappropriately or made inappropriate comments to them of a sexual nature should report such conduct immediately. Even if such behavior is not considered sexual or gender-based harassment under this policy, it may be in violation of other rules and standards of conduct of the district.

2. Harassment of Employees/Staff/Applicants for Employment

Any employee or applicant for employment who feels he or she has been sexually harassed based on sex or gender should immediately report such incidents to his or her supervisor, the Assistant Superintendent of Education Services and Human Resources, or any other member of the Administration, without fear of reprisal. An employee or staff member need not first report the harassment to his or her supervisor, especially if the employee or staff member believes the supervisor engaged in or knowingly tolerated any harassment policy and Administrative Regulation which contains complaint procedures for filing a formal sexual harassment complaint will be provided to the complainant and to any other individual upon request.

Any supervisor or administrator who receives a sexual or gender-based harassment complaint shall notify the Superintendent or the Assistant Superintendent of Education Services and Human Resources, who shall ensure that the complaint is appropriately and promptly investigated. (See complaint procedures which are included Administrative Regulation 4118.11 and 4218.11 for the necessary steps: in filing a formal complaint of sexual harassment.)

3. Any Other Persons Alleging Harassment By A District Employee, or Student

Any person who alleges sexual or gender-based harassment by any employee, or student in the district may file a complaint under the complaint procedures contained in Administrative Regulation 5145.7 under “7. Complaint Procedures”

4. Sanctions

A substantiated charge of sexual or gender-based harassment against an employee of the district shall subject the employee to disciplinary action, up to and including discharge. Such discipline shall be consistent with the California Education Code and any collective bargaining agreement,

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if applicable. If the conduct complained of constitutes sexual or gender-based harassment under this policy, a charge of such conduct will be substantiated where a preponderance of evidence supports the allegations.

A substantiated charge against a student in grades 4 through 12 in the district shall subject that student to student disciplinary action, up to and including suspension or expulsion, consistent with the student discipline code and the California Education Code. If the conduct complained of constitutes sexual or gender-based harassment under this policy, a charge of such conduct will be substantiated where substantial evidence supports the allegations.

5. Notifications – Employees

A copy of the sexual and gender-based harassment policy and administrative regulation shall be displayed in a prominent location in the main administrative building located at 1875 W. Lowell Ave., Tracy, CA and in a prominent location near each school principal's office.

Notice of the sexual and gender-based harassment policy and the administrative regulation which contains the complaint procedures will be circulated to all employees of the district at the beginning of the first quarter or semester of the school year, and to any new employee at the time that the new employee is hired. A copy of the policy and administrative regulation shall also appear in any publication of the district that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the instruction.

All employees additionally shall receive a copy of an information sheet prepared by the California Department of Fair Employment and Housing ("DFEH") that includes information in sexual harassment, including the legal remedies and complaint process available through the DFEH and directions on how to contact this agency. A notice advising employees of the DFEH's requirements, including the prohibition against unlawful harassment based on sex, shall be posted at the main administrative building. The address and telephone number of the DFEH are as follows:

Department of Fair Employment and Housing
2000 O Street, Suite 120
Sacramento, CA 95814
(916) 455-9918

Federal agencies enforcing the prohibition of sexual harassment are the Equal Employment and Opportunity Commission ("EEOC") and the Office of Civil Rights ("OCR"). The addresses and telephone number of these agencies are as follows:

Office of Civil Rights
Old Federal Building
50 United Nations Plaza, Room 239
San Francisco, CA 94102
Equal Employment Opportunity Commission
1265 West Shaw Avenue, Room 103
Fresno, CA 83711

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6. Notifications – Students

A copy of this policy shall be displayed in a prominent location in the main administrative building located at 1875 W. Lowell Ave., Tracy, CA and in a prominent location near each school principal's office.

Notice of the sexual and gender-based harassment policy and administrative regulation which contains the complaint procedures will be given to all 6-12 students and parents or guardians upon enrollment and annually thereafter. A copy shall be provided as part of any orientation program conducted for new students at the beginning of each trimester, semester, or summer session, as applicable. Notification of policy will be given to parents. Teachers shall discuss this policy with their students in age-appropriate ways and should assure them that they need not endure any form of sexual and gender-based harassment.

Students may also file a separate claim of sexual or gender-based harassment with the OCR. The address and telephone number of the OCR is listed under the notifications section for employees. The time limit for filing a complaint with the OCR is 180 days from the date the act of sexual or gender-based harassment occurred, or if a student decides to file a complaint internally with the district under the complaint procedures outlined in Administrative Regulation 5145.7, sixty (60) days after that complaint process is exhausted.

7. Complaint Procedures

The Governing Board designates the following compliance officers to receive and investigate complaints and ensure district compliance with law:

Superintendent

1875 W. Lowell Ave., Tracy CA 95376

830-3200

Assistant Superintendent of Educational Services and Human Resources

1875 W. Lowell Ave., Tracy CA 95376

830-3260

Director Student Services and Curriculum

1875 W. Lowell Ave., Tracy CA 95376

830-3280

It is desirable that problems and complaints of alleged sexual or gender-based harassment brought by students, employees, parents or other members of the community be resolved in a prompt and equitable manner. If possible, such problems and complaints should be resolved in an informal manner. Although preferred, informal resolution is not a pre-requisite to filing a formal complaint.

If the complaint cannot be resolved informally the following procedures shall be followed for filing a formal complaint of sexual or gender-based harassment:

Step 1: Filing of Complaint

Any individual, public agency or organization may file a written complaint of alleged noncompliance.

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The complaint shall be presented to the Superintendent or designee, who will then give it to the appropriate compliance officer. The Superintendent or designee will maintain a log of complaints received, providing each with a code number and date stamp.

All types of complaints regarding sex equity and sexual or gender-based harassment must be initiated, in writing, within one hundred and eighty (180) calendar days of the date the alleged violation occurred, or the date the complainant first obtained knowledge of the facts of the alleged violation.

If a complainant is unable to put a complaint in writing due to conditions such as illiteracy or other disabilities, district staff shall help him/her to file the complaint.

Step 2: Investigation of Complaint

Within sixty (60) school days from receipt of the complaint, excluding summer session, when the alleged violation occurred during the regular school year, the Superintendent or designee shall complete the investigation of the complaint. This time period may be extended by written agreement of the complainant.

The Superintendent or designee will conduct an adequate, reliable and impartial investigation, including the opportunity for both the complainant and alleged perpetrator to present witnesses and evidence. The investigation will be conducted by a trained investigator that will interview all relevant parties and witnesses; the District is required to implement any interim measures, if deemed necessary, and that minimizes the burden on the individual(s) targeted by the bullying/harassment.

Consideration of counseling and other support services for any person found to have been subjected to prohibited harassment; and identification of any other students who were negatively affected by the harassing behavior and a determination of whether they were subject to a hostile environment. If so, the Recipient will consider whether remedial actions would be appropriate for those students.

Step 3: Response

Within sixty (60) days of receiving the complaint, the compliance officer shall prepare and send to the complainant and alleged perpetrator a written report of the district's investigation and decision, as described in Step 4 below. If the complainant is dissatisfied with the compliance officer's decision, he/she may, within fifteen (15) calendar days, file his/her complaint, in writing, with the Governing Board. The Board may consider the matter at its next regular Board meeting or at a special Board meeting. The Board may decide not to hear the complaint, in which case the compliance officer's decision is final. If the Board hears the complaint, the compliance officer shall send the Board's decision to the complaint within seven (7) calendar days or within the time period that has been specified in a written agreement with the complainant.

Step 4: Final Written Decision

The report of the district's decision shall be written in English and in the language of the complainant whenever feasible or required by law. If it is not feasible to write this report in the complainant's primary language, the district will arrange a meeting at which a community member will interpret it for the complainant.

This report shall include:

1. Statement of allegation(s) and issues(s).

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2. The findings and disposition of the complaint to include whether or not harassment occurred; and any individual remedies offered or provided to the complainant or any sanctions imposed on the perpetrator that directly relate to the complaint, and other steps the school has taken to eliminate the hostile environment. If the school finds one to exist, and prevent recurrence. The perpetrator should not be notified of the individual remedies offered or provided to the complainant.
3. Notice of the complainant's right to appeal the decision to the California Department of Education, and procedures to be followed for initiating such an appeal.

If an employee or student is disciplined as a result of the complaint, this report shall simply state that effective action was taken and that the employee or student was informed of district expectations. The report shall not give any further information as to the nature of the disciplinary action. However, when a student is expelled as a result of a substantiated charge of sexual harassment, the expulsion record shall be a non-privileged, dis-closable public record.

If dissatisfied with the district's decision, the complainant may appeal in writing to the California Department of Education within 15 days of receiving the district's decision. For good cause, the Superintendent of Public Instruction may grant an extension for filing appeals.

When appealing to the California Department of Education, the complainant must specify the reason(s) for appealing the district's decision and must include a copy of the locally filed complaint and the district's decision. (Title 5, Section 4652)

E. Record Retention

None

F. Reports Required

Sexual Harassment (student log)

G. Responsible Administrative Unit

Human Resources
Educational Services
Student Services

H. Approved by:

Assistant Superintendent of Educational Services and Human Resources
Director of Student Services and Curriculum
TUSD Acknowledged: 03.24.14