

SEXUAL HARASSMENT

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 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)

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. Unwelcome 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
4. Sexual jokes, derogatory posters, notes, stories, cartoons, drawings, pictures, 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-sex class
7. Massaging, grabbing, fondling, stroking, or brushing the body
8. Touching an individual's body or clothes in a sexual way

9. Impeding or blocking 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

School-Level Complaint Process/Grievance Procedure

Complaints of sexual harassment, or any behavior prohibited by the district's Nondiscrimination/Harassment policy - BP 5145.3, shall be handled in accordance with the following procedure:

1. **Notice and Receipt of Complaint:** Any student who believes he/she has been subjected to sexual harassment or who has witnessed sexual harassment may file a complaint with any school employee. Within 24 hours of receiving a complaint, the school employee shall report it to the district Coordinator for Nondiscrimination/Principal. In addition, any school employee who observes any incident of sexual harassment involving a student shall, within 24 hours, report this observation to the Coordinator/Principal, whether or not the victim files a complaint.

In any case of sexual harassment involving the Coordinator/Principal to whom the complaint would ordinarily be made, the employee who receives the student's report or who observes the incident shall instead report to the Superintendent or designee.

2. **Initiation of Investigation:** The Coordinator/Principal shall initiate an impartial investigation of an allegation of sexual harassment within five school days of receiving notice of the harassing behavior, regardless of whether a formal complaint has been filed. The district shall be considered to have "notice" of the need for an investigation upon receipt of information from a student who believes he/she has been subjected to harassment, the student's parent/guardian, an employee who received a complaint from a student, or any employee or student who witnessed the behavior.

If the Coordinator/Principal receives an anonymous complaint or media report about alleged sexual harassment, he/she shall determine whether it is reasonable to pursue an investigation considering the specificity and reliability of the information, the seriousness of the alleged incident, and whether any individuals can be identified who were subjected to the alleged harassment.

AR 5145.7(c)

SEXUAL HARASSMENT (continued)

3. **Initial Interview with Student:** When a student or parent/guardian has complained or provided information about sexual harassment, the Coordinator/Principal shall describe the district's grievance procedure and discuss what actions are being sought by the student in response to the

complaint. The student who is complaining shall have an opportunity to describe the incident, identify witnesses who may have relevant information, provide other evidence of the harassment, and put his/her complaint in writing. If the student requests confidentiality, he/she shall be informed that such a request may limit the district's ability to investigate.

4. **Investigation Process:** The Coordinator/Principal shall keep the complaint and allegation confidential, except as necessary to carry out the investigation or take other subsequent necessary action. (5 CCR 4964)

The Coordinator/Principal shall interview individuals who are relevant to the investigation, including, but not limited to, the student who is complaining, the person accused of harassment, anyone who witnessed the reported harassment, and anyone mentioned as having relevant information. The Coordinator/Principal may take other steps such as reviewing any records, notes, or statements related to the harassment or visiting the location where the harassment is alleged to have taken place.

When necessary to carry out his/her investigation or to protect student safety, the Coordinator/Principal also may discuss the complaint with the Superintendent or designee, the parent/guardian of the student who complained, the parent/guardian of the alleged harasser if the alleged harasser is a student, a teacher or staff member whose knowledge of the students involved may help in determining who is telling the truth, law enforcement and/or child protective services, and district legal counsel or the district's risk manager.

5. **Interim Measures:** The Coordinator/Principal shall determine whether interim measures are necessary during and pending the results of the investigation, such as placing students in separate classes or transferring a student to a class taught by a different teacher.
6. **Optional Mediation:** In cases of student-on-student harassment, when the student who complained and the alleged harasser so agree, the Coordinator/Principal 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 problem directly with the accused person unless such help is provided and both parties agree, and he/she shall be advised of the right to end the informal process at any time.

AR 5145.7(d)

SEXUAL HARASSMENT (continued)

7. **Factors in Reaching a Determination:** In reaching a decision about the complaint, the Coordinator/Principal 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

To judge the severity of the harassment, the Coordinator/Principal 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 identity, age, and sex of the harasser and the student who complained, and the relationship between them
 - d. The number of persons engaged in the harassing conduct and at whom the harassment was directed
 - e. The size of the school, location of the incidents, and context in which they occurred
 - f. Other incidents at the school involving different students
8. **Written Report on Findings and Follow-Up:** No more than 30 days after receiving the complaint, the Coordinator/Principal shall conclude the investigation and prepare a written report of his/her findings. This timeline may be extended for good cause. If an extension is needed, the Coordinator/Principal shall notify the student who complained and explain the reasons for the extension.

AR 5145.7(e)

SEXUAL HARASSMENT (continued)

The report shall include the decision and the reasons for the decision and shall summarize the steps taken during the investigation. If it is determined that harassment occurred, the report shall also include any corrective actions that have or will be taken to address the harassment and prevent any retaliation or further harassment. This report shall be presented to the student who complained, the person accused, the parents/guardians of the student who complained and the student who was accused, and the Superintendent or designee.

In addition, the Coordinator/Principal shall ensure that the harassed student and his/her parent/guardian are informed of the procedures for reporting any subsequent problems. The Coordinator/Principal shall make follow-up

inquiries to see if there have been any new incidents or retaliation and shall keep a record of this information.

Enforcement of District Policy

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 training to students, staff, and parents/guardians about how to recognize harassment and how to respond
3. Disseminating and/or summarizing the district's policy and regulation regarding sexual harassment
4. Consistent with the laws regarding the confidentiality of student and personnel records, communicating the school's response to parents/guardians and the community
5. Taking appropriate disciplinary action

In addition, disciplinary measures may be taken against any person who is found to have made a complaint of sexual harassment which he/she knew was not true.

AR 5145.7(f)

SEXUAL HARASSMENT (continued)

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)
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, including school web sites (Education Code 231.5)
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)

Regulation
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EVERGREEN SCHOOL DISTRICT
San Jose, California