Sex Discrimination & Sex-based Harassment

Adopted: 04/21/1998 **| Last Revised**: 09/17/2024 **| Last Reviewed**: 09/17/2024

The district does not discriminate on the basis of sex in any of its programs or activities and complies with Title IX of the Education Amendments of 1972 and its implementing regulations. Sex discrimination, including sex-based harassment, is prohibited in district education programs and activities.

The following rule 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

Sex discrimination includes treating an employee differently based on the employee's sex, which includes differential treatment based on sex stereotypes; sex characteristics; sexual orientation; gender; gender identity; gender expression; pregnancy, childbirth, termination of pregnancy, or lactation, including related medical conditions and recovery; parental, family, or marital status; or association with a person or group with one or more of these actual or perceived characteristics.

Sex discrimination, including sex-based harassment, intimidation, or bullying, may result from physical, verbal, nonverbal, or written conduct and occurs when prohibited conduct is so severe, persistent, or pervasive that it creates an intimidating, threatening, hostile, or offensive work environment; has the effect of substantially or unreasonably interfering with an employee's term or condition of employment; or otherwise adversely affects an employee's employment opportunities.

Sex-based harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, sex stereotypes, sex characteristics, or other bases specified above. Conduct will constitute sex-based harassment when it takes the form of:

1. Quid pro quo harassment: A district employee, agent, or other individual authorized by the district to provide an aid, benefit, or service in the district's education program or activity conditioning the provision of district aid, benefit, or service on a student's participation in unwelcome sexual conduct

2. Hostile environment harassment: Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the district's education program or activity

   Any prohibited conduct that occurs off campus or outside of school-related or school-sponsored programs or activities will be regarded as sex-based harassment in violation of district policy if it has a continuing effect on a student's ability to participate in or benefit from district educational programs or activities

3. Sexual assault, dating violence, domestic violence, or stalking, as defined in 34 CFR 106.2

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, regardless of whether or not the conduct is motivated by sexual desire. Conduct is considered to be sexual harassment when made

against another person of the same or opposite sex in the work or educational setting under any of the following conditions:

1. Submission to the conduct is made explicitly or implicitly a term or condition of any individual's employment

2. Submission to or rejection of such conduct by an individual is used as the basis for an employment decision affecting the individual

   The conduct has the purpose or effect of having a negative impact upon the individual's work or has the purpose or effect of creating an intimidating, hostile, or offensive work environment

3. Submission to or rejection of the conduct by an individual is used as the basis for any decision affecting the individual regarding benefits, services, honors, programs, or activities available at or through the district

Examples of Sex Discrimination and Sex-Based Harassment

Examples of actions that might constitute sex-based harassment under state and/or federal law in accordance with the definitions above, 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. Unwelcome verbal conduct such as sexual flirtations or propositions; graphic comments about an individual's body; overly personal conversations or pressure for sexual activity; sexual jokes or stories; unwelcome sexual slurs, epithets, threats, innuendoes, derogatory comments, sexually degrading descriptions, or the spreading of sexual rumors

2. Unwelcome visual conduct such as drawings, pictures, graffiti, or gestures, sexually explicit emails; displaying sexually suggestive objects

3. Unwelcome physical conduct such as massaging, grabbing, fondling, stroking, or brushing the body; touching an individual's body or clothes in a sexual way; cornering, blocking, leaning over, or impeding normal movements

Title IX Coordinator/Compliance Officer

The district designates the following individual(s) as the responsible employee(s) to coordinate its efforts to comply with Title IX in accordance with Administrative Regulation 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-based Harassment Complaint Procedures, and oversee the district's response to discrimination complaints processed under Board Rule 4030 - Nondiscrimination in Employment. The Title IX coordinator(s) may be contacted at:

Positive School Climate
compliance@lodiusd.net
(209) 331-7976

Training

The Superintendent or designee shall ensure that all employees receive training regarding sex discrimination and sex-based harassment in accordance with state and federal law.

Every two years, the Superintendent or designee shall ensure that supervisory employees receive at least two hours and nonsupervisory employees receive at least one hour of classroom or other effective interactive training and education regarding sexual harassment as specified in Government Code 12950.1. All such newly hired or promoted employees to a supervisory position shall receive training within six months of their assumption of the new position.

A supervisory employee is any employee with 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.

Such training may be completed by employees individually or as part of a group presentation, may be completed in shorter segments as long as the applicable hourly requirement is met, and may be provided in conjunction with other training provided to the employees. The training shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation. The district's sexual harassment training and education program but is not limited to, the following:

1. Information and practical guidance regarding federal and state laws concerning on the prohibition, prevention, and correction of sexual harassment

2. The types of conduct that constitute sexual harassment

3. Remedies available for victims in civil actions, and potential employer/individual exposure/liability

4. Strategies to prevent harassment in the workplace

5. Supervisors' obligation to report sexual harassment, discrimination, and retaliation of which they become aware

6. 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

7. The limited confidentiality of the complaint process

8. Resources for victims of unlawful harassment, such as to whom they should report any alleged harassment

9. Steps necessary to take appropriate remedial measures to correct harassing behavior, which includes the district's obligation to conduct an effective workplace investigation of a harassment complaint

10. What to do if the supervisor is personally accused of harassment

11. The essential elements of the district's anti-harassment policy, and how to use the policy if a harassment complaint is filed

    Employees shall receive a copy of the district's sexual harassment policy and rule, which they shall read and acknowledge that they have received

12. Information, including practical examples, of harassment based on gender identity, gender expression, and sexual orientation

13. Prevention of abusive conduct, including a review of the definition and elements of abusive conduct pursuant to Government Code 12950.1, the negative effects that abusive conduct has on the victim and others in the workplace, the detrimental consequences of this conduct on employee productivity and morale, and that a single act does not constitute abusive conduct unless the act is severe or egregious

Additionally, the Superintendent or designee shall ensure that all employees receive annual training related to their duties under Title IX in accordance with 34 CFR 106.8, and that a newly hired employee receive training promptly upon hire or change of position that alters the employee's duties under Title IX.

The district's Title IX sex discrimination and sex-based harassment training shall include:

1. The district's obligation to address sex-based discrimination, including sex-based harassment, in its education program or activity

2. The scope of conduct that constitutes sex discrimination under Title IX, including the definition of sex-based harassment

3. The notification and information requirements specified in 34 CFR 106.40 and 106.44

The district's Title IX sex-based harassment training and education program shall also include additional training required of supervisors; investigators, decisionmakers, and other persons who are responsible for implementing the district's grievance procedures or have the authority to modify or terminate supportive measures; facilitators of an informal resolution process; and Title IX coordinators and designees.

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, type of training, and name of the training provider.

Additionally, the Superintendent or designee shall retain for at least seven years the materials used to provide training as specified in 34 CFR 106.8, and to make these materials available, upon request, to members of the public.

Notifications

To prevent unlawful sex discrimination and sex-based harassment, including retaliation, in district programs and activities, the Superintendent or designee shall provide notifications and implement measures to prevent discrimination and harassment as specified in Board Rule 4030 - Nondiscrimination in Employment.

In addition to the measures to prevent discrimination as specified in Board Rule 4030 - Nondiscrimination in Employment, the Superintendent or designee shall ensure that a copy of the Board policy and this rule:

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

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 either a copy of information sheets prepared by the California Civil Rights Department (CRD) or the district information sheets that contain, at a minimum, components on:

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 CRD and the Equal Employment Opportunity Commission (EEOC)

6. Directions on how to contact CRD 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 CRD and the EEOC

In addition, the district shall post, in a prominent and accessible location, the CRD poster on discrimination in employment and the illegality of sexual harassment and the CRD poster regarding transgender rights.

Complaint Procedures

All complaints and allegations of sex discrimination and sex-based harassment by and against employees shall be investigated and resolved as specified in 34 CFR 106.44 and 106.45 Board Rule 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

If sex discrimination or sex-based harassment is found following an investigation, the Title IX coordinator, or designee in consultation with the Title IX coordinator, shall take prompt action to stop the sex discrimination or sex-based harassment, prevent recurrence, and address any continuing effects.

Policy Reference Disclaimer:
These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the Board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

Legal References:

STATE
CALIFORNIA CODE OF REGULATIONS
2 CCR 11006-11086 Discrimination in employment
2 CCR 11009 Employment discrimination
2 CCR 11021 Discrimination in employment - retaliation
2 CCR 11023 Harassment and discrimination prevention and correction
2 CCR 11024 Required training and education on harassment based on sex, gender identity and expression, and sexual orientation
2 CCR 11034 Terms, conditions, and privileges of employment

5 CCR 4900-4965 Nondiscrimination in elementary and secondary educational programs receiving state or federal financial assistance

EDUCATION CODE

200-262.4 Prohibition of discrimination

220.1 Prohibition of retaliation related to educational equity

220.3 Prohibition of disclosure of information related to student's sexual orientation, gender identity, or gender expression

220.5 Prohibition of policies requiring disclosure of information related to student's sexual orientation, gender identity, or gender expression

GOVERNMENT CODE

12900-12996 Fair Employment and Housing Act

12940 Unlawful discriminatory employment practices

12950 Sexual harassment

12950.1 Sexual harassment training

CALIFORNIA LABOR CODE

1101 Political activities of employees

1102.1 Discrimination: sexual orientation

1197.5 Wages, hours, and working conditions

FEDERAL

UNITED STATES CODE

20 USC 1681-1688 Title IX of the Education Amendments of 1972; discrimination based on sex

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

42 USC 2000gg-2000gg-6 Pregnant Workers Fairness Act

CODE OF FEDERAL REGULATIONS

29 CFR 1636 Implementation of the Pregnant Workers Fairness Act

34 CFR 106.1-106.82 Nondiscrimination on the basis of sex in education programs

MANAGEMENT RESOURCES

COURT DECISIONS

Burlington Industries v. Ellreth (1998) 118 S.Ct. 2257

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

Gebser v. Lago Vista Independent School District (1998) 118 S.Ct. 1989

Meritor Savings Bank, FSB v. Vinson et al. (1986) 447 U.S. 57

Oncale v. Sundowner Offshore Serv. Inc. (1998) 118 S.Ct. 998

FEDERAL REGISTER

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, April 29, 2024, Vol. 89, No. 83, pages 33474-33896

U.S. EQUAL EMPLOYMENT OPPORTUNITY COM. PUBLICATION

Promising Practices for Preventing Harassment, November 2017

WEBSITES

CSBA District and County Office of Education Legal Services https://legalservices.csba.org/#

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

California Civil Rights Department https://calcivilrights.ca.gov/

U.S. Department of Education, Office for Civil Rights http://www2.ed.gov/ocr

Equal Employment Opportunity Commission http://www.eeoc.gov/

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