SEXUAL HARASSMENT

Definitions

Sexual harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of one, or a combination of two or more protected characteristics, which include, but may not be limited to, sex; gender; gender identity; gender expression; sexual orientation; sex stereotypes; pregnancy, false pregnancy, childbirth, or related conditions or recovery; reproductive health decision-making; breastfeeding or related medical conditions; and parental, marital, and family status. (Government Code 11135, 12920, 12926, 12940; 20 USC 1681-1688)

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 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: (Education Code 212.5; Government Code 12940; 2 CCR 11034)

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

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

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

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

For purposes of applying the complaint procedures specified in Title IX, sexual harassment is defined as any of the following forms of conduct that occurs in an education program or activity in which a district school exercises substantial control over the context and respondent: (34 CFR 106.30, 106.44)

1. A district employee conditioning the provision of a district aid, benefit, or service on the person's participation in unwelcome sexual conduct

2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity

3. Sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 or 34 USC 12291

Title IX Coordinator/Compliance Officer

The district designates the following individual as the responsible employee to coordinate its efforts to comply with Title IX in accordance with Administrative Regulation 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures, and oversee the

district's response to sexual harassment complaints processed under Administrative Regulation 4030 - Nondiscrimination in Employment. The Title IX Coordinator(s) may be contacted at:

Assistant Superintendent, Human Resources
1717 4th St., Santa Monica, CA 90401
(310) 450-8338

Training

The Superintendent or designee shall ensure that employees receive training regarding sexual 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 newly hired or promoted supervisory 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)

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. (Government Code 12950.1)

The district's sexual harassment training and education program 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 concerning 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 administrative regulations, which they shall read and acknowledge that they have received.

12. Information, including practical examples, of harassment based on sex, 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

The Superintendent or designee shall retain for at least two years the records of any training provided to employees. Such records shall include, but are not limited to, the names of trained employees, date of the training, the sign-in sheet, a copy of all certificates of attendance or completion issued, the type of training, a copy of all written or recorded materials that comprise the training, and name of the training provider. (2 CCR 11024)

Additionally, the Superintendent or designee shall ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training in accordance with 34 CFR 106.45, including the definition of sexual harassment specified in 34 CFR 106.30, the scope of the district's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

In addition, the district's Title IX sexual harassment training shall include additional training for investigators and decisionmakers. (34 CFR 106.45)

The Superintendent or designee shall retain for seven years the materials used to provide training as specified in 34 CFR 106.45, make these materials publicly available on its website, or, if the district does not maintain a website make these materials available upon request, to members of the public.

Notifications

The Superintendent or designee shall notify employees that the district does not discriminate on the basis of sex as required by Title IX, that the Title IX nondiscrimination requirement extends to employment, and that inquiries about the application of Title IX to the district may be referred to the district's Title IX Coordinator and/or to the Assistant Secretary for Civil Rights, U.S. Department of Education. (34 CFR 106.8)

The district shall notify employees, bargaining units, and applicants for employment of the name or title, office address, email address, and telephone number of the district's Title IX Coordinator. (34 CFR 106.8)

The Superintendent or designee shall ensure that a copy of the accompanying Board policy and this administrative regulation shall:

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 (Education Code 231.5)

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 (Education Code 231.5)

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 (Education Code 231.5)

4. Be posted, along with the name or title and contact information of the Title IX Coordinator, in a prominent location on the district's website (34 CFR 106.8)

5. Be included, along with the name or title and contact information of the Title IX Coordinator, in any handbook provided to employees or employee organizations (34 CFR 106.8)

All employees shall receive either a copy of information sheets prepared by the California Civil Rights Department (CRD) or the district that contain, 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 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. (Government Code 12950)

Complaint Procedures

All complaints alleging sexual harassment by and against employees shall be investigated and resolved in accordance with law and district procedures. The district's Title IX Coordinator shall review the allegations to determine the applicable procedure for responding to the complaint. All

complaints that meet the definition of sexual harassment under Title IX shall be investigated and resolved in accordance with Administrative Regulation 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures. Other sexual harassment complaints shall be investigated and resolved in accordance with Administrative Regulation 4030 - Nondiscrimination in Employment.

If sexual 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 sexual harassment, prevent recurrence, and address any continuing effects.

Legal References:

State	***Description***
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*
Ed. Code 200-262.4	*Prohibition of discrimination*
Ed. Code 220.1	*Prohibition of retaliation related to educational equity*
Ed. Code 220.3	*No requirement to disclose information related to student's sexual orientation, gender identity, or gender expression*
Ed. Code 220.5	*Prohibition of policies requiring disclosure of information related to student's sexual orientation, gender identity, or gender expression*
Gov. Code 11135	*Prohibition of discrimination*
Gov. Code 12900-12996	*Fair Employment and Housing Act*
Gov. Code 12940	*Unlawful discriminatory employment practices*
Gov. Code 12950	*Sexual harassment*
Gov. Code 12950.1	*Sexual harassment training*
Lab. Code 1101	*Political activities of employees*
Lab. Code 1102.1	*Discrimination: sexual orientation*
Lab. Code 1197.5	*Wages, hours, and working conditions*

Federal	***Description***
20 USC 1681-1688	*Title IX of the Education Amendments of 1972; discrimination based on sex*
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 or activities*

42 USC 2000e-2000e-17	*Title VII, Civil Rights Act of 1964, as amended*
42 USC 2000gg-2000gg-6	*Pregnant Workers Fairness Act*

Management Resources	***Description***
Court Decision	*Tennessee v. Cardona (2024) 737 F.Supp.3d 510*
Court Decision	*Olmstead v. L.C. ex rel. Zimring (1999) 527 U.S. 581*
Court Decision	*John T. D. v. River Delta Joint Unified School District (2021) WL 5176356*
Court Decision	*Burlington Industries v. Ellreth (1998) 118 S.Ct. 2257*
Court Decision	*Department of Health Services v. Superior Court of California (2003) 31 Cal.4th 1026*
Court Decision	*Faragher v. City of Boca Raton (1998) 118 S.Ct. 2275*
Court Decision	*Gebser v. Lago Vista Independent School District (1998) 118 S.Ct. 1989*
Court Decision	*Meritor Savings Bank, FSB v. Vinson et al. (1986) 447 U.S. 57*
Court Decision	*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, May 19, 2020, Vol. 85, No. 97, pages 30026-30579*
U.S. DOE, Office for Civil Rights Publication	*Dear Colleague Letter: Enforcement of Title IX under the provisions of the 2020 Title IX Rule, February 4, 2025*
Website	*CSBA District and County Office of Education Legal Services*
Website	*California Department of Education*
Website	*California Civil Rights Department*
Website	*U.S. Department of Education, Office for Civil Rights*
Website	*U.S. Equal Employment Opportunity Commission*

Regulation **Santa Monica-Malibu Unified School District**
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