

Berkeley USD

Board Policy

Sexual Harassment

BP 4119.11

Personnel

It is the policy of the Berkeley Unified School District to provide an educational, employment, and business environment free of unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communications constituting sexual harassment, as defined and otherwise prohibited by state and federal law.

It is both unlawful and a violation of this policy for anyone who is authorized to recommend or take personnel or educational action affecting an employee or student, or who is otherwise authorized to transact business or perform other acts or services on behalf of the Berkeley Unified School District, to engage in sexual harassment as defined under this policy.

The complete sexual harassment policy is available at school sites and at the Berkeley Unified School District Administration Building, 2020 Bonar Street, in both the Human Resources and Student Services Offices. If questions arise concerning the interpretation of the prohibition against sexual harassment, the methods and procedures to be followed in the investigation of complaints, and the appropriateness of specific solutions in disposition of complaints, contact:

1. If the question involves a student, the site principal or designee, and the Compliance Officer/Title IX Coordinator.
Dana Clark, Compliance Officer/Title IX Coordinator
2020 Bonar Street, Room 116
(510) 486-9338
nondiscrimination@berkeley.net
2. In all other cases, the Assistant Superintendent, Human Resources. If a question relates to a site employee or an individual other than a student connected with the school site, the site principal should be contacted, then if necessary, the Assistant Superintendent, Human Resources.
Evelyn Bradley, Assistant Superintendent, Human Resources
2020 Bonar Street, Room 206
(510) 644-6229

evelynbradley@berkeley.net

Work Environment

Within the work environment, sexual harassment is unlawful and is prohibited between supervisors and employees, between employees, and between non-employees and employees.

Educational Environment

Within the educational environment, sexual harassment is unlawful and is prohibited between supervisors and employees, between employees, and between non-employees and employees.

Purpose of the Policy

This policy is intended to supplement, and not replace, any applicable state and federal laws and regulations. Formal complaints under those laws and regulations shall be processed through the procedures established by applicable state and federal agencies.

The Governing Board of the Berkeley Unified School District has developed this policy to:

1. Affirm the Board's opposition to sexual harassment in the Berkeley Unified School District
2. Create a learning and work environment in which all persons who participate in school programs and activities can do so in an atmosphere free from all forms of sexual harassment
3. Establish explicitly the responsibilities of all Berkeley Unified School District employees and students by defining conduct which constitutes prohibited and inappropriate behaviors
4. Create a mandate to develop educational programs designed to help Berkeley Unified School District employees and students recognize, understand, prevent, and take corrective action to end sexual harassment
5. Establish the framework for effective procedures for addressing harassment complaints.

Definition of Sexual Harassment

Sexual harassment occurs when unwelcome sexual advances, requests

for sexual favors, and other verbal, visual or physical conduct of a sexual nature:

1. Are made either explicitly or implicitly a term or condition of an individual's educational status or employment
2. Are used as a basis for educational or employment decisions affecting such individual
3. Have the purpose or effect of unreasonably interfering with an individual's education or work performance or creating an intimidating, hostile, or offensive educational or working environment

Specific Examples

For the purpose of further clarification, sexual harassment includes, but is not limited to:

1. Making unwelcome written, verbal, physical, and/or visual contact with sexual overtones.

Written examples include but are not limited to suggestive or obscene letters, notes, or invitations. Verbal examples include but are not limited to derogatory comments, slurs, innuendoes, jokes, or epithets. Physical examples include but are not limited to assault, touching, impeding, or blocking movement. Visual examples include but are not limited to leering, gestures, display of sexually suggestive objects or pictures, cartoons, or posters.

2. Continuing to express sexual interest after being informed that the interest is unwelcome. Reciprocal attraction is not considered sexual harassment in the case of employees but is inappropriate between employees and students.

3. Making reprisals, threats of reprisal, or implied threats of reprisal following a negative response.

For example, within the work environment either implying or actually withholding grades earned or deserved; suggesting a poor performance evaluation will be prepared; or suggesting a scholarship or college recommendation will be denied.

4. Within the work environment, engaging in implicit or explicit coercive sexual behavior which is used to control, influence, or affect the career, salary, and/or work environment of another employee. Within the educational environment, engaging in implicit or explicit coercive

sexual behavior which is used to control, influence or affect the educational opportunities, grades, and/or learning environment of a student.

5. Offering favors for employment benefits, such as promotions, favorable performance evaluations, favorable assignments, favorable duties or shifts, recommendations, reclassifications or the like in exchange for sexual favors.

Retaliation Prohibited

The initiation of a complaint of sexual harassment will not reflect on the complainant or witnesses in any way. It will not affect such person's future relationship with the district, his or her employment, compensation or work assignments, or, in the case of students, grades, class section or other matters pertaining to his or her status as a student in any district program. It is unlawful and a violation of this policy to engage in such retaliation.

Confidentiality

The request of a complainant or witness to not have his/her identity revealed will be honored in accordance with applicable policies, laws, and/or collective bargaining agreements.

However, it is understood and shall be made clear to the complainants and witnesses that not revealing the identity of the complainants or witnesses may limit the investigation and the action that may be taken against the harassers or retaliators.

Even when the identities of the persons who make complaints or are witnesses are known, reasonable efforts will be made to maintain their confidentiality. Only those who have need to know, including those taking or investigating the complaint, the alleged target of harassment or retaliation, the alleged harassers or retaliators, and any witnesses will be advised of their identities.

Additionally, reasonable efforts will be made to keep a complaint and the results of the investigation confidential. Persons who may be contacted in the course of investigations of sexual harassment complaints shall be informed that it will be a violation of this policy to disclose the complaint, the identities of the complainant and witnesses, or the nature of the investigation to others. They shall be advised that any retaliation or reprisal against any individual who is an alleged target of harassment or retaliation, who has made a complaint, or who has provided evidence in connection with a complaint is a separate actionable offense.

Disciplinary Action

Employees who act in violation of this policy and/or the law may be subject to discipline up to and including dismissal. Such disciplinary action shall be in accordance with applicable policies, laws, and/or collective bargaining agreements.

Students who act in violation of this policy and/or the law may be subject to discipline up to suspension or expulsion. Such disciplinary action shall be in accordance with District policy and state law.

Complaint Procedures Filing

Employees, students, or other individuals who feel aggrieved because of conduct that may constitute sexual harassment are encouraged, but not required, to directly inform the person engaging in such conduct that such conduct is offensive and must stop. It is recognized that power and status disparities between an alleged harasser and a target of harassment may make such a confrontation impossible.

If an aggrieved employee, student, or other individual is unable to communicate directly with the person whose conduct is offensive, or if direct communication has been unavailing or would be inappropriate, the aggrieved employee, student, or other individual may file a complaint in writing with:

1. His or her supervisor (in the case of harassment of an employee by an employee);
2. His or her site principal or designee (in the case of harassment of a student by a student, a student by an employee, or an employee by a student);
3. The site principal or designee associated with the incident (in the case of a site-related incident and harassment by a non-student or non-employee);
4. The Assistant Superintendent, Human Resources (for a non-site related incident and harassment by a non-student or non-employee).

The attached complaint form may be used. If the form is not used, the information requested on the form should be provided.

Before a written complaint is filed, an aggrieved individual may discuss

with the person responsible for taking the complaint whether the alleged conduct is sexual harassment and what options, besides filing a written complaint, are available to the aggrieved individual. The person responsible for taking the complaint will assist the aggrieved individual in determining what action should be taken.

While complaints should be in writing, any complaint received, whether anonymous or not or whether in writing or not, shall be accepted and investigated to the extent possible and appropriate.

An aggrieved individual need not be someone who has been the specific target of harassment. It may be anyone who has been a target of retaliation as a result of a harassment complaint or anyone who has observed sexual harassment or retaliation.

If the person responsible for taking the complaint is not of the same gender as the aggrieved individual, the aggrieved individual may request of the person responsible for taking the complaint that a person of the same gender assist in taking the complaint. If the individual responsible for taking the complaint is the one harassing, the aggrieved person may file the complaint with the individual who is next in line in the appeal process.

Responsibilities of Employees

Employees serving in supervisory or managerial positions that receive complaints or observe harassing or retaliating conduct by or of employees, students or others shall inform the individual responsible for taking the complaint as appropriate.

Investigation

1. Review and Disclosure of Complaint

The individual responsible for taking the complaint shall review the complaint. As soon as reasonably possible after receipt of the complaint, the student, employee, or other person who is accused of sexual harassment shall be informed of the contents of the complaint.

2. Complaints Against Students

Upon completion of the investigation of a complaint filed against a student, the site principal or designee shall determine whether the harassment has occurred and, if so, the appropriate corrective action. Corrective action may include counseling, warning, or the initiation of disciplinary procedures against the student.

3. Complaints Against Employees

Upon completion of the investigation of a complaint filed against an employee, the individual responsible for taking the complaint shall determine whether harassment has occurred and, if so, the appropriate corrective action. Corrective action may include counseling, warning, or the initiation of disciplinary procedures against the employee.

4. Complaints Against Other Individuals

Upon completion of the investigation of a complaint filed against an individual who is neither a student nor an employee, the Assistant Superintendent, Human Resources, or the site principal or designee shall determine whether harassment has occurred and, if so, the appropriate corrective action. Corrective action may include counseling, warning, or such penalties or sanctions against other individuals or parties as may be available to the District given the nature of the contractual or business relationship that may exist with such parties or individuals. Such individuals include visitors to the District and those who have business relations with the District.

Appeal and Disciplinary Procedures

All decisions made under this procedure may be appealed by the aggrieved person to the Superintendent and, thereafter, to the Board.

If the complaint is against a student, the complainant, before appealing to the Superintendent, should appeal to the Assistant Superintendent, Educational Services. In the cases where a site designee is responsible for the complaint, the complainant should appeal to the site principal before appealing to the Assistant Superintendent, Educational Services.

If the complaint is against an employee, the complainant, before appealing to the Superintendent, should appeal to the Assistant Superintendent of Human Resources. If the employee is a site employee and the principal of the site has not heard the complaint, the complainant should appeal to the site principal before appealing to the Assistant Superintendent, Human Resources.

If the complaint is against an individual who is not a student or employee and the incident occurred on a school site, the complainant should appeal to the Assistant Superintendent, Human Resources, before appealing to the Superintendent.

Established statutory and district procedures, under which the District

has the burden of proof, shall be used in the event the administrative review results in a decision that disciplinary action is necessary.

Since established personnel disciplinary procedures provide for Board-level review or decision-making, the Governing Board will take no action on any complaint until it has been acted upon in accordance with this policy. In this way, employees shall be assured of their due process rights.

Time Limits

A complaint shall be filed as soon as reasonably possible after the conduct in question has arisen. All complaints shall be promptly and thoroughly investigated in a confidential manner. The investigation shall be completed within thirty (30) calendar days. If the complainant has submitted a signed written complaint, a written report summarizing the findings and disposition of the complaint will be provided the complainant within the thirty calendar days.

Special Assistance

It is expected that questions may arise concerning the interpretation of the prohibition against sexual harassment, the methods and procedures to be followed in the investigation of complaints, and the appropriateness of specific solutions in disposition of complaints. For assistance in these matters, an aggrieved person may contact the Assistant Superintendent, Educational Services, or the Assistant Superintendent, Human Resources.

Implementation and Dissemination of Policy

This policy will be disseminated to all personnel and students at the beginning of the school year. All newly hired district employees and new students will receive a copy of this policy in connection with the orientation of newly hired employees or new students. District employees shall understand and agree to abide by this policy.

The policy shall be prominently displayed at each instructional or work location and shall be incorporated into any institutional publication that sets forth the rules, regulations, procedures, and standards of conduct. It shall be included as part of the district's annual notification to parents pursuant to Education Code Section 49080.

The Superintendent or designee shall ensure that every two years supervisory employees receive at least two hours of classroom or other effective interactive training and education regarding sexual harassment.

All newly hired or promoted supervisory employees shall receive training within six months of their assumption of the supervisory position.

The district's training and education program for supervisory employees shall include information and practical guidance regarding the federal and state statutory law on the prohibition against and the prevention and correction of sexual harassment and the remedies available to the victims of sexual harassment in employment. The training shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation.

In addition, the Superintendent or designee shall ensure that all employees receive periodic training regarding the district's sexual harassment policy, particularly the procedures for filing complaints and employees' duty to use the district's complaint procedures.

Education of employees and students about this policy and associated federal and state laws prohibiting sexual harassment shall take place periodically. The objective of this education shall be to foster a better understanding of sexual harassment and of this policy and to develop behaviors and attitudes that mitigate against inappropriate sexual overtures and pressures in school, work, and social settings.

Those responsible for taking complaints of sexual harassment or implementing this policy shall receive training designed to inform them of their duties and responsibilities for handling appropriate all incidents of sexual harassment in the Berkeley Unified School District.

(cf. 5145.7 - Sexual Harassment)
(cf. 4319.11 - Sexual Harassment)
(cf. 4219.11 - Sexual Harassment)

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination on the basis of sex

GOVERNMENT CODE

12900-12996 Fair Employment and Housing Act, especially:

12940 Prohibited discrimination

12950.1 Sexual harassment training

LABOR CODE

1101 Political activities of employees

1102.1 Discrimination: sexual orientation

CODE OF REGULATIONS, TITLE 2

7287.8 Retaliation

7288.0 Sexual harassment training and education

CODE OF REGULATIONS, TITLE 5

4900-4965 Nondiscrimination in elementary and secondary education programs receiving state financial assistance

UNITED STATES CODE, TITLE 42

2000d-2000d-7 Title VI, Civil Rights Act of 1964

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

2000h-2-2000h-6 Title IX, 1972 Education Act Amendments

CODE OF FEDERAL REGULATIONS, TITLE 34

106.9 Dissemination of policy

COURT DECISIONS

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

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

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

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

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

Management Resources:

OFFICE OF CIVIL RIGHTS AND NATIONAL ASSOCIATION OF

ATTORNEYS GENERAL

Protecting Students from Harassment and Hate Crime, January, 1999

WEB SITES

California Department of Fair Employment and Housing:

<http://www.dfeh.ca.gov>

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

U.S. Department of Education, Office for Civil Rights:

<http://www.ed.gov/about/offices/list/ocr/index.html>

Policy BERKELEY UNIFIED SCHOOL DISTRICT

Adopted: July 14, 1993 Berkeley, California

revised: May 21, 2003

revised: September 6, 2006

revised: January 11, 2017

revised: June 28, 2017

revised: November 15, 2017